

Agenda Item No. X.

Exhibit I

A Presentation by


**Michael J. Willden, Director, Department of
Human Resources (DHR)**

Regarding

**Consideration of a Quarterly Report Pursuant to
NRS 422.274 and NRS 422.2745 from the
Director of the DHR Concerning the Progress of
the Director Toward Extending Coverage for
Prescription Drugs and Other Related Services to
Persons 65 Years of Age or Older and to Persons
with Disabilities Who have been Determined to be
Eligible for Disability Benefits from the Federal
Social Security System Who are not Eligible for
Pharmacy Benefits Pursuant to Medicaid and
Whose Incomes are not more than 200 Percent of
the Federally Designated Level Signifying Poverty**

Nevada's Legislative Committee on Health Care Meeting

August 4, 2004

EXHIBIT 	HealthCare	Document consists of <u>12</u> pages
<input checked="" type="checkbox"/> Entire document provided.		
<input type="checkbox"/> Due to size limitations, pages ____ through ____ provided.		
A copy of the complete document is available through the Research Library (775-684-6827 or e-mail library@lcb.state.nv.us)		
Meeting Date		<u>8-4-04</u>

**DEPARTMENT OF HUMAN RESOURCES
QUARTERLY PROGRESS REPORT (AB504)
PHARMACY PLUS WAIVER/SENIOR AND DISABLED PERSONS
JULY 2004**

AB504 passed by the 2003 Legislature and signed into law by Governor Guinn requires the Department of Human Resources (DHR) to work with the Centers for Medicare and Medicaid Services (CMS) to determine the feasibility of obtaining a Pharmacy Plus Waiver for Nevada's senior population. The legislation also requires the Department to submit a waiver to CMS for the disabled population, if sufficient funding is available.

In March 2004, DHR provided progress reports to both the Interim Finance Committee and Legislative Committee on Health Care. The gist of those reports was that it was not going to be possible to obtain a Waiver from CMS because Nevada would not be able to demonstrate cost neutrality. States can not use Medicare savings when demonstrating cost neutrality, only Medicaid savings. This coupled with our already robust pharmacy coverage in the Senior Rx program and having eligibility limits higher than 200% of poverty (no expansion population or service) make us conclude that a waiver is not possible. Copies of the March 2004 Progress Reports are attached for reference.

On July 7, 2004, CMS finally responded to Nevada's March 19, 2004 letter, which sought answers to related Pharmacy Plus Waiver questions. The CMS response cemented the decision that a waiver is not possible. A copy of this letter is also attached for reference.

Passage of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 provides Medicare beneficiaries drug coverage. During the "transitional period" from June 2004 to January 2006, beneficiaries will receive discounts on drug purchases and some low income beneficiaries will receive a \$600 stipend per year for drug expenses. Approximately 45% of Senior Rx participants are eligible for the transitional assistance. Letters have been sent to all Senior Rx participants encouraging them to apply for the transitional assistance. Beginning January 2006, Medicare Part D drug coverage will begin with \$250 deductibles, 25% co-insurance, coverage up to \$2,250 per year, no coverage (donut hole) from \$2,250 to \$3,600, and catastrophic coverage begins at \$3,600 with co-insurance. Low income beneficiaries (<135% FPL) will not have deductibles, premiums or a donut hole, but will have co-insurance. CMS has encouraged Nevada to use our own funds (Senior Rx program) to "wrap around" the Medicare benefits being provided.

On June 16, 2004 DHR/State Purchasing issued an RFP to select a Pharmacy Benefits Manager (PBM) to administer Senior Rx under the State's direction. Only federally approved drug discount programs are being allowed to bid. This will enable us to coordinate the Senior Rx program/benefits with the Medicare benefits. The "insured model" of the Senior Rx program will be ended. We expect to be operating the revised/coordinated Senior Rx program by the end of the calendar year.

Regarding the disabled population, a Pharmacy Plus Waiver is also not feasible because of the Medicare prescription coverage; however, DHR is planning to offer Disability Rx coverage with non-federal funds using the same PBM that will be contracted with to operate the Senior Rx program. AB504, section 7, earmarked 2.5% of all revenues deposited in the Fund for a Healthy Nevada each year to support prescription drug coverage for people with disabilities. The current estimate is that \$468,692 would be available annually for this program. DHR has also recommended that the Medco/Merck settlement funds received by the Nevada Attorney General, totaling \$235,537.61, be used to support prescription drug coverage for people with disabilities.

