Changing County and Tribal Roles Home and Community-Based Services Waiver Provider Oversight

Minnesota Department of Human Services Disability Services Division

February 2013

Minnesota Department of **Human Services**

Legislative Report

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Minnesota Statutes, Chapter 3.197, requires the disclosure of the cost to prepare this report. The estimated cost of preparing this report is $1,432.16.

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Contents

Executive Summary

This report responds to legislation, enacted in 2012, requiring the Minnesota Department of Human Services (DHS) to recommend changes to current county and tribal functions with home and community based service waiver providers. On January 1, 2014, oversight responsibility of waiver service providers will shift from the counties/tribes to the State as county/tribal provider contracts are eliminated. This change will significantly impact the administrative functions of counties and tribes.

The Continuing Care Administration (CCA) will soon begin to implement a series of reforms aimed at achieving greater consistency and accountability across its home and community based service (HCBS) programs. These reforms include the transfer of provider oversight functions to the State when they have historically been the responsibility of counties and tribes.

Prompted by a federal compliance directive, the elimination of county and tribal HCBS waiver provider contracts introduces new opportunities for streamlined and consistent oversight. DHS worked with counties and tribes, forming a stakeholder work group, to identify methods used to promote quality services. Based on information and recommendations from the work group, this report addresses the following:

- State's changing responsibilities in oversight of waiver service providers;
- County/tribal changing roles in provider oversight due to the elimination of waiver provider contracts;
- State Quality Council's commitment to supporting quality waiver provider services and addressing the needs of service recipients of all ages;

DHS, with the work group, developed a framework for provider oversight activity following the elimination of county/tribal contracts. The framework recommendations are as follows:

Recommended Roles of State

- Licensure of 12 additional services that currently rely on county/tribal assurance of compliance;
- Enrollment review of waiver service providers;
- Maintenance of a statewide directory of qualified Medical Assistance enrolled waiver service providers;
- Online waiver training required for all newly enrolling waiver service providers;
- Technical assistance for waiver providers using the online DHS Minnesota Health Care Provider Manual, and the interactive DHS Provider Help Desk; and
- Coordination with counties/tribes to develop responses to provider quality issues and noncompliance.

Recommended Roles of Counties/Tribes

- Host counties/tribes assume the lead in assisting all affected counties and tribes in managing provider situations that will potentially disrupt services, including planned and unplanned closures, negative licensing actions, relocation, and provider financial instability;
- Work within state policy to address provider performance and services issues;
- Support culturally diverse waiver service providers in their use of DHS online and training resources; and
- Partner with DHS, and other local entities, to identify regional waiver service gaps and support regional waiver service development efforts.

Recommended Roles of State Quality Council

The State Quality Council is an entity charged with improving the quality of services provided to people with disabilities. Counties strongly recommend the State Quality Council broaden its focus and membership to include home and community based services for older adults as well as for people with disabilities for purposes of managing service quality. This is best accomplished in coordination with managed care organizations, consumers of aging services, and the Aging Network, comprised of representation from the Minnesota Board on Aging, Area Agencies on Aging and providers with whom they contract.

The work group recommends that an expanded State Quality Council, working with Regional Quality Councils, develop the county/tribal role in quality service activities.

Next steps include developing the policy and practice needed to operationalize these recommendations, building the capacity to support oversight functions, and supporting the new roles of counties and tribes.

Legislation

Minnesota Laws 2012, Chapter 216, Article 11, Section 42 required the Department of Human Services to submit a report and present findings as follows.

RECOMMENDATIONS FOR FURTHER CASE MANAGEMENT REDESIGN AND STUDY OF COUNTY AND TRIBAL ADMINISTRATIVE FUNCTIONS.

(a) By February 1, 2013, the commissioner of human services shall develop a legislative report with specific recommendations and language for proposed legislation for the following: (1) definitions of service and consolidation of standards and rates to the extent appropriate for all types of medical assistance case management service services, including targeted case management under Minnesota Statutes, sections 256B.0621, 256B.0924, and 256B.094, and all types of home and community-based waiver case management and case management under Minnesota Rules, parts 9525.0004 to 9525.0036. This work must be completed in collaboration with efforts under Minnesota Statutes, section 256B.4912 ;(2) recommendations on county of financial responsibility requirements and quality assurance measures for case management; and

(3) identification of county administrative functions that may remain entwined in case management service delivery models.

