



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR MEDICAL SERVICES

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September 6, 2000

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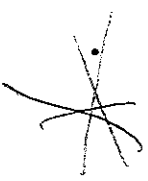
Ms. Claudette V. Campbell
Associate Regional Administrator
Division of Medicaid and State Operations
Department of Health and Human Services
The Public Ledger Building, 2nd Floor
150 South Independence Mall West
Philadelphia, PA. 19106-3499

Re: West Virginia's Request to Renew Waiver #0133.90.R2

Dear Ms. Campbell:

This letter provides the additional information you requested in your June 9, 2000 letter related to the renewal of West Virginia's Home and Community Based Waiver for the Mentally Retarded and Developmentally Disabled Waiver (MR/DD Waiver), HCFA control number 0133.90.R2. With this correspondence, I am submitting a revised waiver renewal application (**Attachment 1**) containing the language changes as indicated in your correspondence, along with other information you requested.

Below is a discussion of each point raised in your letter:

 In our previously submitted application, at Page 9, Item 17, we noted our intent to conduct an independent assessment of the MR/DD waiver. This assessment was recently completed by Robin Hill, NASDDDS, and Mariiyn Hill, Hill Associates. I am enclosing for your review the report prepared by these consultants. (**Attachment 2**)

- We have changed the effective date to July 2000 as you suggested. Appendix G estimates, including factor D for the final year, have been changed. (See **Attachment 1**).
- We have made the suggested language change to Page 14a of the application regarding case management and delivery of direct services. Revisions were made regarding provider participation and geographic catchment as indicated. We too believe these are positive changes.

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With regard to licensure issues raised in your correspondence, I provide the following comments:

- I have enclosed the license requirements for behavioral health centers (**Attachment 3**). The holder of a behavioral health license is equivalent to a Community Behavioral Health Center for the purposes of this application. The Department of Health and Human Resources' Office of Behavioral Health Services contracts and funds certain licensed Community Behavioral Health Centers to provide core behavioral health services as delineated by WV code. These centers are referred to as Comprehensive Community Behavioral Health Centers.
- I have enclosed the provider qualifications for service coordination agencies that will be used for waiver providers (**Attachment 4**). These have been adopted from standards used for agencies providing targeted case management.
- Waiver, licensure and certificate of need limitations are described in the enclosed MR/DD Waiver Handbook (**Attachment 5**), Certificate of Need (CON) process (**Attachment 6**), Summary Review process for MR/DD Waiver Services (**Attachment 7**), and Behavioral Health Licensure regulations (see **Attachment 3**). According to WV Code, any willing provider can apply for a behavioral health license to provide services if they have a CON or now are deemed exempt under the new summary review process. During the 2000 legislative session, the West Virginia Legislature passed a law allowing for the summary review of CON applications for MR/DD waiver providers, which, when appropriate, will allow agencies seeking to provide waiver services to bypass the full CON process and provide for a more expeditious review and granting of a CON.
- We continue to believe that Licensure is an effective method for maintaining quality and stable providers. Apparently HCFA agrees with this on a broad level, since HCFA includes it as a quality assurance measure that is acceptable in the new review protocol for all Home and Community Based Waivers. If anything has restricted the entry of new providers into this arena, we would suggest it has been the CON requirement and process. This potential deterrent is ameliorated, we believe, by the newly enacted summary review process for CONs.
- We disagree with your assumption that West Virginia's licensure provisions have failed with regard to Shawnee Hills. To the contrary, we believe the licensure certification and review processes have helped identify concerns at Shawnee Hills and other providers, and allow for an opportunity to correct deficiencies without disrupting client care. As I pointed out to you in my January 18, 2000 correspondence, the Department's Office of Health Facility Licensure and Certification (OHFLAC) re-surveyed Shawnee Hills and granted the facility full, unencumbered licensure. Shawnee Hills also recently was accredited by the Joint Commission for Accreditation of Health Care Organizations (JCAHO). Moreover, the settlement agreement entered into by Shawnee Hills and the United States

Department of Justice related to billing practices that occurred several years prior to any recent action by OHFLAC. Currently, under its new administration, Shawnee Hills is making significant progress in resolving its financial concerns. Furthermore, we believe there were sufficient providers available to absorb Shawnee Hills clients had Shawnee Hills not been able to resolve its financial and/or licensing issues.

