



State of New Hampshire

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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JEFFREY A. MEYERS
COMMISSIONER

May 10, 2017

His Excellency, Governor Christopher T. Sununu
State House
107 North Main Street
Concord, NH 03301

Re: Status Report in Accordance with Executive Order 2014-03

Dear Governor Sununu:

Attached please find the Department's status report relative to the recent audit by the LBA of the Bureau of Developmental Services, which will be posted on TransparentNH in accordance with Executive Order 2014-03.

This report details the Department's efforts in responding to the LBA audit findings, including corrective actions taken to date and suggestions for further legislative action. The Department remains committed to ensuring that its developmental services programs are managed effectively and that the funds appropriated by the legislature for these programs are serving those who rely on these critical services.

In addition to the steps and corrective actions identified in this status report, the Department has been meeting regularly with a group of area agency executive directors and their consultants to discuss and resolve issues regarding the approval and disbursement of developmental services funds that previously impacted the Wait List. These discussions have been very constructive and both the Department and the area agencies are continuing to work together to ensure the provision of services as intended to those on the Wait List.

Sincerely,

Jeffrey A. Meyers
Commissioner

Enclosure

cc: The Honorable Chuck Morse, Senate President
The Honorable Shawn Jasper, Speaker of the House
Health and Human Services Oversight Committee
Vicki Quirim, Commissioner, NH Department of Administrative Services
Michael W. Kane, Legislative Budget Assistant
Jonathan Routhier, CSNI
Area Agency Executive Directors

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Legislative Budget Assistant's Office
Bureau of Developmental Services, Performance Audit Report
February 2016

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DHHS will review the factors listed above and will consider including waitlist and maintenance (waiver) DD expenditures to the DHHS Dashboard, which would supplement the current individual caseloads reported.

Status Report as of May 2017: BDS is continuing to manually track individual expenditures on a weekly basis. BDS and DHHS management are meeting with the Area Agencies bi-weekly to review the information submitted for expenditures and to ensure that waitlist monies are allocated as needed to serve those on the waitlist.

Estimated Completion Date: BDS will continue to track expenditures in this fashion for as long as necessary to ensure expenditures are made appropriately.

Audit Observation # 2 Recommendations: We recommend the DHHS strengthen management controls over the carry forward of waitlist funds and develop a process to use unspent waitlist funds to start clients' ongoing services, and remove them from the waitlist, prior to developing the subsequent biennium's budget. This may necessitate statutory or budget process changes.

The Legislature may wish to consider changing waitlist budgeting practice to allow for including additional, projected unknown clients based on historical DHHS data, in addition to budgeting for known waitlist clients, as has been practice in past budgets.

DHHS Response: We concur.

BDS agrees that it did not have adequate mechanisms in place in the past for tracking funds that were unspent or underspent at the area agency level. This was self-identified prior to the audit and analysis of same began at the start of SFY15. The Area Agencies have begun reporting to BDS the services not being fully utilized and identifying reasons why funds are not being spent for individuals. BDS is now meeting monthly with Area Agencies to continue to identify and track unspent funds.

Reallocating funds that are underutilized by one individual to another individual is a complex process. Each individual goes through a person centered planning process to identify their needs and a service agreement is developed which indicates which supports they will receive. An individualized budget for these services is also developed. BDS approves the budget for each individual, and when the agency provides the services for the individual, they can bill for those services. Once this process has been completed, reallocating underspent funds to other individuals could result in a loss of available funding for future service for the individual. This is an area that is currently receiving significant attention and Area Agencies and BDS are working together to address this challenge. The meetings with Agencies to identify and track unspent and underspent funds are critical to this evaluation and BDS will continue to do work with the Area Agencies on this issue.

