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Changes Are Coming

Change for long-term care services supporting people with developmental disabilities is on the horizon. Several incidents have caused both the federal and state government to take a close look at the management of the long-term care service delivery system for you or your family member. Some of these changes may make your lives easier, and some of these changes as currently proposed are somewhat confusing – however, it is important to be clear that most of these changes are not negotiable.

History

In the mid 1990's there was movement under foot nationwide and in Colorado to use managed care oversight and apply it to long term care services. The Arcs in Colorado were opposed to this movement. Some of you may even remember going down to our state capitol building on a bus we rented and protesting the merging of Departments and programs. Not only did we oppose it here, The Arcs in Colorado led the nation and passed a resolution at our national organization speaking to the ill-fated idea of using the managed care mentality to support people who needed life long assistance.

The Arcs in Colorado fought a valiant fight but we lost and the long-term care system supporting people with developmental disabilities was converted – forever to be known as *Systems Change*. Community Centered Boards became Managed Care Organizations and then subsequently they were known as Organized Health Care Delivery Systems. Services were no longer delivered on a fee for service basis; now community centered boards would receive payment based on an average service rate for their region and number of persons served, and they would negotiate agreements with individual providers based on the specific needs of the individuals they serve.

Systems Change was to create efficiencies associated with the money savings that in turn were to be used to expand the supported living services program. Since the implementation of *Systems Change*, many of us have seen decrease in hours for day program, the movement to provide residential service almost exclusively in host homes, reduced if not eliminated transportation services, and the serving of people by CCBs even when they have no Medicaid resource. Additionally, we saw a real shift of responsibility and authority of oversight of the services delivered from the State to the CCBs – local control became the mantra when issues were raised about individual CCB practices. Unfortunately this change happened during a severe budget crisis at the state and it is difficult to know whether reductions in service were due to flat funding or systems change because the managed care system made it very hard to track costs and rates to the individual.

Currently

Consumer Directed Service Option

The Colorado Department of Health Care Policy and Financing (HCPF) has been authorized by House Bill (HB) 05-1243 that became law in 2005 to implement Consumer-Directed Care into all Medicaid Home and Community Based Services (HCBS) waivers, including the Comprehensive Services (HCBS-DD), Supported Living Services (HCBS-SLS), Elderly, Blind and Disabled (HCBS-EBD) and the Children’s Extensive Support (HCBS-CES) Waivers.

The Consumer Direction options for people with developmental disabilities will include Attendant Care services for activities of daily living and health related tasks, such as personal care services, household services and health related tasks. Consumer Direction is not a mandate to change your existing services, but the creation of an option to direct a part of them. Consumer direction will allow people with developmental disabilities to direct their most personal services. Timelines for implementation are still being negotiated, but most likely within a year all four waivers will have a Consumer Direction option.

The program is expected to work like this:

Each person with developmental disabilities will be assessed by the use of a new statewide assessment tool know as the Colorado Assessment Tool (“CAT”). The assessment will result in a rate being established for all the services for each person. From that rate a person will budget a part for Attendant Care services for activities of daily living and health related tasks. Services not for Attendant Care services will continue to be funded and delivered as before. Each person with developmental disabilities, and/or his/her authorized representative, who has chosen Consumer Direction will have a fiscal/employer agent who will monitor services and be authorized to bill up to the person’s budgeted amount. (The qualified fiscal/employer agent will be selected in accordance with Colorado rules governing the bid process.)

Each person with developmental disabilities, and/or his/her authorized representative, who have chosen Consumer Direction will choose, hire, set the wage for, train, and if necessary, fire the attendant(s) who provide the approved Attendant Care services. The fiscal/employer agent will be the employer of record, issue the paychecks (minus all payroll taxes) and keep track of the person's budget amount. It will be the responsibility of the person with developmental disabilities, and/or his/her authorized representative, to pay a wage that allows them to get the amount of service hours needed in a month. A parent of a minor or adult child/spouse, who is not the authorized representative, may provide these services up to 40 hours per week within appropriate oversight, as well as other family members.

Centers for Medicare and Medicaid Services and Problems with our Existing Support System

On November 30, 2005, the Centers for Medicare and Medicaid Services (CMS) notified the State that it required additional information as a follow-up to the Medicaid waiver renewal for developmental disability programs previously approved. Among other issues, it sought additional evidence of financial accountability and an adequate audit trail for expenditures (tracking how the money is spent) specific to services delivered by the Community Centered Boards (CCB).

The State responded on January 17, 2006 with, among other things, a commitment from the Department of Health Care Policy and Financing (HCPF) that billing for the developmental disability system would be made directly by the entity providing services and billed to the Medicaid Management Information System (MMIS) to better track how the money is being spent. The Department of Human Services (DHS) and community centered boards (CCBs) expressed concern that such a shift would have an array of impacts not intended by HCPF, including a loss of CCB control over the quality of local services.

On January 20, 2006, the Joint Budget Committee (JBC) staff met with CMS and HCPF. During this meeting, CMS expressed grave concerns about the quality of data provided thus far by the State regarding financial accountability. It expressed willingness to withhold federal funds if adequate state action were not forthcoming. The concerns raised indicate that very significant changes to the current system will likely need to be made in a short time frame. In particular, it appears that the State will need to shift from its current quasi-managed care system for administration of developmental disability services back to a fee-for-service system, and that CCBs will lose the ability to negotiate rates with individual providers for Medicaid-funded services.

