

Implementing Consumer Directed Supports in  
Home and Community Based Service Waivers:  
*A Guide* for County Agency Staff

November 2001  
Draft

Minnesota Department of Human Services  
Community Supports for Minnesotans with Disabilities Division  
Aging and Adult Services Division

## Preface

This manual has been prepared for use by county staff involved in the development and implementation of "consumer directed supports" through the Home and Community Based Services (HCBS) waivers. The decision to produce this manual is the direct result of recommendations made by county staff to CSMD staff during a survey on consumer directed services that took place in May and June of 2001. During that survey, numerous county staff voiced the need for a manual on consumer directed services that would include explanations of county responsibilities, guidelines for developing county policies, and resource information across all waiver service programs. This manual is an attempt to provide the necessary information and resources to county staff for use in developing consumer directed services while continuing to encourage counties to prepare policies and procedures specific to their individual county management of service programs.

As of November 2001, only the Mental Retardation or Related Conditions (MRRC) Waiver allows for the reimbursement of a specific billable service known as "Consumer Directed Community Supports" (CDCS). In order to support choice and increased consumer control over resources for all HCBS recipients, the Department of Human Services is seeking authorization from the Centers for Medicare and Medicaid Services (CMS) to establish the same service through the CAC, CADI, TBI and Elderly waiver programs. A transition phase will be scheduled to allow counties that offered CDCS to recipients of the MRRC waiver prior to January 1, 2002 time to implement any necessary changes to the way in which the service is offered by counties and used by recipients to make it coincide with the new amendment. It is expected that the name of the service will be changed from "Consumer Directed Community Supports" to a new name (consistent across waiver programs), and that the current health care procedure code for CDCS will be discontinued.

When the amendment to each of the HCBS waivers is approved, changes to the definition of the service will occur. Given these upcoming changes, this version of the manual should be viewed as next to final draft. The Department of Human Services intends to make the final version of the manual available on the Department's website in order to allow counties to retrieve updated information quickly and easily.

This manual continues to be a collaboration of effort between counties and regional groups and CSMD and Aging and Adult Services Divisions. Thanks goes out to each and every county staff person who contributed in any way in the development of this manual.

## Overview of the Manual

Section One of this manual includes brief descriptions of those service programs in Minnesota where "Consumer Directed Services" are either available at this time or are expected to become available during the next year. For a complete description of these service programs, please refer to those respective resources available in your county agency.

In addition to an overview of service programs, Section One includes background information on self-determination and person centered planning which is necessary for an understanding and appreciation for consumer directed services. Recent information regarding the impact of the Olmstead Supreme Court decision further supports the basis of consumer directed services.

Section Two of the manual (County Responsibilities) is divided into "subsections" that closely follow the language of the waiver plan amendment that will allow consumer directed services to be available through all the HCBS waivers. These subsections - Administrative Functions, Service Coordination, and Policy Development - include listings and descriptions of county requirements needed in the implementation of the consumer directed services.

Information on the implementation of consumer directed services by a county agency is available in Section Three. The parameters of the service, including the requirement for assurances of quality, *are* also presented here with explanation of the use of fiscal intermediaries, expenditure monitoring, and *overall record keeping* required of consumers and county agencies. Section Four website addresses for more information on topics addressed in the manual.

It is expected that throughout the course of the next year, the information in these sections will be revised in response to changing federal and state requirements. County staff are encouraged to make suggestions for revising and improving this manual, and to submit written examples of policies, procedures, and sample community support plans.

## Table of Contents

I. Overview of Consumer Directed Services through Home and Community Based Services Waivers.....	7
A. Background of Consumer Directed Supports Waiver Amendments.....	7
B. Person Centered Planning as the Foundation for Consumer Directed Supports.....	8
C. The Impact of the Self-Determination Movement on Consumer Directed Services.....	9
D. The Olmstead Supreme Court Decision.....	11
E. Descriptions of Minnesota's Home and Community Based Waivers.....	12
1. Community Alternative Care Waiver.....	13
2. Community Alternatives for Disabled Individuals Waiver.....	14
3. Elderly Waiver.....	16
4. Mental Retardation/Related Conditions (MRRC) Waiver.....	18
5. Traumatic Brain Injury Waiver.....	20
II. County Responsibilities for Consumer Directed Supports.....	23
A. Administrative Functions.....	23
1. Consumer education and assistance in self-determination and person centered planning.....	23
2. Develop policies and procedures <i>for authorizing, implementing, and</i> monitoring consumer support options.....	25
3. Refine outcome-based quality assurance methods.....	26
B. Case Manager/Service Coordinator/Public Health Nurse Role in Consumer Directed Supports.....	30
1. Provide consumer/family education and assistance to assist families/persons to understand, plan, and become informed to develop their own plans, all choices available to them, the consequences of such choices, and their responsibilities.....	31
2. Develop one plan that pulls together all sources of formal and informal supports and addresses health and safety.....	33
3. Assist in planning for supports (face-to-face assessment and planning) with the consumer and his/her support.....	34

4. Assist in designing an individual budget with the person that takes into account the person's wants and needs along with the resources available.....	34
5. Work with the person and/or the person's legal guardian or authorized representative to assure that consumer directed supports meet the person's health and safety needs and personal preferences and are directed at the desired personal outcomes.....	35
6. Assure that consumer directed community supports do not duplicate other services provided to the person. Components of the consumer directed community supports will be documented as necessary to prevent the person's institutionalization in the individual plan. The case manager, service coordinator, public health nurse shall document how the consumer directed community support services enable the person to lead an inclusive community life, build a viable network of support, and result in outcomes specified by the person and/or his/her legal guardian.....	35
8. Assure that the provider has met the identified standards as outlined in the individual's plan.....	37
9. Monitor the provision of services, review on an annual basis at a minimum.....	37
B. Suggestions for County Policies on Consumer Directed Support.....	38
1. Criteria for Participation in Consumer Directed Support.....	38
2. Background Checks for Unlicensed Providers.....	39
3. Risk Management.....	40
4. Establishing Reasonable Payment Rates.....	41
5. "Sharing" a Consumer Directed Supports Provider.....	41
6. Payment Mechanisms.....	43
7. Recipients or Families Assuming Employer of Record or Fiscal Agent Responsibilities.....	46
8. Grounds for Involuntary Termination of a Recipient's Participation in Consumer Directed Support.....	47
III. Implementing Consumer Directed Support Within the County.....	48
B. Clarifying parental/legal guardian responsibility.....	49
1. Paying parents of minors or spouses of recipients to provide certain services.....	49
2. Paying legal representatives of adult recipients to provide services.	51
C. Combining consumer directed supports and traditional licensed services (consumer directed supports and adult foster care, SLS, DT & H, etc. . .	52
D. Budget Development Process.....	55

E. Parameters of Consumer Directed Support.....	56
F. Review and Approval Process for Consumer Directed Support Plans ...	57
H. Record Keeping Requirements for Consumer Directed Support.....	58
I. Monitoring expenditures.....	59
IV. Website Addresses.....	60
A. Person Centered Planning.....	60
B. Self-Determination and Self Advocacy.....	60
C. Olmstead Supreme Court Decision.....	60
D. Quality Assurance and Quality Improvement.....	60
E. Consumer Directed Community Supports (through the MRRC waiver).....	61
V. List of Attachments.....	62
A. Attachment I a.....	63
B. Attachment I b.....	67
C. Attachment II a.....	74

## **Overview of Consumer Directed Services through Home and Community Based Services Waivers**

### ***A, Background of Consumer Directed Supports Waiver Amendments***

Consumer Directed Community Supports (CDCS) was approved in December of 1997 as a service through the MR/RC waiver. (Attachment I a contains language from the 1997 amendment, excerpted from Bulletin #98-56-15 announcing the availability of consumer directed community support services through the MR/RC waiver.) Minnesota pursued an amendment to its waiver plan for the service in part because it had been selected to receive a Robert Wood Johnson Foundation grant for a self determination demonstration project. The service was integral to the objectives of the project, which included promoting the development of individualized supports and consumer control of resources. In order to offer CDCS, counties were required to enter into a Memorandum of Understanding (MOU) with DHS that addressed the following:

- their responsibilities in the areas of self determination and person centered planning,
- their responsibilities for providing information about consumer directed support options, developing and implementing consumer directed community support options, assisting consumers in accessing and developing desired supports, securing administrative assistance to implement supports,
- the establishment of mechanisms that would allow consumers to exercise control and responsibility over supports, and
- Plans for refining outcome based quality assurance methods.

Minnesota Statutes 256B.0916 authorized the commissioner of the Department of Human Services to seek an amendment to the MRRC waiver to make CDCS available in every county of the state. This amendment, if authorized by the Center for Medicaid and Medicare Services (CMS; formerly the Health Care Financing Administration or HCFA), will remove the requirement that counties enter into a MOU in order to offer the service. In addition, Minnesota Statutes 256B.49

expands availability of consumer directed supports to all persons eligible for home and community based waivers. Identical amendments will be submitted to make consumer directed supports available in every county of the state to people receiving services through the CAC, CADI, TBI, and Elderly waivers. (Attachment I b contains the draft amendment language to offer consumer directed supports statewide.)

Although counties will no longer need to enter into a MOU with DHS to offer consumer directed supports, the amendment delineates various responsibilities county agencies must undertake to administer the service. The purpose of this manual is to assist counties to meet the requirements outlined in the amendment and develop the policies and procedures necessary for implementation and management of consumer directed supports through all home and community based service waiver programs.

#### *B. Person Centered Planning as the Foundation for Consumer Directed Supports*

Person centered planning provides the foundation of consumer directed supports. In order for a person to access consumer directed supports, a person-centered community support plan must be developed. This plan directs the necessary assistance and support to allow the person to live in the community, establish meaningful community associations, and make valued community contributions. It is through the person centered planning process that a person, along with family and friends, determines his or her future. The person-centered plan of support reflects these choices and identifies the supports and services that are needed through consumer directed supports in order to realize these outcomes.

Although there *are* many different approaches to person centered planning, each shares the common characteristic of focusing on the person and what he or she wants for the future. Person centered planning involves much more than the development of a written plan. It is an ongoing process that enables life-long growth and development. Person centered planning focuses on a person's capacities and strengths in order to create a vision for a desirable future.



Person centered planning takes shape in many different forms and can be useful when:

- individuals want support in seeking assistance with options and opportunities.
- creative strategies *are* needed for positive change.
- people have few supports outside staff and agencies.
- support is needed and desired during a major life transition.
- there *are* no clear life goals or direction.
- a vision for the future needs to be created.
- people need and want new ideas on how to proceed.

Person centered planning is a way to organize resources that will increase the likelihood that a person's life will change from being program-centered to being centered in the community.

More information on person centered planning, including web site addresses is found in the Resource section of this manual.

C,        *The Impact of the Self-Determination Movement on Consumer Directed Services*

Self-determination *is* a national movement aimed at *changing the service*, system for people with disabilities. One of the most eloquent definitions of self-determination was offered by Tom Nerney, a leader in the movement, during a keynote address to the American Association on Mental Retardation. He stated "Self-determination is simply the restoration of freedom lost when a person with a disability seeks assistance from the present human service system. It means that all individuals with disabilities now have the same rights as all other citizens to pursue a meaningful life deeply imbedded in our communities, rich in relationships, and *individually crafted*. It means finally that public dollars needed for assistance are controlled by the individual and their freely chosen allies."

Self-determination proponents have articulated four key principles that define the movement. These appear below.

