1115 Medicaid Redesign Team Waiver: Extension Request Informational Webinar Transcript

November 18, 2020

Just for everyone's awareness, this webinar is going to be recorded. It's being recorded right now. Ah, so if you're not comfortable with that, you may exit, but for everyone's benefit this recording will be made available on the DOH website after the presentation. So, good morning, happy Wednesday everyone, I'm Brett Friedman, the Director of Strategic Initiatives for the Medicaid program and I'm pleased to present today on the current efforts with regard to the extension request that will be submitted shortly for our 1115 Medicaid Redesign Team waiver. This is a short presentation. It is not one of the two required public comment webinars that will accompany the submission of the waiver. This is really informational, to give the public a sense of what our planning is now for the 1115 Waiver in hopes of answering some questions that we are starting to receive about the future plans given its upcoming expiration. And again, the idea here today is just to walk through our current planning and current thinking and then reserve some time for questions and answers. And I would ask that everyone use the Q&A box on the bottom right hand screen of your WebEx screen. You can type in the questions after we present, we will scroll through and answer the questions we have time for. So if you do have questions please utilize that function and we will go ahead and select those and if we can't get to your question we'll proceed to answer them at a later time. I'm getting some comments that others can't hear. Georgia, is the sound coming through to you? Yes, sound is coming through to me. I see one comment here, maybe some participants can verify. Yup, we are getting that people can hear fine. Thank you.

Ok excellent, if we can move to the next slide please. So the agenda is short today. We are going to do a few high level things. The first is we will give an overview of the waiver and the waiver renewal activities taken to date. Some of these should be, have already been very well publicized. But I think putting it all together in a timeline will help people understand all the efforts we have undertaken over the last calendar year, and moving to a renewal. We will discuss the contents of what is in our 1115 extension request and why we have selected that approach, for now. We'll discuss, what will be, what we are calling potential future 1115 amendments, which wraps into our larger waiver strategy. And we will talk about the timeline between now and the end of March, when the waiver is set to expire, so people are aware of what their choices are for public comment as well as the virtual hearings we will conduct in connect with the public comment process. And

then we will open it up to the Q&A as we discussed. So if you could advance to the next slide please.

So this slide lays out the timeline of all the actions we have taken to date. Some of these should be very familiar to those who have been following our 1115 efforts over the years. On November 27th of 2019 the State submitted its renewal application to CMS for both an extension of the DSRIP program for an additional year as well as a three-year agreement in principal, to map out what the future of our waiver would look like. And that approach, as set forth in the waiver application, was driven by the fact that DSRIP was set to expire on March 31, 2020, of this year. But the larger MRT Waiver, of which DSRIP was part, was set to expire on March 31, 2021. And so we were looking to align the expiration of DSRIP with the expiration of the waiver, and then work with CMS over what was going to be this calendar year on the terms of that renewal. It was a sound strategy at the time and we thought it worked best for the State and our movement towards VBP and the larger strategy goals for the Medicaid program. We heard in late February of 2020, shortly before the pandemic, which created widespread havoc across the county and across our State, that CMS declined to negotiate, both the extension of DSRIP and the renewal request. CMS's rational for that is, is, was complicated, and largely administrative, but we were due to be rebased for our budget neutrality calculation which requires that all of our waiver activities be budget neutral to the federal government. And CMS said that we, consistent with 2017 guidance issued by this administration, we were due for rebasing, and until we rebased CMS was unwilling to consider larger programmatic renewals or an extension of our DSRIP program. So that, that um, CMS was unwilling to negotiate basically the application that we set forth in November. That left us having to rethink our approach with regards to the 1115 waiver, just as the pandemic was hitting. At the same time, in late March, CMS made available to States confronting the challenges of the pandemic, that they could submit an 1115 emergency application, to ask for 1115 waiver flexibility that would help in the pandemic response. We utilized this emergency authority as a way of both seeking additional emergency capacity funding in connection with our pandemic response, to utilize aspects of our DSRIP infastructure to promote community-based strategies around pandemic response, and importantly at the end of that waiver applicatiton, which was submitted to CMS on May 12th, we asked CMS for a one year administrative extension of our expiring 1115 waiver. And what that was intended to do was kick the can down the road, for lack of a better word, for a one year period. So instead of our waiver expiring on March 31, 2021, it would expire in 2022. And the rational for asking for that one year administrative extension was to both determine whether the pandemic would have a programmatic impact on what we sought to do