On the issue of the Certificate of Need requirement and free choice of providers, I offer the following comments:

- We appreciate HCFA's recent approval of our request to serve 200 additional people in the MR/DD waiver. West Virginia Medicaid continues to enroll new waiver providers in an effort to permit recipients free choice of providers. In the HCFA approved MR/DD Waiver renewal submitted in 1993, West Virginia had 15 combined service coordination / service providing agencies enrolled as Waiver providers. As noted on page 14a of the current renewal application, West Virginia currently has 25 providers of both service coordination and direct waiver services. Sixteen additional providers provide direct services to waiver recipients. This total of 41 providers in the year 2000 compares well to 15 when the 1993 renewal was approved by HCFA. Also worthy of note is that in 1993, each county was only served by the one agency that had geographic responsibility for that region of the state. Now in thirty-six (36) counties consumers have the choice of two or more service coordination agencies, and in fifty-four (54) of fifty-five (55) counties they may choose from two or more direct service providers. Despite our desire to enroll new providers, we are, as you know, constrained by state law which requires that these providers receive a Certificate of Need from the West Virginia Health Care Authority, an agency over which the Bureau for Medical Services has no jurisdiction. For this reason, we were very pleased with the new summary review process permitted by recent legislation. With the new CON summary review process simplifying application and eliminating the cost and time generally involved in obtaining a CON, we anticipate an influx of new providers who may have been deterred under the system as it previously existed.
- We believe your assumption that the summary review legislation and simplified CON process will not increase freedom of choice of MR/DD Waiver providers is inaccurate. A similar process was implemented with regard to child care providers, and was very effective in attracting new providers and permitting new providers expedited and simplified access to the program. The Department is committed to expand providers for MR/DD Waiver services in all areas. We fully recognize that the freedom of choice issues you raise are real across the entire state. We would hope that you would recognize our efforts to ease the restrictions that the current CON places on enrolling new MR/DD Waiver providers and let us implement the new review process before judging its effectiveness.
- The Pro-Careers CON application contest and testimony given therein is irrelevant to the renewal of the MR/DD waiver. Pro-Careers was seeking a CON to become

a provider of personal care services as required by state statute. Personal care is a completely different state plan service that has no summary review process associated with the CON review requirements. Any testimony given in that proceeding related solely to the provision of personal care services and was premised on state laws applicable to the provision of personal care services.

- West Virginia plans to expand our fiscal effort in the MR/DD Waiver as evidenced by the increased numbers included in our application. The 2000 Legislature approved a budget that included funding to serve 200 additional individuals in the program. They are aware of this renewal application that plans to further increase the number of individuals enrolled in the program. We appreciate that adding new clients to this program will increase the need for new providers. The plans you asked for are attached: State Health Plan (**Attachment 8**); Application for FY 1999-2001 Community Mental Health Services Block Grant (**Attachment 9**); Mental Health Services Block Grant Implementation Report (**Attachment 10**).
- The Department is in the process of revising the State Mental Health Plan of which one component is the "Balanced System of Care for Adults" (**Attachment 11**). This component was approved by the Department's Behavioral Health Advisory Council which serves as an advisory body on Behavioral Health issues. This group is incorporating the "Balanced System of Care for Adults" with other planning efforts, including the Medley "At-Risk" Plan, (**Attachment 12**) into a revised Mental Health Plan. The Department will introduce this plan to the WV Legislature during its interim session later this summer.
- The Department does not intend to utilize the summary review process only to prevent active compliance monitoring of the program and intervention by HCFA. We see this review process as an ongoing opportunity to increase freedom of choice for individuals in the program.
- For the MR/DD Waiver Program, the Department has conducted a needs assessment of providers, consumers and others. The assessment has demonstrated that there is a need for more providers to increase individual choice. We anticipate issuing a Request for Information (RFI) and enrolling the first new providers under this process by January 1, 2001. In the meantime, new providers are being licensed and enrolled under the existing CON process. We are using a very broad interpretation of the terms "underserved" and "lack of choice" and do not intend to add only one or two providers to an area.
- In determining if choice to consumers exists, we consider as a valid choice only those providers who actually provide services in a county, regardless of the extent of the provider's authority to provide services. That is, if a provider is licensed or has a CON to provide services in several counties, but chooses only to provide services in one county, that provider is not considered in those counties not served in determining if clients have freedom of choice.