**Quarterly Report on AB504
Presented to the Legislative Committee on Health Care
March 3, 2004**

Good morning Assemblywoman Koivisto and members of the Committee. My name is Mary Wherry. I am the Deputy Administrator for the Division of Healthcare Financing and Policy and am here to speak on behalf of the Department of Human Resources. This is the first quarterly report related to our progress toward extending coverage for prescription drugs and other related services to persons 65 years of age or older and to persons with disabilities who have been determined to be eligible for disability benefits.

We had a lengthy telephonic conference call with the Centers for Medicare and Medicaid Services (CMS) Pharmacy team in October of 2003 to discuss the Bush Administration Pharmacy Plus waiver initiative. During that call, the CMS staff stated that the parameters for this type of waiver, called a Section 1115 research and demonstration waiver, are "tough to fill when the state has an existing program" such as our Senior RX program. They also indicated at that time that Dennis Smith, Acting CMS Administrator, had publicly advised states to put on hold the Pharm Plus waivers pending the Medicare Modernization Act legislation.

CMS suggested that because of impending legislation and Mr. Smith's comments that Nevada would be wise to conduct informal calls with CMS, develop a concept paper that would provide CMS with an overview of the shape of our existing program and a comparison of the state program versus the demonstration program. We would then continue informal calls with CMS and develop a draft application. Once the draft was submitted to CMS the informal discussions would proceed into an official application at which time the Department of Health and Human Services and the White House Office of Management and Budget play an active role in reviewing budget neutrality.

The concept paper was developed and submitted to CMS on January 28, 2004. During a February 9, 2004 telephone conference call, CMS staff stated they did not have an answer on Nevada's waiver. It was mentioned by CMS that there may not be room for Nevada to show budget neutrality. CMS also stated those covered by a Pharm Plus waiver would not be covered by the \$600 discount drug card assistance. CMS stated that the Medicare Part D regulations are not yet developed and the impact on Pharm Plus waivers is still unknown. State staff did a quick analysis of the percentage of the existing Senior Rx population that would qualify for the Medicare drug card assistance based on income. It appears that approximately 50% of this population would qualify for the technical assistance component of the Medicare legislation providing the beneficiary with a \$600 per year stipend for drug expenditures.

We held another conference call with CMS on February 20, 2004 and asked for an update related to the Medicare Modernization Act legislation and its impact on the Pharm Plus Waiver initiatives. The CMS staff stated that they were waiting for guidance from Dennis Smith. We discussed the concept paper and they stated they had not had time to thoroughly review the document.

EXHIBIT K Committee Name: Health Care Document consists of 2 pages.

☒ Entire document provided.

☐ Due to size limitations, pages _____ provided. A copy of the complete document is available through the Research Library (775/684-6827) or e-mail library@lcb.state.nv.us.

Meeting Date: 3-03-04

We held another follow up conference call with CMS on February 24, 2004 and were given the same information we received in October. The CMS staff were very specific about the fact that they will not buy out an existing program. In other words, they would not allow federal funds to supplant funds spent on the existing state pharmacy program. They would need to see a substantial expansion in covered lives and services while maintaining budget neutrality.

During the conference call, CMS stated that it would be difficult for Nevada to offset any savings realized as a result of covering all seniors currently on the Senior Rx program. Additionally, it would be difficult to show that adding primary care visits or some other type of service or benefit would be sufficient to generate savings when the primary benefit, access to prescription drugs, has already been provided.

Only Medicaid savings can be considered, not Medicare. Because we are working with individuals who are Medicare eligible, the only significant costs that can be considered are nursing facility costs and the co-payments and deductibles associated with Medicare services for which Medicaid would be responsible.

Nevada Medicaid does not have a spend down program for the medically needy. Not having such a program prevents us from having a substantial expansion of that eligibility group and the potential cost offsets associated with deferring their entry into Medicaid.

CMS recommended that we do a side by side comparison of the Pharmacy Plus waiver and the Medicare discount card legislation and evaluate the feasibility of having a state wrap around program with Senior RX and the Medicare Modernization legislation. That evaluation is currently underway.

In summary, our perception is that the Senior Pharmacy Plus waiver is not going to meet the parameters required by CMS based on the reasons already stated. The real work ahead of us is in developing the wrap around potential of our existing Senior Rx program with the new Medicare legislation.