under our 1115 waiver as well as to reflect the challenges inherent in having to do a full renewal process in the midst of combatting a global pandemic. And as those of you who are familiar with the renewal processes in the past, this is a time consuming and owneress process. The application is long, it requires evaluations of each interim waiver component, it requires a budget neutrality rebasing, and a lot of policy planning work that was inherently constrained by virtue of combatting the pandemic. So we asked CMS for a year extension in order to give us time to get over the hump of the pandemic as well as to utilize the pandemic as a way to inform future asks that could be part of the 1115 waiver. In June we received some positive feedback from CMS shortly after submission that a lot of states were in our boat, that they were going to entertain what they could, and there were also provisions of some of the House stimulus bills, the House version of the Cares Act, the House version of the Heros Act, that would have granted us this same extension that we were asking for as part of our emergency waiver application. Despite these, despite this initial momentum, in June about a month later, six weeks later, CMS said in the course of our conversation that they were unwilling to entertain an administrative extension request as we had asked for, we had to go through a formal renewal request. That was unfortunate news for many reasons, namely because it wouldn't give us time to programmatically plan for a waiver, given all the efforts undertaken since March. We were now three months behind, if not longer, because of, you know, the anticipation that we could administratively extend as well as the fact that CMS during the, since the submission of our original submission in November, was unwilling to engage. So CMS was not willing to accommodate any flexibilities with regard to the 1115 waiver renewal process, even in light of the global pandemic. Which was unfortunate but also consistent with some of the policy pronouncements made by this, you know, the outgoing administration's CMS which is their general disfavor towards 1115 renewal authorities. Their point of view is that 1115 is quote unquote, a waiver of last resort. And to the extent that we do things like, authorization of our Managed Care programs as part of our 1115, they would rather we put it, and authorize it, through different authorities. And so CMS's unwillingness to accommodate the flexibilities we sought in our extension process um was both unfortunate but largely consistent with this administration's viewpoint of the 1115 process. So where does that leave us? If you can move to the next slide.

So we are in the midst, and we are nearing submission, of what will be our renewal application. So we are going through the normal renewal process. We cannot let our waiver expire. It does too much and is too important to our Medicaid program to jeopardize in any way. So we are um, keeping it simple, if you will, in terms of trying to obtain the least owneress extension possible. So we are doding three things as part of this basic

waiver renewal application. The first is seeking a three-year extension of all of the exisiting STCs that CMS will allow us to renew. As well as the funding authorities under the MRT waiver. That is the authorities that permit our Managed Care program, inclusive of mainstream, HARP, MLTC, and HIV/SNP. It is our self- direction program, as well as other components that are authorized by the 1115 waiver. We are simply doing a straight non-new programmatic extension for a three year period. And that three year period was discussed with CMS as essentially long enough where it would give us some runway to utilize this period to do more programmatic things but not so long that CMS would delay its review and approval of the application. It's essentially the standard period for renewal based on CMS's recommendation. That number could elongate slightly as we work through the final process with CMS. Recently other states have received up to a ten year renewal of their 1115 waivers. For us, the longer the better, but we also want to keep the approval process as simple as possible, given that we are seeking this renewal um at this time with the global pandemic and change in the presidential administration. The waiver also includes two MRT II recommendations that were part of last year's enacted budget that have an effective date that would align with the renewal of the waiver. That is the, what we call the pharmacy carve-out, which is the transition of the pharmacy benefit from managed care into fee-for-service. As well as, what we call the transportation carve-out, which is the transition of the transportation benefit from managed long term care plans into fee-for-service so that that, the holistic, non-emergency medical transportation benefit can be managed by an at-risk transportation broker. Those two proposals, which we can, you know, there are lots of other presentations delving into those specifically, including near weekly, or bi-weekly presentations on the pharmacy carve-out. We won't get into those today, but those are part of the waiver renewal because all of those actions, as enacted in the budget, are again April 1, 2021 effective date actions. And so we are submitting all of these actions because we want them effective on the same date. There is administrative complicity to that. There is a line limit on the effective date and it helps with the budget neutrality calculation that is part of the renewal application. Next slide please.