(b) The commissioner of human services shall evaluate county and tribal administrative functions, processes, and reimbursement methodologies for the purposes of administration of home and community-based services, and compliance and oversight functions. The commissioner shall work with county, tribal, and stakeholder representatives in the evaluation process and develop a plan for the delegation of commissioner duties to county and tribal entities after the elimination of county contracts under Minnesota Statutes, section 256B.4912, for waiver service provision and the creation of quality outcome standards under Laws 2009, chapter 79, article 8, section 81, and residential support services under Minnesota Statutes, sections 256B.092, subdivision 11, and 245A.11, subdivision 8. The commissioner shall present findings and recommendations to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services finance and policy by February 1, 2013, with any specific recommendations and language for proposed legislation to be effective July 1, 2013.

Purpose of this Report

DHS submits this report to the Minnesota Legislature pursuant to MN Laws 2012, Chapter 216, Article 11, Section 42 directing the Department of Human Services (DHS) to provide recommendations on county and tribal functions involving the oversight and compliance assurance of home and community based services providers. The Legislature directed DHS to work with county, tribal, and stakeholder representatives to develop a plan for the delegation of commissioner duties to county and tribal entities following the elimination of county and tribal waiver provider contract authority on January 1, 2014. (Minn Stat § 256B.4912, subd. 5)

In response to the legislative directive, DHS formed the State and County/Tribal Waiver Provider Oversight and Coordination Work Group (herein "work group"). (See Appendix A for a list of work group member names and organizations.) Work group members recommended a role for an expanded State Quality Council, originally charged by the 2011 legislature to improve the quality of services provided to Minnesotans with disabilities. (See Appendix B for a list of State Quality Council member names and organizations.)

Background

The Disability Services Division and Aging and Adult Services Division are a part of the DHS Continuing Care Administration (CCA.) Operating under the DHS mission, these divisions, working with many others, administer programs that assist people with disabilities and older adults meet their basic needs so they can live in dignity and achieve their highest potential. Counties and tribes secure and manage arrangements, within our current system, that assure persons with disabilities and older adults receive needed services and supports to live in their homes and communities.

CCA has been steadily moving towards significant program reform necessary for program sustainability. Enacted by the 2011 Minnesota Legislature, Reform 2020-Pathways to Independence[1] directs a series of reforms that include the following:

- Achieve better health outcomes;
- Increase and support independence and recovery;
- Increase community integration;
- Reduce reliance on institutional care;
- Simplify the administration of the program and access to the program; and
- Create a program that is more fiscally sustainable.

[1] http://www.dhs.state.mn.us/main/dhs16_166654

Home and Community-Based Waiver Provider Initiative

Federally approved home and community-based services (HCBS) waivers provide necessary services and supports to eligible persons with disabilities and older adults who would otherwise require the level of care provided in an institution. Minnesota implemented its first HCBS waiver in 1984. In fiscal year 2012, 65,362 people accessed Minnesota's five federal HCBS waiver programs. An additional 4,296 individuals accessed the state-funded Alterative Care program that draws almost entirely upon enrolled waiver providers to deliver services and supports to eligible Minnesotans 65 and over, delaying transitions to nursing facility level of care. (See Appendix C for individual waiver program utilization.)

Federal participation in waiver programs requires that Minnesota submit home and community based service waiver plans, initially and every five years thereafter, to the Centers for Medicare and Medicaid Services (CMS,) the federal agency that administers Medicaid. Each waiver plan must meet specific federal assurances in six areas that include the following: level of care; service plan; qualified providers; health and welfare; administrative authority, and financial accountability. In 2008, CMS found Minnesota to be out of compliance with some of the administrative and provider management requirements governing the Community Alternative Care (CAC) waiver and subsequently its other disability waiver programs.

Federal Compliance

Although federal law provides for the administration of waivers by a State Medicaid Agency in collaboration with other entities on its behalf, it requires that waivers are operated uniformly and consistently across all geographic areas they serve. 42 CFR 431.10(e)(3) stipulates that local agencies performing services for the State Medicaid Agency are not granted the authority to change or disapprove any administrative decisions of State Medicaid Agency. Likewise, local agencies may not otherwise substitute their judgment for that of the State Medicaid Agency with respect to the application of policies, rules, and regulations issued by the Medicaid agency.