We think the door is still open with CMS to pursue a Pharmacy Plus waiver for the population of people with disabilities. One of the challenges we would face is attempting to capture who we would be covering in order to demonstrate budget neutrality. Complicating factors to this option are those discussions that have occurred related to a HIFA waiver and the early proposals of including a 210 option and the medically needy population in such a waiver. The federal regulations allow the single state Medicaid agency to provide Medicaid to individuals who would be eligible for TANF, SSI, or an optional State supplement but who are not receiving these benefits. This is what we would consider the 210 group.

If we go this route, it harms us from a cost neutrality perspective but does provide the needed benefit. The implementation of the HIWA (Ticket to Work Medicaid Buy In) program scheduled for July 1, 2004 is another opportunity for people who might benefit from a Pharm Plus waiver to qualify for the existing Medicaid program, thus reducing the expansion possibility.

CMS requires "substantial expansion" in order to qualify for a waiver. During the 2003 legislative session the discussion for this population was about having a pilot program. We could do a pilot state only coverage program with the tobacco funds already set aside. This could provide us with the opportunity to gain much needed utilization data for a future Pharm Plus waiver application.

**Department of Human Resources
AB 504 Progress Report to the
Interim Finance Committee
Pharmacy Plus Waiver / Seniors and Disabled Persons
March 2004**

AB 504 passed by the 2003 Legislature and signed into law by Governor Guinn requires the Department of Human Resources to work with the Centers for Medicare and Medicaid Services (CMS) to determine the feasibility of obtaining a Pharmacy Plus Waiver for Nevada's senior population. The legislation also requires the Department to submit a waiver to CMS for the disabled population, if sufficient funding is available.

To begin the process the Department had a lengthy telephone conference call with the Centers for Medicare and Medicaid Services (CMS) Pharmacy team in October of 2003 to discuss the Bush Administration Pharmacy Plus waiver initiative. During that call, the CMS staff stated that the parameters for this type of waiver, a Section 1115 research and demonstration waiver, are "tough to fill when the state has an existing program" such as Nevada's Senior RX program. They also indicated at that time that the Acting CMS Administrator, had publicly advised states to put on hold any Pharm Plus waivers pending the outcome of the Medicare Modernization Act legislation.

CMS suggested that because of the pending legislation and the public comments to hold off on waiver submissions that Nevada would be wise to conduct informal calls with CMS, develop a concept paper that would provide CMS with an overview of the shape of our existing pharmacy program and a comparison of the state program versus the proposed demonstration program. We would then continue informal calls with CMS and develop a draft application. Once the draft was submitted to CMS the informal discussions would proceed to an official application at which time the Department of Health and Human Services and the White House Office of Management and Budget would play an active role in reviewing budget neutrality.

The concept paper was developed and submitted to CMS on January 28, 2004. During a February 9, 2004 telephone conference call, CMS staff stated they did not have an answer on Nevada's waiver concept paper. It was mentioned by CMS that there may not be room for Nevada to show budget neutrality. CMS also stated those covered by a Pharm Plus waiver would not be covered by the \$600 drug discount card assistance (under the Medicare Prescription Drug, Improvement and Modernization Act of 2003). CMS stated that the Medicare Part D regulations are not yet developed and the impact on Pharm Plus waivers is still unknown. State staff did a quick analysis of the percentage of the existing Senior Rx population that would qualify for the Medicare drug card assistance based on income. It appears that approximately 45% of this population would qualify for the technical assistance component of the Medicare legislation which provides the beneficiary with a \$600 per year stipend for drug expenditures.

A second conference call was held with CMS on February 20, 2004. CMS was asked for an update related to the Medicare Modernization Act legislation and its impact on the Pharm Plus Waiver initiatives. The CMS staff stated that they were waiting for guidance

from CMS management. We discussed the concept paper and they stated they had not had time to thoroughly review the document.

A third conference call was held with CMS on February 24, 2004, in which we were given the same information we received in October. The CMS staff were very specific about the fact that they will not "buy out" an existing program. In other words, they would not allow federal funds to supplant funds spent on the existing state pharmacy program. They would need to see a **substantial expansion** in covered lives and services while maintaining budget neutrality.

During the conference call, CMS stated it would be difficult for Nevada to show cost neutrality as a result of covering seniors currently on the Senior Rx program. Additionally, it would be difficult to show that adding primary care visits or some other type of service or benefit would be sufficient to generate savings when the primary benefit, access to prescription drugs, has already been provided.

