VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF VERMONT HEALTH ACCESS

State of Vermont
Department of Vermont Health Access
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Agency of Human Services
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Date: October 21, 2022

RE: Responses to comments received from the public regarding proposed GCR 22-051 Applied Behavior Analysis (ABA) Value-Based Payment Measures

A summary of comments received and the Department of Vermont Health Access'(DVHA) responses to those comments are included below. Comments were received from Howard Center, Vermont Care Partners, and Ernestine Abel and Patrick McBride.

Access to Care Concerns:

Comment: Have you viewed the proposed model through an equity lens? Regional access, which is where DVHA focused the response to our question, is part of equity, but only one part. It is crucial that DVHA also evaluate access to care through socio-economic, race, parent/caregiver disability, and other lenses.

Response: As noted in the Question and Answer document that accompanied the public notice, the focus on access to care regardless of region is a broad view of equity. DVHA welcomes other ideas for assessing equity as we test these value-based payment measures in a model that offers providers the potential to earn an additional 1% payment in 2023. It should be noted that the fact that providers serve relatively small numbers of Medicaid members would be likely to present challenges in provider-level performance measurement if we were to stratify results by socioeconomic and demographic characteristics.

Comment: As we noted in the letter, ABA rates were established in the first place as the result of a lawsuit around access to services for children with developmental disabilities. We asked how DVHA will ensure that there are sufficient providers to provide care (although this question was not included in the Q&A). Agencies who are required to serve more vulnerable families have higher costs than agencies who serve more resourced families. To the extent that the payment model ties payment to higher numbers of direct service hours, without accommodation for the unique concerns of families who struggle, it does not truly address equity. Moreover, by not addressing the rate shortfall for DAs providing ABA services, a likely unintended consequence is that fewer agencies will be able to continue to offer these services, leaving Vermont children with ASD with fewer options and reducing access to care.

Response: DVHA is committed to providing access to ABA services to Medicaid beneficiaries. Since the alternative payment model was implemented in 2019, despite the COVID-19 public health emergency, the number of children receiving services has remained steady (with a slight upward trend) and there has been an upward trend in hours of service, which were goals of the model. The number of providers participating in the

program has remained steady. This question was not included in the Question and Answer document because it is a question about the payment model that has been in place since 2019, rather than the proposed value-based payment component that is the subject of this public notice.

Measure Concerns:

Comment: DVHA noted in the Q&A that 8% of members received Tier 1 services (six hours or less), which are not counted towards "person months" for Measure #1. DVHA noted that Tier 1 would largely constitute members who were transition in or out of service, stating that Tier 1 is to support providers during "member absences or times of illness/vacation." In every sector, our state is struggling with a significant workforce crisis. Our behavioral interventionist staff in ABA programs are not immune to this, and it is one of the biggest drivers of whether a family can receive Tier 1 or Tier 2. As we have noted in our advocacy around other payment models, it is imperative that DVHA take the current realities of workforce "supply" into account in payment modeling. We would like to see Tier 1 services included in the count of "person months."

Response: A small percentage of person months are currently below 6 hours. Our data from 2021 indicates 8% of members being served are in Tier 1 or less, which is less than 6 hours per month. ABA is an intensive treatment service where the principles of respondent and operant conditioning are used to change specific behaviors over periods of time. Treatment must be clinically indicated and medically necessary. The average duration of intensive ABA treatment varies member to member, if a member is receiving treatment hours in Tier 1 (1.25 hours per week or less), it is not considered intensive. Rather, this would be classified as transitional (in and out of services).

When creating the tier system, the purpose of Tier 1 was to support members transitioning in and out of ABA services. Additionally, Tier 1 is to support providers during member absences or times of illness/vacation. Setting a minimum of Tier 2 (6 hours or more per month) for counting person months captures those children who are engaged in more comprehensive treatment.

It should be noted that Tier 1 services are excluded from both the numerator and denominator for this measure, since the measure reflects change over time in services Tier 2 and higher. As a result, it generally should not disadvantage providers to exclude Tier 1. It may actually allow providers to improve their results by incrementally increasing hours of service to Tier 2 (or higher) for those members who were in Tier 1 in the base year.

Comment: In our May 2022 response, we asked: "For measure #2, DVHA is proposing that direct service excludes assessment when the parent or child is not present. Assessment is an 8-hour service and includes activities that are best done without the family present, such as record review and collateral contact. Is it DVHA's intention to disincentivize these activities?"

