

EXECUTIVE DIRECTOR
Jeremy Lane

LEGAL DIRECTOR
Pamela S. Hoopes

ADMINISTRATOR
Brenda Jursik

SUPERVISING ATTORNEYS
Roderick J. Macpherson III
Steven P. Elliot

MINNESOTA DISABILITY LAW CENTER

THE PROTECTION & ADVOCACY
SYSTEM FOR MINNESOTA

430 FIRST AVENUE NORTH, SUITE 300
MINNEAPOLIS, MN 55401-1780
(612) 332-1441
(TDD) 332-4668
Toll Free 1-800-292-4150
FAX (612) 334-5755

www.mnlegalservices.org/mdlc

ATTORNEYS
Jennifer E. Giesen
Luther Granquist
Kathleen Hagen
Anne L. Henry
Bonita Kallestad (Willmar)
Kathy S. Kosnoff
Barbara J. Kuhn
Anne M. Robertson
Barnett I. Rosenfield
Patricia M. Siebert

ADVOCATES
Linda Bonney (Grand Rapids)
Kirsten Dubbels (Fergus Falls)
Cynthia M. Jarvi (Minneapolis)
Sandra M. Moore (Duluth)
Janna Peterson (Moorhead)
Rochelle Roehrich (Minneapolis)
Sharon Sanders (Duluth)

February 7, 2003

BY FAX AND U.S. MAIL

Commissioner Kevin Goodno
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155

RE: Re-Basing Home And Community Waiver For Persons With Developmental Disabilities

Dear Commissioner Goodno:

We are writing to express our serious concerns about the impact of the Department's recent action to reduce the funding available for persons with developmental disabilities using the home and community waiver and to ask for a change in re-basing to avoid immediate cuts to current services.

As you know, we have been meeting with Shirley Patterson and her staff since late November of 2002 on matters related to the DD waiver and the increase in the November forecast. The issue of reducing future growth through re-basing was discussed at several meetings in December and early January. Throughout these meetings, we were told that the purpose of the re-basing was to reduce future growth, not to cut current services. While we are very concerned about cutting future growth in the waiver for persons with developmental disabilities, we are cognizant of the state's massive budget crisis and have been willing to withhold judgment until we understood the specific details of the Department's proposal.

On January 17, 2003, DHS notified the counties of their re-based budget. The following week we were told by a number of counties that they would have to reduce current service agreements due to the re-based amount provided by DHS. During the latter half of January, we continued to try to understand the impact of the Department's re-basing on persons with developmental disabilities. On the one hand we were told by several counties, including Dakota County, that they would have to cut current service agreements. On the other hand, we were told by DHS officials that there were several features of the re-basing which allowed counties more funds than they understood. Arc Minnesota and our office requested a meeting between DHS officials and several counties so that we could have both parties discuss the impact of re-basing and understand whether or not current

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service agreements would have to be cut due to the re-basing. That meeting occurred on Monday, February 3, 2003.

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At the meeting, it was clear from both Ramsey and Dakota Counties that they would have to reduce current service agreements because DHS set their new "re-based" budgets at levels lower than the amounts expected to be spent under current service agreements. According to both counties present at the meeting, DHS did not take into account several activities occurring in the county which led to their spending more than was reflected in the payment data used by DHS to re-base the program.

Because there are many vulnerable children and adults with developmental disabilities now relying upon home and community waiver services and because the re-basing was done without enough prior information to those affected, we urge that you change the re-basing proposal so that individuals with developmental disabilities will not experience across-the-board cuts in their current service agreements. We are also very concerned that the Department has not properly advised counties of the criteria for revising service agreements and for making service cuts or explained that any reductions to services require advance notice of the individual's right to appeal and how to do so.

The Department has assured the federal government that the health and welfare of those with developmental disabilities will be protected in the home and community waiver program. Individuals under the waiver need habilitative services in order to maintain or develop skills needed to improve their level of functioning. The state must provide such services in ICF/MRs. To provide an effective, less restrictive home and community-based choice, the state must provide those services through the waiver as well. The purpose of the waiver program derives from the purpose of ICF/MR services. Without an individual review of each person's situation, we are very concerned that Minnesota's assurances to the federal agency in our state waiver plan will be violated.

While we again pledge our willingness to work with you and your staff and the Legislature to find ways to address the serious budget issues we face, we believe that it is extremely important for our state to follow the laws governing these programs for persons with developmental disabilities.

We have yet to learn how many of Minnesota's 87 counties will be cutting service agreements for current waiver recipients. It is extremely harsh and unfair to impose these across-the-board cuts with no opportunity to discuss the impact of the cuts on the individual or to explore other options for meeting the budget requirement. Many counties do not have sufficient understanding of how to manage this program nor do they understand how to manage the spending within the parameters of the DHS re-basing formula or within the law.

We urge that you take action to assure that service plans for persons with developmental disabilities are not subject to across-the-board cuts and that our state's obligation to assure health, safety, welfare and habilitative services is met.

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We remain willing to work with your Department as the budget discussion unfolds at the Legislature.

Sincerely,

MINNESOTA DISABILITY LAW CENTER

Anne L. Henry
Attorney at Law

ALH:nb

cc: Deputy Commissioner Wes Kooistra
Assistant Commissioner Maria Gomez
Assistant Commissioner Loren Colman
Shirley Patterson
Steve Larson
Representative Fran Bradley
Representative Lynda Boudreau