Further, CMS emphasized that it does not feel the State has demonstrated fiscal accountability even though the State has been given a year to do so. CMS is being pressured to enforce its findings and expectations of Colorado regarding fiscal accountability by the Office of the Inspector General, and CMS' patience has worn thin on seeing changes CMS considers adequate. CMS is prepared to withhold federal participation if Colorado does not comply by July 1, 2006.

CMS wants an audit trail where the costs associated with an individual can be identified. CMS staff indicated that it does not matter to them whether fiscal accountability is demonstrated through MMIS or some other method, but MMIS is used for other State waiver programs, and they do not have similar concerns about programs run through MMIS. They are not thus far satisfied with the documentation that comes out of the current community contract and management system (CCMS).

CMS is very concerned with provisions in the CCB contracts that unexpended service funds are to be accounted for as deferred revenue, with the exception that five percent may be retained as unrestricted revenue (SLS waiver). CMS stated that Colorado does not have the authority to allow Medicaid revenue to be treated as deferred, and in particular, not to be retained as unrestricted revenue. Further, CMS maintains that it has never given Colorado the authority to allow CCBs to negotiate rates with individual providers. Colorado is administering its waivers as though it was a managed care, capitated system rather than a fee for service system.

Although federal regulations require that states that bundle services for payment (as CCBs have been doing in Colorado) must continue to compute separately the costs and utilization of each component service that make up the bundled service. Based on CMS' meeting with JBC staff, CMS expects to be able to audit costs on an individual consumer basis--something DHS never understood to be a requirement.

The Arcs' Position on the Above Changes

The Consumer Directed option created through HB 1243 will be implemented in every Medicaid Waiver in the State. For some people with developmental disabilities and their families, this option will provide them the control they have wanted. Currently, it does limit the types of services that can be Consumer Directed (the types of services are expected to expand over time). Thus, this option should not currently be considered as an alternative to self-determination. The Arc of Colorado has been promoting, but is considered to be a good beginning.

- **The Arcs** believe the proposed changes brought about by the identified CMS issues may be an opportunity for the community supporting people with developmental disabilities to discuss in sincerity the implementation of a separate case management system to provide Quality Assurance and single point of entry without a conflict of interest. The Arcs in Colorado support a thoughtful implementation of this concept.
- **The Arcs** believe that the State must be held responsible for a timely, fair and unbiased process to respond to local emergencies.
- **The Arcs** believe that the State must create a process that protects against returning budgeted money for services while individuals remain on the waiting list.
- **The Arcs** support individual services and billing that meet the needs of people and protect the significant federal Medicaid funding.
- **The Arcs** expect transparency and accountability with respect to the management of waiting lists. Further, The Arcs expect that everyone on a waiting list have access to a fair and reasonable explanation on how the list is managed.
- **The Arcs** believe that CCB's in their capacity as single point of entry and case management agencies are statutorily responsible for quality assurance within their respective catchment areas.

THE CRIMINAL JUSTICE ADVOCACY PROGRAM: **AN UPDATE**

During the past year, The Arc of Colorado received two grants in support of The Criminal Justice Advocacy Program, a training program designed to educate Colorado's criminal justice professionals about people with developmental disabilities. The training provides criminal justice professionals with tangible information regarding how to recognize and communicate with individuals that have a developmental disability. Additionally, the training provides referral services that allow each trainee to contact advocates, learn about the developmental disability service system, and work with support organizations.

The first grant, \$3,500.00, was awarded by the Gay and Lesbian Fund for Colorado and was used to conduct trainings to law enforcement offices, probation departments, and attorney organizations throughout the state. With these funds, The Arc of Colorado succeeded in training approximately 170 criminal justice professionals from the following offices: Wheat Ridge Police Department, Colorado State Public Defender's Office, Steamboat Springs Probation Department, Arapahoe County Sheriff's Office, Grand Junction Criminal Defense Bar Association, and the Fruita Police Department.

The second grant, \$10,000.00, was awarded by The Denver Foundation and was used to conduct a one-day conference in order to further the opportunity for dialogue between criminal justice officials and the developmental disability community.

The one-day conference was held on September 22, 2005. The Arc of Colorado received 285 registrations for the conference, comprised of law enforcement officers, victim advocates, attorneys, probation officers, developmental disability service providers, families, and individuals with developmental disabilities. Additionally, with the support of The Denver Foundation, The Arc of Colorado retained Robert Perske, a national expert and lecturer on people with developmental disabilities in the criminal justice system or on death row.

The Criminal Justice Advocacy Program has been a very successful endeavor for The Arc of Colorado. Law enforcement offices in every corner of the state have welcomed the training and have responded to the training in an overwhelmingly positive manner. The Arc of Colorado remains committed to being an ongoing source of information for Colorado's criminal justice community.

If you would like more information regarding The Arc of Colorado's training efforts, please visit our website at www.thearcofco.org or contact Nora Earnest, at (303) 864-9334.