New Mexico's Medicaid Managed Care Waiver: Organizing Input From Mental Health Consumers and Advocates

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The extensive literature on Medicaid gives scant attention to the role of public input in state officials' decisions to include vulnerable populations in Medicaid managed care programs. Evaluations of public health initiatives suggest that community input can be vital to a program's effectiveness and success (1).

Section 1915(b) waivers allow states to require that Medicaid recipients enroll in capitated managed care programs. Under the Balanced Budget Act of 1997, states seeking to enroll vulnerable populations, including seriously mentally ill individuals, must obtain waivers. National advocacy groups support this requirement, because it ensures federal scrutiny of managed care systems originally designed for healthier clienteles (2). Thirty-five states currently operate 77 1915(b) waivers (3), which must be approved by the Centers for Medicare and Medicaid Services (CMS) and renewed at two-year intervals.

Federal regulations do not specify how consumers of mental health services, patient advocates, and providers are to be involved in the development, evaluation, and renewal of waiver programs (4). Each state determines the extent of public involvement in these three areas. Involvement can take several forms, such as including community stakeholders in advisory bodies, soliciting their concerns in public forums, and incorporating their comments in waiver proposals. Nevertheless, public participation in the design and renewal of waiver programs may not be systematic or ongoing (5). Several barriers inhibit sustained involvement of community stakeholders in system-level oversight roles, including lack of training, technical support, and compensation.

We focus on events in New Mexico that illustrate how the absence of defined procedures for participation by community stakeholders in waiver renewals requires consumers, patient advocates, and providers to rely on their own resourcefulness, connections, and persistence to make their voices heard. New Mexico's waiver renewal has national relevance as a result of the increasing emphasis on state-level processes in decisions regarding waivers. The experience in New Mexico suggests the need to institutionalize formal structures for public consultation about waiver programs.

Background

In a population of 1.8 million, approximately 20 percent of New Mexico's residents are covered by Medicaid. To contain public-sector health services expenditures, Governor Gary Johnson's administration developed a privatized integrated managed care system to deliver physical and mental health services to Medicaid recipients. CMS granted the state a 1915(b) waiver for this system in July 1997.

In January 2000, the state Medicaid agency requested that CMS renew New Mexico's waiver, despite evidence suggesting that the integrated system was adversly impacting mental health services. In particular, two audits commissioned by the state legislature established that the system was unable to deliver high-quality, cost-effective mental health care (6,7).

The principal participants in the waiver renewal process were officials from CMS and the state Medicaid agency. Many providers, consumers, and patient advocacy groups—including Parents of Behaviorally Different Children, the Protection and Advocacy System, and the Center on Law and Poverty—argued that their views were not given adequate consideration during the renewal process.

Waiver renewal process

CMS conducted three on-site visits before deciding on the status of the waiver in October 2000. Most information collected during the initial visits related to the physical health portion of the integrated system. During the first visit in March 1999, only managed care organizations and a single advocacy group, the New Mexico affiliate of the National Alliance for the Mentally Ill, were allotted time to address how persons with mental illnesses fared under the waiver.

During the second visit in May 2000, a panel of judges representing district courts in New Mexico re-

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quested a meeting with CMS officials. The judges expressed their concerns about increasing numbers of Medicaid-eligible children and adults with serious mental illnesses who needed intensive services but were unable to obtain them under managed care. They stated that persons in need of treatment were instead placed in detention centers or prisons, which lacked adequate mental health care resources (personal communications, Honorable Geraldine Rivera, Second Judicial District Court, Mar 19, 2001; Honorable Alvin Jones, Fifth Judicial District Court, Mar 19, 2001). Despite the issues raised by the judges, the findings of the initial on-site reviews were generally supportive; CMS reviewers observed that the waiver program encouraged a greater continuum of care and more individualized planning for patients (8).

In response to their perceived lack of involvement in these reviews, consumers, patient advocates, and providers developed coalitions throughout the state and with national organizations, including the Bazelon Center for Mental Health Law, to lobby for federal intervention by CMS. They contended that the state Medicaid agency had not provided adequate oversight of the Medicaid program and had permitted managed care organizations to place mentally ill persons in inappropriate levels of care. They argued that managed care had weakened the state's mental health safety net, because a minimum of 60 facilities had closed since the implementation of Medicaid reform (9).

At the request of local provider and patient advocacy groups, the Bazelon Center conducted an assessment of the state's Medicaid monitoring data (10). The center's analysis revealed significant underutilization of the intensive services designated by the U.S. Surgeon General as effective for serious mental illness. Such services include case management, psychiatric rehabilitation, psychotherapy, and medication management. The reform's effects on mental health services were further documented in an ethnographic study of Medicaid providers completed by researchers from the University of New Mexico (11). The available data illustrated that Medicaid managed care contributed to manpower shortages and decreased financial support for mental health safety-net institutions. Community stakeholders cited these data to argue that mental health care should be carved out of the integrated system. Community stakeholders also started forwarding their suggestions for improving the Medicaid program directly to the state legislature, New Mexico's congressional delegation, and federal officials at CMS, in addition to the state Medicaid agency.