FREEDOM	THE ABILITY FOR INDIVIDUALS, WITH FREELY CHOSEN FAMILY AND/OR FRIENDS, TO PLAN AND LIVE A LIFE WITH NECESSARY SUPPORT.
SUPPORT	THE ARRANGING OF RESOURCES, BOTH FORMAL AND INFORMAL, THAT WILL ASSIST AN INDIVIDUAL TO LIVE A LIFE HE OR SHE CHOOSES.
AUTHORITY	INDIVIDUALS WILL CONTROL RESOURCES, BOTH FORMAL AND INFORMAL, THAT WILL ASSIST THEM TO LIVE A LIFE THEY CHOOSE.
RESPONSIBILITY	ACCEPTANCE OF THE BENEFITS AND RISKS BY AN INDIVIDUAL FOR CHOICES MADE, AND ACCOUNTABILITY FOR SPENDING MONEY IN WAYS THAT ASSURE HEALTH AND SAFETY AND THAT ARE LIFE ENHANCING.

In February 1997, Minnesota was chosen as one of 18 states to receive a Robert Wood Johnson Self Determination Demonstration Project Grant, and one of nine to receive a full three-year grant. This support resulted in the development of Minnesota's "Self Determination Project", a partnership with Blue Earth, Dakota and Olmstead Counties and the Department of Human Services. The goals of Minnesota's Self Determination Project were to:

- Improve management and administration of services;
- Improve service financing and design;
- Improve access to services;
- Improve quality assurance and monitoring; and

- Redesign roles of state and county employees and consumers, families, and service providers.

Minnesota's Self-Determination Project was based on the four key principles of self-determination and created a foundation to support change in the ways persons with disabilities are supported in Minnesota. The project resulted in self-determination approaches becoming visible throughout the state - in the philosophy of county agencies, in consumer advocacy efforts, and in provision of services. By the time the project ended in January of 2000, over 1000 consumers were project participants and an additional 600, who had not chosen to be part of the formal project had been positively impacted by self-determination philosophy and methodologies. The decision to expand consumer directed supports statewide and to recipients of all waivers is largely due to the success of the Self-Determination Project in promoting consumer choice and control over services and resources. Its impact has provided an opportunity for all consumers and their families, for providers, for county agencies, and for the Department of Human Services to improve the management and administration of services, service financing and design, access to services, and assurance of quality.

More information on self-determination, including web site addresses, is found in the Resource section of this manual.

#### *D. The Olmstead Supreme Court Decision*

A 1999 decision by the U.S. Supreme Court concerning two women from Georgia played a major role in the development of consumer directed services in Minnesota as well as in other states. As a result the decision, called *Olmstead v L.C.*, all states are required to develop a comprehensive and effective plan to demonstrate compliance with the "Olmstead Decision" and compliance with its ADA obligations. In responding to this requirement, Minnesota outlined those on-going efforts and initiatives developed to support opportunities for persons with disabilities or those who are elderly to move from institutional settings into communities, or to remain living in communities, with necessary supports and services. An integral component of those programs available in Minnesota to meet the obligations set forth in

the Olmstead Decision will be the consumer-directed support option available through the waivers.

Consumer directed supports are being developed statewide by county agencies in partnership with the Department of Human Services and will be available to qualified persons regardless of age or type of disability, just as *is* stated in the "Olmstead Decision". The services identified as necessary to support a person's continued residence in the community or move to the community from *an* institution are to be identified in a manner that espouses "person-centered planning" in order to assure that choices have been made by the person.

More information on the Olmstead Supreme Court decision is found at <http://www.hcfa.gov/medicaid/olmstead/olmshome.htm>

#### *E. Descriptions of Minnesota's Home and Community Based Waivers*

Beginning in the 1980's, the federal government created opportunities for states to offer services in communities to persons with disabilities and persons who are elderly. By entering into a "Waiver Agreement" with the federal government, states were allowed to use federal dollars in combination with state funds to prevent institutionalization and to accommodate persons leaving institutions to live in their communities.

WAIVER PROGRAMS ARE ALTERNATIVE SUPPORT SERVICE  
PROGRAMS THAT PROVIDE OPTIONS  
TO TRADITIONAL SUPPORT SERVICES.

Minnesota has chosen to enter into a number of waiver agreements in order to provide Minnesotans with more choice in their services.

*Because each of the "waiver" programs were written to meet federal guidelines, each program includes:*

- Specific eligibility requirements (usually according to disability)
- A menu of services
- Funding parameters and limits

- Separate county and/or state policies
- Independent implementation requirements

While the waiver programs are currently independent of each other, it is intended that all of these programs will have consumer directed supports available in the very near future.

The following pages include descriptions of each of the "HCBS" waiver programs available in Minnesota. These descriptions were current as of date of the publication of this manual. However, Minnesota Statutes 256B.49 requires that a common service menu be established for all waivers, which will result in changes to the descriptions that appear below. Updated information on each of the waiver programs will be made available on the Department of Human Service's web site at **<http://www.dhs.mn.us/infocenter/>**

#### 1. Community Alternative Care Waiver

The Community Alternative Care (CAC) Waiver provides funding for home and community services for chronically ill children and adults. Individuals who live in hospitals or who require frequent hospitalizations may be eligible for this program. In order to be eligible for the *CAC Waiver*, a person must:

- Be eligible to receive Minnesota's medical assistance (MA) services, and
- Be under the age of 65 years at the time of application, and
- Determined to require the level of care provided in a hospital, and
- Choose care in the community instead of a hospital, and
- Be certified disabled by Minnesota or the Social Security Administration.

The administration of the CAC Waiver in Minnesota is through the CSMD Division of the Department of Human Services and application and provision of services is made available by county agencies. The process for application eligibility determination is

facilitated by the county agency through the development of a community support plan (previously called the "plan of care") that includes the assurance of the health and safety of the person requesting CAC Waiver services.

In addition to services covered by Medical Assistance, services available through the CAC waiver to support persons living in their homes and communities include:

- Respite care (in-home and out-of-home)
- Case management and case management aide services
- Homemaker services
- Family counseling and training
- Special adaptations or modifications to the home
- Extended home health aide, nursing services
- Foster *Care* services
- Extended home health therapies
- Extended nutritional therapy
- Extended personal care assistance
- Extended prescribed medication
- Extended transportation services

A new service is being developed to enable consumers to direct their *own provision of services*. This *service, considered "consumer-directed"*, will include the person centered planning process and will allow people the flexibility and freedom to go in a direction of services that best suits them. Additional information and technical assistance to county agency staff will be made available by the CSMD Division when approval for the provision of this service is made by the federal government as part of the state's waiver agreement.

## 2. Community Alternatives for Disabled Individuals Waiver

The Community Alternatives for Disabled Individuals (CADI) Waiver provides funding for home and community-based services for children and adults who require the level of care provided in a nursing facility. CADI services may be provided

in a person's own home, parental home, a foster home or in a board and lodging or assisted living facility. If married, a person may receive CADI services while living at home with his or her spouse.

In order to be eligible for the CADI Waiver, a person must:

- Be eligible to receive Minnesota's medical assistance (MA) services, and
- Be under the age of 65 years and the time of application (may continue CADI services if over 65 and the Elderly Waiver is not appropriate to meet a person's needs), and
- Require the level of care available in a nursing facility, and
- Choose care and services in the community instead of a nursing facility, and
- Be *certified* disabled by the State Medical Review Team or by the Social Security Administration.

The cost to Medical Assistance for services through the CADI Waiver must be less than the cost to Medical Assistance for placement in a nursing facility. The administration of the CADI Waiver in Minnesota is through the CSMD Division of the Department of Human Services and application and provision of services is made available by county agencies. The process for application and eligibility determination is facilitated by the county agency through the development of a community support plan (previously called "plan of care"). The community support plan must identify those services to be provided and in what fashion, as well as assurances of health and safety of the person receiving CADI Waiver services.

In addition to services covered by Medical Assistance, services available through the CADI waiver to support persons living in their homes and communities include:

- Adult Day Care services
- Assisted Living services
- Case management and case aide services

- Extended home health aide, nursing
- Extended home health therapies
- Extended personal care assistance
- Extended supplies and equipment
- Family Counseling and Training
- Home delivered meals
- Homemaker services
- Independent Living Skills
- Modifications to home, care and equipment
- Prevocational services
- Residential services
- Respite care
- Supported Employment services

A new service is being developed to enable consumers to *direct* their own provision of services. This service, considered "consumer-directed", will include the person centered planning process and will allow people the flexibility and freedom to go in a direction of service that best suits them. Additional information and technical assistance to county agency staff will be made available by the CSMD Division when approval for the provision of this service is made by the federal government as part of the state's waiver agreement.

### 3. Elderly Waiver

The Elderly Waiver (EW) funds home and community-based services for adults living in their own home, an adult foster care home, a licensed board and lodge, a non-certified boarding care home or in a registered Housing with Services Establishment. This program is administered by the Department of Human Services Aging and Adult Service Division. Application and provision of services is made available through county social service or county health agencies.



In order to be eligible for the EW, a person must:

- Be enrolled as a Medical Assistance recipient under the Minnesota Medicaid program, and
- Be age 65 or older, and
- Be determined, through a community assessment conducted by a social worker and/or a public health nurse, to require the level of care provided in a nursing facility (NF), and
- Choose home and community based care rather than care delivered in a nursing home, and
- Home and community based needs may be met safely and cost effectively as they are defined in a community support plan developed by the service coordinator.

Services available through the Elderly Waiver include:

- Adult Day Care services
- Assisted Living services
- Case management services
- Caregiver Training and Education
- Chore services
- Companion services
- Extended home health aide, nursing
- Extended personal care services
- Extended supplies and equipment
- Extended transportation
- Foster care services
- Home delivered meals
- Homemaker Services
- Modifications to home and vehicle
- Residential services
- Respite care

It is the intent of the Aging Division to make "consumer-directed services" available through the Elderly Waiver as soon as federal approval of this service is secured. The provision of this service will require the provision of person-centered planning and the development of a community support plan,

which will provide the description of those supports to be included in the "consumer-directed services".

#### 4. Mental Retardation/Related Conditions (MRRC) Waiver

Home and community-based services for children and adults with mental retardation or related conditions are funded through the MRRC Waiver program. MRRC Waiver services may be provided in a person's own home, in his or her biological or adoptive family home, in a relative's home (e.g., sibling, aunt, grandparent, etc.) or in a foster care home.

In order to be eligible to receive MRRC Waiver services, a person must:

- Be eligible to receive Minnesota's medical assistance (MA) services, including deeming waivers for families with children with disabilities, and
- Be determined to have mental retardation or a closely related condition and,
- Require a 24 hour plan of care or reside in an ICF/MR or be at risk of such placement if MRRC waiver services were not available, and
- Make an informed choice requesting waiver services in the community instead of ICF/MR services.

In addition, it must be determined that the service needs of the person with MRRC cannot be met under Medical Assistance State Plan services and that no other funding sources *are* available to provide services to the person.

