

ID/A COALITION

THE INTELLECTUAL DISABILITIES AND AUTISM SERVICES COALITION OF PENNSYLVANIA

January 10, 2012

Mr. Francis T. McCullough
Acting Associate Regional Administrator
Centers for Medicare and Medicaid Services
Suite 216, The Public Ledger Building
10 South Independence Mall West
Philadelphia, PA 19106

Dear Mr. McCullough:

The Intellectual Disabilities/Autism (ID/A) Coalition of Pennsylvania is increasingly concerned that conditions and standards established in Medicaid waivers serving people with intellectual disabilities approved by Centers for Medicare and Medicaid Services (CMS) for Pennsylvania are not being satisfied. Our concerns are centered on the inclusion of a factor in the Pennsylvania's ID waivers' cost-based rate-setting methodology that relates to the cost of past utilization increases authorized, but not budgeted for, by the Pennsylvania Department of Public Welfare (DPW). . .

In fiscal year 2004-2005, during preparation for a renewal of Pennsylvania's home and community-based Medicaid waivers serving people with intellectual disabilities, CMS officials discovered that hundreds of enrolled waiver participants were also on the official DPW ID Waiting List for waiver services. These enrolled waiver participants had been denied waiver services for which their need had been documented.

In its letter to DPW officials that opened negotiations over the waiver renewal originally scheduled for July 1, 2005, CMS asked how Pennsylvania would assure federal officials that its ID waiver programs were being administered in compliance with federal requirements. CMS sought assurances that waiver participants, once enrolled, would receive all waiver services for which need can be documented. In response, Pennsylvania Medicaid officials provided CMS with assurances that all of the documented service needs of existing waiver participants would be fully met under the waiver renewal agreement signed December 20, 2006.

Our coalition has become increasingly concerned that Pennsylvania is not properly budgeting for waiver services so that the needs of individuals enrolled in the waiver will not be able to be met. We are very concerned that Pennsylvania will continue to fail to budget adequately for changing needs of people with disabilities, and instead, this planned lack of resources to meet identified need will be shifted to the existing waiver system through adjustments to rates paid to providers. In our review of the experience in Pennsylvania in the past three years, we have found that DPW's budget allocations for the ID waiver programs were not sufficient, and that supplemental funds were required to pay for additional services needed to meet federal requirements that had been ordered by ODP and rendered by enrolled providers.

Since the advent of the ID Waivers' Prospective Payment System on July 1, 2009, the Pennsylvania Department of Public Welfare (DPW) has failed to provide even minimally adequate resources in its initial budget proposals each year to keep its commitment to meet the "changing needs" of existing waiver participants.

In the first year of its Prospective Payment System (FY2009-2010), DPW budgeted \$7.9 million "to address the changing needs of individuals enrolled in the Consolidated Waiver," yet during that fiscal year, DPW and its Administrative Entities issued authorizations for additional services for existing waiver participants costing well over \$100 million. After the close of the fiscal year, when DPW first became aware of this significant over-expenditure of its budget for the changing needs entitlement within the Consolidated Waiver, the Governor's Budget Office worked with the DPW Budget Office to take extraordinary steps to fund this key commitment made by DPW to CMS in the prior waiver renewal process.

During the second year of its Prospective Payment System (FY2010-2011), DPW budgeted only \$11.1 million to meet the changing needs of enrolled waiver participants, and then during that fiscal year, again issued authorizations for additional services for existing waiver participants costing in excess of \$100 million. When this significant over-expenditure was again confirmed two months after the close of that fiscal year, the DPW Secretary decided against requesting additional funding through the Governor's Budget Office, and instead decided that DPW would pay for the very significant unbudgeted cost of its commitment to provide the resources to meet the changing needs of enrolled waiver participants by moving \$104 million of these unbudgeted costs into the following fiscal year (FY2011-2012).

For the third year of its Prospective Payment System (FY2011-2012) DPW has again failed to make a good faith effort to meet its commitments under its waiver agreement with CMS by budgeting only \$15.7 million to pay for the costs of the additional services that DPW will authorize during this fiscal year to ensure that existing ID waiver participants receive the services for which need is documented by DPW's agents.

CMS had approved a rate-setting methodology in Pennsylvania's ID waivers that includes a final step that allows DPW to project annual waiver expenditures, compare that projection to the portion of its budget relating to cost-based services, and then adjust (cut) rates to ensure that projected expenditures will remain within budgeted amounts. This provision was originally developed to enable DPW to react to budget cuts or increases enacted by the Legislature at the beginning of each fiscal year.

