**Notice of Meeting to Solicit Public Comments and Intent to Act**

**Upon Amendments to the Medicaid Services Manual (MSM)**

**Public Hearing January 26, 2021**

**Summary**

Date and Time of Meeting: January 26 at 9:35 AM

Name of Organization: State of Nevada, Department of Health and Human Services (DHHS), Division of Health Care Financing and Policy (DHCFP)

Place of Meeting: WebEx

**Teleconference and/or WebEx Attendees**

**(Note: This List May Not Include All Participants, Just Those Who Identified Themselves)**

Jessica Kemmerer, DHCFP Luisiana Tegan, AmeriHealth

Gabriel Lither, Senior Deputy Attorney General (SDAG) Jesse Wadhams, Black & Wadhams

DuAne Young, Deputy Administrator, DHCFP Kelly Woods, DHCFP

Jessica Adams, Aging and Disability Services Division (ADSD) Joseph Turner, DHCFP

Angela Highsmith, Koinonia Foster Homes, Inc., Heather Lazarakis, DHCFP

Kerri Korin, Apple Grove Treatment Center, LLC Megan Wickland, ADSD

Leslie La Combe, Apple Grove Treatment Center Crystal Wren, ADSD

Marissa Brown, Nevada Hospital Association Tracy Brown-May, Opportunity Village

Lea Case, JK Belz & Associates Alton Giles, Guardian Transportation LLC

Sandy Arguello, Koinonia Foster Homes, Inc Kelly Slaughter, Redhead Supports

Cristina Vito, Nevada Adult Day Healthcare Centers Theresa Carsten, DHCFP

Jenelle Wininger, Overture Services Lori Follett, DHCFP

Jeffrey Murawsky, Silver Summit Health Plan Ellen Frias-Wilcox, DHCFP

Donalda Binstock, Clark County Social Service Rossana Dagdagan, DHCFP

Erin Colgan, Specialty AmeriHealth Caritas Crystal Wren, ADSD

Kirsten Coulombe, DHCFP Jennifer Frischmann, ADSD

Yvonne Vestal, DHCFP Valerie Hicks, SAFY

Megan Quintana, DHCFP Caitlin Basye, Olive Crest

Sarah Dearborn, DHCFP Sanja Guyer, ADSD

Deborah Thomas, ADSD Gladys Cook, DHCFP

Nicole Figles, Silver Summit Health Plan Debra Sisco, DHCFP

Catherine Vairo, DHCFP Debbie Jordan, DHCFP

Marcia Tinberg, DHCFP Jackie Obregon, DHCFP

Sarah Braze, Koinonia Foster Homes, Inc Sandra Stanko, MTM

Jack Zenteno, DHCFP Stephanie Schoen

Susana Angel, DHCFP Tiffany Saunders-Newey; Anthem

Amy Miller Bowman, AmeriHealth Caritas Troy Friden, Chrysalis

Abigail Bailey, DHCFP Diane Thorkildson

Joan Hall, Nevada Rural Hospital Partners (NRHP) Dwayne Dabbs, Aetna

Erin McClelland, Olive Crest Lisa Foster

Mari Nakashima, The Perkins Co Cristina Kirit, Redhead Supports

Ryan Swensen, Humboldt Human Development Services Sarah Cummings

**Introduction:**

Jessica Kemmerer, HIPAA Privacy and Civil Rights Officer, DHCFP opened the Public Hearing introducing herself, DuAne Young, Deputy Administrator, DHCFP and Gabriel Lither, SDAG.

Jessica Kemmerer – The notice for this public hearing was published on December 24, 2020 in accordance with the Nevada Revised Statute (NRS) 422.2369.

1. **Public Comment**

Stephanie Schoen commented on Section 2101 Page 1, Authority, Paragraph 1: “The goal is to allow recipients to live in their own homes or community settings, when appropriate.” Stephanie Schoen asked who decides this and how can that comment be clarified and describe a situation where it would not be appropriate, so it is clear down the line for other people. She also commented that there are times where it states just intellectual disabilities and sometimes developmental disabilities throughout the chapter and she is unsure if the meaning is just intellectual or intellectual and developmental, because not all developmental disabilities come with an intellectual disability issue. Stephanie Schoen continued that on Page 1 of Section 2103.1(a)(4) “The applicant/recipient must have an adequate support system,” is also a very interpreted term just like the term “appropriate” and she would like the term to be defined. Lastly, she commented that nothing in any of 2100 or beyond really addresses the needs of the persons with the intellectual disabilities who cannot direct their own care, who require 24/7 medical dependence, such as nursing services, as well as habilitation for developmental issues. It is a highly specialized but very small group in Nevada that seems to slip through all the cracks. They might be better served under the Waiver for the Frail, Elderly.