Application for the MRRC Waiver is made with the county agency and the state and federal funds used to support this program are managed within each county's unique "pool" of dollars. While this program is administrated through the CSMD Division in the Department of Human Services, counties have the responsibility to determine eligibility and to authorize

services. The MRRC Waiver makes the following services available:

- 24-Hour Emergency Assistance
- Adult Day Care
- Assistive Technology
- Caregiver Training and Education
- Case Management
- Chore Services
- Consumer Education and Training
- CONSUMER-DIRECTED COMMUNITY SUPPORTS
- Crisis Services
- Extended Personal Care Assistance Services
- Extended Transportation
- Homemaker Services
- Housing Access Coordination
- In-Home Family Support Services
- Live-In Personal Caregiver Expenses
- Modifications
- Personal Support
- Respite Care
- Specialist Services
- Supported Employment
- Supported Living Services
- Training and Habitation Services

As noted above, the MRRC Waiver program does make "Consumer-Directed Community Support" (CDCS) services available for recipients of this program. These are services that provide support, care and assistance to a person, prevent institutionalization, and allow the person to live an inclusive community life. Consumer-directed community supports are designed to build, strengthen or maintain informal networks of community support for a person. It is through "CDCS" services that a *person* and the *person's support team have increased* responsibility for identifying the intended outcomes of the supports and services in the community support plan. In

addition, through CDCS, a person may choose to be responsible for how money is spent within his or her individual budget.

Consumer-Directed Community Supports through the MRRC Waiver program *are* often arranged in conjunction with other available services through this program (e.g., day training and habilitation, respite care, specialist services, etc.). If supervision and training supports are secured through CDCS, an "employer of record" or a "fiscal agent" may be used to allow the person to hire his or her choice of staff people to provide that supervision and/or training. In addition, it is through CbCS that the legal representatives of adult recipients can be hired to provide support and assistance as determined within the community support plan.

#### 5. Traumatic Brain Injury Waiver

The Traumatic Brain Injury (TBI) Waiver provides for the use of state and federal resources to fund community-based services for children and adults who have an acquired or traumatic brain injury. Services through this program may also include support for the person's environment including the person's family and living situations.

In order to be eligible for the TBI Waiver, a person must:

- Have a diagnosis of traumatic or acquired brain injury or an acquired or degenerative disease diagnosis where cognitive impairment is present, and,
- Experience significant/severe behavioral and cognitive problems related to the injury, and
- Be assessed at Level IV or above on the Rancho Los Amigos Levels of Cognitive Functioning Scale, and
- Be under the age of 65 years, and
- Be certified as disabled by Minnesota or the Social Security Administration, and
- Be determined to need the level of care available in a nursing facility (NF) or neurobehavioral (NB) hospital, and

- Choose services in the community instead of services in a nursing facility (NF) or neurobehavioral (NB) hospital.

In addition, it must be determined that the service needs of the person with a traumatic brain injury cannot be met by those services available *under the MA state plan* and that there is no other funding source available to provide services to the person. The costs to medical assistance (MA) may not exceed the MA expenditure to maintain the individual in a specialized nursing facility or in a neurobehavioral hospital.

The administration of the TBI Waiver is through the CSMD Division of the Minnesota Department of Human Services. Application for the TBI Waiver is made by contacting the county agency that now determines eligibility for this program. Once eligibility is determined, a community support plan is prepared and includes the assurance of health and safety of the individual receiving services.

The services available through the TBI Waiver include:

- Adult Day Care
- Behavior Programming by Professionals
- Case Management/Case Aide Services
- Chore Services
- Companion Services
- Extended Cognitive Rehabilitation Therapy
- Extended Home Health Nursing
- Extended Home Health Therapies
- Extended Personal Care Assistant Services
- Extended Supplies and Equipment
- Extended transportation
- Family Counseling and Training
- Home Delivered Meals
- Homemaker Services
- Independent Living Skills and Independent Living Therapies
- Mental Health Testing
- Modifications and Adaptations

- Night Supervision
- Prevocational Services
- Residential Care
- Respite Care
- Structured Day Program Services
- Supported Employment Services

It is the intent of the CSMD Division to make "consumer-directed services" available through the TBI Waiver as soon as federal approval of this service is secured. The provision of this service will require the provision of person-centered planning and the development of community supports plan, which will provide the description of those supports to be included in the "consumer-directed services".

## II. County Responsibilities for Consumer Directed Supports

The consumer directed supports waiver amendment outlines a number of administrative functions and case manager/service coordinator/public health nurse responsibilities required of counties in the administration and implementation of the service. This section of the manual will provide *explanations of each responsibility as well as provide examples for how* counties can meet that responsibility.

### A. Administrative Functions

The consumer directed supports waiver amendment requires county agencies to perform four administrative functions in the administration *of the service*. These are:

- Provide consumer education and assistance in the areas of self determination and person centered planning,
- Develop policies and procedures for authorizing, implementing, and monitoring consumer support options,
- Refine outcome-based quality assurance methods, and
- Maintain financial records if using a payment option where breakdown of *services* authorized *and* payment for *services cannot be tracked* through MMIS (managed by the consumer and/or consumer's legal representative). Explanations of each of these responsibilities appear below.

1. Consumer education and assistance in self-determination and person centered planning.

As noted in Section I, person centered planning is the foundation for consumer directed support. Although there are many different person centered planning approaches, all of them are rooted in personal choice and seek to assist people to develop support plans that will allow them to achieve personally desired outcomes. The following is a checklist of things to consider when conducting person-centered planning:

Did the person choose a person-centered process to assist them in planning (i.e. an array of options were presented in a clear and understandable fashion)?

Did the person select who they wanted to assist in the planning? And, did the person select who they wanted to facilitate their planning?

Did the person invite those people?

Did the person choose when and where to have the planning meeting?

Did the person choose what areas planning would occur?

Did the person determine the agenda for the meeting?

Did the person decide whether or not to develop a personal profile and determine how she/he would share this information with others?

Did the dreams and desires of the person form the foundation for this process?

Was/Is the process positive and respectful of the person?

Were strategies for engaging the person respectful? Did they build upon the person's gifts and talents?

Did the person identify and share his/her "images of a desirable future" (list of his/her needs and desires)?

Did the person identify opportunities he/she presently has to make choices and share with the others the areas in which increased opportunity is desired?

Did the person share with the others the areas in which he/she would like to have greater control?

Did the person share what his/her ideal home would look like?

Did the person share what his/her ideal job would be like?

Did the person prioritize his/her needs and desires (and identify which are non-negotiable, strong preferences, or highly desirable)?

Did the person share the strategies and supports that work well in providing support?

Did the person share those things that are not likely to work well and when disruption is likely to occur?

Was the *planning process* (typically a *series of gatherings*, negotiations and review) flexible and dynamic?

Did the person participate in all phases of the process?

Does the person have a formal role in the quality assurance?

Borrowed from: Open Doors at New Hats, Inc., Castle Valley, Utah



Providing assistance with self determination is another responsibility that counties must undertake in the administration of consumer directed services. As previously noted in Section I, self determination is based on principles of freedom, support, authority, and responsibility.

Self determination comes about when people are given the necessary freedom to make important decisions and choices, the authority to control resources and make decisions, the support they need to live the kinds of lives they choose, and the opportunity to be responsible and accountable for the decisions they make. When people are supported in a manner that is individualized and creative, it opens the door for living a self determined life. Although there is no single definition of self determination, primarily because it is different for every individual, it provides a "new way of thinking" in respecting individualized choice and control. Current service programs that require the individual to "fit" into the programs may not allow for individualized choice or control. People who receive services want to grow up, live and work in communities, not in programs or service systems.

Adhering to the principles of freedom, support, authority, and responsibility promotes control over resources, purchasing, and decision making that can be life enhancing.

2. Develop policies and procedures for authorizing, implementing, and monitoring consumer support options.

Counties will need to develop written policies and procedures that detail how consumer directed supports will be administered at the county level in order to ensure that consistency across waiver programs and individual recipients is maintained. These policies and procedures may be requested for review by the Department of Human Services. Additional information on policy development and suggested policies is provided in Section II. Written procedures that counties should consider developing include a description of the process

for reviewing and approving individual budgets, method for assuring that services *are* provided by "qualified" persons, and methods for monitoring the quality of services and their impact on the person.

3. Refine outcome-based quality assurance methods.

A key county responsibility involves measuring the quality of waiver services, including consumer directed supports. Quality of services provided to people on the MRRC, CAC, CADI, TBI, or Elderly Waivers is often defined as compliance with statutes, rules, and regulations, and absence of negative action by licensing agents. The impact of the services on people's lives, as well as their satisfaction with the service they receive, has often been ignored in the assessment of program quality. However, there is an increasing trend toward defining quality services as those that result people achieving personally desired outcomes in addition to ensuring that individuals' rights, health, and safety *are* protected, instead of being viewed as an end product, quality is being viewed as a process. The process begins by asking individuals, along with their families, to define desired outcomes for the services they have chosen. With the assistance of support network members, support plans for achieving those outcomes are established. Methods for evaluating progress toward achievement of personal outcomes are identified, and the resulting information is used to modify support plans as needed.

Assuring quality of services received by people who use consumer directed supports will be a challenging task for counties. In the past, counties have relied on the standards that govern license holders and the regular reviews conducted by state licensing agencies as two means of assuring quality. Many people who use consumer directed support will choose to purchase their services from unlicensed vendors who *are* not subject to the same standards by which licensed vendors must abide, nor will unlicensed vendors be reviewed by state licensing agencies to determine if they are in compliance with certain

standards. This will mean that counties will need to rely more heavily on outcome-based quality assurance methods to determine if people are receiving services that ensure their rights, health, and safety as well as help them to achieve personally desired outcomes.

There have been several efforts in Minnesota to promote the use of outcome based quality assurance. To date, these projects have been conducted with people who have developmental disabilities or who *are* elderly, but the processes are applicable for use with other people as well.

The Performance-Based Contracting Demonstration Project (PBC) was a partnership between the Minnesota Department of Human Services, five service provider agencies, five county agencies, and several advocacy groups. It was designed to demonstrate and evaluate alternative methods for ensuring quality in licensed residential settings for individuals with mental retardation or related conditions as well as to demonstrate alternative ways of contracting for services.

Key components of the PBC project included'. 1) implementation of local-level quality enhancement activities, including development of support networks for consumers, replacement of traditional deficit-based assessment approaches with person-centered planning strategies, and consolidation of planning processes to ensure well-coordinated services; 2) performance-based contracts that specified the amount and conditions of reimbursement, requirements for monitoring and evaluation, and expected consumer outcomes; and 3) interviews of a sample of consumers by members of a Quality Enhancement Team, who used methodology recommended by The Council on Quality and Leadership *in* Supports for People with Disabilities (formerly The Accreditation Council) to determine whether or not outcomes were present in participants' lives.

The person-centered outcome measures developed by The Council on Quality and Leadership in Supports for People with Disabilities have also been incorporated on a more limited scale into the Quality Assurance Project *carried* out by the Community Supports for Seniors Division at the Department of Human Services. This project, initially implemented in 1996 to improve the way DHS assesses and evaluates HCBS waiver programs, is entering Phase 3. The model includes county visits, a data-based review of program information, review of assessment and support plan records for a random sample of participants, the provision of technical assistance, and a limited number of interviews with participants. Phase 3 of the project will examine the Alternative Care Program, the Elderly Waiver Program, and Long Term *Care* Consultation. Limited staff resources will permit only a small number of participants to be interviewed using person-centered outcome measures during this phase. A summary of the project can be obtained from Jolene Kohn at 651-297-3805 or by e-mailing [jolene.kohn@state.mn.us](mailto:jolene.kohn@state.mn.us).

The Region 10 Quality Assurance Commission is a demonstration project aimed at developing and implementing a person centered quality assurance process as well as an alternative system for licensing services for persons with developmental disabilities. Participants include southeastern Minnesota counties, people who receive developmental disabilities services, their families and legal representatives, advocacy organizations, and service providers. The project has received funding support from the Minnesota State Legislature, and is in its (number) year of implementation.

