



Minnesota Department of **Human Services**

March 9, 2000

Anne Henry
Minnesota Disability Law Center
430 First Avenue North, Suite 300
Minneapolis, MN 55401-1780

Dear Ms. ~~Henry~~ *Anne*:

Thank you for your correspondence of March 3, 2000, regarding the Department's recommended approaches to enabling consumer-directed access to Medical Assistance. A response to each of your comments is provided below:

1. Consumer Directed Home Care Demonstration Project

In the description of the 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 of time, rather than relying on an agency for scheduling.

Response: The Department intends to expand the types of home care services to be used as the basis for determining individual budgets to include private duty nursing services. This will enable participating consumers to include the cost of care associated with private duty nursing services they have historically received when determining their individual budgets. Consumers who choose to include private duty nursing service expenditures in their individual budgets will be required to use those budgeted funds to purchase nursing services from self-employed licensed registered nurses or licensed practical nurses or Medicare-certified home health agencies.

2. Payment to parents of minor children and spouses for the provision of specialized services.

This section is limited to what federal law allows. I believe that the Department should consider pushing the issue of allowing parents of minors and spouses to be paid where the family 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 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 the 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.

Response: In fact, the State Medicaid Manual clarifies that Medicaid payment to parents of minor children or spouses for the provision of extraordinary services requiring specialized skills (e.g., skilled nursing, physical therapy) is allowed when the parent or spouse meets the qualifications for providers of care, there are strict controls to assure that payment is made to the parent or spouse as providers only in return for specific services rendered, there is adequate justification as to why the parent or spouse is the provider of care (e.g., lack of other qualified provider in remote areas) and when the services provided are those services that such people are not already legally obligated to provide.

The Department is examining current state law which either prohibits or presents barriers to the provision of home health and private duty nursing services by parents of minors and spouses. Our intent is to identify changes in the State's Medicaid program that are necessary to more effectively meet the needs of people with disabilities and which are consistent with overall health care policy for Minnesotans receiving public assistance. In doing so, the Department will continue to seek input from key stakeholders, including your recommendation regarding the employment of parents and spouses by home care agencies and the oversight and supervisory function that this employee-employer relationship may serve.

3. Consumer-Directed Personal Care Demonstration Project

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

Response: This limitation is necessary to comply with the budget neutrality requirements of the §1115 waiver. It is intended to control for any increase in the number of people enrolling in the MA program, or requesting MA home care services, that may occur as a

direct result of project implementation that would not have occurred had the project not been implemented. The Health Care Financing Administration has included similar limitations under cash and counseling demonstrations in other states.

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

Response: Please see our response to your comment in item 1.

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 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.

Response: As we have discussed, §1115 waivers must be budget neutral. Service expenditures under the demonstration must be based on historical use in order to assure that spending under the demonstration does not exceed spending that would have occurred had the project not been implemented. The establishment of individual budgets based on an authorized amount of services would have a substantial fiscal impact.

Because of the §1115 waiver budget neutrality limitation, we are trying to identify policy changes that address the labor shortage and the interest of consumers in self-determination, but that can be done under the State plan (without federal budget neutrality constraints) or home and community-based services (HCBS) waivers (with a more prescribed but less stringent approach to budget neutrality). Specific initiatives include:

Personal Care Fiscal Agent Option

Beginning July 1, 2000, the fiscal agent option will provide another alternative for individuals receiving personal care services. In some cases this option may be a preferred alternative for consumers who have historically been unable to access sufficient personal care support through traditional personal care provider organizations and who are seeking increased control over hiring and management of their personal care attendants.

Consumer-Directed Community Supports under the HCBS 1915(c) Waivers

This option provides consumers increased flexibility to access individualized services and autonomy over arranging for and directing supports. It is currently available to HCBS

waiver recipients with mental retardation or related conditions (MR/RC). Federal authority to expand this option to other HCBS 1915(c) waivers will be sought.

Payment of Parents of Minors and Spouses for the Provision of Specialized Services

The Department will review policies related to payment of parents of minors and spouses for skilled care.

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

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

Response: The proposed §1115 waiver will incorporate the relative hardship waiver criteria for personal care assistant services to allow certain relatives to be reimbursed for the provision of personal care services to their family member.

7. Steps to Implementation

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

Response: At this time we plan to finalize the draft §1115 waiver request to enable the Consumer-Directed Home Care Demonstration Project for submission to HCFA by May 2000. Approval by HCFA can take anywhere from six months to one year.

Implementation of the Consumer-Directed Community Support option under the 1915(c) HCBS waivers is projected for January 1, 2001, in order to provide sufficient time to obtain federal approval and develop the infrastructure (e.g., information systems, technical assistance and training to counties) necessary to assure effective implementation on a statewide basis.

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.

Response: The limited funding available to cover increased MA administrative costs associated with the expansion of the Consumer-Directed Community Support option under the 1915(c) HCBS waivers and implementation of the Consumer-Directed Home Care Demonstration Project continues to be a concern.