So as mentioned on the prior slides, what this approach does is it extends all of the current waiver programs and authorities. We are not making any changes to them, we are simply keeping them authorized, based on CMS approval, for another three-year period. Um it's, it's again, all of our managed care programs, it's a component of our Children's Home and Community Based Services program, and then there is a self-directed pilot, and then

anything else that, you know, exists as authorities under our 1115 waiver. Um the reason why we chose this approach is admittingly not um splashy, it's not fancy, it's not big ticket, is because we need to preserve our current waiver programs. And we want to do so as there is a change in presedential administration and CMS leadership. We full expect, as probably many of you do, that the position of the biden administration will be different than that of the Trump administration with regard to Medicaid and the ability to use 1115 waiver programs as something other than a waiver of last resort as it's been used historically dating back to the inception of this 1115 in 1997. It provides us, second, it provides us with additional time to consider how COVID-19 should impact our healthcare delivery system, and whether we have to use the 1115 waiver authority to create new federal matching opportunities, to create new system redesign opportunities, to leverage the DSRIP infrastructure, um so that we are fortified and prepared either as the COVID-19 pandemic continues in its various iterations or to prepare for the next pandemic. And we've previewed a lot of that policy thinking as part of our um emergency application submitted on May 12th in terms of the type of expansion and contraction of the hospital delivery system and other key policy components. Certainly a large investment in telehealth would be warranted through consideration of COVID-19 impacts on what the system could look like. It also provides additional time for CMS to consider the 1115 waiver amendments we've submitted in the past six months um that were also part of the MRT II process. There has been a three, or two waiver, two waiver applications or two waiver amendments submitted so far in 2020. They've related to what's been called HCBS behavioral health optimization in managed care. Moving certain HCBS authorities into the rehab option, consistent with um OMH policy planning. Um, there is a waiver that addresses our duals integration strategy and keeping, including keeping individuals who are in mainstream plans so that they can be default enrolled into an affliated DSNP to promote duals integration. As well as MLTC enrollment eligibility change, again that was also part of MRT II. We need to ensure that the 1115 waiver amendment continues because those are amendments to the waiver so if the waiver expires those pending applications would cease to be considered. Next slide please.

But it's important to note that just because we are not seeking programmatic, substantial programmatic changes now, really it's a straight three-year extension. It doesn't mean that we are not thinking about the strategic direction of the Medicaid program. Once the waiver is renewed, sorry, once the waiver is renewed we can then amend the waiver. So we are

not doing the amendment in connection with the renewal we are doing a renewal and then we are going to amend, um, to do longer term policy planning and delivery system reform. And that is consistent with exactly how DSRIP worked, um, the MRT waiver was extended and then DSRIP was a programmatic amendment to that waiver once it was renewed, and um, same thing with HARP. Right, you can make large programmatic amendments so long as the waiver is not expired. So again we are just breaking apart the renewal and the programmatic changes but we are considering multiple programmatic changes to our Medicaid program that we would seek to do through an 1115 waiver authority. As I mentioned earlier developing longer term health care delivery system changes based on the COVID-19 pandemic and associated responses. Again, that can involve, you know, hospital based actions in terms of expansion and contraction. Again we would feature, we would contemplate a large telehealth component given the importance of telehealth delivery system to um ensuring people had access to care during social isolation measures. We would continue to pursue MRT II recommended actions during, that would extend beyond April 1st, 202. And there are several related to advanced VBP payment models, as well as global payment pilots. And so those would be part of subsequent amendments. And we have received a lot of questions about the criminal justice waiver, or the criminal justice reform waiver that we submitted back in 2019. That waiver would apply Medicaid benefits to people who are incarcerated thirty days prior to their release to help with post-release integration into the healthcare delivery system. We submitted that in 2019, CMS failed to consider it at the time, and we would repursue that amendment once the waiver itself was extended. Those actions and others that we consider would be part of either a single or multiple waiver amendments we submit to CMS, after the waiver is renewed and we understand, again, with the budget neutrality rebasing, what the financial impact of those measures would be on keeping the overall 1115 waiver budget neutral consistent with federal requirements. Next slide please.

So this is where we are. This is the timeline for submission. Just to show everyone where they will have an opportunity to provide comments on the waiver application. Right now we are in a pre-clearance mode with CMS. We have developed the waiver, we are vetting it internally with CMS to make sure it's technically complete. Once that happens, we will submit it and it will be published in the State register. We are aiming for the December 16th issue of the State register. There will be a link um to the um waiver amendment, the waiver application, that people can read and they can comment on. And there will be instructions