The mission of the Region 10 Quality Assurance Commission is to develop and implement a quality assurance process that enhances the quality of life for persons with disabilities, is consumer focused and responsive, assures basic safety, and promotes continuous improvement in the system and *services* provided. The Commission has developed a quality assurance assessment tool entitled VOICE, which stands for Value of

Individual Choices and Experiences. Quality Assurance Teams made up of project participants conduct reviews of an individual's services using the VOICE, complete a foster care quality checklist, and review the service provider's paper compliance with rules and regulations. Teams report findings to each individual's Quality Circle (a group of persons who provide formal and informal support to the person and recommend ways to improve the quality of the person's services) and to the project's Quality Assurance manager. A Quality Review Council made up of project participants appointed by counties reviews the teams' reports and findings, makes licensing recommendations to counties, makes recommendations to the Quality Assurance Commission for system upgrades, and resolves complaints. For more information on the Region 10 Quality Assurance Commission, please contact....

The Core Indicators Project is a joint effort of the National Association of State Directors of Developmental Disabilities Services and the Human Services Research Institute (HSRI) in Massachusetts. Minnesota participated in the Core Indicators Project in 1999 and 2000. The project is intended to establish a common set of quality indicators that can be used to measure quality of services for persons with developmental disabilities. Data collection activities are framed around the *following* broad performance "domains;"

- Consumer outcomes, including consumer and family satisfaction with services received;
- Health, welfare, and rights of people receiving services,
- System performance, including service coordination, access to services and supports, and utilization and expenditures, and
- Service delivery system strength and stability.

A major component of the Core Indicators Project involved interviewing people who received developmental disabilities services, and Minnesota conducted approximately 400 interviews with persons receiving services during each of these two years.

More information on the Core Indicators Project is available at [www.hsri.org](http://www.hsri.org).

4. Maintain financial records if using a payment option where breakdown of services authorized and payment for services cannot be tracked through MMIS.

Counties have a responsibility to provide assurances of financial accountability for all services through the waivers, and consumer directed supports is no exception. The waiver amendment requires counties to offer a basic payment option of payment through an enrolled provider who bills MMIS II directly. Counties are also required to offer at least one of the following three options;

- Payment made to an employer of record;
- Payment made by a fiscal agent; or
- Payment made through a voucher process set up by the local agency.

All payments using waiver funds must be traceable back to the service that was authorized and provided. When services that are authorized cannot be traced through a standard MMIS II service agreement, counties need to build in a method for ensuring that people *receive the services that have been* authorized and that providers receive payment only for services that were delivered. A *paper* trail that links the amount, type, and frequency of services agreed to an approved in the community support plan, the services and resources authorized, amount and frequency of services provided, and payment for services with corresponding receipts needs to be established.

6. *Case Manager/Service Coordinator/Public Health Nurse Role in Consumer Directed Supports*

The waiver amendment for consumer directed supports outlines responsibilities of case managers, service coordinators, or public health nurses in helping people to use this service. A list of the

responsibilities and an explanation of what each responsibility entails appears below.

1. Provide consumer/family education and assistance to assist families/persons to understand, plan, and become informed to develop their own plans, all choices available to them, the consequences of such choices, and their responsibilities.

Case managers, service coordinators, and public health nurses have a responsibility to inform consumers and families of the availability of consumer directed supports, and to provide person centered planning to assist families in developing their own plans. (Please refer to Section I for more information about person centered planning.) The intent of consumer directed supports is to provide consumers with more options for accessing supports and to provide a means to by which consumers can purchase services that meet their unique needs and preferences. An important part of this planning process involves helping interested recipients to understand the choices that they can make using consumer directed supports, the limitations of the service, and their responsibilities for using it.

Consumers who use consumer directed supports have a number of choices available to them. They can make choices about ways to spend the funds that *are* available for their support, within parameters for services through the waiver. They can choose to have an unlicensed individual provide the desired service or purchase services from a licensed provider. They can choose to use have part of the funds available for their support to purchase the services of an employer of record or to a fiscal agent, or both.

Part of helping people to understand the choices available to them may involve providing education about the limitations of services through the waivers. It is important for recipients to understand that consumer directed support is not a "cash and counseling" project that offers a cash allowance and information to people who receive waiver services to enable

them to purchase services or goods. Instead, it is an authorized service through the waivers that provides a way for recipients to access supports to meet their unique needs and gives them the freedom, support, authority, and responsibility they need to control resources and make decisions that are life enhancing.

As with all services through the waivers, consumer directed support must be provided in accordance with the assurances outlined in the State's approved waiver plan. One of those assurances is that people will only receive the services that they need and that those needs are identified through an assessment process. According to the state's approved waiver plan, the assessment information will be used to develop a written plan for how services will be individualized. Recipients need to understand that supports obtained through consumer directed supports must correspond to a need identified through the assessment process, and that the expenditure cannot be justified unless an identified need exists.

The waiver amendment requires that all the following questions are asked about services through consumer directed supports:

- Are the services necessary to ensure the recipient's health, welfare, and safety?
- *Will the services enable the recipient to function with greater independence?*
- Is the need for the service the direct result of the recipient's disability or functional limitation?
- Is the service covered by any other funding source?
- Have all options been assessed and does this option meet the individual desires, preferences, and needs of the person within a compensatory range that is considered reasonable and customary?

As part of the planning process, county staff may want to reword the questions in the following way and ask consumers and their families to help develop answers to the questions.



- How is this service necessary to ensure the recipient's health, welfare, and *safety*?
- How will the services enable the recipient to function with greater independence?
- Why is the need for the service the direct result of the recipient's disability or functional limitation?
- How do we know that this service is not covered by any other funding source? Have we requested funding from Medical Assistance or from the person's or family's insurance company?
- Have all options for obtaining this service or support been assessed? Is there another service through the waiver, for example, personal support or environmental modification that we can use instead of consumer directed supports? How does this option meet the individual desires, preferences, and needs of the person? Have we done some research on compensatory ranges so that we know that the proposed rate for service is reasonable and customary?

2. Develop one plan that pulls together all sources of formal and informal supports and addresses health and safety.

The consumer directed supports amendment requires that case managers, *service coordinators*, or *public health nurses* develop a community support plan for each person who uses consumer directed supports. This plan must identify all sources of formal and informal support and be based on the person's preferences. The community support plan that is developed may look different for people on various waivers. This is because each waiver has slightly different requirements for written "plans of care." For example, people who receive MRRC waiver services are required to have an Individual Service Plan (ISP). Requirements for the ISP are outlined in MN Rules 9525.0024, subpart 3. CAC, CADI, and TBI waiver recipients *are* required to *have a* written service plan, also called an individual service plan, developed in accordance with Minnesota Statutes 256B.049, subdivision 15. Elderly Waiver recipients are

required to have a written service plan developed in accordance with Minnesota's federally approved plan for providing Elderly Waiver services. To meet the requirements of a community support plan for consumer directed *supports*, *each of these* plans must reference all sources of formal and informal support and include the person's preferences for services. Support plans should also include information on whom people should contact if they are experiencing problems with their supports or if they experience major changes in their lives, and what they should do if they feel they are being treated unfairly or being subjected to abuse or neglect.

3. Assist in planning for supports (face-to-face assessment and planning) with the consumer and his/her support.

The case manager, service coordinator, or public health nurse must work with the consumer and his or her family to collect information about personal interests, talents, skills, and preferences. Information should be gathered that presents a balanced and positive view of the person's life. This information is used to plan the types of supports that will meet the person's assessed needs.

4. Assist in designing *an* individual budget with the person that takes into account the person's wants and needs along with the resources available.

People who receive waiver services do not determine the *amount* of money on which their individual budget will be based. For people on CADI, CAC, TBI, or the MRRC waiver, the amount available is based on the person's assessed needs, historical spending (if available), individual goals, and available resources. For people who receive services from the Elderly Waiver, the case mix classification will be used to determine the amount available. *Once that amount is determined, the person,* assisted by his or her case manager, service coordinator, or public health nurse decides how the available funds will be

allocated to supports to best meet the person's support needs and desired outcomes. Allowing people to determine how the available funds will be spent supports the self-determination principles of freedom, support, authority, and responsibility.

5. Work with the person and/or the person's legal guardian or authorized representative to assure that consumer directed supports meet the person's health and safety needs and personal preferences and are directed at the desired personal outcomes.

Assuring health and safety of waiver recipients is one of the most important responsibilities of county staff. When consumers choose to use the services of providers that *are* not licensed, county staff need to pay particular attention to methods for minimizing risk of injury, abuse, neglect, or exploitation. *One* of the best ways to do this to ensure that people have support networks of friends and families who provide regular, informal monitoring to assure that services are being delivered in a way that protects the person's health and safety. Other ways include assuring that people who receive services *are* given information regarding to whom they should report injuries and possible instances of abuse, neglect, or exploitation and processes for obtaining consumer feedback about *satisfaction with services received*.

6. Assure that consumer directed community supports do not duplicate other services provided to the person. Components of consumer directed supports will be documented in the plan as necessary to prevent the person's institutionalization. The case manager, service coordinator, public health nurse shall document how the consumer directed community support services enable the person to lead an inclusive community life, build a viable network of support, and result in outcomes specified by the person and/or his/her legal guardian.

Case managers, service coordinators, and public health nurses are responsible for assuring that the services a person receives through consumer directed support do not duplicate, supplant, or augment services received through other funding sources,

including Medical Assistance (MA). This includes services covered by MA under mental health, dental, medical, and transportation as well as services covered through educational or vocational funding. MA payment is payment in full and shall not be subsidized by waiver funds. County staff also must document in each person's community support plan why the service is necessary to prevent the person's institutionalization. In addition, the community support plan must contain documentation of how the consumer directed support will help the person to become fully integrated into his or her community, develop networks of support in the community, and result in the outcomes desired by the person and/or the person's legal representative.

7. Document the specific training, experience *and/or education* standards required of the provider to meet the unique needs and characteristics of the person;

For each type of support that a person wishes to purchase using consumer directed supports, the case manager, service coordinator, or public health nurse will need to document in the person's community support plan the training, experience, or educational background needed by the provider of the support. Providers must meet licensing standards if they *are* providing a *service* that *is normally provided* by a licensed professional.

The training, experience and/or education standards for unlicensed professionals will vary greatly based on the type of support provided. For example, Vang's family wants to hire someone to help Vang to ride the bus from home to the community center, attend an aerobics class, and ride the bus home. They have found a neighbor willing to do this, but realize he will need to know how to communicate with Vang using his electronic communication device as well as what to do if Vang has a seizure. Vang's family also want *to hire* someone to help them with yard work to allow them to spend more time with Vang. This person will never have direct, unsupervised contact with Vang, so he or she will not need training on how to communicate with Vang nor how to deal with his seizures.

Instead, the person who provides the assistance will be expected to have experience doing the type of yard work the family needs to have done.

Assure that the provider has met the identified standards as outlined in the individual's plan.

The case manager, service coordinator, or public health nurse is responsible for assuring that services are provided only by those people who have met the standards that have been outlined in the person's plan. In the previous example, county staff work with Vang's family to develop a checklist of the things they will do to assure that their neighbor has the communication and seizure management skills needed to work with Vang before he starts taking Vang to the community center. The family agrees to sign and date the checklist upon completion of training, have the neighbor do the same, and send a copy to Vang's service coordinator. The family also develops a job description of the yard work tasks they need to have completed and uses it to interview potential employees. They decide to ask the person they hire to sign a form verifying that he or she has previous experience with the type of work they need to have done, and send a copy of the form to the case manager.

