

# Medical Care Advisory Committee

Minutes of Meeting October 16, 2014

## Participants

### Committee Members Present

Russ Elbel (Chair), Andrew Riggle (Vice-Chair), Debra Mair, Greg Myers, Steven Mickelson, Rylee Curtis, Lincoln Nehring, Mark Ward, Danny Harris, Donna Singer (by phone), Mark Brasher, Teresa Swensen (for Kevin Burt), Michael Hales

### Committee Members Excused

Warren Walker, Mauricio Agramont, Jackie Rendo, Kevin Burt

### Committee Members Absent

Jason Horgesheimer, LaVal Jensen, Michelle McOmber, Tina Persels

### UDOH Staff

Gail Rapp, John Curless, Jeff Nelson, Emma Chacon, Heidi Oliver, Tonya Hales, Letty Debenham, Kolbi Young, Nate Checketts, Caryn Slack, Kayla Strong, Randy Hicks, Josip Ambrenac, Summer Perkins

### Visitors

William Cosgrove, Doug Springmeyer, Beau Colvin, Patrick Fleming

## Welcome

Russ Elbel, MCAC Chairperson, called the meeting to order at 1:33 pm.

## Vacancy

Russ announced that we are looking for someone to represent the business community on the MCAC. If anyone has nominations, they should contact Josip Ambrenac.

## Minutes

Lincoln moved to approve the minutes of the August meeting. The motion was seconded by Steve and passed.

## Rulemakings

Kayla Strong presented the new rulemakings.

Lincoln commented that Utah is struggling to enroll uninsured children. Dr. Cosgrove added that the number of unaccompanied minor refugees is rising and asked whether there is a plan to get them healthcare. Michael replied that the partnership between the Department of Human Services and the Department of Health ensures that they get the services they need.

## Enrollment Report

Letty Debenham presented the Cases Served report.

There is a trend of decreasing enrollment, which is likely attributed to Utah's 3.6% unemployment rate. At the beginning of the year, the unemployment rate was 4.3%. Enrollment in CHIP has decreased throughout the year, with a corresponding rise in Medicaid enrollment for children.

Michael reported that PCN is closed for childless adults as of October 1. It is still open for adults with dependents at this time. Steven asked why the enrollees in PCN have not surpassed 2009 enrollment. Michael pointed out that PCN eligibility is now limited to 100% FPL, and we have changed cost sharing to comply with ACA. Both factors affected our budget for PCN, and PCN enrollment is limited by our budget. Steven asked how we would accommodate uninsured individuals who aren't eligible for the FFM. Michael explained that Healthy Utah would replace PCN and will be a more robust benefit. Teresa Swensen reported that there were 402 adults who applied for PCN after October 1 who would have been eligible before that date. Debra asked what happened to the individuals who became ineligible when the PCN limit changed to 100% FPL from 138%. Michael replied that those individuals may lose coverage at the end of 12-month PCN benefit period but, if Healthy Utah is implemented, those between 100% and 138% FPL would get subsidies for a commercial plan.

## HCBS Settings and Transition Planning

Tonya Hales reported.

New federal regulations came into effect that impact Home and Community Based Services. The most significant of these relate to the settings in which clients can receive services. These are required to be settings that are not institutional in nature. Each state is responsible to complete a transition plan. This will involve evaluating each setting where care is provided. The New Choices Waiver has assisted living providers, and some of those may not meet the "home-like" environment required by the rule. We will evaluate, for example, whether a client may have guests at any time, whether they have access to meals at times of their choosing, etc. to determine whether the care setting meets the Federal requirement.

The latest date we can submit our transition plan is March 2015. We are working to draft the plan now. We will have a public process for comment. Drafts will be made available to the public for a minimum of 30 days. We will meet with several agencies, put the drafts on a website, and make it available in any other way we can.

Andrew asked how the department will go about evaluating settings. Tonya replied that the plan will detail that process. Most of the preliminary work will be determining how we will evaluate settings for each service. We will also plan how to bring our providers into compliance. We have five years to comply. Andrew asked whether there would be more opportunities for public input in addition to the formal comment period. Tonya replied that there will be several drafts on which the public can comment. Comments will be submitted to CMS.

The draft plan will be submitted for initial public comment on October 22 and stay open until December 1.

Russ asked how providers would be brought into compliance. Tonya said that we will negotiate with CMS and with the provider to comply. There may be clients who can no longer take advantage of the waiver because their level of care can't be provided in the setting where they live.

