

TO: Persons Concerned About Day Training And Habilitation Services

FROM: Anne L. Henry

RE: Information For Consumers, Providers And Case Managers About Changes In Law Affecting Day Training And Habilitation (DT&H) Services

DATE: June 10, 2003

As many of you know, the Legislature enacted several changes regarding DT&H services. There are important actions which individuals, parents, guardians and case managers should take to assure that DT&H services are provided, if needed.

I. CHANGES FOR COUNTY-PAID DT&H PARTICIPANTS.

Most DT&H services are paid for with Medical Assistance funding. However, for 1,432 adults and possibly 300 June high school graduates, counties use social services and other county funds to pay for DT&H services.

A. **New Children and Community Services Act**, Minn. Stat. § 256M.01-.90 replaces the Community Social Services Act (CSSA), Chapter 256E, which has been repealed as of July 1, 2003. (Laws of MN 2003 1st Special Session, Ch. 14, Article 11.)

1. The new Children and Community Services Act (CCSA) has far fewer requirements for counties on how to develop their Biennial Service Plan and how the funding is to be used.
2. Specific language on DT&H services and alternative habilitation services requirements is contained in the new law. There are two important references to **plans** in this section.

a. **County service plan under Minn. Stat. § 256M.30.**

- (1) Counties are required to include the needs of adults with disabilities in the county service plan.
- (2) Under existing law, Minn. Stat. § 252.28, the Commissioner of DHS in conjunction with the county board is required to determine and redetermine the need for each DT&H program. In addition, county boards are required by Minn. Stat. § 252.44 to authorize DT&H services according to the person's ISP, contract with licensed vendors, and reimburse licensed vendors for services provided.

- (3) To the extent that a county identifies DT&H services as needed, (*see* (2) above), the county is required to provide the service to those whose individual plans reflect the need, § 256M.60, Subd. 2.
- (4) The Commissioner of DHS is required to approve the county plan before funds are provided, 256M.30, Subd. 1. Given the Commissioner's obligations to both determine the need for DT&H services and to approve county CCSA plans, these county plans ought to reflect the need for DT&H services in each county.
 - (a) The first plan under the new law is to be submitted to the DHS Commissioner by October 15, 2003, to be effective January 1, 2004, after approval by the Commissioner.
 - (b) Counties are required to allow citizens to **participate in the development of the service plan**. The county must allow at least 30 days before October 15, 2003, for public comment on the contents of the plan.
 - (c) It is very important that individuals interested in DT&H services and alternative habilitation services contact their counties, meet with the human services director and county board members if needed and **request to be notified about when a draft plan will be available** and how to submit comments and information for the plan.

b. **Individual Service Plan (ISP).**

A person's individual service plan under case management rules (Rule 185, Minn. R. 9525.0024) has now become even more crucial in determining the services to be provided.

- (1) The case management rule requires that the service plan state the needs of the person and how the needs will be met.

An individual who needs DT&H or alternative habilitation services should have that **need explicitly described in the individual service plan**, including the amount of time the service is needed, i.e., five full days per week.

- (2) For many adults with developmental disabilities, DT&H services are essential because these individuals need habilitation and supervision and are not self-directed. If the person **needs DT&H services due to vulnerability and** needs habilitation and supervision in order to avoid abuse and neglect, these facts should be specifically stated in the ISP.
- (3) For adults who have been participating in DT&H services, the provider is required to have a **risk management plan**. Minn. Stat. § 245B.06. The needs identified in the risk management plan should be incorporated into the ISP.
- (4) For many adults with developmental disabilities, DT&H services are **needed in order to continue living in their family home, foster home or own home, which is often the least restrictive setting**. This need and the outcome of preserving the person in the least restrictive environment should be explicitly stated in the person's ISP.

