CMS' Questions re: Consumer Directed Community Supports (CDCS) amendments

Minnesota's Response

October 23, 2002

MN (MR/RC)

State Response:

The goal of Omstead and the New Freedom initiative is to break down barriers to community living for people with disabilities and the elderly. HCBS waivers are one vehicle to provide community-based supports. CMS has been supportive of self-directed alternatives including those provided in HCBS waivers.

Minnesota used CMS resources, feedback from stakeholders, and its experience with consumer directed services under the waiver for persons with mental retardation or related conditions (MR/RC waiver), to develop this amendment. The amendment revises the current CDCS service in the MR/RC waiver and adds CDCS to the Community Alternatives for Disabled Individuals (CADI) and Traumatic Brain Injury (TBI) waivers. The State also plans to add this service to the Elderly Waiver and Community Alternative Care (CAC) waiver at the time they are renewed.

The foundation of the service is the individualization of service planning and delivery. The CDCS budget is a cornerstone to how the service is managed. These will be described in detail during the October 24 conference call.

General Issues

1. What is the purpose and description of the program proposal/ How will it operate?

State Response:

The state will provide an overview of the CDCS service during conference call.

2. Describe how the proposal will integrate with the services in the current waiver services.

State Response:

A key component of the CDCS waiver option, is the individual budget that the recipient controls. The budget allows people to purchase services and supports that best meet their needs. This may include traditional waiver services and goods as well as alternative supports.

3. Parents of minor children or spouses cannot be paid providers. If the state is interested in pursuing this feature they will need to pursue an 1115 demonstration.

State Response:

Parents of minor children and spouses are not prohibited by federal regulations from being paid for services that they provide unless they are legally obligated by state law to provide such services. Minnesota law does not require parents of minors or spouses to provide direct care supports related to the physical or cognitive condition of the child or spouse. Furthermore, parents and spouses may elect to institutionalize a dependent child or spouse, respectively, in order to receive care for the individual.

Because waiver recipients must meet the level of care criteria (i.e., require the level of care provided in an institution) and their individual budget is based on their care needs, it is a logical progression to allow people to purchase more flexible and individualized supports. The State does not want to preclude the option of paying parents and spouses. Recipients, families, advocates and stakeholders clearly voiced wanting this option during the development of this amendment.

The services to be provided by parents or spouses will be included in the care plan and appropriate to meet the recipient's needs as specified in the amendment.

Two protective features of the amendment regarding paying parents and spouses include: (1) limiting how much care may be provided by a parent or spouse; and, (2) the parent or spouse who receives compensation through CDCS cannot make active decisions regarding what is included in the recipient's care plan (i.e., to avoid a conflict of interest).

4. Who will be eligible to participate in the self-directed program?

State Response:

Anyone who meets the waiver's eligibility requirements may select the CDCS option with the exception of people who have been assigned to the DHS Primary Care Utilization and Review program due to misuse or abuse of the MA funds.

5. Discuss the new supports the state envisions creating to aide those who select the self-direction option - focus on provider qualifications, responsibilities, monitoring and reporting.

State Response:

A fundamental component of CDCS is highly individualized, comprehensive, person- centered planning. Consumer-directed services are premised on recipients and their representatives being the best judge of what the recipient needs and how those needs may be most effectively met. Consequently, provider qualifications, responsibilities, and monitoring will be defined in each recipient's individualized care plan.

Over the last three years, the State has provided training to local agencies and, more recently, to consumers, focusing on person-centered planning alternatives and consumer-directed models of support. The State also was awarded a Robert Wood Johnson Foundation Grant in 1995 to develop self-directed alternatives. Much was learned through that project and many tools were developed. These tools are being reworked and refined to provide support to consumers and local agencies with CDCS. Additionally, consumer and provider manuals are being developed and additional training is planned for consumers, local agencies, and providers.

6. Describe the back-up systems - both individual and system-wide.

State Response:

The state believes that the most effective back-up systems are those that are individualized. The recipient's back-up plan will be defined in the person's care plan. It was felt that a system-wide backup plan would

create a burdensome additional level of bureaucracy and move supports further away from recipients.

