



Colorado
Cross-Disability
Coalition

Nothing about us, without us.

Julie A. Reiskin, L.C.S.W.
Executive Director
Certified Non-Attorney Advocate
jreiskin@ccdconline.org

Julie A. Reiskin, E.
Kevin W. Willian

Attachment N

655 Broadway, Suite 775
Denver, Colorado 80203
303.839.1775 (Voice)
800.817.1435 (Voice)
303.839.0015 (TTY)
877.267.1621(TTY)
303.839.1782 (Fax)
www.ccdconline.org

October 13, 2009

Representative John Kefalas, Chair
Members of the Committee on Poverty Reduction:

I want to thank you all for taking so much time out of your summer to address issues of poverty. I am representing the Colorado Cross-Disability Coalition, a disability rights organization that is run by and for people with all types of disabilities to promote social justice and enforce civil rights. Poverty is the most handicapping aspect of living with a disability so all of these subcommittees are critically important to our population. People with disabilities remain the poorest demographic in the United States, and in Colorado for a variety of reasons. During these difficult financial times our poverty is exacerbated and we are left with no way to recover. The budget ax has swung hard and we believe that people with all types of disabilities have been disproportionately impacted and we are hopeful that the legislature will offer some protections once you convene. Many of these numbers and services seem very abstract when we discuss in committee rooms like this—but it is not at all abstract and part of our fervor in coming up with solutions is because it is our friends and families that will have their life lines cut, their safety nets shredded come January 01. While there may be talk about making repairs later or ramping up once we fix the ratchet affect in a few years our people don't have a few years. It can take people years after acquiring a disability or even if they are born with disabilities, to set up a service system that works. This includes medical, social, housing, skill development, income maintenance, personal care, and much more. While it takes years to set up a support system that works, it takes days to unravel it. You can lose your housing after a month with no income, you lose your support people if they are not paid on time and adequately—even one missing paycheck causes them to need to make other arrangements. One eviction and you never get housing again—one month without income and your credit is wrecked forever and re-establishing one's life becomes daunting. It is also easy to say that one area does not affect another, that the betrayal of our people relying on the Aid to the Needy Disabled does not relate to the DD Mil Levy, that the dramatic Medicaid expansions (past and future) are not related to current efforts to kick the disabled off of the rolls but these things are all related. We cannot continue to fill a crumbling infrastructure. We are told not to bring problems but to bring solutions and we take your advice and directives seriously. We are counting on you to rectify damage in January. Our lives are literally in your hands.

The issue of the Mil Levy for DD has been terribly confused with many issues including the whole mess of the waiver changes that began before 2005 and has continued to this day as the state makes wholesale changes in the SLS waiver. DD, like other disability services has been chronically underfunded—it is a tough area to fund because the needs of the clients are significant and they do not go away. They are lifelong needs. Many communities, usually at the instigation of the community centered boards, ran mil levy campaigns to fill the gaps. In about 2003 it was discovered by the CCBs that these funds might qualify for a federal match and after discussion the CCBs made a long term commitment to use these funds for the match. Funds doubled and the CCBs were able to do good things with the extra money. Unfortunately, shortly after this time CMS did an audit and undid the whole CCB system and told the state that some changes were

needed. The basic issue was failure to comply with CMS regulations, even though CMS had approved our system for years, the system they approved was not consistent with regulations. Many people believe that the state made changes beyond what CMS required.

One of the changes was that CMS said that the state needed to handle the mil levy differently. They said that the counties, not the CCBs had to certify the funds. Also, funds had to be used for Medicaid eligible clients and services. Therein lies the issue.

We are not taking the position that every mil levy dollar should be used as a match. However we do believe that to just engage in a blanket rejection of even looking at this issue is not responsible in these tough budgetary times. The bottom line is that no one knows how this money is being used statewide. Some communities, like Denver, have a very open and transparent process. They have public hearings, public reports, and a mil levy committee. As a member of that committee I feel that Denver is doing good things with the mil levy dollars. However there is an option for all Denver citizens to weigh in and have say in how our dollars are used. Denver spends a lot of money on early intervention, a program that is highly supportable by evidence. Some of the clients may be eligible for Medicaid; some of the services may also fit within what Medicaid can fund. Some clients clearly will be over income for Medicaid and some services will not fit the Medicaid guidelines. Each community needs to be able to know what is being spent and for whom. Early intervention is not income dependent. Maybe during these difficult times we need to decide that we cannot fulfill the federal mandate and pay for services for wealthy people? Maybe we decide that this is so important we want to pay for it for everyone. Maybe until we can find a way to not shut out the poorest 6000 clients who have nothing we need to not pay for camps. Maybe we feel that camps are so important that they should be paid for no matter what. The problem is that we are not making any decisions or implementing any public policy, we are simply allowing some people in the Executive to make decisions without all of the information and behind closed doors. Just the fact that it took us eight months and having to get an attorney to file an open records act demand to get the tiny bit of information we have should raise red flags.