Monitor the provision of services, review on an annual basis at a minimum.

Each person's case manager, service coordinator, or public health nurse is responsible to review with recipients the appropriateness of the community service plan and the manner in which services are provided at least once every year. This review should include an assessment of people's satisfaction with their services and their satisfaction with the people providing those services. County staff are encouraged to contact people informally throughout the year to ensure that problems that may crop up between annual reviews *are* solved quickly. In addition, it is recommended that county staff

regularly review with people the process for reporting problems with their supports, major changes in their lives, and procedures for abuse, neglect, or unfair treatment.

B. *Suggestions for County Policies on Consumer Directed Support*

In order to ensure consistency of implementation of consumer directed supports, counties will need to develop policies surrounding administration of the service. Although the Department has not identified specific policies that counties must have in place in order to offer the service, counties *are* encouraged to ensure that policies are available for review by the Department or by CMS staff during waiver reviews. The policies that *are* outlined in this section are not required and should be viewed as examples of the types of policies that may be helpful for counties to have. Some of the suggested policies have come out of discussions with counties that have experience offering CDCS through the MRRC waiver; others arose out of information obtained from the independent evaluation of Minnesota's Self-Determination Project that was conducted by the University of Minnesota Institute on Community Integration.

1. *Criteria for Participation in Consumer Directed Support*

In order to use consumer directed supports, a person must have been determined waiver eligible and have been authorized to receive waiver funding. However, because consumer directed supports as a *service* through the waivers requires a commitment on the part of the person or the person's legal representative to develop the person's support plan, assist in the design of an individual budget, direct the support plan, manage the budget, document the delivery of services, and maintain records of expenditures, counties may wish to develop policies surrounding use of the service by waiver eligible individuals.

The following are questions for counties to consider when evaluating *an* individual's request to use consumer directed supports:

- Does the person have a support network of family or friends who will assist the person, if needed, in fulfilling responsibilities associated with using the service? If not, has the person demonstrated the ability to fulfill those responsibilities or can he/she acquire the skills to perform those responsibilities?
- Has the person demonstrated the ability to make decisions that do not endanger his or her own health and welfare, or does the person have a support network to assist in decision-making, and/or a legal representative to make decisions on his or her behalf?
- What is the person's or person's legal representative's history of using public dollars?

While it is acceptable for counties to develop a set of uniform criteria for reviewing each request to use of consumer directed supports, it is not acceptable for counties to create obstacles that will prevent people from accessing this service. Many counties that offer *CDCS* through the MRRC waiver have taken the stance that everyone who requests the service should be allowed to access it unless documented evidence exists to support a decision to deny the service.

## 2. Background Checks for Unlicensed Providers

Counties are required to conduct background checks on all unlicensed persons who will be providing direct support to a person who uses consumer directed supports. Counties are encouraged to develop policies on conducting background checks for people who do not provide direct support as well. *An* example of someone who does not provide direct support might be a person hired to put storm windows on the home of an elderly waiver recipient in the fall. Although a background check *would not be required for this service, it might be* advisable if the waiver recipient or his support network has

ever expressed concerns about abuse, neglect, or financial exploitation. It also might be advisable to conduct a background check if the service provider's responsibilities will include entry into the house to perform maintenance tasks.

The Bureau of Criminal Apprehension will perform a criminal background check for a small fee. The county must provide the applicant's name (last, first, middle initial), date of birth, and a copy, signed by the applicant, of a reference/background information release form. More information about conducting background checks may be obtained from the Bureau of Criminal Apprehension, 1246 University Avenue, St. Paul, MN 55104. The Bureau's phone number is 651-642-0610.

Background checks do not guarantee that a provider will not abuse, exploit, or neglect an individual, and will not reveal if the individual was suspected but not convicted of abuse, exploitation, or neglect. However, combined with a check on the individual's personal and employment references, this information can help to minimize the risks that may accompany using an unlicensed provider.

Counties that require families or consumers to use an employer of record have incorporated reimbursement for the cost of the background check into the employer of record's contract with the county. Those that allow consumers and or their families to assume the duties of the employer of record have required that a part of the budget be devoted to paying for the cost of a background check for each unlicensed person who will provide direct support to the person.

### 3. Risk Management

As with all other services available through the waivers, counties are responsible to assure health and safety when people choose to use consumer directed support. Counties are urged to develop policies on assessing risk of abuse, neglect, exploitation, and injury and developing risk management plans



that address areas of vulnerability identified through the risk assessment process.

#### 4. Establishing Reasonable Payment Rates

*One* of the decisions that users of consumer directed supports often make is that of how much to pay their provider. Some counties that have implemented CDCS in the MRRC waiver have reported that occasionally, recipients want to pay a provider an hourly wage that is significantly higher than what the employee of a licensed provider organization would receive or that other unlicensed providers receive for similar services. Often, they want to pay the unlicensed provider a rate comparable to what a county would negotiate with a licensed provider agency whose rate includes administrative overhead not experienced by the unlicensed individual. *One* of the potential benefits of consumer directed support is reduced turnover among direct care staff due to an ability to pay a higher wage. However, paying *an* unlicensed support provider considerably more than staff person with similar skills who works for a licensed agency receives may be considered by some to be an irresponsible use of public dollars. Counties *are* encourage to establish "reasonable" payment rates for various types of services that people may wish to purchase through consumer directed support. A starting point for determining these figures might be to look at the hourly wages of direct care staff who are employees of a licensed provider agency and who perform comparable work. That dollar figure could then be inflated by a certain percentage to account for lack of benefits that the employee would not be able to access because he or she works independently as a consumer directed supports provider.

#### 5. "Sharing" a Consumer Directed Supports Provider

Although consumer directed supports *are* intended to allow the provision of individualized supports that meet a person's unique needs, it is also intended to assist people to access community

resources. Occasionally, counties may encounter a situation in which two or more users of consumer directed supports wish to purchase their supports from the same person at the same time. Before approving a community support plan that includes using a service in this manner, counties are encouraged to check applicable rules and statutes to determine if the service is one that is normally provided by a licensed professional. For example, if the group who wish to use the service are MRRC waiver recipients who are not from a single related family, it may be necessary for the provider to be licensed to comply with requirements outlined in Minnesota Statutes 245A, (also known as the Human Services Licensing Act) which governs licensure of services to persons with developmental disabilities.

Regardless of whether or not a service needs to be licensed, counties are encouraged to develop a policy that outlines the parameters under which people who receive consumer directed support from any HCBS waiver can "share" the services they receive. Important questions to ask are:

*Are the recipients (or their legal representatives) making an informed choice to receive services at the same time from the provider? If Sam, Henry, and Jack form a bowling team and advertise for a coach to help them prepare for bowling league competition, knowing that it will result in each of them having less than the one-to-one support than they would receive if each of them hired a coach separately, they are making an informed choice to share the coach's time. However, if Adam, the coach they hire, decides to expand the size of the group by inviting two of his other clients to join Sam, Henry, and Jack without obtaining their permission, they are not making an informed choice,*

*Will there be limitations on the hourly rate of pay for a provider who provides services simultaneously to two or more recipients? For example, if Adam is paid \$15.00 per hour to take Sam bowling, will he receive \$45.00 per hour for coaching Sam, Henry, and Jack as a group? What about if*

Sam, Henry, and Jack invite Sarah, and Elizabeth to join their team? Will Adam be paid \$75.00 per hour for the five people or will a "shared" rate be established?

Can the county continue to *assure* health and safety of each participant if the size of the group increases? For example, if Sam, Henry, and Jack invite *Sarah* and Elizabeth to join their team and share Adam's services, can the county assure that the size of group does not compromise the health and safety of each individual?

All of these questions need to be taken into consideration when developing policies surrounding "sharing" *of a provider*.

## 6. Payment Mechanisms

Counties must offer the basic payment option of payment for consumer directed supports through an enrolled provider, authorized to provide services for an individual, by billing directly through MMIS II. In addition, counties must offer recipients at least one of the following alternative payment options:

Option 1: Payment for services may be made to the employer of record who then pays the support provider. An employer of record is a person or agency that handles some of the employer related duties *for people who use consumer directed support*. An employer of record may be a provider agency, a fiscal agent, or the party responsible to ensure the delivery of consumer support services. The waiver recipient or his/her family may be the employer of record. Employer of record responsibilities can be negotiated on *an* individual basis, but will usually include the following:

Verifying citizenship/legal alien status of support providers,  
Obtaining an employer identification number,  
Hiring, supervising, and discharging support providers,  
Observing Department of Labor wage requirement regarding minimum wage and overtime pay,

Adjusting an employee's deductions when notified of the employee's eligibility on the Earned Income Credit Advance Payment Certificate,  
Completing necessary tax and insurance paperwork,  
Issuing paychecks based on submitted time records,  
Withholding Medicare and Social Security taxes (FICA) from worker's pay, if required,  
Withholding and paying state income taxes,  
Withholding and paying federal income taxes,  
Paying worker's compensation insurance premiums, if required,  
Paying disability insurance premiums, if required,  
Issuing wage and tax statements to workers and submitting income and tax statements to the Social Security Administration, and,  
Keeping proper records on worker's hours, pay, and tax payments.

Employer of record duties sometimes extend to arranging for and/or providing necessary training or health screening for employees and conducting criminal background checks.

The employment relationship is determined by looking at the relationship between the employee and employer. Several factors are used to determine who the employer is; the person who hires the worker, provides the work place and the tools, sets the *specific hours of work*, and *has* the authority to tell the worker what needs to be done and how to do it is the employer of record. If a consumer or family hires a worker to provide them with services and supports and the worker is under the direct supervision of the consumer or family, then the worker is considered to be an employee of the consumer or family. In this case, the consumer or family is responsible for complying with labor laws, tax requirements and record keeping.

Option 2: Payment for services may be made to a fiscal intermediary, also referred to as a fiscal agent, who then pays the consumer directed support provider. A fiscal agent acts as a monetary bridge to channel funds from a payment source (i.e.,

Medical Assistance) to a consumer directed support provider after services are rendered.

A fiscal agent is responsible for "book keeping" tasks, such as completing tax, labor, and Social Security documents as needed, calculating and filing tax documents, distributing wages to support providers, and managing worker's compensation, disability, and benefit insurance. Although fiscal agents and employers of record share some of the same duties, the important distinction between them is that fiscal agents do not hire the worker, provide the work place and the tools, or set the specific hours of work, nor do fiscal agents have the authority to tell the worker what needs to be done.

Some counties that have implemented CDCS in the MRRC waiver report requiring consumers and/or families to secure the services of an employer of record or fiscal agent when families intend to use unlicensed providers. If families have assumed the duties of employer of record, some counties require that payment be made through a fiscal agent. Their rationale for this requirement is that it provides an added measure of accountability for the use of public funds.

A list of agencies that were providing Fiscal Intermediary/Fiscal Agent services appears as Attachment II a.

Option 3: Payment for services may be made through a voucher process set up by the county agency. Vouchers may be implemented in a number of ways such as a certificate authorizing payment for services or support, or an Electronic Benefit Transfer (EBT).

Counties *are* encouraged to develop policies concerning preferred payment mechanisms for various types of consumer directed supports. Some services, such as respite care, may be very amenable to payment through a voucher process, while others, for example, a one-to-one assistance hired to support a child

attend day camp, may be more amenable to payment through an employer of record or fiscal agent.