7. Describe how the individual budget is calculated, implemented and managed and include maximum limitations and the derivation.

State Response:

Each person's budget limit is based on a formula that is equivalent to 102% of the average payment for State plan home care and waiver services in state fiscal year 2001 of a non-CDCS waiver recipient with comparable disabling conditions and service needs. State plan home care and CDCS costs must be managed within the budget amount.

The formula includes a regression analysis that incorporates dependent and independent variables. The final budget amount is trended forward to account for inflation and rate changes.

The dependent variable is the cost per day. Independent variables include such things as living arrangement and support needs. Other specialized independent variables (e.g., age) were added to the analysis to increase the predictability of the formula. The independent variables differ in the formula used for the MR/RC waiver and CADI and TBI. However, the basic model is the same for all waivers.

Individual budget limits will be set and monitored by the State to maintain overall cost neutrality.

8. Who is considered the common-law employer?

State Response:

The recipient or their representative may be the common-law employer. Recipients who do not wish to be the common-law employer may work with a fiscal sector support entity to be the common-law employer. This responsibility would be defined in the written agreement that the recipient has with the fiscal sector support entity.

9. Who is responsible for payroll taxes?

State Response:

The common-law employer is responsible for payroll taxes. If this is not the recipient or their representative, a fiscal sector support entity would be responsible.

10. Discuss the state's quality assurance and improvement plan.

State Response:

It is not expected that the State's HCBS quality assurance and improvement plan will be revised. Consumer directed services are currently available in the MR/RC waiver and have been monitored through the State's existing quality assurance mechanisms. Also, additional quality assurance functions have been build into the amendment.

Local agencies, generally the counties, are responsible for quality assurance tasks as outlined in the amendment. This includes reviewing each recipient's expenditures at the time the plan is authorized and minimally in three-month intervals during the first year of authorization. The frequency of monitoring may be

increased depending on the recipient's plan.

The State will review and analyze quality assurance information at a state aggregate level. The State also plans to conduct an evaluation of the service 12 to 18 months after implementation. Key indicators will be selected to measure program outcomes.

Reiterating earlier comments, CDCS is based on individualized planning and service delivery. Each recipient will have a local agency case manager who will evaluate the plan. Plans cannot be approved if the health and safety of the recipient cannot be reasonably assured. The recipient's care plan must include quality assurance measures and identify who and how frequently they will be monitored.

Supports Brokerage Activities

11. What are the activities that are performed? List specific responsibilities.

State Response:

The term "support brokerage" was not used in the amendment because it may be associated with preconceived definitions and limitations. CDCS allows recipients to attain whatever supports they individually need to effectively plan and purchase services. This continuum ranges from a recipient needing minimal supports (perhaps, training and technical assistance tools) to consumers who require comprehensive, on-going support from others.

Recipients using CDCS may purchase these supports (i.e., billed as CDCS) or receive them from people who are involved but not paid. The responsibilities are defined in the care plan. If the recipient has an authorized representative, the functions that the person is responsible for must be outlined in a written agreement that is signed by the recipient.

12. Describe the responsible entity including relationship with the Medicaid Agency and list contracts/subcontracts arranged or to be arranged.

State Response:

If the "support brokerage" types of services are purchased through CDCS, only an enrolled MA provider can bill, such as local agencies. If the service is not provided by a local agency, it must be paid for through a local agency or fiscal sector support entity.

As described above, the recipient's care plan specifies what supports will be provided. The care plan also delineates who is responsible for these tasks and what qualifications and training are required. If the tasks are provided by a fiscal sector support entity, that entity must have a written agreement with the recipient that outlines their responsibilities.

13. Who provides these activities? Include title and qualifications?

State Response:

These activities may be provided by anyone that the recipient selects and hires to perform the task(s). Their training and qualifications are delineated in the recipient's care plan.

14. Who will provide oversight/monitoring? Include how and frequency.

State Response:

The local agency is responsible for quality assurance functions as outlined in the amendment. In addition, each recipient's care plan must outline individualized provider qualifications and training requirements.

