

CLIENT ASSISTANCE PROJECT

LEGAL ADVOCACY FOR PERSONS WITH  
DEVELOPMENTAL DISABILITIES

MENTAL HEALTH LAW PROJECT

PROTECTION AND ADVOCACY FOR  
INDIVIDUAL RIGHTS

EXECUTIVE DIRECTOR  
Jeremy Lane

LEGAL DIRECTOR  
Pamela S. Hoopes

ADMINISTRATOR  
Lisa Cohen

SUPERVISING ATTORNEYS  
Roderick J. Macpherson III  
Steven P. Elliot

**MINNESOTA DISABILITY LAW CENTER**

THE PROTECTION & ADVOCACY  
SYSTEM FOR MINNESOTA

430 FIRST AVENUE NORTH, SUITE 300  
MINNEAPOLIS, MN 55401-1780

(612) 332-1441

(TDD) 332-4668

Toll Free 1-800-292-4150

FAX (612) 334-5755

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ATTORNEYS

Jennifer E. Giesen  
Luther Granquist  
Kathleen Hagen  
Anne L. Henry  
Kathy S. Kosnoff  
Anne M. Robertson  
Barnett I. Rosenfield  
Patricia M. Siebert

ADVOCATES

Linda Bonney (Grand Rapids)  
Kirsten Dubbels (Fergus Falls)  
Cynthia M. Jarvi (Minneapolis)  
Bonita Kallestad (Willmar)  
Sandra M. Moore (Duluth)  
Rochelle Roehrich (Minneapolis)  
Sharon Sanders (Duluth)  
Marilyn Spensley (Park Rapids)

**TO: Jane Wilcox Hardwig  
Steve Larson**

**FROM: Anne Henry**

**RE: Approaches to Enabling Consumer Directed Access to Medical Assistance**

**DATE: March 3, 2000**

This is a response to the February 29, 2000 draft. Please consider the following comments in finalizing these proposals:

**1. Consumer Directed Personal Care Demonstration Project, page one.**

In the description of Consumer Directed Personal Care Demonstration Project, please add private duty nursing services as well. As I had mentioned on a number of occasions, family arrangements with a nurse directly may allow the family to improve their chances that the nurse will actually provide services in the home and not take other home care jobs or a job outside of home care altogether. I know the Department is concerned about MA dollars for certified medical services being used for other things, so I would propose that any funding for PDN services could be required to be used for nursing services, but with a more flexible arrangement possible, such as providing a particular nurse with an amount of money for a period or time, rather than relying on an agency for scheduling.

**2. Payment to parents of minor children and spouses for provisions of specialized services, page one.**

This section is limited to what federal law now allows. I believe that the Department should consider pushing the issue of allowing parents of minors and spouses to be paid where the family member reduces work or is unable to work due to the requirements of care, given a shortage of other assistance. I realize that federal law does not allow this currently, but a demonstration waiver seems like the perfect opportunity to push this issue. I would see this request as different from a "cash and counseling" waiver request. Parents of minors and

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spouses could actually be hired by agencies and provide care under the rules and supervision of the agency. Hours of work would be limited under Wage and Hour Law and overtime requirements.

The restriction of funneling parents of minors and spouses through a provider agency, along with documentation of a workforce shortage, may be enough to obtain federal approval under a demonstration project.

3. Consumer Directed Personal Care Demonstration Project, page two.

I do not understand the "woodwork" effect of new MA recipients and the limit of 25%. Please provide some information on this.

4. Again, please add private duty nursing services with a stipulation that any funds are required to be spent for obtaining nursing services.
5. Budget Determination.

I am very troubled at the prospect of using an average utilization if a person has not utilized home care services in the past or has been unable to obtain staff for authorized home care services. I urge the use of a percentage of authorized but unable-to-be-used hours in addition to the 90% of historical use. I understand that most often people do not use all of their authorized hours, so I would propose using a figure of 80% of authorized hours or 90% of historical use, whichever is greater. The main attraction of this demonstration project is for people who have not been able to obtain care because of the workforce shortage. This proposal keeps the punishing reality of no access to entitlement services by locking in the current desperate situation. We must find a way to allow people to get access to the dollars that would have been spent had we not had a booming economy.

6. What types of services and supports can be purchased? Page three.

Please remove the prohibition against paying legally responsible adults from this section. The Department is required in the DD Waiting List Bill to allow payment of legally responsible adults both under the Consumer Support Grant Programs and the Consumer Directed Community Supports Under the Hollman Community Waiver. Given the amendment for the PCA program, which will allow legal guardians of adults to be paid as PCA's, the demonstration project should also allow legal guardians to be paid under a plan approved and monitored by the county.

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Another option would be to allow a legal guardian to be paid under the circumstances of a hardship waiver available in the PCA program. Those provisions require commissioner-level oversight.

7. Steps to Implementation, page four.

We have requested a timeline for accomplishing the CSG 1115 Waiver Request and the 1915-C HSBS Waiver Plan Amendments. Please let us know when these items will be completed. We understand that the Department does not have control over federal responses, especially on an 1115 request, but your best guesses as to parameters of a response time would be helpful in explaining the process to interested parties.

8. Infrastructure.

We wholeheartedly agree that counties will need some administrative costs covered in order to assure that they participate in managing and monitoring these new options. Please keep us informed of how counties will be able to obtain administrative reimbursement for these activities and any changes the Department proposes in this area.

9. Legislative Language, page five.

The Consumer Support Grant statute does need to be clarified regarding requesting federal funds under a demonstration project. Does the Department believe this needs to be accomplished during the 2000 session?

Does the Department believe that legislative authority to amend the Hollman Community-Based Waivers to offer consumer-directed community supports is needed? Other amendments to the Hollman Community Waiver Programs have been accomplished without specific legislative authority.

AH:pjc

cc: **Colleen Wieck**  
Bob Brick