Only Medicaid savings can be considered, not Medicare. Because we are working with individuals who are Medicare eligible, the only significant costs that can be considered are nursing facility costs and the co-payments and deductibles associated with Medicare services for which Medicaid would be responsible.

The State of Nevada does not have a Medicaid spend down program for a medically needy population. Not having such a program prevents us from having a substantial expansion of that eligibility group and the potential cost offsets associated with deferring their entry into Medicaid.

CMS recommended Nevada do an evaluation of the Pharmacy Plus waiver and the Medicare discount card legislation and consider the feasibility of having a state wrap around program with Senior RX and the Medicare Modernization legislation. That evaluation is currently underway.

In summary, it appears that a Senior Pharmacy Plus waiver is not feasible because of the parameters required by CMS. The real work ahead is developing the linkage between our existing Senior Rx program and the new Medicare legislation.

Opportunities still exists with CMS to pursue a Pharmacy Plus waiver for the population of people with disabilities. One of the challenges being faced is identifying the population that would be covered in order to demonstrate budget neutrality. Complicating factors to this option are those interim discussions that have occurred related to a HIFA waiver and proposals of including a 210 option (presumptive eligibility determination) and the medically needy population in such a waiver. The federal regulations allow the single state Medicaid agency to provide Medicaid to individuals who would be eligible for TANF, SSI, or an optional State supplement but who are not currently receiving these benefits, which is what would be considered the 210 group. If the State pursues the 210 option, it would make showing cost neutrality in a Pharmacy Plus Waiver more difficult. The implementation of the HIWA (Ticket to Work Medicaid Buy In) program scheduled for July 1, 2004 is another opportunity for people who might benefit from a Pharm Plus waiver to qualify for the existing Medicaid program, thus reducing this expansion possibility.

CMS requires "substantial expansion" in order to qualify for a waiver. This may not be possible, however, during the 2003 legislative session, the discussion for the disabled population was about having a pilot program. The Department could do a pilot, state only, coverage program with the tobacco funds earmarked in AB 504 legislation (approximately \$500,000 annually). This could provide us with the opportunity to gain much needed utilization data for a future Pharm Plus waiver application.

Department staff are monitoring regulations as they are released related to the Medicare Modernization Act legislation. In addition, contact with CMS will continue to fully resolve our perception that we do not meet the criteria of substantial expansion to qualify our senior population for a Pharm Plus waiver. If budget neutrality and substantial expansion are not demonstrated, discussions will need to occur regarding any opportunity for a pilot program for people with disabilities.

(copy: DHCFF)


KENNY C. GUINN
GovernorMICHAEL J. WILLEN
Director

DEPARTMENT OF HUMAN RESOURCES
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Carson City, Nevada 89701-3708
Telephone (775) 684-4000 • Fax (775) 684-4010

MEMORANDUM

DATE: March 15, 2004

TO: John P. Comeaux, Director
Department of Administration

FROM:  Michael J. Willden, Director

SUBJECT: AB 504 / Pharmacy Plus Waiver Initiative

AB 504 passed by the 2003 Legislature and signed into law by governor Guinn requires the Department of Human Resources to work with the Centers for Medicare and Medicaid Services (CMS) to determine the feasibility of obtaining a Pharmacy Plus Waiver for Nevada's senior population. The legislation also required the Department to submit a waiver to CMS for the disabled population, if sufficient funding is available.

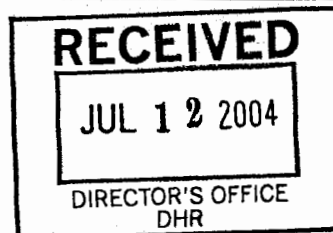
Enclosed is the initial report to be transmitted to the interim Finance Committee for its consideration at the next meeting.

MW:jc

Center for Medicaid and State Operations

JUL 7 2004

Michael J. Willden
Department of Human Resources
505 E. King Street, Room 600
Carson City, NV 89701



Dear Mr. Willden:

In your March 19th letter to the Centers for Medicare & Medicaid Services (CMS), you posed a number of questions regarding the feasibility of a Pharmacy Plus waiver for Nevada. When Pharmacy Plus began, enactment of a drug benefit under Medicare was far from certain. With enactment of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Medicare beneficiaries will receive substantial coverage for drugs. Low-income beneficiaries will receive additional benefits, leaving them with minimal out-of-pocket costs. Furthermore, states will be able to use their own funds to wrap around the Medicare benefit to assist other Medicare beneficiaries with incomes that exceed the level for low-income subsidies.