In 2008, CMS cited new concerns about the operation of the Community Alternative Care waiver in Minnesota that included the following:

- In directing counties and tribes to verify that waiver providers were qualified to deliver services, DHS allowed the assessment of county agencies to substitute for that of the Department, as the Single State Medicaid Agency.
- In permitting counties and tribes to use a Request for Proposal contract process, DHS unlawfully denied waiver providers meeting approved State Medicaid Agency standards the right to deliver services.
- Minnesota's waiver provider county and tribal contracting process failed to assure uniform statewide waiver service rate determination methods and standards.

- Minnesota's county and tribal contracting process failed to assure comparability of waiver services statewide.

After considerable discussion with CMS about Minnesota's county/tribal contract infrastructure, in place since Minnesota implemented its first waiver program, DHS agreed to evaluate and design a new infrastructure to manage and monitor providers. This work, compatible with the Agency's HCBS quality improvement and reform initiatives, resulted in federal corrective action plans incorporating the following key elements:

- A statewide disability waivers rate system[2];
- DHS licensure requirements for 12 additional currently unlicensed waiver services[3] ;
- Enhanced DHS standards and enrollment processes for services remaining unlicensed;
- A new statewide waiver service training, required for all newly enrolling providers[4];
- Elimination of county and tribal waiver provider contracts[5] and transition to less expansive provider oversight functions.

Defining a New Waiver Provider Oversight Role for Counties and Tribes

Beginning in early 2012, through January 2013, DHS hosted a series of meetings with counties and tribes. Eighteen metro and greater Minnesota counties and three tribal bands were represented on the work group. The work group focused on the following central tasks:

- Identify current county/tribal provider oversight activities;
- Determine where state capacity could prompt efficiency in quality oversight activities;
- Develop recommendations to change state operations to meet the needs of a new waiver provider system; and
- Develop recommendations for an expanded State Quality Council on quality activities that counties and tribes could undertake regionally.

[2] http://www.dhs.state.mn.us/main/dhs16_144651
[3] Minn Stat § 245D
[4] Minn Stat § 256B.4912, subd. 7
[5] Minn Stat § 256B.4912, subd. 5

Report Recommendations

DHS, with the work group, developed a framework for provider oversight activity following the elimination of county/tribal contracts. The framework identifies a series of oversight functions that will either be centrally managed by the State or delegated for management by counties and tribes. Those recommendations are as follows:

Recommended Roles of State

- Licensure of 12 additional services that currently rely on county/tribal assurance of compliance;
- Enrollment review of waiver service providers;
- Maintenance of a statewide directory of qualified Medical Assistance enrolled waiver service providers;
- Online waiver training required for all newly enrolling waiver service providers;
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The work group recommends that the State Quality Council, working with Regional Quality Councils, develop the county/tribal role in quality service activities.

Next Steps

DHS recognizes the need to build policy that clarifies the roles of tribes and counties irrespective of whether persons' receive waiver services as part of the managed care organization benefit set or through fee-for-service. DHS also acknowledges the need to define the shared administrative roles of tribes, counties, and managed care organizations following the elimination of county and tribal waiver provider contracts.

There is a great deal of activity underway at DHS to prepare for the elimination of county/tribal provider contracts and shifts in the county/tribal provider oversight role. Activity in the upcoming year includes capacity building to enable increased provider oversight and policy-making to support the new role of counties and tribes.

Activities for Building State Capacity to Provide Oversight Functions

- License waiver services through new 245D provider standards;
- Enhance accessibility of the Minnesota Health Care Provider manual and capacity of the DHS Provider Help Desk;
- Produce and make available new statewide waiver service provider training;
- Establish the requirement that new providers attend a waiver services billing workshop;
- Develop training to support the implementation of new 245D waiver service licensure standards;
- Develop an online state directory of Medical Assistance enrolled waiver service providers; and
- Develop fiscal management entities to replace county management of receipt billing.

Activities that Support the New Roles of Counties and Tribes

- Develop policy needed to support county and tribal responsiveness to waiver provider performance service issues;
- Develop a coordinated approach to meeting the needs of culturally diverse waiver service providers;
- Develop a framework to address unmet service needs; and
- Assist the State Quality Council in identifying county/tribal roles for quality service delivery to service recipients of all ages and coordination with managed care organizations.

