

Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
233 North Michigan Avenue, Suite 600  
Chicago, Illinois 60601-5519



November 18, 2005

Christine Bronson  
Medicaid Director  
Minnesota Department of Human Services  
444 Lafayette Road North  
Saint Paul, MN 55155

Dear Ms. Bronson:

I am responding to your request, received on September 29, 2005, to amend Consumer Directed Community Supports (CDCS) services in all Minnesota home and community based services (HCBS) waivers. You requested that the waivers cover certain cost related to physical fitness for adults and proposed various technical modifications. These proposals are currently under review and discussion with your staff. You also proposed to amend the Waiver for Persons with Mental Retardation or Related Conditions (MR/RC), control number 0061.90.R3.07, to allow exceptions to the individual budget amounts for a subgroup of waiver participants who were receiving CDCS services on or before October 2004.

Section 1915(c) of the Social Security Act permits states to waive three Medicaid requirements: 1902(a)(1), regarding statewideness, 1902(a)(10)(C)(i)(III), regarding income and assets rules and 1902(a)(10)(B) regarding comparability of services. The waiver of comparability is a specific request that defines the waiver program which authorizes services available to the waiver target population that differ from those available to other Medicaid recipients under the state plan. There is no authority under 1915(c) to further waive comparability within the HCBS waiver itself, by authorizing services available to subgroups in the waiver target population that differ from those available to other waiver participants. Authorization of services to HCBS waiver participants must be based solely on assessed need, as established in the plan of care, within service limits applicable to all participants in the waiver. Therefore, your request to establish, within a single waiver, a subgroup of participants with service limitations that differ from other waiver participants with identical assessed need, cannot be approved.

As previously discussed on November 10, 2005 CMS' current policy does not permit grandfathering and therefore, the amendments received on September 29, 2005 cannot be approved if the grandfathering provision in the MR/RC waiver remains. In order to permit the other amendments in your transmittal to proceed through the approval process, we suggest you remove the grandfathering provision from the amendment package.

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Ms. Bronson

If you have any questions, please contact Twana Brown, Health Insurance Specialist at (312) 353-3851.

Sincerely,

/s/

Verlon Johnson  
Associate Regional Administrator  
Division of Medicaid and Children's Health

cc: Twana Brown, CMS RO V  
Dan Timmel, CMSO  
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