



COMMONWEALTH of VIRGINIA

DEPARTMENT OF
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JAMES W. STEWART, III
COMMISSIONER

December 1, 2010

TO: The Honorable Robert F. McDonnell
Governor of Virginia

The Honorable Charles J. Colgan
Chairman, Senate Finance Committee

The Honorable Lacey E. Putney
Chairman, House Appropriations Committee

FROM: James W. Stewart, III 
Commissioner, Department of Behavioral Health & Developmental Services

Re: Report on the Proposed Auxiliary Grant Portability Pilot (Item 341.H.)

The purpose of this memorandum is to report on the proposed Auxiliary Grant (AG) portability pilot authorized in Item 341.H. of the 2009 *Appropriation Act*, which reads as follows:

The Department of Social Services, Department of Mental Health, Mental Retardation and Substance Services, Community Services Boards, and local departments of social services may conduct a pilot for portable Auxiliary Grants to pay for housing of consumers who (i) have lived in an assisted living facility for more than 6 months, (ii) receive an Auxiliary Grant, (iii) receive Medicaid-funded case management and support services from a community services board or behavioral health authority, (iv) meet residential assisted living level of care criteria, (v) are determined by the community services board or behavioral health authority to be good candidates for living in the community based upon the Uniform Assessment Instrument, and (vi) have a plan of care in place developed by a community services board or behavioral health authority to ensure that needs can be met in the community. Priority shall be given to individuals meeting the above criteria who reside in assisted living facilities that give notice of closure or of discontinuing acceptance of Auxiliary Grant recipients as residents. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall, with cooperation by the Department of Social Services, evaluate any pilot to determine

the impact on portable Auxiliary Grant recipients, community services boards and local departments of social services. A report of the evaluation findings and recommendations shall be submitted to the Governor and Chairmen of the House Appropriations and Senate Finance Committees by December 1, 2010.

As former Secretary Tavenner informed you in October of last year (see attached) the pilot, as defined in the *Appropriation Act*, could not be implemented. Staff from the Departments of Social Services (DSS) and Behavioral Health and Developmental Services (DBHDS), with representatives from local DSS offices and community services boards (CSBs), began planning in 2009 to implement the pilot but stopped once the following impediments were identified:

1. **Medicaid Eligibility:** Auxiliary Grant recipients are categorically eligible for Medicaid, which would have been billed to cover services for the new portable-AG recipients. However, it was determined that, under 42CFR § 435.234(b)(6), this eligibility category is tied to the fact that assisted living facilities (ALFs) are considered “*domiciliary facilities or other group living arrangements as defined under SSI*” The supported housing in alternative settings proposed in the pilot would not meet that criteria.

Many portable-AG participants would have likely been eligible for Medicaid as Supplemental Security Income (SSI) recipients, but not all; therefore the pilot could not ensure that their “needs can be met in the community”. The federal regulations at § 435.234(b)(9) allow for other “*reasonable groups of individuals, as specified by the State, receiving State-administered supplementary payments*” to be eligible for Medicaid, but adding another category would require changes to Virginia’s Medicaid Plan.

2. **Auxiliary Grant Maintenance of Effort:** Under Social Security Administration (SSA) maintenance of effort (MOE) rules for SSI supplements, Virginia must maintain AG payments to any category of eligible recipients at the same payment level as the previous year (with some leeway according to when the category was established). This payment amount is measured either by the current AG rate (the *Payment Levels Method*) or total amount of AG payments (*Total Expenditures Method*.) If a new portable AG category was created for the pilot, it would establish a new baseline rate that could not be discontinued once the pilot ended without having some effect on Virginia’s remaining MOE obligations. Under SSA regulation 20CFR § 416.2096, for Virginia to be eligible to receive Medicaid reimbursement, MOE compliance in the AG program is required.

We regret that we were unable to demonstrate alternative uses of the Auxiliary Grant for individuals with behavioral health disorders through this pilot and look forward to working with the Department of Social Services and our other partners to pursue other opportunities as they may arise.