An additional consideration in reallocating allocated but underutilized funds is that the expenditure of allocated funds must comply with RSA 9:19, as well as meet the needs of individuals in accordance with RSA 171-A. The service delivery system's ability to be flexible and allow reallocation of funds from one individual to another while also expending funds for their appropriated purposes may require changes

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which provides for services for individuals receiving services due to an acquired brain disorder, to include the same information.

With respect to the recommendation that there should only be one set of rules to include both DD and ABD populations, BDS neither agrees nor disagrees. BDS will conduct a review to determine whether it is appropriate to continue to maintain two sets of rules for the two different populations served.

RSA 171-A:1-a provides for limits on waiting lists. This statute became effective on July 1, 2007. He-M 503 had been amended in January 2007 and was not amended again until July 2015. BDS concurs that during the audit period of SFY 14 and 15, the rule was not in compliance with the statute in this regard. However, the July 2015 rule incorporates the language of this statutory provision, which ensures that individuals meeting waitlist criteria are consistently added to the applicable list. BDS intends to amend He-M 522 to include this language as well.

While BDS does not agree that guidance to the Area Agencies regarding the use of waitlist funds was unclear, BDS understands the importance of ensuring that individuals receive services in accordance with proper program standards. Rules, contracts, and policies all have a role in the service delivery system. BDS will work to ensure that rules are properly adopted pursuant to RSA 541-A and that contracts and policies are used appropriately and are applied consistently internally and across all Area Agencies.

With respect to the recommendation that BDS ensure that funds are used for their appropriated purpose, the response to Observation No. 2 is incorporated herein by reference. The service delivery system's ability to be flexible and allow reallocation of funds from one individual to another while also expending funds for their appropriated purposes may require changes to the budgetary process, statute, and subsequently rules. For example, BDS' flexibility to reallocate unspent maintenance appropriations for use by other individuals from one year in the biennium to the next is currently limited by budget language and law. This limits BDS' ability to meet individuals' needs and increases the potential for lapse.

Status Report as of May 2017: Observation 7 recommends that the Legislature consider combining the statutes for individuals with Developmental Disabilities and Acquired Brain Disorders. A Subcommittee of the Health and Human Services Oversight Committee was formed to review remedial legislative actions in response to this audit. The Subcommittee met between September 2016 and October 27, 2016. The final report of the Subcommittee recommended further discussion of combining statutes is necessary and that it be addressed through a reconstituted subcommittee in the next legislative session. In the meantime, BDS will enter rulemaking for He-M 522 to include the same waitlist language that was added to He-M 503. The status report of Observation 2 is also incorporated herein by reference. BDS has developed waitlist policies that will be distributed to all Area Agencies and implemented July 1, 2017. While the policy was being developed, BDS has also clarified waitlist rules and expectations in formal memos to all area agencies. Prior to incorporating into rules, we want to ensure the policies are working effectively, meeting the regulatory and statutory intent.

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Audit Observation # 5 Recommendations: We recommend DHHS management:

- Correct PA system faults and inefficiencies of underlying IT systems to streamline the mechanics of PA processing;
- Consolidate and simplify administrative processes for approving individual service budgets and PAs;
- Formalize the simplified policy and procedure in rules and procedure manuals; and
- Collect performance data to assess timeliness of PA processing to identify sources of delays, underpin staffing requirements, and measure performance over time.

DHHS Response: We concur in part.

Delays in the PA approval process have not led to delays in service starts, or contributed in any way to funds lapsing. Information provided to the auditors by BDS, which came directly from the Area Agencies, confirmed that in the years audited, delays in budget approvals and PA request approvals did not delay services or impact the amount of reimbursement. Accordingly waitlist funds did not lapse due to delays in the approval of budget or PA requests. However, BDS agrees that the PA process can be improved to provide greater efficiencies, and has already begun to do so by amending He-M 503 in July 2015 to include timelines for the approval of PA requests.