CDCS allows recipients the opportunity to build in more quality assurance and monitoring based on their situation. In practice, recipients will have greater control over the frequency and type of service monitoring that occurs.

15. Describe the reimbursement process. Are these activities claimed as a waiver service or as administrative costs?

State Response:

Services are paid through MMIS as a waiver service. Costs incurred to assist the recipient in planning and implementing the CDCS service may be covered.

Fiscal/Employer Agent Activities

State Response:

The terms "fiscal or employer agent" were not used in the amendment. Tasks that are purchased to assist the recipient in employer related functions are referred to under the umbrella of *fiscal sector supports.*

16. What are the activities to be performed? List specific responsibilities.

State Response:

The activities that are performed by the fiscal sector support entity depend on what the recipient needs and the agreement that recipient has with the support provider.

Responsibilities may include tasks related to: (1) staffing -- advertising, screening, completing background checks, hiring, training, managing; (2) payroll -- paying CDCS providers, managing payroll taxes and personnel related documents; and, (3) billing for CDCS -- maintaining records of expenses, service authorizations, and verifications from the recipient that the service was provided. Recipients may hire a fiscal sector support entity for some or all of these functions.

For recipients who choose to complete these tasks themselves, billing may be completed by the local agency. Recipients will not receive any direct payments of waiver funds to disperse to providers.

17. Describe the responsible entity including relationship with the Medicaid Agency and include contracts/subcontracts to be arranged.

State Response:

Only approved MA providers can bill for CDCS services. An approved provider such a county agency or

fiscal sector support entity can bill MMIS for CDCS services that were rendered. The county or fiscal sector support entity, then pays for the CDCS service.

The care plan is the primary document outlining what will be purchased. Contracts and subcontracts are not required but may be used if the recipient wants formal agreements. This allows recipients the flexibility to hire a neighbor to assist with yard work without the complications of having the neighbor be hired through an agency or develop contract with the county.

The entity that bills MMIS is responsible to assure that the service was provided through information attained from the recipient.

18. Who provides the activities? Include title and qualifications.

State Response:

Fiscal sector support entities must have current liability insurance of $250,000 per claim and surety bonding of $25,000 and must be either a certified public accountant or a person with a baccalaureate degree in accounting or have a contract with the county to perform this function. This is in addition to the agreement that the entity must have with the recipient and any other training or qualifications that are identified in the care plan.

19. Who will provide oversight/monitoring? Include how and frequency.

State Response:

As described earlier, local agencies have a significant role in providing oversight and monitoring. Recipients may also build into their care plan additional monitoring.

20. Describe the reimbursement process. Are these activities claimed as a waiver service or as administrative costs?

State Response:

Fiscal sector supports are billed through MMIS as a CDCS waiver service. Costs incurred to manage the budget; advertise and train staff; pay employer fees and the employers share of benefits, retention incentives; and, the costs related to criminal background studies may be included as a CDCS waiver cost. This creates an even playing field with providers who have administrative expenses built into their rates.

Providers

21. Which entity will hold the Medicaid provider agreement?

State Response:

Any entity that is billing for CDCS services must be an MA enrolled provider for CDCS services. Entities that are enrolled providers may bill MA directly. If the person or provider is not an MA provider, they may bill for services through the local agency or fiscal sector support entity.

22. Explain the flow of funding from the Medicaid agency to each provider of services.

State Response:

MMIS will pay for CDCS services based on a MMIS service agreement that must be prior authorized by the local agency. MMIS will only pay providers who are enrolled with MA to provide CDCS services. The service agreement summarizes what is included in the care plan.

23. The individual budget maximum amount is set by the state or for Minnesota Disability Health Options (MNDHO) enrollees by the health plan or health plan's designee. Are the health plans paid also paid as providers (case managers)?

State Response:

Health plans receive a capitation for each enrollee. The capitation payment accounts for waiver services including case management. The health plans will not bill MMIS for CDCS services or receive any additional payment as CDCS providers (e.g., they cannot bill for case management or other services).