When using each of these options, counties must remember that waiver resources (state or federal dollars) may not be dispersed in advance of the delivery of the service or support being purchased through consumer supports.

#### 7. Recipients or Families Assuming Employer of Record or Fiscal Agent Responsibilities

Under consumer directed support through the waivers, recipients or *families of recipients can choose to* assume the responsibilities of the employer of record or fiscal agent. These responsibilities are outlined in Section III. Since the costs for an employer of record or fiscal agent are included in the recipient's budget, some recipients or their families prefer to take on those responsibilities as a cost saving measure. Occasionally, counties have encountered recipients or family members who request compensation for performing employer of record or fiscal agent tasks. Federal regulations prohibit parents of minors who receive MRRC waiver services from being reimbursed under CDCS for performing these tasks. Legal representatives (who *are* not case managers) of persons with MRRC may be paid for performing these duties if the consumer's support plan *includes*: 1) the *consumer's preference for the legal* representative to perform these tasks; 2) a clear differentiation of the legal representative's duties as employer of record or fiscal agent from those duties provided as legal representative; 3) identification of conflict of interest, if any, and resolutions; 4) plans for protecting health, safety, and welfare of the recipient; 5) plans for monitoring the support services according to MN Rules 9525.0024, subpart 8; and, 6) assurance of no duplication of duties. Please see Bulletin #01-56-04, which is available at the following website: <http://www.dhs.mn.us/infocenter/docs.htm>. Click on "2001 Bulletins," then on "Community Supports for Minnesotans with

Disabilities." From there, find the bulletin number and click on it.

At this time, there *is* no *legislation or state policy that* prohibits adults who receive CAC, CADI, TBI, or Elderly Waiver services, their legal representatives, or their family members from being paid to act as employer of record or fiscal agent. Counties are encouraged to develop policies to address requests by recipients, legal representatives, or families to be paid to perform these duties. Bulletin #01-56-04 may provide guidance for developing policies governing the circumstances under which adults who receive CAC, CADI, TBI, or Elderly Waiver services, their family members, or legal representatives could be paid for employer of record or fiscal agent duties.

8. Grounds for Involuntary Termination of a Recipient's Participation in Consumer Directed Support

Occasionally, it may be necessary for a county to tell a person that he or she can no longer use consumer directed supports because of actions he or she has committed. The only reasons for canceling a person's ability to use this service should be for failure to complete agreed upon responsibilities after repeated attempts by county staff to assist the person to complete those responsibilities, for engaging in actions that have been identified as grounds for termination, or for engaging in fraudulent billing practices. These "grounds for termination" should be discussed during the community support plan development process and agreed to in writing by the person and county staff. People who lose their right to use consumer directed supports need to be informed that they *are* still eligible to use traditional services through the waiver for which they *are* eligible, and that they have the right to appeal the county's decision to terminate their use of consumer directed supports.

### **III. Implementing Consumer Directed Supports Within the County**

#### *A, Assurances of Quality Required as a Condition of Renewal for All Waivers*

As part of the process of qualifying for a home and community based services (HCB) waiver program, each state must provide the federal government with assurances that it will:

- Safeguard the health and welfare of waiver participants;
- Develop an individual plan of care for each waiver participant that is responsive to his or her needs;
- Ensure that waiver services will be furnished by qualified providers;
- Not enroll an applicant for waiver services in a waiver program unless he/she meets the institutional level of care criteria specified for that waiver program;
- Retain ultimate administrative authority over the waiver program; and,
- Provide financial accountability for the waiver.

These assurances must be provided for each waiver program that a state administers, and apply to all the services available through those waivers, including consumer directed supports. These assurances constitute the foundation of the quality assurance responsibilities each state has with respect to administration of its waiver programs.

Reviews of waiver programs are conducted by the Centers for Medicaid and Medicare Services (CMS; formerly known as the Health Care Financing Administration or HCFA) approximately every three to five years. CMS staff who conduct waiver reviews use a newly developed protocol that assesses the extent to which the State meets its obligations regarding these assurances. With the exception



of retaining ultimate administrative authority over the waiver programs, Minnesota has delegated substantial responsibility for the remainder of these assurances to county agencies.

In previous reviews of waiver programs, CMS staff interviewed and reviewed the records of only a few people who received CDCS through the MRRC waiver. However, the expansion of this service to all counties in Minnesota and the availability of the service to recipients of the MRRC, CAC, CADI, TBI and EW waivers will mean increased scrutiny of this service by CMS during its upcoming reviews. It is very important that counties consider these assurances when developing policies and procedures for the administration of consumer directed support. The Department requires that counties address health and welfare, development of an individualized responsive plan of care, qualifications of providers (particularly unlicensed providers from whom the recipient may choose to purchase services), and financial accountability of the service for each person who chooses to use consumer directed supports.

More information on the statutory assurances that states *are* required to furnish in order to qualify for a waiver program or to receive continued approval for an existing waiver is found in the HCFA Regional Office Protocol for Conducting Full Reviews of State Medicaid Home and Community-Based Waiver Programs. This document was distributed to county agencies in the spring of 2000. A copy of the protocol is available at the following website-

<http://www.hcfa.gov/medicaid/proto1-2.pdf>

#### B. *Clarifying parental/legal guardian responsibility*

1. Paying parents of minors or spouses of recipients to provide certain services.

The waiver amendment allows parents of minors or spouses of recipients to be reimbursed through consumer directed supports for providing "extraordinary services," defined as extended *private duty nursing, under certain circumstances*. In

order to receive payment for providing the service, the parent or spouse must possess a valid nursing license and must not otherwise be legally required to provide the care. In addition, the parent *or* spouse must meet the *following criteria in order* to receive reimbursement through consumer directed supports:

- Have resigned from a part-time job or full-time job to provide services for the recipient; or
- Have gone from a full-time to a part-time job with less compensation to provide services for the recipient; or
- Have taken an unpaid leave of absence to provide services for the recipient; and
- Because of labor conditions, special language needs, or intermittent hours that service is needed, the parent or spouse is needed to provide support to meet the needs of the recipient.

Consumer directed supports cannot be used to pay a parent or spouse for providing extended private duty nursing services in lieu of services that *are* covered and available through another funding source. Instead, the services provided by the parent or spouse must be used to supplement services that are paid through traditional means.

The amendment requires that the county address risk management when services are to be provided by a parent or spouse. As with any service through the waiver, the county must also assure the recipient's health and safety. The county must arrange for a criminal background check of the parent or spouse prior to authorizing the service to be provided by the parent. If the parent or spouse fails the criminal background check, the county cannot authorize payment for services. In addition, if a home health agency, case manager, or physician determines that the parent or spouse provides services in a way that jeopardizes the health and welfare of the recipient, the county cannot authorize payment for services.

There are also limitations on how much service that is provided by the parent or spouse can be reimbursed. The amendment

limits reimbursement to 50 percent of the total approved hours on the community support plan, or 8 hours per day, whichever is less, up to a maximum of 40 hours per week.

Sometimes, families of waiver recipients will request that consumer directed supports be authorized for things that cannot, because of federal guidelines, be funded through any of the waivers. The following is a list of some of the items that cannot be paid for with waiver funds:

- Costs related to basic needs (e.g., food, clothing, and shelter)
- Items for comfort or convenience (e.g., televisions, radios, *microwave ovens*, *electric* toothbrushes, etc.)
- Tuition and fees at a private school for preschool through 12<sup>th</sup> grade students
- Tuition and fees at a postsecondary education institution
- Experimental medical or therapeutic treatments (e.g., treatments that are not approved by the AMA or covered by Minnesota MA or Medicare, some vitamin and acupuncture therapies)
- Dental and cosmetic procedures
- Purchase, lease, or maintenance of vehicles
- Additions to homes owned or rented by waiver recipients

2. Paying legal representatives of adult recipients to provide services.

Currently, legal representatives of adults who receive MRRC waiver services may be reimbursed for providing consumer directed supports if their role as a paid provider is clearly differentiated from their role as legal representative. In addition, a plan that assures the person's health and safety has been agreed to by the person, his or her legal representative and the county.

Professional guardians and professional conservators are excluded from receiving payment for consumer directed supports through the MRRC waiver, as *are* county case

managers who act as legal representative for persons with mental retardation or related condition. In addition, people with MRRC cannot be reimbursed for providing consumer directed supports to themselves. Bulletin #01-56-04, available at <http://www.dhs.mn.us/infocenter/docs.htm> under 2001 bulletins, Community Supports for Minnesotans with Disabilities, outlines the process a county needs to follow when authorizing a legal representative to provide supports under consumer directed supports for a person with mental retardation or a related condition.

C. *Combining consumer directed supports and traditional licensed services (consumer directed supports and adult foster care, SLS, DT & H, etc.*

Consumer directed support may be provided in a variety of residential settings such as the family home, the person's own unlicensed home or apartment, or an adult foster home. It is possible to use consumer directed support to fund a portion of the service package while still using traditional licensed services for the remainder. The following examples illustrate how consumer directed support may be combined with traditional licensed services.

Jack

*Jack lives in an adult foster home. He receives personal support through the MRRC waiver from a provider licensed under the Consolidated Standards. He also attends a DT&H program. Jack and his guardian have requested termination of the personal support services. Jack wants to hire his neighbor, Irwin, to accompany him on recreational outings in the town in which he lives. He would also like to hire his foster family to take him fishing once a week. Jack plans to continue attending the DT&H program. The county can authorize the use of consumer directed support for both activities neither service duplicates the services provided under adult foster care.*

## Murial

Murial is 42 years of age, lives with her parents. She receives in-home family support and respite *care from* a provider licensed under the Consolidated Standards. She also attends a DT&H program. Murial and her legal representative have requested that her DT&H service be discontinued. Murial would like to hire her aunt to transport her to the local hospital and stay with her while she volunteers in the nursery for several hours each day. She would like to continue receiving in-home family support and respite care from the licensed provider. The county can authorize the use of consumer directed support as an alternative to DT&H because the services she will receive from her aunt are not the same as *Murial would have received from* the DT&H, *nor* do the services meet the definition of DT&H services.

## Ezra

Ezra is 75 and receives services through the Elderly Waiver. He lives with his son and daughter-in-law and attends a licensed adult day care center while his family members are at work. Ezra has never been a social person, and dreads getting up early every morning and being dropped off at the center. His adult niece has said she would come over every day while family members are at work if she could be paid for her time. The county may authorize the use of consumer directed support as an alternative to adult day care because the services Ezra will receive from his niece are not the same as those he would receive from an adult day *care* center, nor do the services meet the definition of adult day care.

## Reba

Reba lives in a corporate adult foster home. She receives supervised living services through the MRRC waiver from a provider licensed under the Consolidated Standards. Reba wants to go swimming at the community center twice a week and

to church on Sundays, and she wants to go without her housemates tagging along. However, the cost of one-to-one staff for Reba for this activity is not part of her service provider's contractual agreement with the county for supervised living services. Reba has requested that the county authorize consumer directed support so that she can hire her adult cousin to transport her and accompany her during these outings. She would like to hire her cousin for 6 hours a week at the rate of \$12.00 per hour. The county can cover the additional costs within its waiver average, and since the service she is requesting does not duplicate the SLS or foster care service, they agree to her request.