1. **Discussion and adoption of changes to MSM Chapter 2100 – Home and Community-Based Services (HCBS) Waiver for Individuals with Intellectual and Developmental Disabilities, MSM Chapter 2200 – HCBS Waiver for Frail Elderly, and MSM Chapter 3900 – HCBS Waiver for Assisted Living.**

Susana Angel, Waiver Program Specialist, DHCFP, Long Term Services and Supports (LTSS) Unit presented the proposed changes to MSM Chapter 2100 – Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities to align with the current waiver renewal which was approved by the Centers for Medicare and Medicaid Services (CMS) on October 1, 2018.

The majority of the proposed changes throughout the chapter are the reorganization of chapter sections to follow the formatting of other DHCFP MSM Waiver Chapters. Also, throughout the chapter duplicated verbiage removed, grammar, punctuation and capitalization changes were made. References to other MSM Chapters were added, acronyms used and standardized, and unnecessary language was either removed, updated and/or reworded for clarity. Renumbering and re-arranging of sections was necessary for consistency with other waiver policies. The following terms where updated throughout the chapter to adhere to the CMS guidance regarding the HCBS New Settings Rule that focuses on Person Centered services; “Home and Community-based Waiver (HCBW)” was changed to “Home and Community-Based Services (HCBS),” and Individual Support Plan (ISP) was updated to Person Centered Plan (PCP).

Section 3715 of the CARES Act was added to Section 2103.1A(4) Waiver Eligibility, coverage and limitations allows HCBSto be provided in an acute care hospital setting. The services must fall within the guidelines set forth by the CMS. The Settings must identify in an individual’s person-centered support plan (or comparable Plan of Care (POC)); provided to meet needs of the individual that are not met through the provision of hospital services; not a substitute for services that the hospital is obligated to provide through its conditions of participation or under Federal or State law, or under another applicable requirement; and designed to ensure smooth transitions between acute care settings and HCBS settings, and to preserve the individual’s functional abilities. New sections added are “Provider Responsibilities” and “Recipient Rights and Responsibilities” in several areas throughout the chapter to align with other Waiver chapters. The additional subsections were added to the Waiver Eligibility Criteria and under each waiver service.

Section 2103.2A was updated to reflect the current requirements for enrollment and continued Certification for ID Waiver Providers. Required training for providers, documentation, incidents and serious occurrence portions have been updated for clarity in the policy as well. Under each waiver service section, the Service descriptions have been updated to align with the recently approved ID Waiver Renewal language. The Intake procedure was updated in Section 2103.14 for clarity and Subsection 2103.14C titled Support Plan Development was added to provide guidance in the Quality Assurance review as required by the CMS. Section 2103.16 “Service Coordinator Recipient Contacts” was updated with guidelines to ensure all efforts have been made by the Service Coordinator to contact the recipient within the quarterly timeframe. Section 2103.18 “DHCFP Annual Review” was updated to provide additional clarification for the Quality Assurance reviews as required by the CMS.

Under the Fair Hearings, Section 2104.1 added “Suspended Waiver Services” and 2104.2 “Release from Suspended Waiver Services” was added back with updates for clarity and consistency with verbiage. The Fair Hearings Section 2104.4 “Termination of Waiver Services,” added “Death of Recipient.” Both were added to comport with Code of Federal Regulation (CFR) 431.206 “Informing Applicants and Beneficiaries.” In Section 2104.5, “Reduction or Denial of Waiver Services,” was updated to provide additional instructions of the Notice of Decision (NOD) process between the ADSD and the DHCFP.

Please note - on the footer of this chapter – the word “Waiver” was deleted and will be added after the acronym (HCBS).

1. **Discussion and proposed adoption of changes to MSM Chapter 2200** **– HCBS Waiver for Frail Elderly**

Ellen Frias-Wilcox, Waiver Program Specialist, LTSS Unit, DHCFP, presented the proposed changes to MSM Chapter 2200 – Home and Community-Based Services Waiver for Frail Elderly also known as FE Waiver, to align with the current waiver renewal which was approved by the CMS on July 1, 2020.