Recipients who have elected to participate in MnDHO, may receive CDCS services as they would any other waiver service. The waiver services are paid for by the health plan.

24. Most of the provider qualifications are inadequate. For instance, for chore services the state indicates "provider qualifications necessary to meet an individual's needs and preferences will be specified in the person's individual service plan or personal support plan." While we recognize the desire to allow consumer's maximum flexibility in choosing providers, consistent with 1915(c) waiver requirements, the state must establish provider qualifications and these qualifications must be reasonable to meet the needs of the target group.

State Response:

For services that require professional certification or licensing, the same standards apply under CDCS. Likewise, for providers who require licensing, the provider must meet those standards to bill under CDCS.

For services that do not require professional certification or licensing and for providers who do not have to otherwise be licensed, the State meets the waiver requirement of establishing the CDCS provider qualifications by requiring that the provider qualifications be identified in the care plan. This strengthens recipient's ability to customize the qualifications and training of providers (e.g., a recipient may want to assure that their direct care provider speaks their primary language).

For example, if a recipient hires their neighbor to remove snow from the sidewalk the neighbor does not have to be hired by a chore provider agency. The recipient identifies in their care plan what the neighbor is responsible to do (e.g., to remove snow and ice from the south sidewalk within two hours of any precipitation) and what qualifications and training are required.

The local agency reviews and authorizes CDCS services. This includes evaluating if the CDCS support as well as the provider's qualifications and training will reasonably assure the recipient's health and safety.

Participant Protections

25. Describe the incident management system.

State Response:

In addition to the quality assurance functions of the local agency, the recipient may add additional quality and monitoring provisions to their care plan. Licensed providers must continue to meet incident reporting requirements. All mandated vulnerable adult and maltreatment of minor's reporting and follow up requirements are the same for CDCS recipients as other waiver participants. CDCS recipients may also report concerns or complains to the State Ombudsman's offices or the Minnesota Department of Health Office of Health Facility Complaints.

If the local agency case manager has concerns about the recipient's health or safety, they can work with the recipient and care providers to address the issues of concern. If they determine that the recipient's health or safety is at risk, the local agency can intervene by discontinuing the CDCS authorization and develop a care plan using traditional waiver services.

26. Are criminal background checks made available?

State Response:

Yes. The recipient may require them for any CDCS service. They are required for authorized representatives.

27. Describe the individual and statewide emergency back-up system. The state offers a service called 24-hour emergency assistance. Is this the backup plan as required by Independence Plus?

State Response:

Back-up systems will be individualized and will be delineated in the care plan. A statewide system moves services further away from the recipient and is less efficient.

Services

28. Under consumer directed Community supports services, the state indicates that a maximum of $1000.00 per plan year will be used to purchase good and service to support unpaid care givers. Unpaid caregivers cannot be supported financially under the waiver. Payment can be made only to those individuals meeting provider qualifications who are not the parents of minor children or spouses.

State Response:

All supports billed to CDCS must be included in the recipient's care plan and approved by the local agency. Funds used to support unpaid caregivers may directly benefit the recipient, prevent institutionalization, and be significantly more cost-effective.

For example, under traditional waiver services, direct care staff can be paid to be with a recipient several hours per day to assist with such things as transfers and personal cares. These tasks may be able to be provided by an unpaid caregiver that is available to the recipient on an ongoing basis to provide intermittent cares.

However, in some cases, the unpaid caregiver needs some minimal supports themselves to provide care to the recipient. For example, an unpaid caregiver who is doing lifting and transferring a recipient may need exercise classes for back muscle strengthening.

Unpaid caregivers tend to be a reliable, stable, and long-term source of support. Recipients want to maintain these supports as long as possible. They can prevent institutionalization and can be very cost-effective.

29. The State indicates that "activities and expenses related to quality assurance are included in the community support plan but may be paid for outside of the individual's budget. Shouldn't these activities always be outside of the consumer's budget?

State Response:

The quality assurance activities that the local agency is responsible for are not included in the recipient's budget. Recipients may purchase additional monitoring if they wish.