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Disabled and Elderly Health Programs Group

CMCS Informational Bulletin

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SUBJECT: Health and Welfare of Home and Community Based Services (HCBS) Waiver Recipients

Introduction

The Center for Medicaid and CHIP Services (CMCS) is releasing this Informational Bulletin to address the issues outlined in the January 17, 2018 report titled "Ensuring Beneficiary Health and Safety in Group Homes Through State Implementation of Comprehensive Compliance Oversight"[1] ("the Joint Report") developed by three agencies of the Department of Health and Human Services: Administration for Community Living (ACL), Office for Civil Rights (OCR), and Office of Inspector General (OIG). CMS takes the health and welfare of individuals receiving Medicaid-funded Home and Community-Based Services (HCBS) very seriously, and we are providing the following CMS perspective on the issues raised in the Joint Report for state and stakeholder awareness.

This Bulletin addresses one of the three suggestions the Joint Report made to CMS: *encourage states to implement compliance oversight programs for group homes, such as the Model Practices, and regularly report to CMS.* Information contained here is consistent with the March 12, 2014 Informational Bulletin titled, "Modifications to Quality Measures and Reporting in § 1915(c) Home and Community-Based Waivers[2]" and will not supplant and/or rescind that document. This release will be the first in a series on this topic of health and welfare. CMS intends to issue future guidance highlighting promising practices in effectuating the suggestions contained in the Joint Report, along with proposed performance metrics for evaluating the health and welfare of individuals receiving HCBS waiver services.

The Joint Report compiled individual audits across four states conducted by OIG to determine how states were ensuring the health and welfare of individuals with developmental disabilities

[1] https://oig.hhs.gov/reports-and-publications/featured-topics/group-homes/group-homes-joint-report.pdf
[2] https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/downloads/3-cmcs-quality-memo-narrative.pdf

residing in group homes[3]. In addition, proposed Model Practices for components of a robust oversight framework were identified in the Joint Report, including State Incident Management and Investigation, Incident Management Audits, State Mortality Reviews, and State Quality Assurance. Each of these is addressed below.

At the outset, CMS acknowledges that ensuring high quality HCBS to Medicaid beneficiaries is a shared goal among our state partners, provider communities, beneficiaries and their families and caregivers, and other stakeholders. Medicaid-funded HCBS play a critical role in facilitating beneficiary independence and community participation. The information contained here is meant to reaffirm CMS' commitment to provide necessary technical assistance to states in the development, implementation, and improvement of a quality oversight program. We encourage states to review this information as they look to strengthen their quality assurance system.

Incident Management and Investigation

A strong system of quality oversight utilizes a framework that defines and captures information on potential instances of abuse, neglect, or exploitation and emphasizes the importance of awareness and identification of critical incidents. There is no standard federally defined term for "critical incident" that outlines the scope of reportable incidents, leading to variation across states in the Medicaid program, and sometimes even across programs within the same state. Based on information contained in the Joint Report, along with the Agency's review of states' submitted HCBS waiver applications, CMS strongly encourages states to define critical incidents to, at a minimum, include unexpected deaths and broadly defined allegations of physical, psychological, emotional, verbal and sexual abuse, neglect, and exploitation. See pages A-iv and A-v of the Joint Report for a more comprehensive list of suggested reportable incidents. Awareness of critical incidents is the first step states require to determine whether an investigation or potential changes to the provision of services is necessary.

CMS supports the information contained in Appendix A of the Joint Report, titled "Model Practices for State Incident Management and Investigation" and finds it consistent with the expectations in the March 12, 2014 Informational Bulletin. Ensuring that the right information is generated at the provider/individual level and communicated to the state provides the basis for state-conducted review of data for timely trend analysis, investigations of specific incidents consistent with waiver materials and state policies, procedures and requirements, as well as implementation of any resulting corrective actions. The identification of emerging trends of concern is an important analysis for states to perform to determine whether systemic controls are in place or need improvement to prevent future incidents of abuse, neglect, and exploitation.

Reporting critical incidents plays an important role in a quality oversight program, and we believe that it is necessary to ensure that an approach to incident management is not perceived as punitive, but instead as an opportunity to help make quality oversight systems stronger. There is

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[3] While there is no standard definition of a "group home," they tend to be congregate residential settings of various sizes in which individuals with a unifying characteristic or diagnosis – such as a developmental disability, mental illness, etc. - receive services.

a balance that CMS and the states must strike to ensure that we are encouraging, not inadvertently discouraging, providers and other stakeholders to report and resolve critical incidents and to be active participants in ongoing quality improvement efforts.

