Developmental Disabilities Traditional Waiver Review

June 30, 2016

Key concepts regarding the waiver

- **What is a waiver?**
  - Section 1915 c of the Social Security Act was changed to allow states to ask for waivers.
  - A waiver means that the regular rules are "waived"—that is regular rules are not applied.
  - The Home and Community Based (HCBS) waiver began in 1981 as a means to correct the "institutional bias" of Medicaid funding. North Dakota began utilizing the waiver in 1982.
  - The "bias" is that individuals could get support services while institutionalized, but if they wanted to remain or live in the community they could not get similar services.
  - The idea is that states can use the Medicaid money for community services that would have been used if the person went to an institution.
    - ***This is why getting HCBS waiver services is tied to institutional eligibility.***
  - This does not mean that you have to go to an institution or want to go to an institution ----just that you could be eligible for services in an institution.

Key concepts regarding the waiver

- **Benefits of a Waiver:**
  - People can choose services in the community where they can live near family and friends or with them.
  - The state can decide:
    - The values that underlie our system
    - What supports and services are covered
    - Who can provide those services
  - Medicaid is a matching program where the STATE pays part of the cost (based on a formula) and the FEDERAL government "matches" what the state pays.
  - This is important because the availability of STATE money drives how many people the waiver can serve and how much a state spends.
  - The waiver must operate based on the spending/budget that is designated by the Legislature.

Key concepts regarding the waiver

- **Waiver application:**
  - Back in the good old days there was no waiver application, just a set of statutes.
  - In 1990 CMS published a waiver template/application that was about 24 pages.
  - In 1995 a new version was published that was about 35 pages.
  - After the General Accounting Office completed a review of HCBS waivers and severely criticized CMS (formerly HCFA) for their oversight of the waivers, a new template/application was published.
  - We now have a 322 page technical assistance guide to use when filling out the CMS application which is about 100 pages when blank with 10 appendices.

Components of the waiver & ND's Proposed changes

- **Appendix A Waiver Administration and Operation -** explains who is operating the waiver, who has oversight of the waiver, any contracted entities (fiscal agent/Acumen) and assessment methods of the entities.
  - The State Medicaid agency must retain oversight over all aspects of the Waiver.
  - The DD Division has day to day responsibility for operation.

Components of the waiver & ND's Proposed changes

- **Appendix B Participant Access & Eligibility** - explains who the waiver is serving, costs to the individual if any, number served, reserved capacity if any, eligibility groups and evaluation & reevaluation of level of care (LOC).
  - Slots – *increased by 105 each year* – did not change reserved capacity (135 ID, 50 emergency & 5 Transition from Supported Employment to Individual Employment services)
    - Year 1 5260
    - Year 2 5365
    - Year 3 5470
    - Year 4 5575
    - Year 5 5680

Components of the waiver & ND's Proposed changes

- **Key concepts of Appendix B**
  - **Who can receive a HCBS waiver service?**
    - The person must be eligible for Medicaid, according to your state rules; **AND**
    - Meet what's called the level of care (LOC) for:
      - Nursing Home
      - ICF/IID
      - Hospital or
      - Other Medicaid-financed institutional care
    - The State must select **one** of the three principal target groups and for the target group selected, may select one more of the subgroups listed.
      - Aged (persons age 65 and older) or disabled; or both;
      - Persons with intellectual disability or a developmental disability or both;
      - Persons with mental illnesses.
    - The waiver we are referring to is persons with an "intellectual disability or a developmental disability". The state selected both options.

Components of the waiver & ND's Proposed changes

- **Key concepts of Appendix B**
  - Individuals who are in the waiver target group AND would otherwise require the Medicaid covered level of care (ICF/IID) specified for the waiver may be considered for entrance to the waiver. Both conditions must be met.
  - **Intellectual Disability or Developmental Disability group** – this target group is composed of individuals who otherwise would require the level of care furnished in an ICF/IID which is defined as serving persons with intellectual disabilities or persons with related conditions. States are advised that the ICF/IID level of care is reserved for persons with intellectual disability or a related condition as defined in 42 CFR 435.1009 . Participants linked to the ICF/IID level of care must meet the "related condition" definition when they are not diagnosed as having an intellectual disability. Some persons who might qualify as having a "developmental disability" under the Federal DD Assistance and Bill of Rights Act may not meet ICF/IID level of care. While "Developmental Disability" and "Related Conditions" overlap, they are not equivalent. The definition of related conditions is at 42 CFR 435.1009 and is functional rather than tied to a fixed list of conditions.