#### Miranda

Miranda is four years old and *receives* in-home respite care, home modifications, and private duty nursing through the CAC waiver. Her mother took a leave of absence as a registered nurse to care for Miranda after she was born. She returned to work part-time after Miranda began receiving CAC waiver services. She now works part-time on weekends in the emergency room at the local hospital. Lately, the home health agency has had difficulty finding nurses to work with Miranda during the hours they are needed. The family *is requesting* consumer directed support to pay Miranda's mother for 40 hours a week of the total 112 hours a week (i.e., 16 hours a day) that is authorized. Miranda's mother is a registered nurse, meets the criteria for providing services to her minor child, and will not be providing services in excess of 40 hours a week. The services she will be providing are not being used in lieu of the already covered and available nursing service; rather, nurses from the home health agency will still be covering 72 hours of the 112 that are authorized. Miranda's mother plans to cover the shifts that seem to be the least desirable to the agency nurses. Miranda's mother passes the necessary background check, and the county develops a risk management plan to address Miranda's health and safety, the county can authorize consumer directed support.

**D.     *Budget Development Process***

The allocation of resources for support was identified in the evaluation of Minnesota's Self-Determination Project as a controversial topic. County staff faced with helping a family develop a budget need to decide between two methods for determining the dollar amount available for services. The first method is to base the budget on the historical cost of services the person has used in the past. The second is to use an allocation tool based on need to determine an appropriate budget.

Basing the budget on historical costs is a method that may work well for people who have had services for several years. However, a person's historical costs may have been impacted by the inability of his or her provider agency to hire and maintain staff to provide the number of hours of service that have been authorized. If a person's needs are changing due to a degenerative illness, basing the budget on historical costs may result in inadequate funds to meet the person's needs as his or condition worsens.

Some counties have experimented with using an allocation tool that produces a budget based on need. Counties have found that *this method works best for individuals who are* receiving waiver services for the first time or for those whose needs have changed considerably.

Other counties report using the profile grouping generated by the MRRC waiver tracking system as a starting point for determining the budget. This method may work well in theory, but counties should bear in mind that the dollar amount attached to the profile group was intended only to assist counties to manage their MRRC waiver average. Profile groupings cannot be used to limit the amount of service a person receives when the person actually needs more services,

nor should their use justify the authorization of more services than the person needs.

*E. Parameters of Consumer Directed Support*

Supports funded through consumer directed support are subject to the same parameters as are all waiver services. The waivers are an alternative to institutionalization and waiver funds can only be used to fund specific services that the state has been approved to offer by the Centers for Medicare and Medicaid Services (CMS). While the waiver programs that Minnesota offers have some differences in terms of the types of services offered, all have in common their inability to fund certain items. For example, waivers cannot be used to fund the cost of room and board, nor can waiver funding be used to pay for special educational and related services as defined in sections (15) and (17) of the Individuals with Disabilities Education Act. In addition, waivers cannot be used to fund services for which another funding source is already available. An example is durable medical equipment such as a power wheelchair. The waiver cannot fund the purchase of this equipment because it can be covered through Medical Assistance State Plan Services. More information on Medical Assistance State Plan Services is available at <http://www.dhs.mn.us/infocenter/docs.htm> under Chapter 2 of the Health Care Programs Provider Manual.

Counties should also determine if the service a person or family is requesting could be billed under an existing procedure code. For example, if a person on the MRRC waiver is requesting consumer directed supports to pay for a companion to accompany him on community outings, the county may be able to provide a service that meets the person's needs and expectations under Personal Support. Likewise, a county should first determine if a family's needs for home modifications for a father who has a brain injury could be covered through existing procedure codes.



F. *Review and Approval Process for Consumer **Directed Support Plans***

The review and approval process that a county follows when approving the use of consumer directed support is very important to the integrity of its waiver programs. Counties that have implemented consumer directed supports with the MRRC waiver have offered several suggestions for review and approval processes. One method currently in use involves having a team of consumers, parents, providers, county staff, and community representatives review and rate the plans according to pre-established criteria, then vote whether to accept or reject the plan. Case managers may serve on the review team, but excuse themselves from voting to accept or reject the plan. Counties can also partner with other counties and review each other's plans. (If this method is used, counties need to take steps to protect the confidentiality of personal information that is shared.) Either method helps to ensure unbiased review and guards against conflicts of interest that *are* possible when case managers who develop a plan with a family are also responsible for approving it.

G. *Paying Families to Serve as Employer of Record*

Occasionally, families or recipients will request to serve as employers of record in order to preserve the entire consumer directed support budget for direct services. The waiver amendment allows recipients or recipients' legal guardians to serve as employer of record. However, if the recipient is a minor, his or her parent or parents cannot be reimbursed under consumer directed support for performing these tasks. Legal representatives (who are not case managers) of adults with mental retardation or related condition) may be paid for performing these duties if the consumer's support plan includes; 1) the consumer's preference of the legal representative to perform these tasks; 2) a clear differentiation of the legal representative's duties as employer of record from those duties provided as legal representative; 3) identification of

conflict of interest, if any, and resolutions; 4) plans for protecting health, safety, and welfare of the recipient; 5) plans for monitoring the support services according to MN Rules 9525.0024, subpart 8; 6) assurance of no duplication of duties. (See Bulletin #01-56-04, available at <http://www.dhs.mn.us/infocenter/docs.htm> under "2001 Bulletins" for more information.) Counties are encouraged to develop policies that address the responsibilities, rate of pay, and reporting requirements for families or recipients who serve as employers of record, as well as policies addressing county monitoring responsibilities.

#### ***H. Record Keeping Requirements for Consumer Directed Support***

The waiver amendment authorizing consumer directed support requires that records be maintained whenever the use of the service is approved. Counties must assure that program and fiscal records and supporting documentation *are* maintained that provide an audit trail clearly linking:

- The amount, type, and frequency of services agreed to and approved in the community support plan;
- Services and resources authorized;
- Amount and frequency of services provided;
- Payment for services with corresponding receipts.

Take for example a family who has been approved to use consumer directed support to hire their 19-year old neighbor, Clarence, to go with their son Claude, who is 21, to the YMCA three times a week. The plan also calls for the family to use consumer directed support to purchase a package of "community member passes" for Clarence, who does not have a Y membership. The county needs to assure that the plan details the number of hours the neighbor will provide the service, the rate of pay, and the number of times per week he will accompany Claude to the Y. The county also needs to assure that the family sets up a process to document that Clarence is providing the agreed number of hours of service at the agreed

upon frequency. The family will sign Clarence's bi-weekly timesheet, verifying that he has rendered the authorized services. Clarence will need to submit his time sheet to the employer of record for payment. As a safeguard against the unlikely possibility that Clarence will decide not to take Claude to the Y and instead take him to the drag races, the family is requiring Clarence to ask one of the staff at the YMCA to initial and date each pass on the date it is used and return it to them when he brings Claude home.

/.

*Monitoring expenditures*

Counties are responsible for monitoring consumer directed support expenditures that *are* authorized in the community support plan. Counties may wish to consider the following questions when developing processes for monitoring use of the service.

- Once the plan has been approved internally, what is the responsibility of the county as well as the consumer in ensuring the services and goods purchased *are* consistent with those outlined in the individual's plan?
- Will the county conduct random audits on an annual basis to ensure that there is consistency between the approved plan and actual expenditures?
- What are county responsibilities for ensuring that contracted employers of record or fiscal agents complete their responsibilities within the framework of the contract?
- Will the county conduct random audits of financial reports from the fiscal intermediary or employer of record?

## **IV. Website Addresses**

### **A. *Person Centered Planning***

<http://soeweb.svr.edu/thechp/everyday.pdf> (Finding a way toward everyday lives: The contributions of person centered planning, by John O'Brien and Herb Lovett.)

<http://134.84.215.211/pcplanning/resources.html> (person centered planning resources)

### **B. *Self-Determination and Self Advocacy***

<http://www.self-determination.org> (The National Program Office on Self-Determination)

<http://www.state.nh.us/sdp> (New Hampshire Self-Determination Project)

<http://www.sabeusa.org> (Self Advocates Becoming Empowered)

<http://www.libertynet.org/speQking> (Speaking for Ourselves)

### **C. *Olmstead Supreme Court Decision***

<http://hcfa.gov/medicaid/olmstead/olmshome.htm>

### **D. *Quality Assurance and Quality Improvement***

<http://www.Qccredcouncil.org/> (The Council on Quality and Leadership in Supports for Persons with Disabilities)

<http://www.ncor.org> (The National Center on Outcomes Resources)

<http://www.hcfa.gov/medicaid/protol-2.pdf> (HCFA Regional Office Protocol for Conducting Full Reviews of State Medicaid Home and Community-Based Waiver Programs)

<http://www.hsri.org> (The Human Services Research Institute)

***E. Consumer Directed Community Supports (through the MRRC waiver)***

<http://www.co.hennepin.mn.us/mrrcwaiver/facts.htm>

## **V. List of Attachments**

### *A. Attachment I a*

Excerpt from Bulletin #98-56-15 containing the waiver amendment language for Consumer Directed Community Supports through the MRRC waiver,

### *B. Attachment I b*

Draft language for Consumer Directed Support in the CAC, CADI, TBI, MRRC and Elderly Waivers

### *C. Attachment II a*

Agencies Providing Fiscal Agent/Fiscal Intermediary or Employer of Record Services as of September, 2001

- 3) Development of person-centered support plans which provide the direction, assistance and support to allow the person to live in the community, establish meaningful community associations, and make valued community contributions.
- 4) Ongoing consultation, community support, training, problem-solving, and technical assistance to assure successful implementation of his/her person-centered plan.
- 5) Development and implementation of community support strategies, which aid and strengthen the involvement of community members who assist the person living in the community.

- The MR/RC Waiver will reimburse for consumer-directed community support services in areas of the state in which local agencies have memorandums of understanding with the Department to demonstrate the feasibility and effectiveness of consumer-directed community supports.
- Costs associated with consumer-directed community support will be managed within a county's unique allowable average to provide the flexibility to meet the preferences and needs of persons in the most effective and efficient manner.

#### Qualification Standards for Consumer-Directed Community Supports

Consumer-directed community supports will be provided by entities or individuals that meet the unique needs and preferences of the person as specified in the person's ISP. The case manager will document in the ISP the specific training, experience, and/or education standards required to meet the unique needs and characteristics of the person.

The focal agency that has entered into a memorandum of understanding with DHS will:

## ***Attachment /a***

### **Excerpt from Bulletin #98-56-15 Waiver amendment language for Consumer Directed Community Supports through the MRRC waiver**

The following excerpt is found in Bulletin #98-56-15 (dated October 21, 1998): "MR/RC Waiver Amendments Announced" pages 3,4, and 5 of the attached Guidebook.

#### ***CONSUMER-DIRECTED COMMUNITY SUPPORT SERVICES***

Consumer-directed community supports are services which provide support, care and assistance to a person, prevent the person's institutionalization, and allow the person to live an inclusive community life. Consumer-directed community supports are designed to build, strengthen, or maintain informal networks of community support for the person.

Key points about consumer-directed community supports:

- Consumer-directed community supports include the following specific activities at the request and direction of the consumer or his/her legal representative:
  - 1) Provision of services and supports which assist the person, family, or friends to:
    - identify and access formal and informal support systems;
    - develop a meaningful consumer support plan; or
    - increase and/or maintain the capacity to direct formal and informal resources.
  - 2) Completion of activities which assist the person, his/her family, or his/her friends to determine his/her future.



