



Rhode Island LTC Plan Still Comes Up Short

By Gene Coffey
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The Centers for Medicare and Medicaid Services (CMS) has approved Rhode Island's Global Consumer Compact Waiver, under which the state will accept a capped allotment of Medicaid funds from the federal government in exchange for much broader discretion in the operation of its Medicaid program.

Rhode Island declared in its waiver proposal that the restructuring of its Medicaid long-term care (LTC) coverage was at the heart of its plan.¹ NSCLC published an analysis of this element of the waiver and identified three primary concerns: 1) that Rhode Island is not embracing the purpose of the Vermont Choices for Care program, the central feature of which Rhode Island borrowed for its own program; 2) that Rhode Island has not availed itself of important LTC opportunities that do not require waivers; and 3) that Rhode Island has not allowed sufficient time to study the outcomes of programs it has implemented or for which it has received approval.²

The Special Terms and Conditions document, which constitutes the agreement reached between CMS and Rhode Island's Department of Human Services (DHS), does not alleviate these concerns.

Rhode Island's Plan Still Fails To Measure Up to Vermont's Choices for Care

Vermont implemented its Choices for Care waiver in 2005, with the aim to dramatically increase access to home and community-based services (HCBS) in order to improve beneficiary satisfaction and control overall LTC spending. The increase in HCBS access is hinged on the entitlement to HCBS that a portion of the state's LTC population has under the program. Federal

Medicaid law makes nursing facility (NF) coverage an entitlement for individuals who have a clinical need for LTC, while HCBS may be offered to the same individuals if the state is operating an HCBS waiver program, under which enrollment is generally capped. But Vermont decided to test whether making HCBS an entitlement would improve the overall delivery of LTC coverage.

Vermont eliminated its single LTC clinical standard and split it into three: highest need, high need and moderate need. Highest need individuals are entitled to choose between NF services or HCBS, while high need individuals are offered the same choice if funding is available, which the state expected would be available through savings realized by highest need individuals choosing HCBS. Moderate need individuals would receive coverage for preventive LTC services.

Initial results from Vermont's program are now surfacing. HCBS enrollment in the state has significantly increased while nursing facility placements have decreased, and a significant number of moderate need individuals are receiving services.³ However, waiting lists for high need individuals have developed, something the state did not expect. Also, some HCBS enrollees have reported that their services have been reduced, and at least two challenges to the reductions have made it to the Vermont Supreme Court. There is also a concern that the moderate need program is not sufficiently targeting the needs of individuals in that group.

Rhode Island adopted the three-tiered framework of Vermont's program and will apply clinical standards

¹ Waiver, page 11.

² National Senior Citizens Law Center, *The Long-Term Care Proposals in Rhode Island's Global Consumer Compact Waiver*, available at www.nslc.org

³ Jeff Crowley & Molly O'Malley, *Vermont's Choices for Care Medicaid Long-Term Services Waiver: Progress and Challenges As the Program Concluded its Third Year* (Kaiser Commission on Medicaid and the Uninsured, 2008).

for its own three tiers that are virtually identical to Vermont's. However, though Rhode Island draws so heavily on Vermont's program, the plans differ in crucial respects. First, while high need individuals can choose NF services in Vermont's program, high need individuals may *not* in Rhode Island's, even though Rhode Island's high need population is identified as including those who *do* need NF services.⁴ Second, while the preeminent feature of Vermont's plan is the entitlement to HCBS for the highest need population, the Special Terms and Conditions document implies that highest need individuals in Rhode Island's plan may be put on a waiting list for HCBS.⁵

Also, it should be noted that Vermont was ahead of other states in its delivery of HCBS to older individuals and adults with physical disabilities when it proposed Choices for Care to CMS, while Rhode Island ranked 38th among the 50 states and Washington, D.C. in the same category when it proposed its own waiver last year.⁶

It should also be noted that the cap on federal financing for Vermont's program is a generous one,⁷ and Rhode Island officials must provide a comparison, especially given that Vermont has been forced to place high need individuals on waiting lists even though it was already providing HCBS coverage to a higher percentage of older individuals and adults with physical disabilities when it implemented Choices for Care than Rhode Island currently is providing. DHS officials must also explain how it plans to avoid the other challenges that have confronted Vermont.

Many Elements of the Global Compact's LTC Provisions Do Not Need Waiver Authority

NSCLC indicated in its analysis of the Global Compact Waiver that almost all of the LTC elements did not actually require waivers. This fact is not limited to the LTC provisions. Indeed, CMS asked DHS whether its plan to streamline benefits for parents with incomes over 100% of the federal poverty level

could be accomplished through existing statutory authority, to which DHS responded, "Whether or not this could be accomplished through [existing] authority is moot; the State is seeking the flexibility under the 1115 Waiver."⁸ That the state could accomplish most of what it seeks to do for LTC through the waiver under existing authority continues to be an issue.

Other Elements of Special Terms and Conditions Are Not Beneficiary Friendly

According to the Special Terms and Conditions (page 23), current Medicaid-enrolled NF residents will be screened against the more restrictive clinical eligibility authorized by the waiver if they opt to move out of the facility in order to receive HCBS, an element that creates the perverse incentive to stay institutionalized. It is also not clear from the document that current HCBS enrollees will be screened against the pre-demonstrational clinical criteria as NF residents will be.

Summary

Because Vermont's LTC program played a central role in Rhode Island's development of its LTC plan, NSCLC measured Rhode Island's proposal against Vermont in its initial analysis. NSCLC indicated that while, with regard to Vermont's program, controlling costs was an element of a rather innovative plan to transform the delivery of LTC, Rhode Island's plan appears designed simply to control costs. The Special Terms and Conditions do not change this assessment. Medicaid LTC coverage is indeed very expensive for states, and all states should strive for the most efficient use of their LTC dollars. But new plans to achieve this must ensure that people in need are able to access services, because the plan will otherwise be entirely counterproductive. Rhode Island's plan unfortunately appears headed in the latter direction.

4 Special Terms and Conditions, page 23, describing high need individuals as ones "determined based on medical need to benefit from either the institutional level of care..."

5 Id., at 21-22.

6 Enid Kassner et al., AARP Public Policy Institute, A Balancing Act: State Long-Term Care Reform (2008), http://assets.aarp.org/rgcenter/il/2008_10_ltc.pdf.

7 Crowley & O'Malley, supra, note 3, at 13-14.

8 Rhode Island Section 1115(a) Global Compact Waiver Proposal Responses to CMS Questions of October 8, 2008, page 22.