

COUNTY OF MILWAUKEE

Inter-Office Communication

DATE: June 27, 2011

TO: Supervisor Peggy Romo West - Chairperson, Health and Human Needs Committee

FROM: Geri Lyday, Interim Director, Department of Health and Human Services

SUBJECT: **From the Interim Director, Department of Health and Human Services, submitting an informational report regarding the status of 1915(i) Community Recovery Services**

Background

The federal Deficit Reduction Act of 2005 added a new section 1915(i) to the Social Security Act that allows states the option to provide home and community-based services for individuals considered disabled by a mental illness using the state plan amendment process, rather than having to obtain a waiver from the federal government.

From the list of allowable services under 1915(i), the Wisconsin Department of Health Services (DHS) applied and was approved to provide psychosocial rehabilitation services, which included three sub-services: Community Living Supportive Services, Supported Employment and Peer Supports.

The service any specific individual receives is based on the individual's needs identified under an independent person-centered assessment. In order to be eligible for 1915(i) services, individuals must meet all of the following criteria:

- Eligible for medical assistance under the State plan;
- Income does not exceed 150% of the Federal Poverty Level;
- Resides in the community; and,
- Meets the needs based criteria as established by the State.

Services are provided on a cost reimbursable basis and counties must pay the required local match. About 60% of service costs would be covered through Federal revenue with the County matching 40% of service costs.

When DHS originally submitted its application for 1915(i) services, states were permitted to limit the geographic areas in which the benefit would be offered, set a maximum level of people to receive services and establish a waitlist. Participating counties could limit their financial risk by identifying the potential number of eligible individuals to be served within their respective county and create a wait list for any eligible individuals that exceeded the original target number.

The Behavioral Health Division (BHD) had originally identified a total of 914 participants to be served from its current enrollment within a two-year time span (see File No. 10-5(a)(a): Purchase of Service report submitted to the County Board on November 17, 2009).

Shortly after receiving notice from the State that BHD's application for 1915(i) certification was approved in Spring 2010, the Affordable Care Act (ACA) was passed by Congress. The ACA had two significant changes that impacted 1915(i): (1) States cannot limit the number of 1915(i) clients except through the functional needs based eligibility criteria, making this a true "entitlement", and (2) 1915(i) services must now be provided statewide. These changes were effective October 1, 2010.

Federal law, therefore, now prohibits waiting lists for this program. Since services may only be limited by the eligibility criteria, not budget controls, BHD worked with the State to narrow the functional eligibility criteria. Immediately upon learning of the changes to 1915(i), BHD also suspended all implementation activities including obtaining a 1915(i) Medicaid provider ID until financial risk could be determined.

After the ACA changes went into effect making 1915(i) an entitlement, DHS modified the MH/AODA Functional Screen used for determining eligibility for 1915(i) services. Stricter eligibility criteria were included in the State's Medicaid State Plan Amendment submitted in December 2010 though the criteria were broader than BHD had requested.

BHD still has concerns that the modified eligibility criteria are general enough that the number of potential people eligible for 1915(i) services in Milwaukee County far exceeds the number for whom Milwaukee County has resources to cover the required County match.

Because of this concern, the Milwaukee County 2011 Budget directed BHD to "work with the State to further narrow the functional eligibility and/or replace/reduce Milwaukee County's local commitment with State funding." If successful BHD was to "return to the Committee on Health and Human Needs with a written implementation plan, prior to moving forward with this initiative."

Discussion

Since the adoption of the County's 2011 Budget and DHS's submission of the Medicaid State Plan Amendment with the revised eligibility criteria, the Department of Health and Human Services (DHHS) and BHD have undertaken the following actions to address the potential feasibility of participating in 1915(i):

- Participated in State briefings on 1915(i) Services including reviewing State estimates of possible County revenues under rough assumed scenarios;
- Held workgroup meetings with DHHS and BHD staff to consider options for addressing issues raised by the changes in 1915(i);
- Developed estimates of the likely number of individuals eligible for 1915(i) in Milwaukee County; and,

- Sent a letter to Wisconsin Department of Health Secretary, Dennis Smith, requesting that the State further adjust the functional needs based eligibility criteria, allow BHD to establish a risk reserve, and/or operate the program within the limits of available funding (**see Attachment 1**).

Eligible Client Estimates

BHD estimates that 3,200 individuals, who are not currently receiving services from BHD, would be eligible for 1915(i) services.

This estimate was based on several calculations using December 2010 Medicaid SSI enrollment data for Milwaukee County as the base because SSI recipients would meet the technical eligibility for 1915(i) enrollment (i.e. meet the Federal Poverty Level requirements and are Medicaid enrollees). The prevalence rate for mental health disorders in Milwaukee County as identified by the State was then applied. The State's experience with other current 1915(i) counties using the modified Functional Screen eligibility criteria to estimate potential functional eligibility was further applied. The methodology for these estimates was shared with DHS staff and they concurred with the projection. This number far exceeds the 914 participants originally identified by BHD to be served under 1915(i) when Counties could limit program enrollment.