Components of the waiver & ND's Proposed changes

- **Appendix C Participant Services -** summary of all the services, any service limitations, and provider requirements
  - Removed Adult Day Health
  - Changed Day Support name to Day Habilitation
  - Removed Extended services and replaced with the following services:
    - Prevocational
    - Individual Employment
    - Small Group Employment

Components of the waiver & ND's Proposed changes

- **Appendix C Participant Services** – continued:
  - Residential Habilitation – no longer includes subcategories of CC, MSLA, SLA, TCLF, ISLA, and FCO III. Service description has been updated. This service continues to include community residential settings leased, owned, or controlled by the provider agency, or in a private residence owned or leased by a participant.
  - Independent Habilitation – is a new service similar to Residential Habilitation, however, not provided on a daily basis and for fewer than 24-hours per day

Components of the waiver & ND's Proposed changes

- **Appendix C Participant Services** – continued:
  - Homemaker
    - Added language to clarify that Family Care Option cannot be provided in conjunction with this service
  - Extended Home Health Care (EHHC) – updated the service definition and specification that the service is not available for individuals who are eligible for EPSDT

Components of the waiver & ND's Proposed changes

- **Appendix C Participant Services** – continued:
  - Adult Foster Care – name change from Adult Family Foster Care to Adult Foster Care
    - EHHC and Behavioral Consultation cannot be provided with this service
  - Behavioral Consultation
    - Added language that the behavioral consultant needs to write the plan and the plan is incorporated into the participant's service plan

Components of the waiver & ND's Proposed changes

- **Appendix C Participant Services** – continued:
  - Environmental Modifications:
    - clarified that the limit is for the five year waiver period
    - changed provider verifications from DDPM to participant or primary caregiver
  - Equipment & Supplies:
    - clarified that the limit is for the five year waiver period
    - clarified that nutritional supplements are only covered when they constitute 51% or more of nutritional intake to ensure that it is not duplicated under the Medicaid State Plan,
    - changed provider verifications from DDPM to Fiscal Agent.

Components of the waiver & ND's Proposed changes

- **Appendix C Participant Services - continued**:
  - Family Care Option
    - In the limit section to avoid duplication of services, Independent Habilitation and EHHC were added
  - In-Home Supports
    - Clarified that the service requires the need for a specially trained caregiver
    - In the limit section added:
      - Independent Habilitation cannot be provided at the same time as this service
      - Noted that In-Home Supports cannot be provided in a Family Care Option setting.

Components of the waiver & ND's Proposed changes

- **Appendix C Participant Services - continued:**
  - Parenting Support
    - Added Independent Habilitation to the limit section
  - Removed Transportation Costs for Financially Responsible Caregiver
    - *CMS regulations do not allow for medical transportation within a 1915(c) waiver. This guidance was provided to North Dakota during a recent amendment to the Medically Fragile Waiver. The division is working with CMS on a transition plan for this change. Additional information will follow.*

Components of the waiver & ND's Proposed changes

- **Appendix D – Participant-Centered Planning & Service Delivery** explains the participant development of the service plan, implementation, and monitoring of the plan

- **Key concepts in Appendix D**
  - Waiver requirement that everyone has an individual plan of care developed by qualified individuals.
  - Individual can determine who participates in the process and they can direct the process.
  - The plan must be reviewed at least annually or when the individual's needs change.
  - Must address risks and risk management strategies in the plan including emergency back up plans.

Components of the waiver & ND's Proposed changes

- **Appendix D – Participant-Centered Planning & Service Delivery** continued:
  - Added clarifying language to show compliance with HCBS final rule requirements
    - **For example**: participants have the right to choose their own team members; the participant can request an update of their plan at any time, etc.