- Provide consumer education and assistance in areas of self-determination and person-centered planning
- Specify in their written procedures and criteria the local agency's responsibilities to provide information about consumer-directed community support options, develop and implement consumer-directed community support options, assist consumers in accessing and developing the desired support(s), and assist in securing administrative assistance to implement to support(s).
- Establish mechanisms that allow consumer to exercise control and responsibility over their supports, and
- Refine outcome-based quality assurance methods.

The local agency will also:

- Authorized resources for the purposes of purchasing consumer-directed community support services based upon factors outlined in the agency's written procedures and criteria. These factors may include the person's functional skills, environment, available supports, and specialized support
- Assure the services do not duplicate any other service provided
- Document in the ISP the components of the consumer-Oirected community supports that are necessary to prevent the person's institutionalization
- Document in the ISP how the consumer-directed community support services enable the person to lead an inclusive community like, build a viable network of support, and result in outcomes specified by the person or his/her legal guardian
- Document in the ISP the specific training, experience, and/or education standards required of the provider to meet he unique needs and characteristics of the person
- Work with the person and his/her legal guardian to assure that the consumer-directed community

supports meet the person's health and safety needs and personal preferences and are directed at the desired personal outcomes.

- Verify that the provider has met the identified standards

## ***Attachment I b***

### **Draft language for Consumer Directed Support in the CAC, CADI, TBI, MRRC and Elderly Waivers**

November 2001

#### ***Description of the Service***

Consumer directed supports are services that provide support, care and assistance to persons with disabilities prevent the person's institutionalization and support safe, independent living. Consumer directed supports are designed to build, strengthen or maintain informal networks of community support for the person and promote the person's health, independence and integration in the community. Consumer directed supports are intended to assist people to access community resources and to purchase services that meet their unique needs and preferences.

Consumer directed support is a state-wide service option available to recipients of CAC, CADI, TBI, MR/RC, and Elderly waivers.

#### ***Purpose***

To promote self-determination by assisting the person, family or friends to:

- Develop a meaningful community support plan that provides direction, assistance and support to allow the person with a disability to live in the community, establish meaningful community associations, and enjoy a productive, independent life.

- Participate as a valued and empowered partner in all decision-making.
- Identify and access formal and informal support systems or increase and/or maintain the capacity to direct formal and informal resources
- Access ongoing consultation, community support, training, problem solving, and technical assistance to assure successful implementation of his/her community support plan

- Develop and implement community support strategies which aid and strengthen the involvement of community members who assist the person to live in the community

- Have the freedom, authority and support to control, direct and

manage his or her own services, supports and funding.

***Persons Eligible***

All Minnesotans' determined waiver eligible and who have been authorized to receive waiver funding *are* eligible.

***Parameters***

Services must not duplicate any other service provided  
AW decisions must be individualized and compiled in one plan that pulls together all sources of formal and informal supports in pursuit of the recipient's own vision

Services must meet the intent of the HCBS waivers through an evaluation of the following key questions:

Are the services necessary to ensure the recipient's health, welfare and safety? and;

Will the services enable the recipient to function with greater independence? and;

Is the service of direct and specific benefit to the recipient's disability? and;

Is the service covered by any other funding source? and;

Have all options been assessed and is the option chosen the most cost effective in comparison to the alternatives?

Rates for *services* may be negotiated with providers and are not limited to existing rate limits except for extended state plan services and congregate living/package services (assisted living, assisted living plus).

For the MR/RC waiver, services will be considered a residential habilitation service when habilitative goals *are* identified in the plan and provided through the consumer directed supports option.

Services provided in an institution or a living setting adjoined to an institution or on the same property as *an* institution are not reimbursable through this option. Institution means a nursing facility, hospital, intermediate care facility, or institute for mental disease. In addition, when single family homes or multi-plex homes on adjoining properties *are* owned or leased by a single license holder, services provided are only reimbursable through this waiver at one of the homes. A multi-plex is considered a home for the purposes of this language.

Services are reimbursable through this option only when they are directed by the person/legal representative through personal freedom, authority and control over services. Key indicators may include, but *are* not limited to:

Consumers and families have ready access all the time to clear, concise, understandable, user-friendly, "how to" information about services and supports.

Consumers and families lead and direct the development of their support plans with assistance as needed from case managers, guardians, professionals, brokers and/or agents.

Consumers and families have the support they need to understand, plan, and become informed to develop their own plans.

Services and supports *are* provided in ordinary places and build on the unique strengths of each consumer and his/her support network.

Consumers have support to learn about and understand the planning process, the choices available to them, the consequences of such choices, and their responsibilities.

Consumers and families determine the amount and types of supports they use.

There is support and encouragement for the choice and use of generic services, including faith communities and other social service networks.

Based on qualities that they believe are important, consumers and families have free choice in hiring, firing, supervising and training support workers or selecting providers.

Consumers have a direct and personal relationship with providers of service.

Consumers choose where and with whom they live and where they work.

Consumers and families have the authority to manage dollars and design an individual budget that takes into account the person's wants and needs along with the resources available to the person.

Assistance, including fiscal agents, is available to individuals and families to help them to manage individual budgets.

Expenses related to basic needs (e.g. food, clothing, shelter) or items for comfort and convenience (e.g., televisions, radios, microwave ovens, etc.) are not reimbursable through this option

Services provided by parents of minors and/or spouses of recipients may be reimbursed through this option if the following criteria *are* met:

- 1) For the purposes of this option, "extraordinary services" *are* limited to extended private duty nursing.
- 2) The parent or spouse must be licensed or professionally certified to provide the service.
- 3) The provision of these services is not legally required of the parent(s) or spouse.
- 4) The services are necessary to prevent institutionalization of the recipient.
  - 5) The parent or spouse meets one of the following criteria:
    - > resigns from a part-time or full-time job to provide services for the recipient;
    - > goes from a full-time to part-time job with less compensation to provide services for the recipient;
    - > takes a leave of absence without pay to provide services for the recipient;
    - > because of labor conditions, special language needs, or intermittent hours of services needed, the person is needed in order to provide support to meet the needs of the recipient.
- 6) Services provided by a parent or spouse cannot be used in lieu of services covered and available through other funding sources.
- 7) Services provided by a parent or spouse must be included in the recipient's community support plan.
- 8) The county arranging the service addresses risk management and assures the recipient's health and safety.
- 9) A parent or spouse may not be paid to provide services if the parent or spouse fails to pass a criminal background check or if it has been determined by the home health agency, the case manager, or the physician that the service provided by the parent or spouse is unsafe.
- 10) Services provided by the parent or spouse may not exceed 50 percent of the total approved hours, or 8 hours per day, whichever is less, up to a maximum of 40 hours per week.

Legal representatives of adult recipients may be reimbursed for services provided through this option (will be submitted as a separate

amendment covering all services per legislation).

### **Provider Qualifications**

Agencies or individuals that meet the unique needs of the person as specified in his/her community support plan.

Services that require a professional certification or license by statute, rule or federal standards or, *are* identified in the recipient's support plan as needing a license or certification, including, but not limited to, private duty nursing, physical therapy, occupational therapy, speech therapy, respiratory therapy and habilitation services must be provided by individuals or agencies who meet the qualifications.

### ***Payment Options***

In order to maximize flexibility, various payment options may be utilized to purchase consumer supports. Consumers and legal representatives may choose from an array of payment options, consistent with local agency policies and procedures.

Counties must offer the basic payment option:

Payment through an enrolled provider, authorized to provide services for an individual, by billing directly through MMIS II

In addition, counties must offer at least one alternative payment option to recipients from the following options:

Payment may be made to the employer of record;

- > *An employer of record may be a provider agency,*
- > *An employer of record may be a fiscal agent, or*
- > *An employer of record may be the party responsible to ensure the delivery of consumer support services.*
- > *An employer of record may be the recipient or his/her family.*

Payment may be made to a fiscal intermediary, also referred to as a fiscal agent;

Payment may be made through a voucher process set up by the local agency. Vouchers may be implemented in a variety of ways such as:

- > A certificate authorizing support/service payment, or
- > Electronic Benefit Transfer (EBT).

Under no circumstance will waiver resources (state or federal dollars) be dispersed in advance of the delivery of the service or support being purchased through consumer supports.

### ***Required Records***

Counties must assure that program and fiscal records and supporting documentation are maintained that provide an audit trail clearly linking:

the amount, type and frequency of services agreed to and approved in the  
community support plan

services and resources authorized

amount and frequency of services provided

payment for services with corresponding receipts

### ***County Role***

Administrative functions;

Provide consumer education and assistance in areas of self-determination and person centered planning,

Develop policies and procedures for authorizing, implementing, and monitoring consumer support options,

Refine outcome-based quality assurance methods, and

Maintain financial records if using a payment option where a breakdown of services authorized and payment for services cannot be tracked through MMIS (managed by the consumer and/or their legal representative).

Case Manager/Service Coordinator/Public Health Nurse:

Provide consumer/family education and assistance to assist families/persons to understand, plan, and become informed to develop their own plans, all choices available to them, the consequences of



such choices, and their responsibilities.

Develop one plan that pulls together all sources of formal and informal support and addresses health and safety.

Assist in planning for supports (face-to-face assessment and planning) with the consumer and his/her support.

Assist in designing an individual budget with the person that takes into account the person's wants and needs along with the resources available.

Work with the person and/or his/her legal guardian or authorized representative to assure that consumer directed supports meet the person's health and safety needs and personal preferences and *are* directed at the desired person outcomes.

Assure that consumer directed supports do not duplicate other services provided to the person. Components of consumer directed supports will be documented in the plan as necessary to prevent the person's institutionalization. Additionally, the county agency shall document how the consumer directed supports enable the person to lead an inclusive community life, build a viable network of support, and result in outcomes specified by the person and/or his/her legal guardian.

Document the specific training, experience and/or education standards required of the provider to meet the unique needs and characteristics of the person.

Assure that the provider has met the identified standards as outlined in the individual's plan.

Monitor the provision of services, review on an annual basis at a **minimum**.

### *State Responsibilities*

- Provide assistance to counties to secure training on self-determination, person-centered planning
- Provide technical assistance to comply with federal waiver plan, statutes, rules and department policy
- Implement quality assurance/monitoring strategies

**Attachment II a**

**Agencies Providing Fiscal Agent/Fiscal Intermediary or  
Employer of Record Services as of September, 2001**

<b>Company</b>	<b>Contact</b>	<b>Phone Number</b>
Alliance Health Care, Inc.	Dawn Thorn	(952) 882-1030
Community Involvement Programs	Jane Lawrence	(612) 362-4437
Connections, Inc.	Michael Ferrier	(612) 636-3002
Cooperating Community Programs	Tim Scott	(612) 374-4800 x313
Dungarvin Minnesota, Inc.	David Watson	(651) 669-6050
Lifeworks Services, Inc.	Vicki Gerrits	(651) 365-3734
Mains'l Services, Inc.	Kristi Olzeske	(763) 494-4553
MRCI	Linda Leiding	(800)829-7710
Orion ISO, Inc.	Lisa Walz	(612)239-4615
Partners In Community Support-PICS	Greg Gamble	(612) 866-0225
PICS-Fraser	Heidi Burch	(612) 798-8323
PICS-Hammer	Lisbeth Armstrong	(952) 277-2444
PICS-LSS	Leigh Anna Canny	(612)377-2185
Pinnacle Services, Inc.	Nicholas Thomley	(612)986-2787
REM Minnesota	Marge Schwab	(952) 922-6776
RISE, Inc.	Lynn Noren	(763) 783-2814
St. David's Child & Family	Beth Dahl	(952) 939-0396
Oakridge Homes	Yvette Buehler	(218) 829-7599