

**TO: Persons Interested In Consumer-Directed Community Supports (CDCS)**

**FROM: Anne L. Henry, Minnesota Disability Law Center and Cindy Johnson, Arc Minnesota**

**RE: CDCS Amendment**

**DATE: August 16, 2002**

For the past year, the Department of Human Services (DHS) has been developing an amendment to the Home and Community Waiver Programs for persons with disabilities and the elderly for a consumer- directed service option for all disability waivers and persons of all ages. There have been a number of meetings regarding the provisions of the DHS amendment. There are several outstanding issues with the Consumer-Directed Community Supports option amendment. Here is the information we have to date:

### **1. Time Line**

Shirley Patterson stated that the amendment will be submitted to the federal agency, CMS, by the end of August 2002. DHS considers the policy decisions for the amendment complete. The budget issues may require continued work, after the amendment is submitted.

### **2. Budget Methodology**

The current amendment describes a budget methodology which will be used statewide for **all** waiver participants choosing Consumer-Directed Community Supports. DHS staff have agreed to provide details about the methodology so that we can provide this information to the interested public. We anticipate getting this information from DHS before the end of August, and we will provide it as broadly as possible, as soon as possible.

### **3. Current Problems With CDCS**

Department officials have made clear that under the current waiver for persons with developmental disabilities (MR/RC waiver), CDCS is optional for counties to provide or not to provide. At this point, only 23 of 87 counties are offering the CDCS option. Within the current MR/RC waiver, it is the Department's position that counties have a lot of flexibility to set policies and procedures governing how CDCS will operate in that county. The top priority for DHS with regard to CDCS, is to finish the amendment and submit it to the federal agency. Given the work entailed in developing CDCS covering all disability waivers and the elderly waiver, the state employees strike last fall and the reduction in the state work force due to the state budget shortfall, individual CDCS problems with particular counties have not received priority attention from DHS. It is the Department's belief that this overall amendment will resolve many of the issues between CDCS participants and counties when it is approved.

Where current problems with county decisions on CDCS have been identified, DHS will try to resolve them. Again, however, this commitment is in the context of the fact that working on the amendment is the highest priority for DHS at this time.

### **4. Specialized Diet**

DHS has made it clear that they believe specialized diets cannot be covered under the current MR/RC waiver authorizing CDCS services. However, specialized diets will be included in the waiver amendment request to be submitted at the end of August. The specialized diet matter under the current waiver language has been appealed.

### **5. Employer of Record**

The requirement that a person or their legal representative take on the role of employer is included in the waiver amendment. The Department has indicated a willingness to discuss options for individuals who may benefit from Consumer-Directed Services but cannot do this themselves and do not have family members to take on the employer of record role *i.e.* those under public guardianship). Since DHS staff have stated that the policy matters have been

decided, it may be that this issue will continue to be discussed after the waiver amendment has been submitted at the end of the month.

#### 6. Information for Counties and Consumers

DHS staff have described an "administrative manual" under development which will include information from various bulletins, laws and rules over the years. DHS plans to have this administrative manual ready by the end of this calendar year.

#### 7. Federal approval Process

The federal agency has 90 days to review Minnesota's amendment to the CDCS option. It is important to note that the CDCS option has already been approved by the federal agency as part of the waiver for persons with developmental disabilities. The approach taken by DHS is to submit an amendment to already approved waiver plans in hopes that the process would not have to drag on over many months. The federal agency is free to ask questions which can stop the clock on the 90- day review. Therefore, the process could take much longer than 90 days depending upon how the federal agency responds to the specific requests in the amendment.

Department staff listed three areas which may be contentious issues for the federal agency: specialized diets, unpaid care giver support funding and paying parents of minor children and spouses. The Department agreed that if there were particularly contentious issues which were slowing down the approval process, they would seek to get most of the provisions of the amendment approved and then continue to negotiate on *the remaining matters*.

#### 8. Budget Neutrality

Department staff emphasized that the CDCS changes must be fiscally neutral in terms of federal dollars and state dollars as well, especially given the current large state budget deficit. This means that the CDCS changes cannot increase costs for either the state or federal governments. We also were told that because the CDCS budget methodology will lock in a specific amount, the effect on other waiver participants not using CDCS must be analyzed. It is necessary for the Department to assure the fiscal integrity of the waiver program for the thousands of persons using home and community-based waived services.

#### 9. Direction to Counties

Shirley Patterson agreed to consider publishing a short question and answer memo to counties on key questions for CDCS. Shirley estimated that this could be done during the month of October.

#### 11. Next Steps

We expect to get further information about the budget and a final draft of the amendment to be submitted. As soon as we obtain any further information, we will provide it in written form for broad distribution. To the extent there are individual concerns about the current operation of a CDCS option, we recommend persons begin with the conciliation conference process to try to resolve the matter.

ALH:nmm