for public comment as part of that State register posting. We will then hold, so that period then expires, it will run, it's a thirty day public comment period and it will run to, December 16th to January 15th ah where people are able to ah, submit public comments on any capacity of the waiver amendment, all three of those contents components. Then we will hold two virtual public hearings. We would have traditionally have held these in-person, we would have done them in different parts of the State. We fully expect come January that travel restrictions or other sort of you know ability to hold large public gatherings should still be limited. CMS has permitted virtual public hearings to substitute for in-person public hearings during the duration of the federal public health emergency. So we are going to hold two public hearings on January 21st and January 27th. They will look and feel a lot like this. But we will in addition to providing a brief overview of the waiver again, we will open it up for Q&A. Again this meeting today is informal and informational, to give people a sense of what we are doing. It's not going to count as one of these two virtual public hearings which will come in January post expiration of the public comment period. We will receive all of the public comments following the virtual public hearings and public comment period. We will review, we will integrate them, we revise the waiver application if necessary. And then we will, our target submission date for a formal application to CMS is, we are saying early March, it will probably be around March 5th or so. And that will give CMS a month, and given that this is non-programatic, we are hoping that CMS will quickly review and approve our waiver amendment so it is concurrent with the expiration. If CMS cannot review and approve the waiver amendment by April 1, we are hoping "A" they can approve the non-programatic pieces of it um but the CMS will permit the waiver amendment to continue in a quote unquote "administrative temporary extension period". So simply getting the waiver in preserves, getting the waiver application in preserves the waiver amendment even if CMS cannot formally renew it by April 1. Um and so that's why this is such an important component and why again our strategy here has been - keep it simple, given that CMS has not engaged on our larger programmatic changes that we've submitted in last year and May of this year. Next slide please.

So that's um you know, that's basically it at this point. We are happy in the next twenty or thirty minutes to scroll through these questions um and um try and answer a few of them. So if you give us a few minutes or actually you know I can just start taking them down um and we may break a little bit and sort of figure out if there are repeats how to best answer these efficiently. But, um, I'll start going through the questions. The first question is "Will

the slides and recording be available?" , the answer is yes. We will post this on the MRT II Waiver website. If you, actually, if you can advance to the next slide the, the the websites are here and so the MRT II waiver website, we will post a recording on this webpage. As well as likely the MRT II website as well, so there is multiple places you can access it, but yes, we will make all of this public. The next question is "Has rebasing been done?" The answer is rebasing will be done as part of this waiver application. It has not been done yet, we will submit our calculations of the rebasing along with the waiver application, and then CMS will rebase, when they approve the renewal. It's unclear to us whether the rebasing will be retroactive to April 1, 2021 or whether, or if it will be as of the date they approve the waiver, if that approval is later than April 1, 2021. But, this consistent with all of CMS's guidance dating back to 2017, we will be, we will be rebased. And we are I think the first state to go through rebasing under the new CMS guidance that was issued. The question is, "Is the pharmacy carve-out contingent on a waiver extension?" Um, that is a more complicated legal question than I think it was probably intended to be. The answer is, the 1115, um, the current legal thinking is the 1115 waiver needs to be amended in order to um, in order to pursue the pharmacy carve-out. You know that, because Managed Care is authorized by virtue of the 1115 waiver, we want to be sure the 1115 waiver amendment reflects um, what, you know, reflects the nature of the pharmacy carve-out in its terms and conditions. And so, the pharmacy carve-out and the waiver extension need to go hand-in-hand because if the waiver extension, if the waiver is not extended, there is nothing to amend to achieve the pharmacy carve-out. There is a little bit of a additional complexity there because it's not like a fully authorized waiver service in that pharmacy services are State plan services, and so we can achieve a lot through a State plan amendment as well and we'll, you know, we'll have to see how the waiver renewal goes and the time period by which, you know, CMS acts, but it's important that we give certainty and not rely entirely on CMS's approval of the waiver to start effectuating the pharmacy carve-out. So stay tuned on the pharmacy specific communications there so that we can be clear as these two pieces come together by necessity. The next question is, "If the 1115 extension is not approved, does that mean...", so I think that's the same question about the relationship between the two. That's actually another question on that. Give me a minute while I scroll through these. Similar question, which is, "How do the waiver amendments submitted in the last few months, regarding the other MRT II changes, relate to this, will they be incorporated in this submission, the look back, the personal care services changes, the auto-assign changes?" I've touched on it a little bit but it bears