Components of the waiver & ND's Proposed changes

- **Appendix E – Participant Direction of Services** explains in the waiver how participants can self-direct their services, what services are self-directed, and whether or not a third party is involved. Also explains DD Program Management as an administrative activity, termination of self-directed services, and budget authority of these services.
  - Removed Extended Services from this section

Components of the waiver & ND's Proposed changes

- **Appendix F- Participants Rights—** explains a participant's opportunity for a fair hearing, disputes resolutions, grievances, and complaints
- **Key concepts in Appendix F:**
  - Freedom of choice of providers – People can choose any provider they want that is qualified, under state rules to do the work
  - Appeal rights when a service is denied, suspended, terminated or reduced.
  - No changes in this Appendix

Components of the waiver & ND's Proposed changes

- **Appendix G- Participants Safeguards –** explains what the state will do with Abuse, Neglect, Exploitation (A, N, E) and management of medication administration (how reported, when to report, what to report, oversight, interventions, and safeguards)
  - Updated the language to reflect current policy and procedures for A, N, E.

Components of the waiver & ND's Proposed changes

- **Appendix G- Participants Safeguards –**Reviews of data are compiled and reviewed at least quarterly by the service provider responsible for implementation of the plan. The DDPM reviews the use of individual restrictive interventions during the Quality Enhancement Review (QER) to assure the safeguards and requirements are met and to assure that the approval of the individual/legal decision maker, behavior management committee and the Human Rights Committee is documented.
  - This information is recorded in the QER and any noncompliance or needed follow up regarding the use of restrictive interventions are initiated and documented

Components of the waiver & ND's Proposed changes

- **Key concepts in Appendix G:**
  - The State must have a formal system to monitor health and safety
  - A formal system to report and resolve instances of abuse or neglect

Components of the waiver & ND's Proposed changes

- **Appendix H – Quality Improvement Strategy** a summary of the plan for how the waiver will continually determine if it is operating as designed, meeting assurances and requirements, and achieving desired outcome for waiver participants in identifying issues, making corrections and implementing improvements

Components of the waiver & ND's Proposed changes

- **Appendix H – Quality Improvement Strategy continued:**
  - **Key concepts:**
    - State oversight of the service system with providers through visits
    - Collecting data on system performance and waiver assurances
    - Getting information from waiver participants about how they like their services
      - No changes in this Appendix

Components of the waiver & ND's Proposed changes

- **Appendix I –Financial Accountability** explains financial integrity and accountability (rates, billings, claims) through only approved systems
- **Key concepts in Appendix I:**
  - The state must be financially accountable for ALL funds. This means the state has to know and report:
    - How the money is spent,
    - For what people and;
    - What services.
  - Portability of funding - Medicaid money belongs to the individual not the provider.

Components of the waiver & ND's Proposed changes

- **Appendix I –Financial Accountability** continued:
  - Removed the language that described the retrospective rate setting process for Residential Habilitation (ISLA, MSLA, TCLF, CC, SLA, FCO III) and Day Habilitation.
  - Added language to describe new fee for service system for Residential, Independent, and Day Habilitation, Employment, and Prevocational services.

Components of the waiver & ND's Proposed changes

- **Appendix J – Cost Neutrality** demonstrates budget neutrality (showing that it is less expensive on average or equal to have participants on the waiver than it is to have them institutionalized); explains:
  - Cost neutrality updated
  - Rates updated

- **Key Concepts in Appendix J:**
  - The state must assure CMS that the waiver is cost neutral – which means that the average cost per person under the waiver can't be more than the average cost per person in an ICF/IID

Comments will be accepted until 5:00 p.m. (Central Time) July 29, 2016

Comments, question or concerns about the proposed changes, contact:
Marella Krein at mkrein@nd.gov **or**
by calling 701-328-8977, ND Relay TTY 800-366-6888, **or**
by mailing a written response to:

N.D. Department of Human Services
Attn: Developmental Disabilities Division/Marella Krein
1237 West Divide Avenue Suite 1A
Bismarck ND 58501

Copies of the amended application are available at:
http://www.nd.gov/dhs/services/disabilities/docs/draft-nd-1915c-hcbs-waiver-amendment-id-dd-services.pdf

Thank you for your input and attendance.