

ABCD's Comments on Amendments to the Community Care Waiver

The Alliance for the Betterment of Citizens with Disabilities (ABCD) appreciates the opportunity to comment on the draft proposal for amendments to the Community Care Waiver (CCW). ABCD has raised concerns in the past that New Jersey may not be maximizing its federal revenues under the current CCW. Upon review of the proposed changes to the CCW, we do believe that the Division of Developmental Disabilities (DDD) is moving forward to ensure that we maximize federal revenues from the CCW. Specifically, we are pleased that DDD is putting in amendments that will allow Real Life Choices to be funded through the waiver. In addition, ABCD is pleased that DDD plans to use an ABCD proposal to allow family members residing in the home to render services to an individual. We believe that these and other amendments will support people with developmental disabilities who live at home with their families.

We do have some additional comments/amendments that we would like to propose for DDD's review and consideration prior to sending in amendments to the Centers for Medicare and Medicaid Services (CMS). Below are a series of issues that we believe should be included in the CCW. We have provided you with references to other States that provide these services, if available. Even though we do understand that each Medicaid Waiver is different, we believe that it is important for New Jersey to explore these options to allow for the greatest maximization of federal revenues and to provide for the broadest service array for people with developmental disabilities and their families.

Caregiver Training and Education: This can be offered as a distinct service under the CCW. The service could include: 1) underwriting the costs of trainers coming into the home to teach skills and techniques for addressing the individual's needs (training can be customized for the individual and their caregiver); 2) underwriting the registration and material costs for caregivers to attend special trainings and educational classes; and 3) paying the expenses associated with caregivers attending workshops or conferences.

This caregiver training could be used for nutritional services and behavioral services if DDD included these specific services in the CCW. Below is a brief description of these services.

Consultative Services

Professionals in psychology, nutrition, counseling, and behavior management provide consultation activities. The service may include the development of a home treatment/support plan, training to carry out the plan and monitoring of the individual and the provider in the implementation of the plan.

Nutritional Services: This service has many aspects that could potentially be paid for through the CCW including home delivered meals, nutrition counseling, and nutrition risk reduction. For example, Iowa and Maryland provide medical nutrition therapy (nutrition care planning, nutrition assessment and dietetic instruction). Illinois provides training and counseling in nutrition services for unpaid caregivers.

Behavioral Services: The proposed amendments to the waiver makes not provision for behavioral or social deficits in determining either need or scope of services. This prevents individuals with secondary psychiatric disorders as well as many individuals diagnosed with autism spectrum disorders from receiving services under the waiver as their needs cannot be properly diagnosed nor served. Behavioral services could be included, in addition to the Medicaid State Plan mental health services, and could include consultative therapies and family and individual training such as psychology, counseling and behavior management. States are permitted to use the extended state plan provision to cover the same services in the waiver as the State Plan but in greater amount scope and duration of coverage. DDD should work with Medicaid and the Division of Mental Health Services to ensure the best coverage for people with developmental disabilities.

Environmental/Vehicle Modifications in Combination with Assistive Technology Devices

DDD requested comments on the proposal to limit expenditures to \$11,000 every three years, with the possibility of exceptions being made for issues of health and safety. ABCD believes that the cap on expenditures is too limited and requests \$5,000 per year for each of the three modifications/devices, totaling \$15,000 per year. The Division could include prior authorization if there is a concern about cost containment.

During our research, ABCD found that Connecticut's waiver included vehicle modifications up to \$10,000 over a three year period; specialized medical equipment and supplies at \$750 a year with up to \$3,000 over three years (with prior approval); and environmental modifications up to \$10,000 a year over three years. Based on a review of Connecticut's waiver manual, that State does not limit the total utilization of all three services together. In 2005, Virginia proposed changes to its waiver which would allow a \$5,000 limit per year for environmental modifications and a \$5,000 per year limit for assistive technology. It is unclear from our research if Virginia received its waiver. According to a report by ASPE, in the US Department of Health and Human Services, Illinois has a \$15,000 cap over five years for all services. We do understand that some states have life time caps on environmental modifications and/or assistive technology (including a life time cap of \$10,000 for assistive technology in Pennsylvania). However, we do not believe that a lifetime cap is reasonable, but instead believe that a prior authorization may be in order.

Transition Services

ABCD is pleased that DDD is including Transition Services in the CCW. We agree that it is important to ensure that non-recurring expenses, for individuals transitioning from Developmental Centers, which are eligible for FFP are maximized. We do believe that additional changes could be added to allow for transition into any community residence including group homes. ABCD is including a description of these additions in a subsection of our comments under CMS Policy Clarifications on Olmstead.