We were told that CMS issued a cease and desist order—they did not—they simply asked some questions and said we had to go about certification differently. However everyone was told that CMS issued a cease and desist order. As we stand poised to make devastating cuts we need to snatch every possible federal dollar. Before we know if this match should or should not be pursued we need some questions answered. We are respectfully asking if you can require the department or the CCBs or even the counties to provide the following information so that as the policymakers for this state you can make an informed decision, keeping in mind the needs of all citizens and the needs for general fund to be available for people with all kinds of disabilities. At a minimum the following information should be synthesized and made available to you and all interested parties for debate and decision making:

- 1) A list of counties that have a DD mil levy.
- 2) Copies of the actual ballot language for each
- 3) Total dollar amount collected in the past two years and projected revenue for the next two years
- 4) List of actual expenditures and breakdown of expenditure item and county.
- 5) Demographics on client benefit from these dollars, for example how many are over Medicaid income (74% of poverty). How many live in family home that has an income over 150% of poverty? How many live in homes with a value over \$500,000 (or whatever number you all want to pick). How many are young children? How many are school age and how many elderly?
- 6) Can we get a plain language interpretation of the state statutory authority regarding use of these funds given that we spend so much on developmental disability services? Does the state statutory authority differ if the city is home rule like Denver?
- 7) Does every area that has a mil levy have a citizen advisory committee like Denver and if not why not? If so have they weighed in on this issue?

Once we learn how much money we have in mil levy dollars and the percentage of that which could be certified rational decisions can be made.

I want to be clear that this is not an issue of "advocates versus the CCBs" This has nothing to do with the quality of services or anything else about the CCBs. The federal government said that the CCBs cannot certify dollars because they did not find them to be enough of arm of government. We are concerned that the state agencies have implied that the CCBs refused to cooperate because we don't know that they have ever been given adequate information. As I said, I personally think Denver Options does a terrific job with their mil levy dollars. I

have no reason to believe that any CCB is doing anything bad with the dollars. The issue is simply one of having all of the information on the table and bringing the community together to make tough decisions in tough times, and to make sure that fundamental values can come into decision making. Thank you for your time. Attached for your convenience is the actual letter from CMS along with time line I made based on the documents we received as public records.

Thank you again for your time and CCDC will remain available to help in any way possible as you go through this process.

Sincerely

Julie Reiskin
Executive Director

- Memo's from DDD to CCB's telling them how to certify expenditures, only see expenditure certification from Pathways
- 4/18/06 Email from Steve Block expressing some concerns about the process to begin on 7/1/06—state says it is inaccurate but no record of them contacting Dr. Block to correct
- 9/15/06 State letter to Pathways about history of Pathways certification of expenses, references agreements made in 2003 that mil levy funds for such certification would be long term commitment—referenced Pathways proposal regarding equity
- --this paragraph in letter In a memorandum dated September 15, 2003 to CCJ3 Executive Directors and CCB Finance Directors from DDD regarding the local match process, CCBs were informed that: "Participating in this program is strictly voluntary on the part of each city/county...". During an initial in-service in February 2003, a handout to all participating CCBs, including Developmental Pathways, entitled: "Using Local Tax Revenues As Medicaid Match" states in part: "Any CCB that wants to use local match and associated FFP to provide services to persons on the Medicaid Comp. and/or Medicaid SLS waiting lists must consider this as a long term commitment.

It appears from correspondence that Pathways threatened to sue the state over something or threatened to withdraw money but the open records request did not include the actual letters from Pathways only the responses so we really don't know.