Enclosure



COMMONWEALTH of VIRGINIA

Office of the Governor

Marilyn B. Tavenner
Secretary of Health and Human Resources

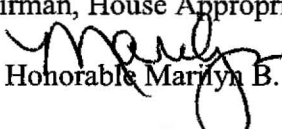
October 7, 2009

Memorandum

TO: The Honorable Timothy M. Kaine
Governor of Virginia

The Honorable Charles J. Colgan
Chairman, Senate Finance Committee

The Honorable Lacey E. Putney
Chairman, House Appropriations Committee

FROM: 
The Honorable Marilyn B. Tavenner

SUBJECT: Portable Auxiliary Grant Pilot

This purpose of this memorandum is to report on the voluntary portable Auxiliary Grant (AG) pilot authorized in Item 341 H of the 2009 Appropriation Act. The pilot was to be based upon the 2008 AG Portability Plan developed by the Department of Behavioral Health and Developmental Services (DBHDS) and the Office of the Secretary of Health and Human Resources (SHHR). The Appropriation Act directive is as follows:

The Department of Social Services, Department of Mental Health, Mental Retardation and Substance Services, Community Services Boards, and local departments of social services may conduct a pilot for portable Auxiliary Grants to pay for housing of consumers who (i) have lived in an assisted living facility for more than 6 months, (ii) receive an Auxiliary Grant, (iii) receive Medicaid-funded case management and support services from a community services board or behavioral health authority, (iv) meet residential assisted living level of care criteria, (v) are determined by the community services board or behavioral health authority to be good candidates for living in the community based upon the Uniform Assessment Instrument, and (vi) have a care of plan in place developed by a community services board or behavioral health authority to ensure that needs can be met in the community. Priority shall be given to individuals meeting the above criteria who reside in assisted living facilities that give notice of closure or of discontinuing acceptance of Auxiliary Grant recipients as residents. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall, with cooperation by the Department of Social Services, evaluate any pilot to determine the impact on portable Auxiliary Grant recipients, community services boards and local departments of social services. A report of the evaluation findings and recommendations shall be submitted to the Governor and Chairmen of the House Appropriations and Senate Finance Committees by December 1, 2010.

Staff from the Department of Social Services (DSS), Department of Medical Assistance Services (DMAS) and DBHDS, as well as other stakeholders, began discussions on pilot implementation in April 2009. As discussions progressed, two major obstacles to pilot implementation were discovered. One related to Medicaid eligibility for pilot participants. Under current Medicaid guidelines, an individual with a portable AG payment who moves to an apartment will no longer be automatically eligible for Medicaid. The pilot participant's continued Medicaid coverage is essential to ensure they receive mental health support services in the community. While it may be possible to obtain federal approval for pilot participants to be included in another Medicaid category, inclusion of this additional category would necessitate changes to the State Medicaid Plan and DMAS regulations.

Additionally, discussion with the Social Security Administration (SSA) state supplement representatives revealed another concern with the pilot. Each year Virginia must meet a Maintenance of Effort (MOE) requirement and ensure that federal cost of living adjustments are passed along to individuals with Supplemental Security Income (SSI). There are two "passalong" options, and Virginia has had the ability to switch between options as needed. If the additional category of portable AG participants was added to the AG program and then discontinued at a later date, it would limit Virginia's flexibility in meeting the MOE requirements. Failure to meet MOE requirements could threaten Virginia's entire Medicaid program. It is important to note that the agencies had a discussion with SSA during the development of the 2008 plan. However, we believe it was not clear at the time that the program was to be a pilot, rather than permanent.

Given these two grave concerns, it was agreed that the pilot, as envisioned in the Appropriation Act, could not be implemented. The next option was to explore a permanent third category with capped enrollment. We hoped that making the new category permanent would alleviate SSA's concern with the pilot, and that capping enrollment would avoid a fiscal impact. DSS was asked to consult once again with SSA regarding whether a new permanent category could be capped.

This week SSA notified us that a new permanent category of capped state supplementary payments is not permissible. They indicate that capping the new category would still put us at risk of not meeting MOE requirements. I regret to say we have exhausted our options to make a cost neutral portable AG, permanent or pilot, a reality.

An alternative would be for the General Assembly to consider creating another program with the same eligibility criteria as the proposed pilot, but outside the SSI State Supplement/AG umbrella. This would require straight general funds. However, it would allow the Commonwealth to implement the desired supplemental program and tailor it to our needs, without the risks encountered with the pilot.

MBT:kc

c: Anthony Conyers, Jr., Commissioner, Department of Social Services
Patrick Finnerty, Director, Department of Medical Assistance Services
James Reinhard, MD, Commissioner, Department of Behavioral Health and Developmental Services