Participation by elected officials

The community stakeholders' efforts led national and state legislators to take seriously complaints about the difficulties of obtaining mental health services under Medicaid managed care. In September 2000, as CMS prepared to render its decision on continuing the waiver, Senator Jeff Bingaman, a member of New Mexico's congressional delegation, requested that CMS conduct another on-site review of the Medicaid program. CMS then initiated its most comprehensive review. The six-person CMS review team spent three days traveling throughout the state. Instead of relying on the state Medicaid agency, the team worked with a coalition of local providers and patient advocates to organize meetings with diverse groups of community stakeholders. The coalition also convened a "speak out" where more than 200 persons discussed problems with services.

The legislative finance committee, which had audited Medicaid mental health services at the request of state legislators, shared two reports with the CMS review team. Although CMS requires state governments seeking waiver renewals to provide evidence that their Medicaid programs are cost-effective and do not diminish access to or quality of care, both reports concluded that New Mexico's integrated system lacked adequate capacity to deliver mental health services. The first report revealed that projected Medicaid cost savings of $125 million per year under the integrated system would not occur (6). This report disclosed that the state Medicaid agency was neither effectively monitoring consumer complaints and grievances nor collecting reliable encounter data to evaluate the new system. The second report demonstrated a diversion of financial resources to administrative services, because only 55 percent of Medicaid managed care funds earmarked for mental health services in 1999 were distributed to providers (7). Access problems were attributed to cumbersome service authorization procedures required by managed care organizations. Disturbed by these findings, one state legislator—the chair of the interim legislative committee on health—wrote to CMS officials objecting to the program (12).

Waiver renewal denied

In an unusual move reflecting the deficiencies of the Medicaid program, CMS revoked New Mexico's waiver on October 19, 2000, and gave the state 90 days to restore the mental health portion of the integrated system to a fee-for-service structure. CMS would not allow Medicaid managed care to continue unless the state Medicaid agency withdrew mental health services from its waiver application. CMS's intervention in a state government's operation of a Medicaid program is a rare occurrence (13). The state Medicaid agency resisted CMS's decision, as did Governor Johnson, who personally requested that President-elect George W. Bush consider reversing it (11).

Transition to the fee-for-service structure never occurred, because CMS permitted its postponement. On February 14, 2001, the state's bipartisan congressional delegation, which remained in close communication with local advocates, expressed unease to Tommy Thompson, Secretary of the U.S. Department of Health and Human Services, about the lack of mental health services under Medicaid managed care. The delegation urged Secretary Thompson to take into account "all viewpoints from concerned New Mexicans" as he reconsidered CMS's decision (14).

On February 16, 2001, CMS, under Secretary Thompson's direction, retroactively approved the state Medicaid agency's request to provide mental health services under the inte-

grated model, asserting that CMS had concluded that the extant system would be able to adequately deliver mental health services. CMS's approval was subject to a list of conditions, including the implementation of intensive monitoring procedures and mechanisms to act on patients' complaints. Not entirely satisfied with these conditions, the state legislature passed a bill to carve out Medicaid mental health services into a fee-for-service structure. However, underscoring the polarized views on public-sector mental health care within the state government, Governor Johnson vetoed this bill.

Because 1915(b) waivers do not require public review, state Medicaid agencies are not obliged to elicit comments from community stakeholders on the content and evaluation of Medicaid managed care programs (4). However, the terms of New Mexico's waiver renewal included the creation of a provisional advisory committee, composed of state officials, consumers, patient advocates, and providers, to redesign Medicaid mental health services. The committee met from April 2001 to November 2001. These meetings provided a first step for building trust between state officials and community stakeholders. The committee negotiated a platform of shared values that guided its analysis of problems in the Medicaid program and recommendations for changes. Recommendations included setting up a permanent steering committee, which may contribute in the next waiver renewal process (15).

Conclusions

Despite widespread recognition of the important role that community stakeholders can play in managed care programs (2,4,5,15–17), the New Mexico experience illustrates the challenges of organizing public input into a waiver renewal process. The contested nature of this process calls into question the meaning of "states' rights" as they relate to the oversight of specialty health care in the public sector. Implicit in this concept is the belief that state governments, in contrast with the federal government, are closer to constituents and more responsive to their concerns. However, seeking to influence decisions about Medicaid services, stakeholders in New Mexico have perceived themselves as disenfranchised parties in the renewal process. Notably, the greatest support for stakeholders has not originated within the state government. Instead, CMS has been responsive to the bipartisan state legislature and congressional delegation.

The case of New Mexico raises policy considerations about public participation in state Medicaid programs. In particular, does CMS need to create and enforce guidelines for including community input into waiver renewal processes? This question also is pertinent to state plan amendment processes, in which state governments are authorized to modify mandatory managed care programs without allowing for public input (4). Stronger measures must be taken to articulate a framework for garnering public participation and long-term support for mental health services under Medicaid managed care.

The participatory planning process advanced by New Mexico's provisional advisory committee provides one model for states that are establishing waiver programs for mental health services (15). The National Health Law Project and the Bazelon Center also have proposed frameworks for improving public engagement in waiver programs (16,17). Adherence to such frameworks as a CMS requirement may improve state Medicaid agencies' responsiveness to the concerns of consumers and advocates. ♦

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