Implementation Language

DHS seeks the authority to require statewide training for newly enrolling waiver service providers to replace the training that has been a part of county/tribal contracting operations with new providers.

Minn Stat § 256B.02 Definitions

[add] Subd. 17, **Controlling individual.** "Controlling individual" means a public body, governmental agency, business entity, officer, owner, or managerial official whose responsibilities include the direction of the management or policies of a program. For purposes of this subdivision, owner means an individual who has direct or indirect ownership interest in a corporation or partnership, or business association enrolling with the Department of Human Services as a provider of waiver services. For purposes of this subdivision, managerial official means those individuals who have the decision-making authority related to the operation of the program, and the responsibility for the ongoing management of or direction of the policies, services, or employees of the program. [end add]

Minn Stat § 256B.4912

Subdivision 1. **Provider qualifications.** For the home and community-based waivers providing services to seniors and individuals with disabilities [add] under Sections 256B.092, 256B.49, 256B.0915, 256B.0913 [end add], the commissioner shall establish:

(1) agreements with enrolled waiver service providers to ensure providers meet Minnesota health care program requirements;

Subd. 7. **Applicant and license holder training.** An applicant or license holder [add] for the home and community-based waivers providing services to seniors and individuals with disabilities under Sections 256B.092, 256B.49, 256B.0915, 256B.0913 [end add] that is not enrolled as a Minnesota health care program home and community-based services waiver provider at the time of application must ensure that at least one controlling individual successfully completes a onetime training on the requirements for providing home and community-based services as determined by the commissioner, before a provider is enrolled or license is issued. [add] Within six months of enrollment, a newly enrolled home and community-based waiver service provider must ensure that at least one controlling individual has completed training on waiver and related program billing. [end add]

Appendix A: State and County/Tribal Waiver Provider Oversight and Coordination Work Group

County/Tribe	Representative
Anoka	Jan Buck
Carlton	Patti Martin
Chisago	Nancy Dahlin, Carrie Jakober
Dakota	Dennis Price, Therese Branby
Douglas	Kathy Werk
Hennepin	Ryan Marshall, Charlotte Strand
Lincoln, Murray, Pipestone, Rock	Dale Hiland
Olmstead	Corrine Erickson, Jill Schmidt
Polk	Kent Johnson
Ramsey	Tim Hammond
Rice	Mark Shaw
Steele	Charity Floen
St. Louis	Susan Dailey, Eric Blomstrom, Brian Chilberg
Washington	Cathy Ellis, Sarah Tripple
Leech Lake Band	Pam Mitchell, Karen Jones
Mille Lacs	Candy Jeanotte
White Earth	Audrey Kolnes

Appendix B: State Quality Council Members

Organization/Affiliation	Representative
ARC	Steve Larson
Association of Residential Resources in Minnesota (ARRM)	Barbara Turner
Care Providers; Assisted Living	Daniel Pakonen
Consumer Choice , Consumer Directed Community Supports (CDCS) Fiscal Support Entity (FSE)	Cara Benson
Consumer Directed Community Supports (CDCS) Support Planner	Gina Lecy
Dakota County	Dennis Price
DHS Licensing	Katherine Finlayson
DHS Regional Resource Specialist	Shannon Smith
Dungarvin Minnesota, LLC	Jason Flint
Family	Viola Smith
Family	Alice Hulbert
Family	Lester Bauer
Hennepin County	Ryan Marshall
Lifeworks Services Inc. (Resigned Nov 2012)	Andrew Pietsch
Lutheran Social Services	Debra Koop
Lutheran Social Services	Ann Lazzara
Metropolitan Center for Independent Living (MCIL)	David Hancox
Minnesota Department of Health	Janice Jones
Office of Ombudsman for Mental Health and Developmental Disabilities	Kay Hendrikson
Ramsey County	Pat Kuehn
Recipient	Lance Hegland
Recipient	Patricia Winick
Region 10 Quality Assurance Commission	John Jordan
Region 10 Quality Assurance Commission	Dennis Theede
Region 10 Quality Assurance Commission	LeAnn Bieber
Wright County	Debbra Swanson

Appendix C: Count of Individuals Receiving Home and Community-Based Services through a Waiver or Alternative Care (7/1/2011 - 6/30/2012)

Waivers	All
CADI	19,220
BI	1,476
CAC	419
DD	16,006
EW	28,241
AC	4,296