Vermont Developmental Disabilities Council

Mailing Address:
103 South Main Street
Waterbury, VT 05671-0206
Temporarily Located at 322 Industrial Lane, Berlin, VT

Phone: 1-802-828-1310
Toll Free: 1-888-317-2006
FAX: 1-802-828-1321

vtddc@vermont.gov

www.ddc.vermont.gov

August 31, 2015

Shawn Skaflestad
208 Hurricane Lane
Williston, VT 05495

Dear Mr. Skaflestad,

Thank you for the opportunity to comment on the Agency of Human Services Comprehensive Quality Strategy (CQS). Our primary concerns are twofold: First, with the lack of public process and consumer engagement in developing this document; and second, with the lack of detail as to how AHS intends to extend its CQS to Global Commitment Programs other than Choices for Care.

Background

The VTDDC has had a longstanding concern with reductions in the capacity of AHS to monitor quality in developmental services. When originally put in place after the closing of the Brandon Training School, the Developmental Services Quality Review Team operated as a 12 person unit, staffed by 10 developmental specialists and 2 registered nurses. Capacity was sufficient to ensure that each individual receiving HCBS had an annual quality review by the State's DS Quality Review Team. By contrast, Developmental Services today employs just two Quality Management Reviewers who are assisted by up to three other staff members.

In fact, concern about the erosion of quality assurance capacity was a critical factor in the decision by advocates to seek changes in Vermont's Developmental Disabilities Act (the DD Act) during the 2014 legislative session. Adopted as Act 140, language was strengthened in the State's DD Act to require that the Department "maintain a statewide system of quality assessment and assurance for services provided to people with developmental disabilities and provide quality improvement support to ensure that the principles of service in section 8724 of this title are achieved."[1] Similarly, language was added to the DD Act that clarified and strengthened reporting requirements and legislative oversight of the Developmental Services System of Care Plan. In reporting to the Governor and legislative committees of jurisdiction, the Department must specifically

[1] 18 VSA Chapter 204.A §8723(7)

comment on the "extent to which the principles of service set forth in section 8724 of this title are achieved, and whether people with a developmental disability have any unmet service needs, including the number of people on waiting lists for developmental services."[2]

During this same period, CMS has acted at several different levels to increase and clarify its expectations in terms of the quality and nature of services supported by Medicaid funding and delivered in managed care arrangements, including most recently, home and community based services (HCBS). We note that the impetus for Vermont to update and submit a draft CQS comes from several CMS directives.

- Under 42 CFR 438.202., states have an obligation to have "a written strategy for assessing and improving the quality of managed care services" of any managed care organization (MCO) that coordinates Medicaid services.

- Recognizing that a number of states are incorporating Long Term Services and Supports into their respective managed care programs, CMS issued *Guidance to States using 1115 Demonstrations or 1915(b) Waivers for Managed Long Term Services and Supports Programs* (May 20, 2013).

- More recently, CMS has adopted regulations found at CFR S 441.301(c)(1,)(2), and (3) pertaining to important aspects of HCBS – specifically Person-Centered Planning, Home and Community Based Settings, and a Transition Plan for coming into compliance with the Home and Community Based Settings requirements.[3]

<u>Stakeholder Process</u>

With regard to engaging stakeholders in the development of the CQS, AHS appears to have met the letter but not the spirit of the new HCBS Rules. Specifically, we note that the period for public comment has fallen during August when family vacations make it difficult for consumers to attend hearings and meetings. In fact, two of the four events most likely to elicit public input on the CQS were cancelled. (The State Program Standing Committee for Developmental Services and the Medicaid and Exchange Advisory Committee, which was listed as an opportunity for stakeholder input on the CQS timeline, were both cancelled. This left the DAIL Advisory Board meeting and a public hearing on August 20, 2015 as the primary venues for delivering public comment).

Second, AHS's own timeline is unrealistic in terms of providing CMS with a reasonable summary of public comments and agency response as required under 42 CFR § 441.301(c)6. Since the final date for public comments and the date for submission of the draft CQS are one and the same, it's hard to see when AHS would have the opportunity for thoughtful review and response.

Third, the draft CQS is highly technical, perhaps unnecessarily so, and it seems unreasonable to expect meaningful consumer input without additional materials and staff presentations. We note that some states (Maine is a good example) have developed a version of their transition plan in an alternative format that is more readily accessible to the general public. Vermont has posted a power point presentation dated July 9,

---

[2] 18 VSA Chapter 204.A §8725(e).

[3] Here we concur with comments submitted by Vermont Legal Aid which make clear that Vermont is not exempt from the HCBS requirements.

2015, but as a stand-alone document, these slides are also difficult to understand; and as already noted, public presentations with AHS staff available to answer questions have been very limited.

Quality Standards and Monitoring for Specialize Programs other than Choices for Care

The CQS states that Vermont will use a "phased implementation approach" in addressing the requirements of the HCBS rules. Beginning with Choices for Care, AHS intends to establish a framework that sets the stage for incorporating Developmental Services, Traumatic Brain Injury, Community Rehabilitation and Treatment, and Children's Mental Health into this standardized approach to quality review. The goals of this multi-year approach appear sound: Avoiding unnecessary administrative burden; minimizing disruption in care; maintaining consumer choice; and continuous application of lessons learned.[4]

Our concern lies with the fact that beyond this very general outline, there are virtually no details to which one can respond.

- Other than the fact that all service populations will be incorporated into the CQS by December 31, 2019, there is no specific timeline presented for phases 2, 3, and 4.[5]

- Metrics, benchmarks, and targets are unspecified for all long term services and supports,[6] and the CQS does not lay out a process by which AHS will select appropriate metrics and set improvement targets.

- The CQS includes a table listing a number of best practices that are consistent with the regulatory requirements under the HCBS Rules.[7] However, the table is not linked to any specific strategy that AHS intends to deploy in reviewing service quality. For example, will AHS use consumer interviews, record review, site visits, unannounced site visits, a survey, or other means to determine whether "staff communicates with individuals in dignified manner"?

Vermont has chosen a unique approach to manage care in that it establishes, through an intergovernmental agreement between AHS and DVHA, a public managed care model. This has significant advantages in terms of efficiency and in terms of aligning payment and policy with public good. However, this model also raises some concerns regarding conflict of interest. Essentially, Vermont's managed care arrangement, which includes the CQS as a condition of operation, tasks AHS staff from the Office of the Secretary of AHS with developing and deploying consistent and continuous quality review standards across a host of AHS programs all of which, presumably, also report to the Secretary of AHS.

CMS addresses this concern in 42 CFR 438.202(d) by requiring the MCO to make "arrangements for annual, external independent reviews of the quality outcomes and timeliness of, and access to, the services covered under each MCO and PIHP contract." Vermont has, in fact, gained useful insights from its External Quality Review Organization (EQRO), Health Services Advisory Group, Inc. about aspects of its Choices for Care program. The CQR does not describe what role, if any, an EQRO might play in assessing quality metrics in MLTSS for HCBS, including evaluating compliance with the HCBS rule. We would like to take this opportunity to urge the Department to include external review and to make this an explicit part of the CQS as it applies to DS, TBI, and CRT.

---

[4] CQS, page 42.
[5] CQS, page 42.
[6] CQS, page 14.
[7] CQS, pages 45-46.

Again, we appreciate the opportunity to share these concerns.

Yours Sincerely,

s/Kirsten Murphy
Senior Policy Analyst and Planner
Vermont Developmental Disabilities Council

cc. Karen Schwartz, Executive Director, VTDDC
John Hall, President, VTDDC