Incident Management Audits

States are encouraged to conduct audits of their incident management systems to ensure that information on all occurrences meeting the state's definition of a critical incident are reported appropriately and lead to investigations to determine the need for any corrective actions. This is consistent with the instructions for administrative oversight in the section 1915(c) Instructions, Technical Guide and Review Criteria. The information contained in Appendix B of the Joint Report, titled "Model Practices for Incident Management Audits," provides a good resource for how these audits could be conducted. While the OIG audits focused on incidents that led to hospital emergency department visits, CMS recognizes that not all emergency department utilization is due to abuse, neglect, or exploitation; likewise, not all incidents of abuse, neglect, or exploitation result in emergency department visits. States should implement an auditing protocol that captures all incidents that are relevant to the state's definitions of critical incidents, and reflects all locations in which those incidents could occur.

In response to the Joint Report's suggestions to review Medicaid claims data as part of incident management audits, CMS acknowledges that potential time lags between service provision and claims submission may make this type of review most appropriate on a retrospective basis to identify where incidents have been reported and/or not reported consistent with the emergency department visits audit, trends, and potential system improvement strategies.

Mortality Reviews

CMS agrees with the role that reviews of beneficiary deaths can have in a state's overall quality oversight system. CMS also agrees with the information contained in Appendix C of the Joint Report, titled "Model Practices for State Mortality Reviews". The distinction on page C-ii of the Joint Report is important: while states should require a preliminary review of all beneficiary deaths, investigations should focus on deaths that are determined to be "unusual, suspicious, sudden and unexpected, or potentially preventable, including all deaths alleged or suspected to be associated with neglect, abuse, or criminal acts." CMS recognizes that state Medicaid agencies and state operating agencies cannot mandate that autopsies be performed. States are encouraged to establish relationships with relevant agencies performing autopsies to maximize the likelihood of their performance upon state request. CMS notes the significance of mortality reviews in identifying trends in critical incidents and implementing systemic interventions that help protect against such critical incidents.

Quality Assurance

Appendix D of the Joint Report, titled "Model Practices for State Quality Assurance," brings information discussed earlier in the Report together into a comprehensive quality oversight

strategy. CMS, working with State Associations and representative states, agreed that this was a critical need in the state's Quality System for Health and Welfare issues and communicated that in the 2014 Informational Bulletin. CMS supports the infrastructure described in Appendix D of the Joint Report, including the focus on ensuring the provision of person-centered planning and services, and the inclusion of beneficiaries and other stakeholders in the development and implementation of a HCBS quality oversight program.

Ensuring the transparency of information associated with HCBS quality oversight is a critical step in fully utilizing the perspectives of such a wide array of stakeholders. States are encouraged to establish regular and clear communications with stakeholders, including individuals receiving or on a waiting list for HCBS. All reports generated as part of a state's HCBS quality assurance program should be published online and made available (in plain English and other relevant languages) to stakeholders. Finally, states are encouraged to identify ways to close feedback loops with individuals who are experiencing difficulties in receiving HCBS.

Next Steps

CMS encourages states, providers, and other stakeholders to become familiar with the Model Practices contained in the Joint Report. They represent sound recommendations in the implementation of good quality management programs and are consistent with the March 12, 2014 Informational Bulletin. In upcoming guidance, CMS intends to highlight examples of how these recommendations are being successfully utilized in the delivery of HCBS. CMS remains available to provide technical assistance on quality oversight to states under the various HCBS authorities.

CMS notes the potential availability of enhanced federal matching funds for state activities to implement the Model Practices described in the Joint Report. Enhanced federal administrative match of 75% may be available for these activities if they are part of a medical and utilization review performed by certain utilization and quality control peer review organizations under subsections (b)(6)(i) and (b)(10) of 42 CFR 433.15. CMS encourages states to enlist the assistance of qualified entities in this important work. States may contact their CMS Regional Office to discuss the possibility of enhanced administrative matching and the development of an administrative claiming plan for CMS review and approval. Likewise, states may also contact their Regional Office to determine the availability of 90% federal match for expenditures related to development of an automated data processing (ADP) system through the advanced planning document (APD) process under 42 CFR 433.112(a).

CMS looks forward to working with states in continued efforts to assist Medicaid beneficiaries in maintaining community integration and receiving quality services.