

Mary Jo Nichols

From: Colleen Wieck [Colleen.Wieck@state.mn.us]
Sent: Monday, March 10, 2003 3:04 PM
To: 'mary.jo.nichols@state.mn.us'
Subject: FW: [GovAffairsCommittee] Fwd: Information on County Contracts and Rebasing
fax to Metro Work Center

-----Original Message-----

From: Steve Larson [mailto:arcmn115@yahoo.com]
Sent: Monday, March 10, 2003 3:09 PM
To: govaffairscommittee@yahoogroups.com; Dennis Collins; ArcAdvocates
Subject: [GovAffairsCommittee] Fwd: Information on County Contracts and Rebasing

"Doyle, Laura" <Laura.Doyle@state.mn.us> wrote:

From: "Doyle, Laura"
To: 'Anne Henry',
'Steve Larson'
Subject:
Date: Mon, 10 Mar 2003 13:43:14 -0600

TO: All County Directors

FROM: Laura Doyle, Manager
Home and Community Living Services
Disability Services Division

DATE: March 10, 2003

SUBJECT: Contract Information

We have received a number of questions from counties on the topics of: 1) contracts with all providers as well as DT&H providers specifically; 2) review of individual service plans; and 3) renegotiating rates with providers in light of last years COLA legislation. Please find below information on all of these topics. If counties are engaging in contract negotiation, please work with your county attorney.

1. If after reviewing the county waiver budget and making adjustments, and we still need to re-negotiate rates with providers, what are our obligations?

All providers are under contract with the counties to provide specifically identified services (type, amount and duration) to MR/RC clients at

3/10/03

specific rates. The contracts govern the flexibility counties have in adjusting rates. One party cannot unilaterally change a contract term, including the payment rate, without agreement among/between the parties to the contract. Any agreement should be captured in a written amendment signed by all the parties to the contract. The contract itself, however, may contain a specific provision that gives the county the option to reduce rates based upon an overall budget reduction. If a county has a question regarding its options under a specific contract provision, it should contact its county attorney for advice.

All contracts have a termination provision, which either party may exercise, usually with a 30-day notice. Counties should be aware that, if they are unable to reach an agreement to amend an existing contract with a provider, either party has the ability to terminate under boilerplate contract language. Moreover, any breach of a contract provision by the county, without explicit agreement by the provider, is actionable under Minnesota law.

2. May counties re-negotiate DT and H payment rates and amend contracts?

DT&H contracts cannot simply be amended by agreement of the parties. Under Minnesota law, any rate change that is lower than the minimum rate must receive a variance from the Commissioner of Human Services ('Commissioner'). See Minn. Stat. 252.46, subd. 6(a) (2002). Since the rate minimum is the rate that was approved by the Commissioner on January 1 of the previous calendar year, any agreement between the parties to lower the rate below this level would require a variance. *Id.* at subd. 2.

The Commissioner may grant a variance to the rate minimum when one of the following circumstances exist: (1) the county board contracts for increased services from a vendor and, for some or all individuals receiving services from the vendor, lower per unit fixed costs result; or (2) the actual costs of delivering authorized service over a 12-month contract period have decreased. *Id.* at subd. 6(c)(1)-(2). In addition, the county must document in its variance request that several other conditions have been met relating to the provider's and county's duty to review the rates, including that the provider must attempt to reallocate its financial resources before applying for a variance. *Id.* at subd. 6(d)(3); see also subd. 6(d)(1)-(6). The Commissioner has sixty days to grant or deny a variance request. *Id.* at subd. 6(e). A county may request reconsideration, and a provider may appeal (with the concurrence of the county) a denial of a variance request. *Id.* at subd. 7 and 19. Until the request for reconsideration or the appeal is finally resolved, payments must continue at the existing rate. *Id.* If a variance is granted, the contract can be amended accordingly by the parties.

3. May providers reduce services to individuals as the result of a

re-negotiation or rates and what are the rights of the consumer?

MR/RC consumers are entitled to an individual service plan ('ISP') tailored to the persons' need and goals. Minn. Stat. 256B.092, subd. 1a(b) and 1b. Regardless of whether the provider agrees to a rate change, it cannot unilaterally suspend, reduce, deny, or terminate services provided to MR/RC consumers under the consumer's ISP. Minn. Stat. 256.045, subd. 4(a). Any such change, without first amending the ISP, triggers the consumer's right to a conciliation conference with the county agency. Id. Note that any change to an ISP requires the consumer or the consumer's representative to agree to the change in writing. Minn. Stat. 256B.092, subd. 1(b)(8)(2002). The consumer also has the right to ask for a hearing under Minn. Stat. 256.045, subd. 3. Id. Thus, counties and providers must be cognizant of complying with the ISP requirements, regardless of any rate change agreement.

4. If a provider re-negotiates rates with the county, are they not still obligated to comply with the provisions of the last COLA?

DHS has specifically incorporated the COLA increase into the counties' budget allocations. We would recommend that any provider, who has re-negotiated their contract with the county to a lower rate, should seek legal advice if they are considering an adjustment to staff wages.

> ATTACHMENT part 2 application/ms-tnef name=unnamed1

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