BDS will consider whether any other changes are appropriate to consolidate or simplify administrative processes for approving individual budgets and PA requests. Any changes will be formalized into procedure manuals and/or rules as appropriate. As noted in the response to Observation No. 2, there are several factors in addition to the PA process which have contributed to lapsing funds, and those factors are incorporated herein by reference.

BDS will review whether any PA system faults and inefficiencies of underlying IT systems exist, and will work to address any identified. It is important to note that any improvements to IT systems will require appropriations.

BDS has developed processes for collecting data to assess the timeliness of PA processing. In assessing the data collected to date for SFY 16, it has become clear that Area Agencies are still not submitting waiting list PA requests timely. Additionally, when PAs are being requested and approved by BDS, the Agencies are not beginning to bill for the waiting list services provided.

Status Report as of May 2017: Two lean processes have been conducted relative to IT systems and PA processing. One process was conducted in collaboration with the area agencies, and one was internal to DHHS and focused on the IT systems currently used by BDS. As a result of these lean processes, several areas for improvement have been identified. DHHS has requested, as priority number 4 in the capital budget request, improvements to the IT systems utilized by BDS. This topic was addressed with the Subcommittee identified in the response to Observation 2 above, and it was the Subcommittee's recommendation that the DHHS budget request in this regard be approved.

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Subcommittee recommended further discussion of combining statutes is necessary and that it be addressed through a reconstituted subcommittee in the next legislative session.

Estimated Completion Date: As this recommendation is to the Legislature and not BDS, BDS does not have an Estimated Completion Date for this recommendation.

Audit Observation # 8 Recommendations: We recommend DHHS management revise rules to:

- Ensure rules require funds be expended for their appropriated purpose;
- Standardize the terms used throughout the developmental service system;
- Incorporate all rule-like requirements established in guidelines or other media into duly promulgated rules; and
- Provided statutorily-compliant provisions for temporary service arrangements for ABD clients.

We recommend BDS management:

- Develop a system to collect, validate, and analyze timeliness data to ensure statutory and regulatory compliance; and
- Discontinue ad hoc rulemaking and formalize procedures to issue mandates either by rule (for standardized or recurring requirements) or contract (for negotiated requirements).

DHHS Response: We concur.

BDS intends to amend He-M 522 to include the same language as He-M 503 with respect to the provisions for temporary service arrangements.

BDS is in the process of developing, and has begun to utilize, a system to collect, validate, and analyze timeliness data to ensure statutory and regulatory compliance.

BDS will conduct a review to determine whether it is appropriate to continue to maintain two sets of rules for the two different populations served.

With respect to the recommendation that BDS ensure that rules require funds to be expended for their appropriated purpose, the response to Observation No. 2 regarding reallocation of underutilized funds is incorporated herein by reference. The service delivery system's ability to be flexible and allow reallocation of funds from one individual to another while also expending funds for their appropriated purposes may require changes to the budgetary process, statute, and subsequently rules. For example, BDS' flexibility to reallocate unspent maintenance appropriations for use by other individuals from one year in the biennium to the next is currently limited by budget language and law. This limits BDS' ability to meet individuals' needs and increases the potential for lapse.

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He-M 503 was amended and approved by JLCAR in July 2015. Prior to entering rule making, BDS engaged stakeholders, including all Area Agencies, CSNI, and the Quality Council. Many of their recommendations were incorporated into the final rule. RSA 541-A:22, II, provides that rules “shall be prima facie evidence of the proper interpretation of the matter that they refer to.” BDS properly adopted rules pursuant to RSA 541-A and during the rule making process no concerns about the rule issues identified in this Observation were raised. However, BDS will review the following areas, identified in this Observation, and consider whether any further changes to rule are necessary:

- Standardizing the use of days instead of business days;
- Standardizing language use to start and end timed steps within processes;
- Ensure rule language conforms to statute and is internally consistent and clear; and
- Defining all relevant terms.