## Minimum Wage Rule

Tonya Hales reported.

The Department of Labor has revised its regulations relating to some home health care workers. These policies will go into effect January 1, 2015, but there will be a 6-month period of non-enforcement as states revise their processes to come into compliance with the rule. "Companionship" has been exempt from the Fair Labor Standards Act (FLSA), but it will no longer be exempt in some cases. Some states will be significantly impacted by this change, but we don't think it will have as much of an impact on Utah.

States will need to evaluate their employer status as it relates to a client's self-hired aide: Is the client the sole employer of the aide, or does the State have a joint employment responsibility? The IRS uses the Common Law Test, the Department of Labor uses this as well as the Economic Realities Test. The State will have to look at both in its evaluation. Some of the criteria we would look at includes whether the State requires basic qualifications, like a background check or CPR, or whether the qualifications more extensive. Fewer qualifications set by the State would mean that the client has more leeway in hiring the aide, which in turn would mean that the client is the aide's sole employer.

Once we have completed this analysis in partnership with the Department of Human Services, we will meet with the Attorney General's office in both departments to decide a course of action. We think at this time that we are not a joint employer in most cases. Most of our self-directed care workers are friends or relatives of the client.

Michael clarified that the states that will be impacted most are the ones that do have a joint employer relationship.

## Autism Waiver

Tonya Hales reported.

We will hold another enrollment period in the late fall for services to begin in January. We will serve 25-30 additional children. We will need to report to the legislature on client outcomes, which have generally been very good.

We received additional guidance from CMS on services to children with Autism Spectrum Disorders. They expect that autism services will be provided under EPSDT, which is a big shift from what we have been doing. We will have to implement that change and determine how that would impact our current clients. The current Autism Waiver allows some clients who would otherwise not be eligible for Medicaid to receive services. We are working with CMS to determine how to transition current enrollees. CMS recognizes that states may need time to review their policies and implement changes.

Lincoln asked who would deliver ASD services in the future, specifically whether the county mental health authorities would be involved. Michael replied that there was a significant amount of infrastructure building that went into our pilot waiver. Now that CMS has determined that ASD services should be provided under EPSDT, we will need to determine what treatment is medically necessary and

the best delivery method for the services. In the future, if there is value in rolling these services into an ACO, we will do so. For now, they will be fee-for-service as they have been on the Autism Waiver. We will need to figure out a way to work in families who are above the traditional income guidelines. We want to disrupt services as little as possible. Tonya also mentioned that an analysis was performed and found that 45% of the children on the waiver had received Medicaid at some point in the past, but that leaves a large number of children who a transition plan would need to be developed for.

Russ asked to clarify the time frame for compliance. Tonya said that CMS's guidance says this has always been the case, but until the litigation came forward, they didn't realize it. If we were to try to amend our current Autism Waiver, CMS would start asking for our transition plan. The waiver authority expires next October. Lincoln asked whether the waiver gives us a good idea of what these services will cost. Michael said that we have focused on children ages 2-6, but we will now be providing services to everyone up to age 21. We have good demonstrated outcomes from our waiver, but don't yet know what services will look like for older children.

## Suspension of Eligibility for Incarcerated Individuals

Jeff Nelson reported on suspension of eligibility.

When people are released from jail or prison, they often have an immediate need for medical services, and mental health services in particular. Applying for medical services can take up to 30 days, and that creates a barrier to access, which in turn can lead to recidivism. One solution would be suspending eligibility.

The first hurdle would be the length of the hold. We need to review cases every 12 months. How long would we hold the case?

The second hurdle is that changes happen. Medicaid is a month-to-month program. Household composition may change and other changes can happen during incarceration.

The third hurdle is residency. Individuals in Utah institutions are not eligible to receive Medicaid. This is one of the Medicaid eligibility regulations.

The fourth hurdle is confidentiality. We would not want to report, for example, family/children's addresses to an individual who has a restraining order against them, or if the family no longer wanted that information shared with the individual being released.

We looked at some other alternatives. In the Utah State Prison, we have the ability to fax applications 30 days in advance to have eligibility upon release. Fewer than 5% of released individuals follow up with DWS upon release. We have a similar program at the Salt Lake County Jail. We do have eligibility for inmates who stay at a hospital outside the institution. That mechanism could help as we design a program.

We need participation from the community to help solve the problem. We're to the point where we can engage the public in the discussion.

