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August 31, 2015

Shawn Skaflestad
208 Hurricane Lane
Williston, VT 05495

Re: Global Commitment to Health Medicaid Comprehensive Quality Strategy

Dear Mr. Skaflestad:

Vermont Legal Aid is submitting these comments on the draft Global Commitment to Health (GC) Comprehensive Quality Strategy (CQS),[1] dated July 6, during the published public comment period. We hope that the Agency of Human Services (AHS) will address our comments and concerns in the final draft that it submits to The Centers for Medicaid and Medicare Services (CMS). Our primary concerns are with the failure to apply the Home and Community Based Service regulations to all GC waiver services, the process for stakeholder input, the lack of defined quality strategies and measures, and the confusing organization of the document.

1. Home and Community Based Services

Vermont is required to comply with the Home and Community Based Service (HCBS) regulations found at 42 CFR §441.301(c)(1), (2) and (3) pertaining to Person-Centered Planning, 42 CFR§441.301(c)(4) and (5) pertaining to Home and Community Based Settings, and 42 CFR §441.301(c)(6) pertaining to a Transition Plan for coming into compliance with Home and Community Based Settings requirements. These regulations became effective March 17, 2014 and apply to HCBS waivers under section 1915(c), section 1915(i) and section 1915(k) of the Social Security Act. Although Vermont's waiver is a section 1115(a) demonstration waiver, the state is expected to meet or transition to the new HCBS requirements "in accordance with the timelines articulated in the rule."[2] CMS has explicitly determined that Vermont must operate its 1115 waiver, as to ***all*** HCBS services, in compliance with the amended regulations (emphasis

[1] http://dvha.vermont.gov/administration/vt-gc-cqs-draft-july-6-2015.pdf

[2] Questions and Answers - 1915(i) State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, Setting Requirements for Community First Choice, and 1915(c) Home and Community-Based Services Waivers - CMS 2249-F and 2296-F, http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/final-q-and-a.pdf. *See also:* Guidance to States using 1115 Demonstrations or 1915(b) Waivers for Managed Long Term Services and Supports Programs (CMS, 5/20/2013).

added).[3] The CQS states that "Rather than developing a transition plan - Vermont has opted to have the CQS demonstrate the state's compliance with the HCBS requirements and should suffice as the Statewide Transition Plan."[4] (sic)

For the reasons noted below, the CQS fails to demonstrate the state's compliance with the HCBS requirements and does not suffice as the Statewide Transition Plan required by the rules.

Section II.b. National Performance Measures (page 12)

This section includes information on population specific metrics for populations covered by Vermont's Medicaid program. However, no measures are provided for populations receiving Home and Community Based Services, specifically, individuals enrolled in Choices for Care, or receiving Developmental Disability, Traumatic Brain Injury or Community Rehabilitation and Treatment (CRT) HCBS . Measures for these populations are identified as "TBD."

In contrast, the Special Terms and Conditions (STCs) agreed to by CMS and Vermont require the CQS to include specific metrics and performance measures related to each covered population, including individuals receiving HCBS and individuals receiving Long Term Care Services and Supports (LTSS).[5]

The STCs also require:

> HCBS performance measures in the areas of level of care determinations, planning process, outcome of person-centered goals, health and welfare, outcomes, quality of life, effective process, community integration and assuring there are qualified providers and appropriate HCBS settings.[6]

Also, the STCs clarify that the state must include in its CQS a "self assessment of MLTSS adherence to state and federal standards of care…"[7] This applies to all MLTSS populations. The self-assessment includes an assessment of initiatives already in place designed to improve delivery of LTSS and an examination of how to identify corrective actions steps to improve the LTSS system.

These provisions are consistent with the federal requirement that states have a transition plan which must include the state's assessment of the extent to which its regulations, standards, policies, licensing requirements and other provider requirements ensure settings that comport with the rule, and which describes actions the state proposes to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and deliverables.

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[3] Centers for Medicare & Medicaid Services correspondence to Steven Costantino, April 29, 2015, attached.
[4] CQS at page 3.
[5] Centers for Medicare and Medicaid Services Special Terms and Conditions, Number 11-W -00194, Global Commitment to Health Section 1115 Demonstration at page 33, available at http://dvha.vermont.gov/administration/vt-1115-consolidation-amendment-approval-01302015.pdf.
[6] *Ibid.*
[7] *Ibid.*

The CQS should include a roadmap for the state's self-assessment of its compliance with the HCBS rules and the CQS should include specific performance measures for the HCBS and LTSS recipient populations identified above.