DVHA responded: "*It is not DVHA's intent to disincentivize needed assessments. A key goal of the project is to maximize direct services that include support for the child, the family, or both. Per the Vermont Medicaid ABA Benefit, providers are allowed a combined total of 8 hours of assessment every 6 months. The assessment is used to inform the treatment plan which contains goals for direct service."*

This response does not address the concern that key elements of high-quality ABA work – for example, record review, and collateral contact with childcare providers, schools, and other healthcare providers – are disincentivized by this measure. We recommend that all assessment activities be included in the definition of assessment, not just those that involve direct child and family contact.

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Response: DVHA does not dispute that record review and contact with other providers and educators are important elements of high-quality ABA work, which is why 8 hours of assessment every 6 months allows providers to draw down monthly tier payments. However, DVHA's interest in this measure (one of three measures for the potential 1% additional payment in 2023) is in the provision of direct services that include support for the child, the family, or both, as noted in the Question and Answer document.

Comment: VCP and network agencies have appreciated a collaborative relationship with DVHA to develop value-based payment models for mental health and developmental disabilities services. The process of developing these ABA measures was unfortunately limited and did not allow us to engage in dialog as a network, alongside other providers. Our initial letter was not acknowledged, and we did not receive the Q&A until it was published in August along with the GCR listing. Our request to engage the VCP network via CYFS and CFO leaders did not receive a response. As a System of Care partners, this is frustrating. As a result, we have lingering questions about whether or not DVHA engaged in analysis of the impact of these measures and targets on providers, and whether there is a differential impact between providers. We've always had better outcomes when the three-legged stool of state government, providers, and families/advocates work together. We hope that going forward DVHA will utilize a process with more meaningful and collaborative stakeholder engagement.

Response: DVHA values meaningful and collaborative stakeholder engagement. Because of federal deadlines around the expenditure of the funds for this potential 1% additional payment in 2023, time for stakeholder engagement was limited. Nonetheless, DVHA worked diligently to develop and disseminate detailed written materials describing the proposal, schedule three meetings with providers, obtain written feedback, and compile the feedback that related to the proposal into a comprehensive Question and Answer document. Meeting participants included Children, Youth, and Family Services (CYFS), Chief Financial Officers, other financial and program staff from designated agencies (DAs), and other providers. The questions posed in the initial letter from Vermont Care Partners that related to the proposal were acknowledged and covered during the meetings. We appreciated participation in the meetings as well as the written feedback. We look forward to continued dialogue as we test the use of these value-based payment measures that provide an opportunity for additional payments to providers.

In terms of impact of the measures and targets on DAs and providers, the following analysis was included in the Question and Answer document:

For Measure #1, 10 providers would have gotten maximum points, 3 providers would have gotten some points, and 5 would have gotten no points if the model had been in place in 2021. For Measure #2, all providers would have received some points if the proposed model had been in place in 2021, and 9 of the 17 providers would

have received the maximum points. For Measure #3 (timely claims submission), it appears that 6 providers in 2020 and 4 providers in 2019 would not have received points.

Measure 1: Percent Growth of Total Person Months (Tier 2 or more)

CY 2021* over CY 2020 Result	# of Providers
4 Points (110% or more)	10
Some Points (90-110%)	3
0 Points (90% or less)	5
	18

***Not all billing is in for 2021**

Measure 2: Historical Levels of Direct Therapeutic Services by # of Providers

	CY 2020	CY 2021
99% or over	8	9
96 to 99%	8	8
Under 96%	1	0
Total	17	17

Process concerns:

Comment: The process undertaken by DVHA in the case of proposed policy 22-051 was void of provider engagement. The metrics, definitions and parameter of payment were handed down to providers without involvement. When feedback and questions were generated by providers, the AHS response was a written narrative read aloud without the opportunity for mutual discussion. As a result, many of the most notable concerns related to proposed policy 22-051 have remained unaddressed.

Response: DVHA values meaningful and collaborative stakeholder engagement. Because of federal deadlines around the expenditure of the funds for this potential 1% additional payment in 2023, time for stakeholder engagement was limited. Nonetheless, DVHA worked diligently to develop detailed written materials describing the proposal, schedule three meetings with providers, obtain written feedback, and compile the feedback that related to the proposal into a comprehensive Question and Answer document. There was time allocated during the meetings for additional discussion. We appreciated participation in the meetings, the discussion that occurred, and the written feedback. We look forward to continued dialogue as we test the use of these value-based payment measures that provide an opportunity for additional payments to providers.