repeating again, um, those waiver amendments were submitted, they've been, they're in various stages of review by CMS. The, now that CMS has issued the interim final rule, that has changed the maintenance of effort requirements - what CMS can act on prior to end of the calendar quarter, which the federal public health emergency expires, has changed, and so we, it's possible now that CMS will act on, say the MLTC enrollment eligibility change prior to April 1st, 2021. So let's say they approve that in January or February, that will go into effect upon CMS's approval and when the new assessment process takes effect. Then, that will then carry forward into the waiver renewal process. I don't like to guess in terms of catastrophic scenarios, but let's say we get the waiver approved and CMS declines for some reason or the other, and they reject our renewal request, they don't think we should have an 1115 waiver amendment anymore, then we need to go through the complex process of moving those managed care authorities into other areas. We have to move it from an 1115 authority into 1915b authority and takes some time. So, again the 1115 is, you need to have a base 1115 in place to ensure that these programmatic changes carry forward. And so ideally, CMS will approve our pending waiver amendments and then they will be simply renewed as our programmatic renewal takes effect. I hope that was clear. There is a great deal of complexity but we can delve into that a little deeper. "Will any of these waiver requests include workforce reinvestment initiatives?" The three contents of our current application do not include specific workforce reinvestment initiatives. But as I mentioned earlier, all we are doing now is extending the term. This is non-programmatic. So when we get the waiver extended and we pursue one or more larger programmatic amendments, that is where we will consider workforce reinvestment initiatives as we've done with other amendments, including our November 2019 and in DSRIP before that. And so while there isn't a specific workforce component in this, that's by design, again, trying to keep it simple – we are not asking for any new federal match or federal funding. We are simply looking to continue the existing authority so we can then amend the waiver to include new programmatic things which again could include workforce reinvestment initiatives. So, no regulatory or programmatic changes to the terms from all of 2021, just an extension. The answer is yes, this is again just an extension. We will make regulatory and programmatic changes after it is extended and hopefully quite quickly thereafter. But again, we don't want to complicate and elongate CMS's review in hopes that we limit this period of, we limit CMS's period of review and then we can assess the Biden administration's priorities and design a waiver that we think will fit within their administrative priorities like we did with administrations before this one.

Similar question, “Will this renewal include programs like DSRIP or workforce investment?” Again, I’m sorry for being a broken record, this specific renewal does not include any new programs like DSRIP or workforce investment. Again, we are just trying to preserve the special terms and conditions so that we can seek future amendments that include programmatic features that build on DSRIP. Whether they will be called DSRIP or not will probably be a function of what the Biden administration believes. As you know, the Trump administration disfavored DSRIP programs, but you know we are hopeful that the current administration is more expansive in what it would view as eligible for 1115 waiver authorities. And certainly workforce investment is a critical component of new programmatic changes. So again, not this one, there will be another opportunity which we will submit one or more large waiver amendments so we can pursue those initiatives with appropriate public input. There is a question about “Will alternative therapies be covered?”, chiropractic, massage therapy, likely acupuncture as an alternative to opioids or other pain treatments. We have an MRT II recommendation that relates to that specific question. At this point, implementation of those initiatives doesn’t require a to our 1115 waiver amendment. I believe, and Greg can correct me, that we are pursuing most of those authorities through State plan amendments as opposed to waiver amendments. And so, the 1115 waiver amendment is not inclusive of those alternative therapy coverage at this point, but it is on our policy and programmatic radar and we are moving forward in pursuing those initiatives. That’s correct Brett. Ok great, thank you Greg. You know Greg, you’re on, Donna, you’re on. I’m sort of out of questions which is good, because it means that hopefully we were relatively clear in what we were trying to do. But I wanted to break here and Greg or Donna, if there is anything that you want to add to this presentation, again this is going to be recorded, if other questions come we will be happy to entertain them. But by design, this is a simple structure, and it’s designed to preserve authorities so we can give the current administration a chance to settle people in and then engage with them on what our priorities will be in the coming years. But Greg and Donna, I want to hand it over to you if there is anything you want to add to that message. Brett, I would just, this is Greg, I would just double underline the point that the priorities we had in the prior waiver submissions remain our priorities, and you know, folks should not read into this design as any kind of backing away from those priorities. I think this is really strategic. So, all of the work that we did on criminal justice is still very important to us. All of the work we did on DSRIP continuation, and I’ll just say there were very critical workforce components that we were trying to carry forward in that previous work that we were submitting right

around this time last year, right before Thanksgiving. So all of those priorities remain our priorities and I think we're looking forward, as Brett's been saying, to a more you know favorable landscape for them. And just also to say that we do have a long history of building programmatic changes on top of an approved waiver and using DSRIP as the example was a good one because that program did span two waiver extension renewal periods. And, you know, many States have added programmatic features, as New York has, to an existing approved waiver. So, um, we are you know still committed to those reforms. That's the only thing I would add Brett to your otherwise excellent overview. Excellent. So with that, I'm not seeing any additional questions coming in, I'm happy to give everyone a few minutes back on this cold Wednesday morning. And again, these materials will be made available. There is a web, a bml address on the slide so if other questions arise after this, please email that email address and we will promptly respond in hopes of answering your questions about this waiver approach. And you know we look forward to the public comment process, the virtual public hearings. There will be other opportunities to provide input and ask questions about this. But I think it's, you know, I'm pleased to be able to start the process and make sure that we have a sustainable Medicaid program for the next three years. So thank you everyone and have a good rest of the day.