The majority of the changes made throughout this chapter are renumbering and re-arranging of sections necessary for consistency across all waivers and with other MSM Chapters within the LTSS Unit, grammar, punctuation and capitalization changes, duplications removed, references to other MSM Chapters were added, acronyms used and standardized, and unnecessary language either removed, updated and/or reworded for clarity.

“Home and Community-Based Waiver (HCBW)” was updated to “Home and Community-Based Services (HCBS)” to adhere to the CMS guidance. The term “goals” was replaced with “personalized goals” to align with the Person-Centered approach in assessing individual’s needs and in the development of the plan of care. The term “authorized representative” was replaced with designated representative.” “QIO-like vendor” has been replaced with “fiscal agent.” The term “Legally Responsible Individual (LRI)” has been added where applicable; The term “Waiver Unit” was replaced with “LTSS Unit.” Statutes and Regulations titles have been added throughout the chapter.

The following proposed major changes are as follows:

In Section 2203.1A(6), “Eligibility Criteria Coverage and Limitations,” Section 3715 of the Cares Act was added, and the same rules applied as was mentioned by Susana Angel, who presented the preceding Chapter 2100, as they are within the same program. Prior to the implementation of the Cares Act, no waiver services could be provided to recipients during their hospital or institutional stay. In Section 2203.2A and 2B, “Waiver Services,” the Assisted Living Waiver services and its provider type (PT) 59 requirements were incorporated. Section 2203.2B(2), “Criminal Background Check,” was simplified and references to the Division of Public and Behavioral Health (DPBH) website and MSM Chapter 100 Medicaid Program were added. Section 2203.10A, “Augmented Personal Care Service Coverage and Limitations,” added Service Level 4, Critical Behaviors, which was approved during the 2017 NV legislative session and the amended FE Waiver application was approved by the CMS on April 1, 2019. The Service Level 4 is to provide additional financial support to residential facility providers caring for FE Waiver recipients with behavioral issues, who are needing extra assistance and supervision. Section 2203.12A, “Intake Procedure Coverage and Limitations,” Subsection #2, Placement on the Waitlist and #3 Waiver Slot Allocation have been revised, updated and streamlined. Subsection #5 has been revised to align with the approved FE Waiver and for the purpose of expediting the processing of intake packets so that applicants can begin receiving waiver services in a timely manner.

Section 2204.4, Fair Hearings, Termination of Waiver Services, “Death of Recipient” was added to comply with the Code of Federal Regulation (CFR) 431.206 Informing Applicants and Beneficiaries.

Ellen Frias-Wilcox added a friendly reminder, on the footer of Chapter 2200, the word “Waiver” is missing and needs to be added after the acronym (HCBS) as well as the changes effective date of January 27, 2021 will be changed to February 1, 2021.

1. **Discussion and proposed adoption of changes to MSM Chapter 3900 – Assisted Waiver**

The proposed change is to obsolete this chapter as the Assisted Living Waiver expired on June 2014 and was combined with the Frail Elderly Waiver approved by the CMS on July 2014. All Assisted Living waiver services and its authority have been incorporated into MSM Chapter 2200 – Waiver for the Frail Elderly, and no changes were made to the services.

At the conclusion of Ellen Frias-Wilcox’s presentation, Jessica Kemmerer asked DuAne Young if he had any questions or comments.

DuAne Young replied he did not have any comments, but he understood there were some comments made earlier in regard to language changes that will be requested. He said that in addition to Ellen Frias-Wilcox and Susana Angel, we also have representation from our sister agency Aging and Disability Services on the line and Megan Wickland who are taking notes and will be open to meeting with any concerned advocates regarding language, but due to timeframe needed for this particular policy, he will be approving today. However, the door will be left open to have that discussion amongst both agencies and with anyone who has any concerns.

Jessica Kemmerer asked Gabriel Lither and if he had any questions or comments and he had none.

Tracy Brown-May, Opportunity Village, commented on Section 2100. First, she wanted to offer congratulations on the DHCFP’s due diligence and hard work. She acknowledged the immense amount of work and conversations relative to the changes presented today, and the alignment with the Waiver is appreciated as so many people currently accessing services are in such need of Medicaid support.

