COMMONWEALTH of VIRGINIA
Department of Medical Assistance Services

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December 12, 2018

MEMORANDUM

TO: The Honorable Thomas K. Norment, Jr.
Co-Chairman, Senate Finance Committee

The Honorable Emmett W. Hanger, Jr.
Co-Chairman, Senate Finance Committee

The Honorable S. Chris Jones
Chairman, House Appropriations Committee

Daniel Timberlake
Director, Department of Planning and Budget

FROM: Jennifer S. Lee, M.D. JL
Director, Virginia Department of Medical Assistance Services

SUBJECT: Consumer-Directed Agency with Choice Model due December 1, 2018

The 2018 Appropriation Act, Item 303 UUU, states: Effective July 1, 2018, the Department of Medical Assistance Services shall explore private sector technology based platforms and service delivery options to allow qualified, licensed providers to deliver the Consumer-Directed Agency with Choice model in the Commonwealth of Virginia. The department shall work with stakeholders to examine this model of care and assess the changes that would be required including the services covered, provider qualifications, medical necessity criteria, reimbursement methodologies and rates to implement the model. The department shall submit a report on its findings to the Chairmen of the House Appropriations and Senate Finance Committees by December 1, 2018.

Should you have any questions or need additional information, please feel free to contact me at (804) 786-8099.

JSL/

Enclosure

pc: The Honorable Daniel Carey, M.D., Secretary of Health and Human Resources

Consumer-Directed Agency with Choice Model

A Report to the Virginia General Assembly — *December 1, 2018*

Report Mandate:

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Executive Summary

Agency with Choice (AwC) is one of two predominate models used in consumer directed services. This report examines the agency with choice model and highlights stakeholder input regarding changes that would be required to implement the model in the Commonwealth.

Background

Agency with Choice (AwC) is a model of consumer-directed services that provides individuals receiving Medicaid Home and Community Based Services (HCBS) greater choice and control over who provides their services and how those services are provided. In the AwC model, the Medicaid beneficiary and the agency are joint employers or "co-employers" of the individual's attendant. The individual is the managing employer responsible for selecting, training, and supervising the attendant who provides services. The agency serves as the primary employer of the attendant and is responsible for hiring and terminating the attendant, approving timesheets, and managing payroll, taxes and insurance.

In the Commonwealth, there are two service delivery options for individuals receiving Medicaid HCBS: 1) consumer-directed (CD) services or 2) agency-directed (AD) services. In the CD model, the individual or someone appointed by the individual acts as the employer of record (EOR). As the EOR, the individual is responsible for hiring, training, scheduling, and terminating their employee(s) and monitoring services. A services facilitation provider works with the EOR/individual in establishing a plan of care and supports the EOR in understanding the employment responsibilities. A Fiscal/Employer Agent (F/EA) acts as an administrative support to the EOR and is responsible for completing required background checks, processing timesheets, processing payroll, and paying

About DMAS and Medicaid

DMAS' mission is to ensure Virginia's Medicaid enrollees receive high-quality and cost-effective health care.

Medicaid plays a critical role in the lives of more than a million Virginians. Medicaid enrollees include children, pregnant women, parents and care takers, older adults and individuals with disabilities. Virginians must meet income thresholds and other eligibility criteria before qualifying to receive Medicaid benefits.

Medicaid covers primary and specialty health care, inpatient care, and behavioral health and addiction and recovery treatment services. Medicaid also covers long-term services and supports, making it possible for thousands of Virginians to remain in their homes or to access residential and nursing home care.

Quick Medicaid facts:

- Covers 1 in 8 Virginians
- Covers 1 in 3 births and 33% of children
- Supports 2 in 3 nursing facility residents

Virginia Medicaid and Children's Health Insurance Program (CHIP) are administered by the Department of Medical Assistance Services (DMAS) and are jointly funded by Virginia and the federal government under the Title XIX and Title XXI of the Social Security Act. Virginia generally receives $1 of federal matching funds for every $1 Virginia spends on Medicaid.

state and federal employment taxes. In the AD model, the agency performs the F/EA functions.

Both CD and AD service options are available for personal care, respite and companion services for:

- Individuals enrolled in a Community Living or Family and Individual Supports Developmental Disabilities Waiver;
- Individuals enrolled in the Commonwealth Coordinated Care Plus Waiver;
- Individuals receiving Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services, or
- Individuals in the Medicaid Works program.

Examination of Agency with Choice Model

Benefits of AwC Model

According to the National Resource Center for Participant-Directed Services, AwC empowers participants to have choice and control over the services and supports needed to live at home and in the community. Additional benefits include:
(1) the individual chooses and schedules attendants without being responsible for administrative and human resource functions, (2) the individual's paperwork burden is reduced because the participant is not the legal employer, (3) AwC provides worker related support and emergency back-up, (4) a lower risk option for individuals because the agency is the primary employer of workers, (5) cost effective alternative to provide benefits to attendants such as health insurance and retirement, and (6) possibility of full time employment for attendants because they can work for several participants.