This issue becomes quite a bit larger if Healthy Utah is implemented. Patrick Fleming, Director of the Salt Lake County Division of Behavioral Health Services, reported that most released inmates are not eligible for Medicaid, but the majority will be eligible under Healthy Utah. Russ asked whether there were

transition programs available already for folks who are being released. Currently, only 23% of the inmates in Salt Lake County Jail have ever had Medicaid. Most of these are pregnant women or those who have young children. With Healthy Utah, that number would rise over 80%. We also don't have enough services to cover the needs of people with mental illness. Criminal justice and healthcare reform are working hand in hand through the Pew Charitable Trusts. Salt Lake County endorses suspension rather than termination.

Dr. Cosgrove said that the system that covers hospital stays should be able to cover the individuals. Jeff replied that the eligibility is typically retroactive in that case. We did determine that individuals who are determined disabled will still be considered disabled when they are released.

Lincoln asked whether we could create a presumptive eligibility program for released inmates. Jeff said that we would need to find a qualifying entity. Would it be the prison itself, or someone else? Russ concurred with the presumptive eligibility suggestion through the jails. The average length of stay at Salt Lake County is 7 days. Michael said that the dynamic changes substantially as we move into a Healthy Utah program, but at this time there is only a small percentage of the incarcerated population is affected.

Jeff invited the committee to be involved in the workgroup to talk about this issue.

## Director's Report

### Healthy Utah

We are not working through any major policy questions at this point. The discussion is more technical. We are working on putting together an informational document in order to educate the public and the legislature. When we get the details of the plan in writing, we will start distributing the document as widely as we can. We don't have a specific date yet when the plan will be released to the public, but most of the key elements of the proposal have been agreed to. The formal process will require the Department to submit a waiver application with public comment periods.

Lincoln asked whether the document is set in stone or if it's open to modification as we receive input. Michael said that the Governor has the flexibility to negotiate with the legislature and the public. If we get modifications from the legislature, they will be reflected in the waiver application. There will be at least two public hearings.

Danny asked how detailed our negotiations have been with CMS. Michael said that we have determined things like cost sharing schedules. We are working on a letter that the Governor can send to Sec. Burwell to ask for conceptual agreement. The hope will be that our informational document will be as specific as it can be. We'll be gearing the document to a legislative level of understanding and interest. We will include information on known coverage gaps, Federal match rates available, assurances that the Federal Government has not changed its offer and the specifics of the coverage plan. The document will be very broad and include a lot of background.

Rylee and Lincoln asked whether there is still a bridge plan in the works. Michael said that there is an expectation that the Department will start covering people immediately. Our timeline is about 9 months before we would be fully implemented. If we got approval in the 2015 session, it will be an aggressive

goal to get them covered on January 1, 2016. We have worked with CMS on a plan to give people coverage in the interim.

If we get approval during the 2015 session, we would be working to enroll individuals under 100% FPL and transition PCN clients. Individuals between 100% and 138% FPL would presumably already be in the FFM, and we could provide the wraparound benefit. It will be a lot of additional work, but it takes into account the realities of providing coverage quickly.

Rylee asked how individuals over 100% FPL would get the wraparound coverage. Michael said that we have met with the QHPs on the Federal marketplace with the expectation that the State would pay them directly for the wraparound services. The plans will be expected to help us identify the individuals who need the benefit. There are about 20,000 individuals who will be enrolled this way.

Andrew gave due credit to the administrative nightmare that this will be.

During the bridge period, we would not be using the commercial plans because of open enrollment rules.

Dr. Cosgrove asked what the work requirement will look like. Jobs for people in this income category tend to be insecure. How would we track employment? Michael said that the requirement would be concurrent enrollment in the UWorks program. Anyone who has a medical frailty that prevents them from working would not be required to participate, but the Governor would like to add additional incentives of training and job placement. No one will lose coverage as a result of the work requirement.

Rylee asked whether there would be a budget line item to support the UWorks program. Michael said that he does not expect an increased appropriation for DWS, since the program is already in place. There are administrative costs that the State will incur, but we would get additional federal appropriations as a result of the plan.

### Private Duty Nursing Update

Historically, we've depended upon an acuity grid that was developed in Oklahoma. We have received a request to evaluate the validity of that method, and we're working with Oklahoma and West Virginia, who have similar programs. We continue to review the issue and make progress.

Andrew asked what the result was of the discussions with Healthy U and their home health provider. Michael said that Healthy U and the provider were able to reach an agreement and resolve the issue.

### Adjourn