Tracy Brown-May advised Section 2103.4, “Residential Support Services,” in the second paragraph, there appears to be a typo. In the second line at the end it reads PPC and she believes it should be PCP. She also had a question on Section 2103.4A(2), which reads “the recipient’s natural family home or in a non-provider owned home or apartment.” She was curious why spell out such detail instead of just identifying a residential setting owned or leased by the service recipient in a setting that is not classified as institutional. She also wanted to offer congratulations regarding the change in moving toward the word “recipient” as opposed to calling a person an “individual.” She continued that on Page 26, 2103.5, Prevocational Services. Paragraph #2 “Prevocational Services provides for learning and work experience, including volunteer work,” she believes the word “may” is missing. She inquired if it should read “must require volunteer work” as opposed to “it may include volunteer work for prevocational services.” She said “may” is included in the following Section 2103.6, “Support Employment,” “Supported Employment Services are individualized and *may* include any combination…” she said it looks like something out of the ordinary. She also congratulated the efforts on gender neutrality on Section 2103.9A(1)(a) “assisting the recipient to develop one’s goal(s)” as being really progressive.

DuAne Young responded by thanking Tracy Brown-May for the comments and advised any technical changes and typos will be taken note of and ensured they are looked at and marked as fixed and then he will approve based on the typos as being fixed.

Christina Vito, Nevada Adult Day Healthcare Centers, asked how long the waiting list currently is to be eligible or approved for HCBS for the Frail Elderly.

DuAne Young responded that he does not know if one of his staff can answer the question or if Megan Wickland or another ADSD staff can answer.

Ellen Frias-Wilcox answered that unfortunately the owner of the waitlist is the “Aging and Disability Services Division” and they would know more as far as how long the waitlist is and she would reach out to ADSD to provide the answer.

Jessica Kemmerer recommended DuAne Young approve the proposed changes to MSM Chapter 2100 – Home and Community-Based Services (HCBS) Waiver for Individuals with Intellectual and Developmental Disabilities; MSM Chapter 2200 – HCBS Waiver for Frail Elderly and MSM Chapter 3900 – HCBS Waiver for Assisted Living.

DuAne Young approved as submitted.

Jessica Kemmerer closed the Hearing for MSM Chapters 2100, 2200 and 3900.

1. **Discussion and proposed adoption of changes to MSM Chapter 1900 – Transportation Services**

Kelly Woods, Policy Specialist for the Transportation Services, LTSS Unit, DHCFP, presented on the proposed revisions to MSM Chapter 1900 – Transportation Services.

Revisions to MSM Chapter 1900 – Transportation Services are being proposed to define the policy and coverage of Non-Emergency Secure Behavioral Health Transports. Non-Emergency Secure Behavioral Health Transport Services means the use of a motor vehicle, other than an ambulance or other emergency response vehicle, that is specifically designed, equipped and staffed by an accredited agent to transport a person alleged to be in a mental health crisis or other behavioral health condition, including those individuals placed on a legal hold. Throughout the chapter, grammar, punctuation, and capitalization changes were made, duplications removed, acronyms used and standardized, and language reworded for clarity. Renumbering and re-arranging of sections was necessary.

This proposed change affects all Medicaid-enrolled providers delivering non-emergency secure behavioral health transport services. Those PTs include but are not limited to: Specialty 987, Non-Emergency Secure Behavioral Health Transports (PT 35); Ambulance, Air, or Ground (PT 32).

There is an anticipated financial Impact on local government increase in budget expenditures:

SFY 2021: $8,403

SFY 2022: $21,865

SFY 2023: $21,267

The effective date for these changes is February 1, 2021.

Kelly Woods gave an overview of the proposed revisions.

Section 1903.2 Page 6, titled “Non-Emergency Secure Behavioral Health Transports” has been created to add the introduction/definition of these transports. Section 1903.2A titled “Coverage and Limitations” has also been created which includes subsections “Program Eligibility and Criteria,” “Covered Services,” and “Limitations” to further define the policy of this service. For these non-emergency secure behavioral health transports, recipients must be eligible for Nevada Medicaid or Nevada Check Up services and must be experiencing a behavioral health crisis. These transport services may be used for the following transports: facility-to-facility transports between facilities such as hospitals, public or private mental health facilities and other medical facilities, transport to and from a facility arranged by individuals authorized by NRS 433A.160 to arrange for transportation, and transport of an individual seeking voluntary admission pursuant to NRS 433A.140 to a public or private mental health facility. Limitations for this service due to safety considerations are family members or other unaccredited agents are not allowed to travel in the secure vehicle with the recipient.