When the Medicare Part D benefit is in place, we believe there will be less need for Pharmacy Plus waivers. States with waivers in effect will need to decide if they want to continue their waiver and if their waiver can continue to be budget neutral.

The following are the questions that were posed in the letter, followed by our answers:

- 1. In order to qualify for a Pharmacy Plus waiver, a state must demonstrate budget neutrality (i.e., that it would be able to create sufficient savings from cost avoidance of the current program to offset the total cost of the waiver). These savings can only be from Medicaid and cannot consider any savings that may be gained in the Medicare program. Is this correct?** *Yes, this is correct and consistent with all of the Pharmacy Plus approvals to date. We cannot consider any Medicare savings for Pharmacy Plus budget neutrality.*
- 2. When a state already has a program in place to provide low-cost drugs to seniors, Medicaid savings are derived from the current program. Is it allowable to use these savings to offset the total cost of the waiver or is the state limited to only those savings that would occur as a result of any expansion beyond its current program?** *In order to demonstrate budget neutrality, a state must be able to show that costs associated with providing a pharmacy benefit through Pharmacy Plus would be offset by a reduction in long-term care costs and/or acute care costs associated with diverting individuals from Medicaid. This is usually demonstrated by an expansion in eligibility or an expansion of the drugs covered by the current program. There are exceptions to this rule, however. Indiana had an existing State Pharmacy Assistance Program and wanted to double the enrollment. Indiana was changing its program from a reimbursement program, where participants had to buy the*

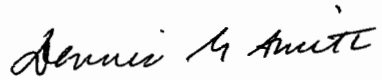
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prescriptions and send in receipts to get 50 percent reimbursement, to an online POS system where the participants received the discount at the point-of-sale. Indiana argued that this program change would result in a less cumbersome program for seniors and would attract more seniors to the program, thereby diverting them from Medicaid. We approved the program because of the logical argument presented by Indiana.

3. **Nevada currently has a program (Senior Rx) that covers seniors (over age 62) up to approximately 225 percent of poverty that are not eligible for Medicaid. The program has 9,000 seniors currently enrolled and no waiting list. The Pharmacy Plus waiver appears to be limited to individuals at or below 200 percent of poverty. Is it correct to assume that Nevada would not be able to expand eligibility of its Senior Rx program under a Pharmacy Plus waiver? Your assumption is correct. We have not approved a waiver above 200 percent of the Federal poverty level (FPL).**
4. **The Nevada Senior Rx program has a broad formulary and an annual benefit limit of \$5,000 per enrollee, which is met by less than 1/2% of all enrollees. Under a Pharmacy Plus waiver, it appears that the only service expansion would be to cover over-the-counter medications (OTC's) and/or some case management services. Is this correct? Aside from extending your program to cover the disabled population, the coverage of OTC's and/or the addition of case management services seem to be your only options at this time. As in all instances of Pharmacy Plus budget neutrality, CMS would need strong supporting evidence to demonstrate that these service expansions would, in fact, result in Medicaid savings that are attributable to the diversion of seniors from the Medicaid program.**
5. **Nevada Medicaid does not have a spend-down program for the medically needy. From your website, it appears that most states that have received Pharmacy Plus waivers have used cost avoidance from those programs to demonstrate budget neutrality. Is this correct? The Pharmacy Plus budget neutrality model is based on the premise that those covered by a Pharmacy Plus demonstration are being diverted from more comprehensive and expensive coverage under the traditional Medicaid program. Savings from the absence of a spend-down program for the medically needy would be difficult, at best, to use in demonstrating budget neutrality.**
6. **Under the Medicare Prescription Drug, Improvement and Modernization Act of 2003, individuals under 135 percent of poverty will receive a \$600 annual credit for drug purchases beginning on July 1, 2004. Can these savings be used under a Pharmacy Plus waiver? Pharmacy Plus waiver enrollees are not eligible to participate in the Medicare Drug Discount Card.**
7. **If Nevada were to establish a new program for the disabled to provide low-cost drugs, could this be considered for a Pharmacy Plus waiver separate from the current Senior Rx program? A new program for the disabled, separate from the current Senior Rx program, that is budget neutral and covers disabled individuals at or below 200 percent FPL, would be considered for a Pharmacy Plus waiver.**

Please contact Larry Reed at (410) 786-3325 or Deirdre Duzor at (410) 786-4626, if you have further questions regarding Pharmacy Plus.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis G. Smith".

Dennis G. Smith
Director