Fiscal Concerns

DHHS and BHD support providing services to individuals with mental illness who need them but the Department also needs to live with its fiscal means. DHHS and BHD do not have the resources to pay the required approximate 40% County match for the cost of services for the estimated 3,200 new eligible individuals who would be entitled to services if the County opted to participate in this program. If Milwaukee County opted to participate in 1915(i) anyone who was eligible would be entitled to services and the County would be unable to establish a waitlist or cap enrollment no matter how high the cost for the required match of service costs.

At a January 11, 2011 briefing on 1915(i) Community Recovery Services for Milwaukee County, DHS included charts identifying the potential revenue for Milwaukee County from participating in the program. DHS included an assumed average cost of \$105.67 per person per day. The County would receive 57.16% of the Federal Medical Assistance Percentage (FMAP) matching funds. (The FMAP increase to 60.16% in the beginning the third quarter of 2011 and, in addition, a 5% fee is taken from the FMAP for State administrative costs.) If only 1,000 new individuals participated in the program for one year (one third of the estimated eligible new people), it is estimated that the cost would be \$38.5 million overall. Of the total cost, the County would receive around \$22.0 million in revenue to cover the cost of those services but would have to fund the remaining \$16.5 million of costs for the services. If Milwaukee County participated in this program, the State pays no matching funds to cover the costs of services and, in fact, receives revenue for administrative costs from the individuals served in Milwaukee.

It should be noted that BHD would also need to invest in the development of sufficient community recovery services (Community Living Supportive Services, Supported Employment and Peer

Supports) to provide these services to the eligible population. These are required service options that BHD does not currently offer at the levels needed for this program.

Letter to the DHS Secretary

DHHS sent a letter to DHS Secretary Smith on February 4, 2011 (**Attachment 1**) asking DHS to allow the County to establish a risk reserve if it chooses, tighten the eligibility criteria once the target number of individuals is met, and allow the County to operate the program within the limits of available funding. Secretary Smith responded on March 24, 2011 and basically left BHD with no further assurance that County costs could be controlled (**Attachment 2**).

The Secretary noted that DHS has already tightened eligibility criteria and that “further restrictions to eligibility may run counter to the wishes of the other counties participating in the program...” DHHS’s letter to the Secretary asked if the State would consider tightening the eligibility criteria once the targeted number of individuals was met. This could be allowed, DHHS believed, since the Centers for Medicare & Medicaid Services (CMS) issued a memo (August 6, 2010) to State Medicaid Directors noting that if enrollment of eligible individuals exceeds a State’s projected enrollment status as identified in the submitted and approved Medicaid State Plan Amendment, then states are permitted to modify the non-financial needs-based eligibility criteria without prior approval from CMS. States need only notify CMS and the public at least 60 days before exercising the option to modify the criteria. For Wisconsin, DHS had identified the total 1915(i) enrollment to be 1,250 individuals (including the 914 previously identified for Milwaukee County).

In his response letter, Secretary Smith also stated that DHS could not allow Milwaukee County to operate within the limits of its available funding since that “could be interpreted as allowing a waiting list or otherwise limiting enrollment.”

Next Steps

Since receiving the DHS response, BHD has communicated with staff within DHS regarding 1915(i) and 1937, another program available through a new section of the Social Security Act, through which similar services can be provided but wait lists are allowed. DHS staff are assessing 1937 but would need to submit a State Plan Amendment if they chose to participate. DHHS and BHD will continue to communicate with DHS and, once more information is available, assess available options and the fiscal implications.


Meanwhile, BDH has stopped working toward implementing 1915(i) Community Recovery Services. BHD has not been submitting service plans or claims for funds even for existing BHD patients under this program since doing so would mean that BHD was participating in the program and could result in additional eligible individuals receiving unbudgeted services and would put the County at financial risk for the required match.

DHHS and BHD will continue to explore viable opportunities to expand community-based mental health services. The Department regrets that it is unable to proceed with the implementation of 1915(i) and offer the community services available under that program, which could have provided a “jump-start” to the development of an expanded and enhanced system of community-based

services for individuals with mental illness. DHHS and BHD believe, however, that the financial risk, of participating in 1915(i) with the current eligibility criteria and match requirements, is too great for Milwaukee County.

Recommendation

This report is provided for information only. No action is necessary.



Geri Lyday, Interim Director
Department of Health and Human Services

cc: Chris Abele, Milwaukee County Executive
Lee Holloway, Chairman, Milwaukee County Board
George Aldrich, Chief of Staff, County Executive Office
Patrick Farley, Director, Department of Administrative Services
Terrence Cooley, Chief of Staff, County Board
Cynthia Pahl, Acting Assistant Fiscal and Budget Administrator
Antoinette Thomas-Bailey, DAS Analyst
Jennifer Collins, Analyst, County Board
Jodi Mapp, Committee Clerk, County Board