RSA 171-A:6, III, provides for preliminary evaluations to be completed and preliminary recommendations for services to be made within 21 days after an individual applies for services. He-M 503 now provides that the initial service planning meeting is to be held within 30 days of the eligibility determination. RSA 171-A:12 provides that a written individual service agreement be completed within 14 days after the initial service planning meeting. RSA 171-A:1-a is the only other statutory time frame, and subsection (b) provides that after the completion of a service agreement pursuant to RSA 171-A:12, funds must be allocated within 90 days. Notably, neither the statute, nor the rules in effect during the audit period provided a time frame in which the initial service planning meeting must be held, and thus, at the point of the preliminary recommendation, there was a gap in the timeframe structure for the entire process. While adding the three statutory time limits together results in 125 days, the sub processes were disconnected, as the time for frame for the initial service planning meeting is not included in statute.

Likewise, as indicated above, during the audit period, the same gap existed in rule and the rule based timelines did not run consecutively. Therefore, there was no way to quantify the timelines in the statute or rules during the audit period. BDS therefore does not concur with the timeframes in this Observation that were purported to exist during the audit period. The statute has not been amended, and therefore the statutory time limits still cannot be aggregated. However, He-M 503 has now filled in the gap that existed in the timeline from application to the allocation of funding during the audit period by requiring the initial service planning meeting to occur within 30 days of the preliminary recommendation for services. The current rule based timeline from when an application is received until funds are allocated is 155 days, which does not conflict with any statutory time frames.

He-M 503 includes a provision whereby individuals or their guardians can waive certain statutory time frames to ensure effective service provision. While this may extend the overall 155 day time frame noted above, there is no prohibition against doing so. In fact, allowing the waiver is in the individual’s best interest to ensure the most appropriate services will be provided, and is not in conflict with the statute.

He-M 503 now connects the processes of allocating the funds for service provision and the prior authorization process to ensure that the funding for services is approved and authorized prior to service initiation. He-M 517 requires that prior authorization requests be submitted at least 30 days prior to the start of services. BDS has implemented processes to monitor the PA submission requirements and ensure they are being followed.

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BDS will also further explore whether any definitions in rule should be standardized and will incorporate any changes through the rule making process.

Rules, contracts, and policies all have a role in the service delivery system. BDS will work to ensure that rules are properly adopted pursuant to RSA 541-A and that contracts and policies are used appropriately and are applied consistently internally and across all Area Agencies.

Status Report as of May 2017: The individual service agreement and budget templates have been completed and are in use. Contracts for FY 2018 have been updated and will continue to be reviewed and revised. As pointed out in the Status Report above for Observation 8, BDS is in the process of finalizing policies for July 1, 2017 implementation.

Estimated Completion Date: The Department is implementing the remaining actions as expeditiously as possible, with a June 2017 completion date.

Audit Observation # 11 Recommendation: We recommend BDS management develop written policies and procedures, and formalize processes for developing and distributing them and measuring their effectiveness.

DHHS Response: We concur.

Status report as of May 2017: BDS is continuing to review the areas in which formal policies and procedures are necessary, formalizing the process for developing and distributing them, and measuring their effectiveness. BDS has developed four policies for July 1 implementation and an additional three are being established. The individual service agreements and budget templates have been formalized and required this fiscal year and BDS is in the process of developing a policy for the criteria BDS staff will use to evaluate and approve these documents. In March, BDS hosted two trainings for all area agencies and vendor employees regarding the new budget template. The forms and directions will be placed on the BDS website.

Estimated Completion Date: The internal BDS policy for reviewing budgets will be developed by June 2017. The budget template documents will be on the BDS website by June 1, 2017.

Audit Observation # 12 Recommendation: We recommend BDS management improve IT controls and evaluate risks associated with the IT systems used to oversee and operate the BDS service delivery system.

DHHS Response: BDS will review IT systems and evaluate any risks associated with said systems, and make changes as appropriate. It is important to note that any improvements to IT systems will require appropriations.