- As mentioned above, our fiscal plan for behavioral health includes the additional funding for the MR/DD Waiver Program. We do not feel that it is inconsistent with either the Department's programmatic or fiscal plan. We also believe strongly that increased competition may reduce costs in many instances where the only choice a consumer has may not be consistent with his/her needs. The summary CON review process would permit us to "waive" the requirement in the traditional CON process that the state not incur any new expenses by the approval of new providers.
- Importantly, we recognize that recent litigation, including the Benjamin H. case in West Virginia and Olmstead nationally, requires us to provide waiver services in a timely manner to a growing number of eligibles. The need for a larger provider network and greater provider capacity will be major considerations when evaluating the degree to which an area is adequately served.
- As previously stated, West Virginia has enrolled new providers since the last renewal. In the year 2000, six new service coordination agencies have enrolled (the ARC of Kanawha-Putnam Counties, Russell Nesbitt Services, the Potomac Center, Timberline Inc., ARC of Harrison County and Green Acres). Worthington Center has expressed interest in being both a service coordination and provision agency and is being given assistance in its effort to do so. Stars of Appalachia applied for the CON and Behavioral Health License as a direct service provider and now is providing these services. REM, currently providing direct services in 17 counties, has also expressed interest in service coordination and is being assisted in its efforts. Res-Care/VOCA, which currently provides waiver services in 20 counties, has expressed interest in becoming a service coordination provider. We will assist as necessary to get this provider enrolled.

With regard to your comments related to specific passages / pages in the renewal application, please note the following:

- Page 20 - Habilitation: This page has been revised to clarify that we are not allowing subcontracting for day programming (see **Attachment 1**).
- Page 20 Item g: This item has been revised to clarify that these therapies are covered as QMRP services (see **Attachment 1**). Physical and occupational therapy are state plan services but are not available for chronic conditions. Consequently, waiver physical and occupational therapy do not duplicate state plan services. Speech therapy available under the state plan is limited in duration and waiver speech therapy is used to provide extended periods of treatment. We plan to report these services separately on the HCFA-372 Report.
- Page 61 - Informed Consent: I am enclosing a draft of an Application/Statement of Interest form (**Attachment 13**). Also enclosed is a Statement of Rights which will be distributed at the time of application (**Attachment 14**). The Informed Consent

form (**Attachment 15**) has been revised and informed consent will become part of the application process rather than a post-approval activity.

- Page 62 - Notice of Decision: The Notice of Decision (**Attachment 16**) has been revised as part of the Benjamin H. case and to bring it into compliance with applicable Federal regulations. The MR/DD Handbook you requested is enclosed (see **Attachment 5**). Please note the handbook reflects current practice and will be rewritten when the renewal application is approved.
- Page 65 - Level of Care Criteria: We have revised this page as you suggested (see **Attachment 1**).
- Page 66: Targeted Case Management, Personal Care, Clinical and Mental Health Rehabilitation services would be duplicative for the waiver population.
- Page 68 - Appeal of an Individual Program Plan: We have revised this page to authorize only the applicant, recipient or authorized representative to file appeals (see **Attachment 1**).
- Page 71 - Medicaid Agency Approval: We have revised this page regarding the initial approval of the plan of care and subsequent periodic review by the waiver monitoring team (see **Attachment 1**).

