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April 23, 2003

MEDIA RELEASE

Individuals with Disabilities & Statewide Organization Sue the Commissioner of Human Services to Prevent Implementation of "Rebasing"

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Four individuals with disabilities and Arc Minnesota, a statewide organization that provides advocacy and support for persons with developmental disabilities and their families, filed a lawsuit in federal court today in response to actions by the Minnesota Department of Human Services (DHS) to limit the amount of money available to counties for the MR/RC (Mental Retardation/Related Conditions) waiver. DHS's re-calculations, termed "rebasing," created serious shortfalls in funding available for many people with disabilities to receive home- and community-based services and avoid more costly institutional care.

The Minnesota Disability Law Center (MDLC) is representing the plaintiffs in challenging the DHS rebasing of the waiver program. Termed "waivers" because the federal government waives certain Medicaid obligations for participating states, these programs include an array of home- and community-based services for eligible recipients. In the absence of waivers, program participants would require an ICF/MR (intermediate care facility for the mentally retarded) level of care. Plaintiffs include:

K. M., a 46-year-old man who resides with his sister and has autism and mental retardation. He was placed in the Cambridge Regional Treatment Center at age five, lived there until age 12, and

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then resided in three ICFs/MR facilities. Throughout these years of institutionalized living, K.M. was over-medicated, subjected to punitive programming, and severely abused. A maltreatment investigation and documented abuse in his last ICF/MR placement led to his receiving a MR/RC waiver slot in 1998. When he left the institutional setting, K.M. had extensive health and care needs caused by malnourishment and over-medication along with self-injurious behaviors due to prior abuse. His waiver budget for 24-hour care included 40 hours of weekly care provided by his sister, respite care by a private provider, and a day program. Many hours that his sister spends on his care are uncompensated and some of her payments are used toward K.M.'s food, clothing and living expenses. As a result of DHS's rebasing, Ramsey County reduced K.M.'s waiver by over 43%. The family has been forced to again consider out-of-home placement, although it would be detrimental for this plaintiff and a more expensive option.

N. E., a nine-year-old boy with cerebral palsy and global developmental delay, lives with his family and brings this legal action through his mother. He is nonverbal, nonambulatory and requires 24-hour care in all areas of daily living. His family provides most of his personal care (e.g., assistance with grooming, toileting, eating, etc.) and he also obtains personal care assistance under a waiver through Hennepin County. N.E. receives in-home speech, physical, and occupational therapies which have improved his oral motor speech and his muscle tone. These services and assistive devices have helped him become more integrated into his school and community. DHS rebasing would result in a 15% cut to his waiver, significantly reducing his personal care assistance and respite coverage.

J. M. has cerebral palsy, dystonia, a low-vision disability, and a seizure disorder. She will soon turn 21 and lives at home with her parents. J.M. is nonambulatory and needs substantial assistance with personal cares as well as ongoing supervision due to low vision and seizures. Although needing 24-hour care, she waited 12 years to get a Ramsey County waiver slot that could provide for her various needs. Prior to and since receiving waiver services, J.M.'s parents have provided overnight care and supplemented the aid provided by her personal care assistants. J.M. often requires two persons to lift her, as well as additional assistance stemming from surgical complications. DHS rebasing would result in a 51% reduction to her waiver budget. If allowed, the rebasing cut will effectively force J.M. out of her family's home and into a higher cost, out-of-home placement.

B. S., a four-year-old boy living with his family, brings legal action through his mother. He has a diagnosis of autism that manifests in a myriad of problematic behaviors and developmental delays. His social interactions are limited and difficult, he has obsessive behaviors, and he lacks any awareness of danger. Of particular concern is B.S.'s "tactile defensiveness," a condition marked by extreme resistance and sensitivity to many forms of touch, smell and taste. Eating is continually challenging as he gags and vomits at the sight and smell of food and at the sensation of any substance in his mouth. Many problematic behaviors showed clear improvement after B.S. received a waiver through Scott County that includes behavioral therapy coverage. With this waiver, his family has been able to obtain dietary supplements, modify their home with safety devices, and purchase a specialized care seat. In response to DHS rebasing, Scott County proposed substantial cuts to the budgets of children and adults residing in family homes while attempting to preserve funding for out-of-home placements. Rebasing would result in a 30% cut to B.S.'s waiver, a reduction that jeopardizes his therapeutic progress and threatens his health and welfare.

Arc Minnesota is a non-profit organization with over 5,000 members and 24 local and

regional chapters throughout Minnesota. Members include persons with disabilities, including persons with mental retardation or other related conditions, and family members of persons with disabilities. Many Arc members receive waiver services or are parents or guardians of people who receive waivers. Since the early 1980s, Arc Minnesota, its local chapters and its members have advocated for expansion and improvement of the home- and-community-based waiver. Arc Minnesota has received numerous calls from members statewide about rebasing's adverse impact on services. The impact involves unilateral cuts to waiver budgets and corresponding reductions to critical in-home services needed to preserve consumers' basic health, safety and welfare.

The rebasing plan was implemented following budget projections of rapid growth in waiver services. Significant consequences of rebasing include: reductions in current services, not just limits to future growth; individuals receiving in-home services bearing a disproportionate amount of budget reductions in some counties; impaired access to waiver services in the counties most impacted by rebasing; and, across-the-board reductions for providers in some counties.

According to the complaint prepared by the Minnesota Disability Law Center, "absent the enjoining of the defendant's rebasing plan, the plaintiffs will suffer irreparable harm." The lawsuit seeks to obtain a declaration that the rebasing plan violates federal Medicaid law, and to obtain an injunction prohibiting implementation of the plan. The complaint asserts that DHS's rebasing plan unevenly redistributes funds to Minnesota's 87 counties. DHS imposed larger cuts to some counties, thereby impinging on individuals' identified needs for health, welfare, safety and habilitation. This disproportionate impact violates federal Medicaid requirements that services to an individual must be sufficient in amount, duration and scope to serve the basic purpose of the program and meet the needs of the program participants. Secondly, the complaint states that DHS failed to ensure that plaintiffs and Arc Minnesota members have an effective choice between receiving care in an ICR/MR setting or through the waiver as required under Medical Assistance. Lastly, the complaint

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charges that rebasing creates widespread and fundamental disparities among the levels of services available to clients on a county-by-county basis which violates Medicaid requirements that eligible persons have comparable access to services statewide.

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