Comment: DVHA has not sufficiently related the rationale for the selection of the three measures nor connected their content to established best practices for the provision of ABA services. The performance measures do not account for quality (rather they only stand to increase the pressure to deliver more underfunded services) nor have they been connected to existing national best practices in the delivery of ABA services. With the provider side omitted from the creation of measure definitions, Howard Center is concerned with areas of definition that appear to lack clarity in calculation. For example, in measure three a discrete target of 100% was

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established. However, that appears to contradict the "gate and ramp" CQI methodology cited in the creation of the measures (with a 100% target, there is no room to 'ramp').

Response: Improving access to services was a key goal of the alternative payment model. Measures 1 and 2 are directly related to the stated goals that more children are served, those children receive more hours of service, and a higher percentage of the hours are in the form of direct services. Data indicates that more services are being provided statewide, which is encouraging.

Regarding Measure 3, Medicaid requires that all claims be submitted within six months from the date of service, which is why 100% is proposed as the minimum threshold. Delays in claims submission result in additional administrative burden for providers and DVHA, as well as delays in program monitoring and reconciliation. DVHA considered establishing a target to receive maximum points that was more aggressive than the six-month requirement (e.g., three months), which would have resulted in a gate and ramp approach for this measure but decided that it was more reasonable and advantageous to providers to use the six-month requirement as the metric.

Comment: We are seeking to learn more about the rationale for selecting the payment measures, specifically around established evidence that the measures lead to improved client care.

Response: As noted previously, improving access to services was a key goal of the alternative payment model. Measures 1 and 2 are directly related to the stated goals that more children are served, those children receive more hours of service, and a higher percentage of the hours are in the form of direct services. Measure 3 is important because delays in claims submission have resulted in a lack of timely information and additional administrative burden for providers and DVHA, as well as delays in program monitoring and reconciliation (which can result in payment delays).

Impact to providers:

Comment: Across the board, DAs continue to lose money in ABA programs and only 4 remain delivering this service presently. In 2024 failure to meet identified measures would result in a 1% withholding of earned payments. This burdens implementation of the DVHA funding mechanism, weakens the payment structure and further jeopardizes Howard Center's ability to continue offering this service. The community cannot afford a reduction in ABA providers.

Response: DVHA is committed to using this opportunity for a potential 1% additional payment for providers in 2023 to test value-based payment and assess the potential future impact on providers and Medicaid members.

Comment: The financial strain caused by a withhold from the proposed payment measures serves a risk to displace more clients seeking services onto other provider waitlists.

Response: DVHA would like to use this opportunity for a potential 1% additional payment for providers in 2023 to test value-based payment and assess the potential future impact on providers and Medicaid members.

Comment: Does DVHA plan to revise the underlying payment model in coordination with the inclusion of these measures?

Response: Not at this time. DVHA will continue to monitor the impacts of the tiered payment model on services for Medicaid members.

Comment: Will DVHA address the current rate shortfall to allow for agencies to cover costs? Has DVHA considered taking these new funds and using them to bolster the existing rate structure?

Response: The tiered payment model for ABA was intended to support the provision of ABA services and provide flexibility in how services are provided. If there are concerns about adequacy, DVHA has processes for assessing provider rates. Any rate changes must be considered within the context of other services and the entire Medicaid budget. In terms of the federal funds that are being used for this proposal, CMS, AHS, and DVHA have all identified value-based payment as an important priority. As a result, using these funds to provide a potential additional 1% value-based payment for providers in 2023 was included in the State's spending plan, for ABA and for other Medicaid services.

Comment: A comment was received in support of Howard Center and DVHA continuing to fund the ABA program. This commentor provided information on the experiences and quality services they have received from the Howard Center and wishes that it continues.

Response: Thank you very much for sharing your experiences with your daughter and with the Howard Center. DVHA is committed to working with providers to ensure that ABA services are available to children and families. Improving access to services was one of the primary goals of the alternative payment model that was implemented in 2019. The proposal that is the subject of this public notice offers the potential for providers to earn an additional 1% payment in 2023, based on performance on three measures, two of which relate to access to services.