The mechanism (Rate Adjustment Factor) was not to be used to remedy the problems rooted in poor budget planning. Nonetheless, the rate adjustment factor is being used to remedy the problems of under-budgeting by DPW for the costs of ensuring that the needs of existing waiver participants are fully met, in accordance with its waiver agreement with CMS. DPW has recently informed its enrolled ID waiver providers that a 6% reduction in rates has been imposed by ODP on rates beginning on November 15, 2011. DPW explained that the reduction is a result of its projection that expenditures during this fiscal year (FY2011-2012) would otherwise have exceeded the adjusted budget amount pertaining to cost-based waiver services by \$58.5 million. The major cause of the projected over-expenditure that led to the 6% payment reduction was the \$104 million payment made this fiscal year that relates to DPW's under-budgeting for the costs of the changing needs authorized by DPW during the prior fiscal year. Clearly DPW failed to provide necessary resources to meet the documented needs of existing waiver participants. This fiscal problem is not related to changes in provider unit costs. In addition, enrolled waiver providers did not know, prior to their providing additional services authorized by DPW in FY2010-2011 that future rates would be cut as a result of the costs they would incur to provide these additional services.

In a March 8, 2010 letter from Associate Regional Administrator Ted Gallagher addressed to George Kimes, the Chair of the Pennsylvania MH/MR Coalition at that time, CMS offered a clarification of its requirements concerning the rate setting methodology used in the Pennsylvania Consolidated and Person/Family Directed Support (P/FDS) Home and Community Based Services (HCBS) waivers. A copy of the letter is attached for your reference. In regard to questions that were presented by the Coalition, CMS said:

Based on these requirements, as well as the requirement that the State Plan is a 'comprehensive written statement' (42 CFR §430.10), CMS has concluded that retroactive rate adjustments (rate reductions for services included in the service plan, authorized and delivered) cannot occur based on the unavailability of State resources. Waiver providers should know in advance what rate they will be paid for the services that they agree to provide. There are rate setting methodologies that can be used in HCBS waivers that result in retroactive rate modifications during the waiver year, for example based on actual costs that vary from some earlier estimate. In order for such retroactive rate adjustments to occur, however, they would have to be part of the rate methodology described in the approved waiver.

THE ID/A COALITION CONSISTS OF STATEWIDE ADVOCACY AND PROVIDER ORGANIZATIONS ADVOCATING FOR SERVICES FOR PEOPLE WITH INTELLECTUAL DISABILITIES AND AUTISM IN PENNSYLVANIA.
FOR ADDITIONAL INFORMATION, CONTACT ANY OF THE ORGANIZATIONS LISTED:

PA ASSOCIATION OF REHABILITATION FACILITIES (717.657.7608)
PA WAITING LIST CAMPAIGN (877.372.WAIT)

DISABILITY RIGHTS NETWORK (1.800.692.7443)
PA COMMUNITY PROVIDERS ASSOCIATION (717.364.3280)

PA ASSOCIATION OF RESOURCES FOR AUTISM AND INTELLECTUAL DISABILITIES (717.236.2374) THE ARC OF PA (717.234.2621)
UNITED CEREBRAL PALSY OF PA (717.975.0611)

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Since DPW officials decided not to request a supplemental appropriation needed to provide “adequate state resources” to cover all of the costs of the services that it authorized which providers delivered during the past fiscal year (FY2010-2011), and that they instead are imposing rate cuts in this fiscal year to pay for “services included in the service plan, authorized and delivered” in the prior fiscal year, it is our view that DPW’s announced rate reduction squarely fits the prohibition against retroactive rate adjustments articulated in the first sentence of Ted Gallagher’s March 8, 2011 letter quoted above. As a result, we ask that CMS direct DPW to withdraw its announced 6% rate cut prior to November 15, 2011.

Since we believe that the continued quality and availability of services to people with intellectual disabilities under Pennsylvania’s home and community-based waivers is at grave risk, the members of the IDA Coalition are also requesting an immediate face-to-face meeting with you and your staff to discuss our concerns. We understand that such a meeting would include state officials.

Enclosed is a copy of the letter that the IDA Coalition recently sent to Pennsylvania’s Budget Secretary that explains in more detail the facts of the matter as we understand them.

We look forward to hearing from you soon.

Sincerely yours,



Mark Murphy, Chief Executive Officer
Disability Rights Network of PA



Shirley A. Walker, President and CEO
Pennsylvania Advocacy and Resources for
Autism and Intellectual Disabilities



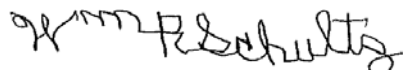
George J. Kimes, Executive Director
Pennsylvania Community Providers Association



Eugene Bianco, President and CEO
Pennsylvania Association of
Rehabilitation Facilities



Maureen Westcott, Public Policy Advocate
The Arc of Pennsylvania



William R. Schultz, Board President
United Cerebral Palsy of Pennsylvania