Home and Community Based Services (HCBS) (page 15)

The CQS states "Special focus is placed on long term care services and supports (CFC) populations and addresses the following…" Again, there is no reference to other Home and Community Based Service populations covered by the HCBS rules such as Developmental Services, Traumatic Brain Injury and CRT service recipients. The CQS should provide detailed information on adherence to state and federal standards of care, person-centered planning and integrated care settings, comprehensive and integrated service packages, qualification of providers, and participant protections for these HCBS populations, not just Choices for Care recipients. In addition, the CQS states that "CMS will allow Vermont up to four years to phase in these changes." The person-centered planning provisions of the HCBS rules at 42 CFR §441.301(c)(1), (2) and (3) became effective on March 17, 2014 and do not allow for a phase in or transition period. As such, Vermont should currently be in compliance with the HCBS person-centered planning provisions as to all HCBS populations. The CQS should include information on the extent of Vermont's compliance with the person-centered planning rule and describe specific steps it will take to come into compliance where necessary. At a minimum, the CQS should describe how Vermont will ensure compliance with the following aspects of person-centered planning:

1) Providers of HCBS for the individual, or those who have an interest in the individual or are employed by a provider of HCBS for the individual do not provide case management or develop the individual's person-centered plan. 42 CFR §441.301(c)(1)(vi);
2) The setting in which the individual resides is chosen by the individual. 42 CFR §441.301(c)(2)(i); and
3) Natural unpaid supports are provided voluntarily to the individual in lieu of … HCBS waiver services and supports. 42 CFR §441.301(c)(2)(v).

Additionally, the CQS states "The MCE must determine whether services in these settings meet the community standards set forth in the rules." It is unclear what "settings" are being referred to; the HCBS rules apply to all settings in which HCBS are provided, and to the settings where individuals receiving those services live.

III.d. HCBS Standards (page 40)

The introductory sentence is confusing in that it implies that some HCBS are not covered by the new rules. The services covered by the rule are defined at 42 CFR §441.180. "'Home or community-based services' means services, not otherwise furnished under the State's Medicaid plan, that are furnished under a [1915(c) waiver]." As noted above, although Vermont's is an 1115(a) demonstration waiver, CMS has determined that the HCBS requirements apply. The introductory sentence should be revised by deleting the word "certain."

At page 40, last sentence, the CQS states that "HCBS provided to a member in his or her own home are assumed to meet the requirements of the new rule." Please provide the source or reference for this assertion.

At page 41 the third full paragraph appears to contain a syntactical error in the sentence "The Special Terms and Conditions of the Global Commitment Waiver require the Choices for Care Program HCBS assure…"

The third sentence of the fourth full paragraph on page 40 states "Based on considerable stakeholder interest, AHS plans to engage stakeholders in conversations about the Vermont rules and policies that govern other Global Commitment programs to discuss where person-centered planning and home and community based standards identified above [42 CFR §441.301(c)(1-3) and 42 CFR §441.301(c)(4)] should also be reviewed and monitored." This sentence is confusing at best. It appears to say that Vermont plans to engage in a conversation as to where the HCBS requirements should be reviewed and monitored in other Global Commitment programs: How can the HCBS requirements be "reviewed and monitored" if they have not been implemented in programs other than CFC? Is it more accurate to read this sentence as saying that AHS will engage in a conversation as to what other Global Commitment programs must comply with the HCBS rules? This interpretation is more consistent with the description of Monitoring Activities "Phase III: Additional Implementation (if required)" on page 42 of the CQS which states "This phase broadens the scope of the activities described in Phase II *to include any additional programs and settings identified by the state*" (emphasis added). Taken together (and also noting the titular description of "Phase III" as "if required") these statements leave the strong impression that Vermont views the HCBS rules found at 42 CFR§441.301(c)(1-3), 42 CFR §441.301(c)(4) and 42 CFR §441.301(c)(6) as applying only to the Choices for Care program and not to Developmental Services, TBI or CRT Home and Community-Based services. In view of the failure of the CQS to even commit to application of the HCBS rule to Global Commitment waiver programs other than the Choices for Care program, the CQS fails to demonstrate the state's compliance with the HCBS requirements and does not suffice as the Statewide Transition Plan required by 42 CFR §441.301(c)(6).