Challenges of AwC Model

The National Resource Center for Participant-Directed Services indicates a primary challenge of AwC is balancing the duties of the managing employer (the individual) and the primary employer (the agency). Other challenges include:
(1) conflict of interest between business interests of the agency and control of participants, (2) choice and control is not inherent and monitoring is needed to ensure true participant-direction, (3) liability concerns may cause an agency to limit participant's level of control in order to manage risk, and (4) attendants may view the agency as managing employer and resolve issues via the agency.

Stakeholder Input

In September 2018, the Department of Medical Assistance Services (DMAS) conducted a telephone survey with stakeholders representing providers of Long-Term Services and Supports including the Virginia Department of Behavioral Health and Developmental Services, services facilitators, agency providers, and managed care organizations. Prior to completing the survey, DMAS sent stakeholders a copy of the survey questions and a power point on the AwC model. Five stakeholders participated in the survey.

All stakeholders shared positive comments about the basic concepts of the AwC model. The majority of stakeholders expressed agreement with the division of responsibilities in the AwC model.

Stakeholders indicated that the AwC model: (1) provides flexibility, options, and choice for individuals and families; (2) fosters person centered care; (3) facilitates continuity of care when a case is transferred from one agency to another; (4) allows for increased professionalism and attendant training; and (5) provides more oversight over utilization of hours and plans of care than the current CD model.

Services Covered

Currently, personal care, respite and companion services can be provided through the CD model. The majority of stakeholders stated that these services should be included in an AwC model if one were to be developed. Stakeholders shared that families would like increased options for consumer direction in Developmental Disabilities (DD) Waivers, such as (1) In-Home services, (2) workplace assistance, and (3) community coaching.

Provider Qualifications

The recommended DD waiver services of in-home family supports, workplace assistance, and community coaching currently require competency observations by a supervisor. This would warrant a decision on which employer would be responsible for the observation. Other recommendations from stakeholders were: (1) add minimum education requirements for attendants, (2) have staff who understand independent living and consumer direction, and (3) use licensed practical nurses to provide services facilitation.

Medical Necessity Criteria

Individuals receiving consumer directed services must meet the eligibility criteria for their respective waiver program. An individual needs must also be consistent

with services that are authorized. Should an AwC model be developed, the medical necessity criteria would be consistent with the already established requirements. Additionally, individual choice and needs must also be ensured when determining hours of care.

Reimbursement Methodologies and Rates

Prior to the implementation of AwC, an independent rate model would be developed taking into account the provider's costs for delivering the service. Stakeholders suggested that the rate established for AwC could be comparable with current AD rates.

A rate cost analysis with a national vendor will be required to determine if there will be an additional impact. The Commonwealth will need administrative funding to perform the cost analysis.

Stakeholders expressed concern about low wages of attendants and workforce shortage; as well as the lack of reimbursement for Registered Nurse visits in the current AD rate model. These concerns should be considered when developing a rate methodology for AwC consumer direction.

Private Sector Technology Based Platforms

The majority of stakeholders were not aware of any private sector technology-based platforms designed to implement AwC. One stakeholder shared information on an existing proprietary technology system and offered to provide a demonstration to DMAS. Another stakeholder expressed reservations about technology and stated that in some areas of Southside Virginia, cellular phone service is limited and some individuals do not have landlines.

Stakeholder Concerns for Consideration

Stakeholders expressed concerns regarding the joint employer roles and the responsibilities in the AwC model and emphasized the importance of clear delineation of roles. They also noted that AwC should only occur if it will serve a benefit and offer enhanced services suggesting that DMAS must first address any existing problems with the current AD and CD models by providing additional oversight of utilization of hours and billing for attendant care and services facilitation.

Federal and State Requirements

Should DMAS implement AwC for consumer-directed services, Federal approval would be required from the Centers for Medicare and Medicaid Services (CMS) through waiver amendments. Waiver amendments would need to be developed and submitted for each of the three 1915 c waivers impacted: the Commonwealth Coordinated Care Plus waiver, Community Living waiver and Family and Individual Supports waiver. The Virginia Administrative Code would require revision to provide state regulatory authority to implement the service model.

Conclusion

AwC provides Medicaid individuals with choice and control over their services. Stakeholders shared input on benefits and concerns with the AwC model and provided suggestions for changes that would be required to implement the model including services covered, provider qualifications, reimbursement rates, use of technology, and joint employer responsibilities.