9. Legislative Language

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?

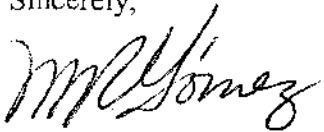
Response: The Consumer Support Grant statute should be amended to reestablish the CSG Program as a state-funded cash grant program so that it is consistent with the overall approach proposed by the Department to enable consumer-directed access to Medical Assistance.

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

Response: The 1915(c) waiver plan amendments, once approved by HCFA, should provide sufficient authority for implementation of the Consumer-Directed Community Supports option.

Thank you again for your comments and recommendations.

Sincerely,



Maria R. Gómez
Assistant Commissioner

cc: Colleen Wieck
Bob Brick



Minnesota Department of **Human Services**

March 9, 2000

Colleen Wieck, Executive Director
Developmental Disabilities Council
Minnesota Department of Administration
658 Cedar St.
St. Paul, MN 55155

Dear Ms. ~~Wieck~~ *Colleen*:

Thank you for your comments of March 1, 2000, regarding the Department's recommended approach to enabling consumer-directed access to Medical Assistance. A response to each of your questions pertaining to the proposed Consumer-Directed Home Care Demonstration §1115 waiver is provided below.

1. What home care services will be used as the basis for determining individual budgets? *Please consider RN and LPN services to be added to this list.*

Response: The Department intends to expand the types of home care services to be used as the basis for determining individual budgets to include private duty nursing services. This will enable participating consumers to include the cost of care associated with private duty nursing services they have historically received when determining their individual budgets. Consumers who choose to include private duty nursing service expenditures in their individual budgets will be required to use those budgeted funds to purchase nursing services from self-employed licensed registered nurses or licensed practical nurses or Medicare-certified home health agencies.

2. How will the amount of each individual's budget be determined? *I understand the distinction between authorized and historical use...given the crisis in staffing, historical use might be considerably lower than authorization level. Is it possible to reconsider using up to 90 percent of the authorization level rather than historical use?*

Response: As we have discussed, §1115 waivers must be budget neutral. Service expenditures under the demonstration must be based on historical use in order to assure that spending under the demonstration does not exceed spending that would have occurred had the project not been implemented. The establishment of individual budgets

based on an authorized amount of services would have a substantial fiscal impact.

Because of the §1115 waiver budget neutrality limitation, we are trying to identify policy changes that address the labor shortage and the interest of consumers in self-determination, but that can be done under the State plan (without federal budget neutrality constraints) or home and community-based services (HCBS) waivers (with a more prescribed but less stringent approach to budget neutrality). Specific initiatives include:

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This option provides consumers increased flexibility to access individualized services and autonomy over arranging for and directing supports. It is currently available to HCBS waiver recipients with mental retardation or related conditions (MR/RC). Federal authority to expand this option to other HCBS 1915(c) waivers will be sought.

Payment of Parents of Minors and Spouses for the Provision of Specialized Services

The Department will review policies related to payment of parents of minors and spouses for skilled care.

3. How will individual budgets be managed by the consumer? *We know that the cash out option may not be possible now, but we will continue to work on this option especially at the federal level?*

Response: Based on input received from you and other key stakeholders, the §1115 waiver proposal has been revised to incorporate those purchasing and payment strategies being implemented under Minnesota's Self Determination Project. You have indicated that, although consumers and families are seeking increased flexibility and autonomy to arrange for and manage their supports, most consumers and families would not choose to take on (directly) the additional employer-related responsibilities associated with the receipt of cash grants. It is our intent to develop and refine a number of different intermediary service models in order to provide a choice for consumer who vary in their ability and desire to manage their home care services.

4. What types of services and supports can be purchased? *There is a single line in this paragraph which states, "The consumer directed personal care option will not provide payment to spouses, parents, or legally responsible adults for the provision of supports." Both the hardship waiver and the proposed legislation regarding legally responsible adults are pushing this boundary.*

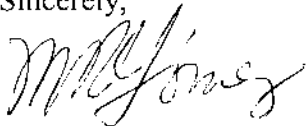
Response: The proposed §1115 waiver will incorporate the relative hardship waiver criteria for personal care assistant services to allow certain relatives to be reimbursed for the provision of personal care services to their family member.

5. I am not sure about the nuances of the legislative language and the late date in trying to make changes, but we don't want to lose the directive to pursue federal funds.

The Department intends to submit a §1115 waiver request to enable the Consumer-Directed Home Care Demonstration Project. This will be an option to MA eligibles in lieu of receiving home health aide, personal care, nursing supervision of personal care, and private duty nursing services under the traditional fee-for-service system.

Thank you again for you comments and recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Maria R. Gómez", written in a cursive style.

Maria R. Gómez
Assistant Commissioner

cc: Anne Henry
Bob Brick