Support Coordination

ABCD is pleased that DDD is including Support Coordination for Real Life Choices and Self Determination into the CCW. ABCD has been advocating for a number of years that New Jersey is not maximizing its federal dollars under Real Life Choices. ABCD does believe that the section on Support Coordination in the CCW should be expanded to include Support Coordination for moving people out of the Developmental Centers. ABCD is including a description of these additions in a subsection of our comments under CMS Policy Clarifications on Olmstead.

CMS Policy Clarifications on Olmstead

ABCD has raised to DDD and the Department of Human Services since 2000 that the State utilize the policy changes and clarifications provided under State Medicaid Directors Letters associated with Olmstead. ABCD is unclear whether the entire costs of Support Coordination and other expenses associated with Case Management, Assessment for Accessibility and Environmental Modifications for people leaving the Developmental Centers is being reimbursed by the federal government. ABCD recommends that the options afforded by the federal government to reimburse states for these services, including for group homes, be used to fully maximize federal revenues, if the options are not already in use. If they are in use, we recommend that the State inform the community of its use.

In the year 2000, the then Health Care Financing Administration (HCFA) and renamed CMS, issued several State Medicaid Director Letters regarding Olmstead. On July 25, 2000, Olmstead Update Number 3 was issued that included policy changes and clarifications giving States more flexibility to expand services. ABCD suggests that DDD uses these policy changes and clarifications to ensure that New Jersey is maximizing all of its federal revenue.

Specifically, we suggest that DDD use Attachment 3-B related to Home and Community-Based Services (HCBS) Case Management as a way to assist paying for transition services for an individual leaving a Developmental Center. We understand that the Division's sister agency, the Division on Aging and Community Services in the Department of Health and Senior Services began to use this option approximately a year or so ago to assist in transitioning individuals from nursing homes.

The HCBS Case Management allows a person served under the waiver to receive case management services while they are still institutionalized, for up to 180 consecutive days prior to discharge. Federal Financial Participation is available on the date the person leaves the institution and is enrolled in the waiver. "The case management service begun while the person was institutionalized is not considered complete until the person leaves the institution..." The amount of paid services is claimed as a special single unit of transition case management. The cost of case management furnished as a HCBS waiver service must be estimated in factor D of the waiver's cost neutrality formula.

In addition, the Administrative Case Management may be furnished as an administrative activity. Case management furnished as an administrative expense may be eligible for FFP even if the person is not eventually served in the community due to death, the individual's choice not to receive waiver services or loss of Medicaid eligibility. According to the Olmstead Update 3-b "the State must have a policy on file with HCFA that clearly delineates the circumstances under which case management is billed either as an

administrative or a service expense. This information must be included in the supporting documentation that the State forwards with its State plan or waiver request". ABCD recommends that DDD include this documentation in its waiver amendments so as to ensure full maximization of federal revenues.

Other policy changes and clarifications in Update 3-b that could potentially be used by DDD to assist with moving people out of the Developmental Centers include Assessments for Accessibility and Environmental Modifications. A State may assess the accessibility and need for modification in a home or vehicle and FFP may be available. In the area of environmental modifications, a State may claim FFP for home modifications (including the actual construction costs) furnished as a waiver service up to 180 days prior to discharge.

Rates for Services

ABCD and its member agencies are concerned about the rates that are included in the proposed CCW amendments for respite, day habilitation, and individual supports. We understand that the rates are based upon usual and customary rates for Personal Care Assistance services in the State Medicaid program. However, we believe that these services for people with developmental disabilities are different than for personal care and request that the rates be revised. People with developmental disabilities need services provided during respite and not just pure respite. The State could accommodate this by adding habilitation services to be provided in the home to the array of services included in the waiver. The need for specific programs which require follow-up would justify and enhanced rate for in-home services.

In addition, we feel it is especially important to change the rate for Individual Supports related to Real Life Choices. Several years ago when Real Life Choices was developed DDD set the rate without any input from providers. Providers determined that the staffing ratio and supervisory issues for Real Life Choices were different than other services provided and suggested a higher rate. DDD promised that as soon as 150 individuals were in Real Life Choices that the Division would enter into discussions with providers about a different rate. Now, a number of years later, with many more than 150 individuals using these services and there has been no discussion of a different rate. ABCD strongly recommends that DDD meet with providers to discuss a change in the rates for Real Life Choices and the other services in the CCW.

ABCD is not including rates from other states for this analysis due to the fact that each state has a different definition for services. We did not believe it useful to provide a review of rates for this reason.

Family Support

ABCD is pleased that DDD has included several options under Family Support for inclusion in the Community Care Waiver. ABCD believes that there are a number of services under Family Support that could be included in the Waiver. We have testified to the Legislature and discussed with the Administration over the years that we are one of only about 14 States that do not receive federal reimbursement for family support. We understand that there will be additional discussions about expanding federal reimbursement for Family Support. ABCD requests inclusion in any discussions related to Family Support and amendments to the Waiver.