B. **Circumstances under which counties are allowed to limit services**, Minn. Stat. § 256M.70.

1. Counties are required to make reasonable efforts to apply for commonly-available state and federal funding for services. Adults who need DT&H services should be considered for MR/RC waiver resources.
2. If a county has insufficient CCSA funds, then a county is allowed to limit social services except for services which meet one of seven criteria, with the highest priority given to the first three:
 - a. *Services needed to protect individuals from maltreatment, abuse and neglect;*

- b. *Emergency and crisis services needed to protect clients from physical, emotional or psychological harm;*
- c. *Services that maintain a person in the person's home or least restrictive setting;*
- d. *Assessment of persons applying for services and referral to appropriate services when necessary;*
- e. *Public guardianship services;*
- f. *Case management for persons with developmental disabilities, children with serious emotional disturbances, and adults with serious and persistent mental illness; and*
- g. *Fulfilling licensing responsibilities delegated to the county by the commissioner under Section 245A.16.*

C. Limitation on county spending cuts for adults with disabilities.

1. Rider language, effective for the next biennium, provides that counties shall not reduce CCSA expenditures for services to adults with disabilities by more than the overall percentage reduction in the county's CCSA grant compared to calendar year 2003 CSSA grants.

This provision should not be read to allow counties to make across-the-board percentage reductions in DT&H or other disability-related services. The language discussed above, on page 4, #2, provides that if DT&H services are required to avoid abuse, maltreatment or neglect or are necessary to maintain the person in their home or least restrictive setting, DT&H services or other services may not be reduced, even in the face of limited funds. In addition, existing law continues to require that when there has been a determination of need for DT&H services, the county must provide them.

D. Due Process Appeal Rights.

1. If a county, despite a person's ISP documenting the need for full-time DT&H services, decides to cut DT&H services, the person must be given advance written notice of the cut. The notice should also include the legal

and factual basis for the reduction and information on how and when the person can request an appeal, including how to have services continue pending appeal.

2. If a person is threatened with a reduction in DT&H services and the ISP does not clearly describe the need for DT&H services and the purposes fulfilled by the DT&H service to avoid abuse or neglect and to maintain the person in their home or least restrictive setting, an effort should be made to revise the ISP as soon as possible.

If the county refuses to revise the ISP, the person can request a conciliation conference (Minn. Stat. § 256.045, Subd. 4a) and, if the matter is not resolved, an appeal hearing, under 246.045, Subd. 3(a)(1).

3. It is also important to request that services be continued pending appeal if the person is already receiving needed DT&H services.
4. If a June graduate had been slated to begin DT&H services and is now denied or just does not show up, contact the person or their guardian and assist them if they want to appeal.

II. CHANGES FOR WAIVER AND ICF/MR DT&H PARTICIPANTS.

About 8,060 adults with developmental disabilities access DT&H services through the MR/RC waiver, and 2,128 ICF/MR residents participated in DT&H services in 2002.

- A. **Wording change in consolidated licensing standards section on "leaving the residence."**

Although this provision led to lots of heated discussion during the legislative session, the actual language has been changed in a minor way and retains the expectation that persons living in ICFs/MR and waiver services group homes will leave their residences during the day for services unless the ISP specifically states otherwise. In addition, existing law continues to require that when there has been a determination of need for DT&H services, the county must authorize and provide for them.

- B. **Travel time to and from a DT&H site can be as long as 90 minutes per one-way trip.**

Service hours are not to be reduced due to travel time. Again, however, service hours must be identified in the person's individualized service plan.

- C. **DT&H providers are no longer prohibited from providing services to an adult in their own home or residence.**
- D. **Improved protections for persons who choose their residential provider for day services.**

First, an individual must be offered a choice of providers and agree in writing to have the residential provider also provide services during the day. The individual service plan for a person who chooses the residential provider for day services must describe how the following needs will be met:

1. Health,
 2. Safety,
 3. Protection,
 4. Habilitation,
 5. How frequent and regular contact with persons other than the residential services provider will occur,
 6. Address the provision of services during the day outside the residence on weekdays.
- E. For persons funded under Medical Assistance and living in an ICF/MR or funded through the MR/RC waiver, **new definitions were added for habilitation services and services during the day.**
 - F. **Payment for services during the day for ICF/MR residents.**

If an ICF/MR resident chooses services during the day, other than DT&H services, the payment rate shall not exceed 75% of the recipient's DT&H service costs prior to the service change.

When choosing a service other than DT&H, an ICF/MR resident's needs must be considered, as identified in the ISP for active treatment.