- 2/27/07 Letter from HCPF to CMS in response to January 07 letter on this matter
- 3/9/07 Email from CMS to HCPF as follow up of verbal conversation asking for information to be provided to CMS in two weeks (and tone suggested compromise was available if two week deadline was not workable for HCPF)
- 5/1/07 CMS asks HCPF about the response that was due in late March 5/2/07 HCPF responds to CMS
- 5/2/07 HCPF sends memo to CMS outlining how CCB funds were certified for federal match before and after July 01, 2006
- 8/13/07 CMS sent letter to HCPF telling them to do match for CCB funds differently, did not tell them they could NOT use these funds for federal match but that they needed to change the procedure before 1/1/08
- 2/10/09 S. Hutter asks HCPF about this in email after not getting responses,
- 2/12/09 HCPF tells Hutter they will follow up quickly
- 2/28/09 S Hutter asks where information is—HCPF said matter referred to DDD
- 3/2/09 DDD says they are looking into it
- 3/26/09 S Hutter again asks both DDD and HCPF about this in light of what we are told are upcoming cuts—DDD again says they are looking into it and that waiver renewals are due on 31st

- 6/4/09 S Hutter again asks when she can get an answer
- 7/6/09 HCPF says that CMS issued cease and desist order in November of 2006 unless process changed, CCB's not willing to change process and that HCPF did not think they had authority to order them to do so

- 7/9/09 CCDC JR contacts Karen Beye asking about this since they have authority over CCBs

- 8/4/09 JR leaves voice mail for KB and email asking for a response
- 8/10/09 CCDC and other organization send out press release after getting no information from DHS

- 9/10/09 CCDC files open records request to get information

- 9/23/09 Issue is addressed by poverty task force, agree to sponsor bill, county lobbyist initially supportive but that support has been withdrawn in the past week

- 9/23/09 open records provided to CCDC (note that state law requires three day response)



HEALTH CARE POLICY
& FINANCING DEPARTMENT OF HEALTH & HUMAN SERVICE
Centers for Medicare & Medicaid services

2007 AUG 15 PM 1 21

Region VIII
1600 Broadway, Suite 700
Denver CO 80202-4967

RECEIVED

August 13, 2007

Ms. Joan Henneberry
Executive Director
Colorado Department of
Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

Dear Ms. Henneberry:

The Centers for Medicare and Medicaid Services (CMS) has been working with your staff to confirm the procedures that are being used to claim Federal Medicaid Funds for services to the Developmentally Disabled with the non-Federal share coming from local government revenue. Our understanding is that the Colorado legislature appropriates funds for this program as "Federally-matched Local Program Costs" in the annual budget bill but the non-Federal funding is apparently furnished by individual counties within the State. Upon request from CMS, the Department of Health Care Policy and Financing (HCPF) staff provided a detailed explanation of the local match process for the Community Centered Boards (CCBs) that had been implemented by the Department of Human Services effective July 1, 2006. CMS has a number of concerns with the process described, which are discussed below.

CMS's major concern is that there does not appear to be a documented non-Federal share of claimed expenditures. Our understanding is that Colorado is identifying funds certified or transferred by CCBs themselves. CCBs are not public agencies or governmental units, but are private non-profit organizations. Under the regulation at 42 CFR §433.51, private entities, including private providers, cannot certify expenditures used as the non-Federal share. Moreover, transfers from private providers, such as the CCBs, to the State agency would be provider-related donations under CMS regulations at 42 CFR §433.52. Because such transfers are related to Medicaid payments, they would not be bona fide under 42 CFR §433.54.

It is our understanding that counties are providing funds to the CCB, however, this funding does not represent the Medicaid rate due CCBs under the 1915(c) demonstration. In order to utilize certified public expenditures as funding for Medicaid payments to CCB, the county would need to certify public funds in conjunction with a CCB certification of costs incurred to provide Medicaid services. To the extent that the county funding is used to fund Medicaid payments due CCB as a Medicaid demonstration provider, the state would need to modify the demonstration to indicate that CCB payments under the demonstration were actual cost incurred and further, must define the process for identifying that cost. CCB would certify its cost incurred for delivering Medicaid services and the county would certify the amount of public funding appropriated to

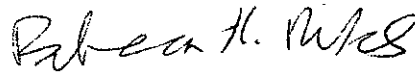
Ms. Joan Henneberry
Executive Director
August 13, 2007
Page Two

CCB. The Federal match claimed could never exceed cost or the Federal share of the appropriation. The county could also transfer the funds to HCPF through an Intergovernmental Transfer (IGT), and HCPF may use those funds as the non-federal share of State expenditures.

CMS requests that this practice stop and that the state adopt an alternative method of certifying the non-Federal share for these expenditures or develop an IGT. No matter which method the state adopts, the practice must be in compliance with Federal regulations as outlined above and be in place effective January 1, 2008.

If you have questions, do not hesitate to contact me at (303) 844-7479 or Stephen Nose at 303-844-7045.

Sincerely,



Barbara K. Richards
Acting Associate Regional Administrator
Division of Medicaid and Children's Health

Cc: Barbara Prehmus, HCPF
Chris Underwood, HCPF
Richard Billera, CMSO