2. Stakeholder Process

We appreciate that AHS has made efforts to get stakeholder input on the CQS. However, the process has been insufficient. Medicaid and Exchange Advisory Board (MEAB) members received an introduction to the CQS at a MEAB meeting on April 27, 2015. At that time MEAB members were told that another presentation would be given on a more complete version of the CQS at either the June or July meeting. This did not happen, and the August meeting was cancelled. MEAB members were sent an email on July 31, 2015, which included the July 6, 2015 CQS draft without further explanation of its contents, and the Public Notice[8] which describes the public comment period for commenting on the draft. The most recent publicly posted timeline

[8] http://dvha.vermont.gov/administration/cqs-public-notice-brief-july-29-2015-final.pdf

for the CQS, dated May 19, 2015,[9] states that AHS will submit a draft of the revised CQS to CMS within 180 days of approval of the demonstration renewal, on August 31, 2015. The Public Notice states that the public comment period runs from 8/1/15 - 8/31/15. This allows no time to incorporate feedback on the proposed draft after the closing of the public comment period.

We are also concerned that the stakeholder process does not meet the criteria outlined in the Terms and Conditions.[10] That agreement specifically requires beneficiary input in addition to input from the MEAB and other stakeholders. We are not aware of any process aimed at seeking beneficiary input. The Terms and conditions also require the state to make any revisions available for public comment prior to submission to CMS. As noted above, it does not appear that there is any opportunity for this review given the existing timeline.

We approach the CQS as an opportunity to improve the quality of the care that Vermonters receive through the Medicaid program. Thus, we hope there will be a future CQS that will address our concerns.

3. Quality Strategies and Measures

The STCs require the state to identify specific improvement goals that align with the three part GC aim to improve patient experience of care, improve population health and reduce per capita costs. CMS clarified that these goals must be "more specific in identifying pathways" for achieving these goals.[11]

The CQS does not identify concrete strategies and pathways the agency will use to improve quality. Fourteen strategy objectives are listed on page 6 of the CQS, but nowhere in the document does it specifically say how each of these objectives is going to be achieved. The Improvement and Interventions section on page 47 lists five extremely broad interventions, however, it is unclear whether these are intended to be the primary strategies. While the objectives are fairly specific, the strategies are not specific, clearly laid out, or linked to the objectives. This is especially concerning as this is supposed to be a strategy document.

The Delivery System Reform section insufficiently describes the many efforts that Vermont is making that are supposed to improve quality. Medicaid is very involved in the State Innovation Model (SIM) grant activities. These should be described in greater detail and linked to the objectives.

Additionally, while some general improvement targets are listed in the document (e.g., a 5% improvement for all quality measures), no strategies for achieving such improvements are defined. Targets and benchmarks remain "TBD" which makes it difficult to assess whether a 5% improvement target is realistic or to provide meaningful comment. This is especially confusing

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[9] http://dvha.vermont.gov/administration/vt-cqs-timeline-july-27-2015.pdf

[10] Centers for Medicare and Medicaid Services Special Terms and Conditions, Number 11-W -00194, Global Commitment to Health Section 1115 Demonstration at page 34, available at http://dvha.vermont.gov/administration/vt-1115-consolidation-amendment-approval-01302015.pdf.

[11] *Ibid.*, at page 32.

given that according to the document, the timeframe for improvement began in January 2015. The AHS 2014-2015 External Quality Review Technical Report[12] notes that Vermont performs well on some measures (>90th percentile) and poorly on others (<25th percentile). It does not seem logical that improvement targets would be the same for low-performing and high-performing measures. Moreover, as we previously stated, while measures are listed for some areas there are no quality measures included related to the populations served by the following waiver programs: Choices for Care, Developmental Disability Services, Traumatic Brain Injury, and Community Rehabilitation and Treatment. We assume this means that there are currently no measures being collected to assess these areas. It is concerning that measures, targets, and benchmarks remain to be selected eight months into the performance period.

4. Organization

We recognize that one purpose of this CQS is to meet the requirements of the federal regulations, particularly in 42 CFR §438 Subpart D. However, we find the State Standards section to be extremely difficult to follow. An extensive list of the regulations addressed might be okay, but the formatting needs to be improved so that the reader can follow which section is being discussed. Different highlighting, font size or layout might help with this. We find the current highlighting of lengthy quotes from the regulations to be unnecessary and quite distracting.

Thank you for your consideration of our comments.

Sincerely,

s/ Nancy Breiden, Director, Disability Law Project

s/ Trinka Kerr, Chief Health Care Advocate

s/ Jackie Majoros, Vermont Long Term Care Ombudsman

[12] Vermont Agency of Human Services 2014-2015 External Quality Review Technical Report, February 2015, prepared by Health Services Advisory Group (HSAG) available at http://dvha.vermont.gov/administration/ahs-vt2014-15-eqr-techrpt-f1.pdf