Waiver policy mandates that providers have qualified and trained staff to serve as backups or substitutes in the event such staff are needed. We rely on our periodic monitoring of providers to assure proper credentialing of employees by the providers.

The issue of Medicaid reimbursement rates and whether these rates effect agency staffing recently was before the court in the Benjamin H. case. While the court found in our favor on this issue, we have undertaken a review of reimbursement rates to insure economy, efficiency, quality of care and equal access. Our review and any decision on this matter will be completed in the very near future and we will supplement this response at that time.

- Pages 89a to 89e - Demonstration of Factor D estimates: We have revised these provisions as previously discussed. We have added page 89f showing the units of service which you requested (see **Attachment 1**).
- Page 90 - Appendix G-3 has been completed (see **Attachment 1**).

The following is an update on our May 26, 1999 response to HCFA's assessment report and recommendations therein for operation of the waiver program:

- The Office of Behavioral Health Services (OBHS), Division of Developmental

Disabilities, held a statewide training called "The Gathering" on August 31, 1999. During that training, a neuropsychiatrist retained by OBHS conducted a session on the appropriate use of anti-psychotic medications, alternatives, awareness of side effects, and human rights issues. Clinical staff and case managers from provider agencies attended this training and were instructed how to train direct care staff using handouts and notes from the session. At the most recent waiver provider meeting on August 10, 2000 we distributed the HCFA publication "Psychopharmacological Medications: Safety Precautions for Persons with Developmental Disabilities—A Resource for Training and Education" to waiver providers. OBHS has planned another training session for December 2000. This will also feature a presentation by a neuropsychiatrist.

- OBHS Division of Developmental Disabilities is in the process of hiring a full-time registered nurse as MR/DD Program reviewer. In the interim, nursing staff from the Bureau for Medical Services with a background in the use of anti-psychotic medication has participated and will continue to participate in on-site MR/DD Waiver reviews.
- To our knowledge, county school systems are meeting their service obligations. When difficulties accessing school services are brought to the attention of the Waiver office in OBHS, the Office of Special Education or Bureau for Medical Services, we work quickly in concert to directly intervene with the local school system, if needed, to resolve the question. Additionally, representatives from OBHS, Medicaid and the Department of Education, particularly the Office of Special Education, meet regularly on a variety of issues. In these meetings either systemic or case specific issues can be addressed and resolved. We also expect service coordinators to advocate for consumers and to link to the WV Advocates regarding school issues. School Health Services under the State Medicaid plan were recently expanded. (See State Plan Amendment **Attachment 17**) We believe this expansion will enhance the ability of local school systems to provide IEP services to Medicaid eligible children.
- As explained earlier in this response, we no longer are restricting qualified providers to geographic catchment areas. We are making progress in attracting new providers and existing providers are beginning to expand into broader geographic areas. We believe that increased choice of providers will be instrumental in eliminating potential conflicts of interest regarding case management providers who also provide other waiver services. We certainly do not intend to prohibit or prevent clients from changing providers as desired and encourage and assist with this process as necessary to facilitate any desired change.
- Agencies that provide waiver services are required to bill Medicaid directly for their services. We do not permit sub-contracting providers. Some individual direct care staff who are not employees of an agency are currently billing through service

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coordination agencies. Those individuals are selected by the consumer and customarily serve only that one consumer. Billing through a service coordination agency allows us to assure that these individuals meet credentialing requirements. Under our current billing methodology it would be difficult for such providers to file claims directly with Medicaid. However, we are exploring other reimbursement methods which may in the future eliminate this arrangement.

I hope this information sufficiently addresses your concerns about our renewal. Please do not hesitate to contact me if you have additional questions or concerns.

Sincerely,



Elizabeth S. Lawton
Commissioner

ESL/plc

Enclosures