The following policy sections have been added to the Non-Emergency Secure Behavioral Health Transport. Section 1903.2B, Page 7 “Authorization Process,” 1903.2C “Provider Responsibility” and 1903.2D “Recipient Responsibility” to further define the policy. These types of transports do not require prior authorization and claims are to be submitted to Nevada Medicaid’s fiscal agent. Providers must apply to become an accredited agent and once accredited must enroll as a Medicaid Non-Emergency Secure Behavioral Health Transportation provider. Providers are responsible for verifying Medicaid eligibility for each recipient and whenever possible should be done prior to rendering services.

For the entire “Non-Emergency Transportation (NET) Services” policy section, which begins with Section 1903.3 Page 8; language was moved around, rearranged and sections renumbered for a cleaner and more organized structure and to better mirror the format of the Emergency Transportation Policy section.

The first section rearranged is 1903.3A, Page 9 “Coverage and Limitations” which includes subsections titled “Program Eligibility Criteria,” “Qualifying Conditions” and “Covered Services.” Policy language to Section 1903.3A(3), Page 11 “Covered Services” has been moved around to have a more organized breakdown of NET covered services and modes of transport such as: Public Transportation, Gas Mileage Reimbursement, Indian Health Programs, Out-of-Area Travel, Companions to Recipients and Inpatient Treatment Facilities. Policy language for Section 1903.3A(4), “Non-Covered Services,” has been moved up. For section 1903.4, Page 37, “Geographic Area,” has included moved policy language regarding catchment areas. Section 1903.5, “Special Requirements for Selected NET Services,” Page 38, has updated the term “scheduled emergency” reference to the correct term “non-immediate medically necessary transport” and the manual section reference regarding these transports.

At the conclusion of Kelly Woods’s presentation, Jessica Kemmerer asked DuAne Young and Gabriel Lither if they had any questions or comments, and they had none.

Jessica Kemmerer asked if there were any public questions or comments, and there were none.

Jessica Kemmerer – Recommended the Deputy Administrator approve the proposed changes to MSM Chapter 1900 – Transportation Services.

DuAne Young – Approved as submitted.

Jessica Kemmerer – Closed the Public Hearing for the MSM Chapter 1900 – Transportation Services.

1. **Discussion and proposed adoption of changes to MSM Chapter 4000 – 1915(i) Home and-Community-based Services State Plan Option Intensive In-Home Services and Crisis Stabilization**

Sarah Dearborn, Social Services Program Specialist, Behavioral Health Unit, DHCFP, presented revisions to MSM Chapter 4000 – 1915(i) Home and Community-Based Services State Plan Option for Intensive In-Home Services and Supports and Crisis Stabilization Services are being proposed to include an additional care coordination model, Safety Assessment Family Evaluation (SAFE), to be utilized by the local county agencies when evaluating individuals to be eligible for these services. Throughout the chapter, changes were made to replace Care Manager and Wraparound Facilitator with Care Coordinator and renumbering and re-arranging of sections was necessary. Specific changes to Section 4003.3F(1)(e) within Documentation Standards were made to add the SAFE Care Coordination model. And Section 4003.3F(1)(f) within Documentation Standards changes were made to add clarifying language to define Care Coordinator. These proposed changes affect all Medicaid-enrolled providers delivering Intensive In-Home Supports and Services and Crisis Stabilization Services. Those PTs include, but are not limited to, Specialized Foster Care Services (PT 86).

The financial impact of the proposed regulation on local government is unknown at this time.

These changes are effective January 27, 2021.

At the conclusion of Sarah Dearborn’s presentation, Jessica Kemmerer asked DuAne Young and Gabriel Lither if they had any questions or comments, and they had none.

Jessica Kemmerer asked if there were any public questions or comments, and there were none.

Jessica Kemmerer – Recommended the Deputy Administrator approve the proposed changes to MSM Chapter 4000 – 1915(i) Home and Community-Based Services State Plan Option for Intensive In-Home Services and Supports and Crisis Stabilization.

DuAne Young – Approved as submitted.

Jessica Kemmerer – Closed the Public Hearing for the MSM Chapter 4000.

1. Adjournment

There were no further comments and Jessica Kemmerer adjourned the public hearing at 10:15 AM.

***\*An Audio (CD) version of this meeting is available through the DHCFP Compliance office. For more detailed information on any of the handouts, submittals, testimony and or comments, please contact Jenifer Graham at*** [***jenifer.graham@dhcfp.nv.gov***](mailto:jenifer.graham@dhcfp.nv.gov) ***with any questions.***