



April 16, 2024

The Honorable John A. Hoffman
Chair, Human Services Committee
Minnesota Senate
2111 Minnesota Senate Bldg.
St. Paul, MN 55155

The Honorable Jim Abeler
Ranking Minority Member, Human Services Committee
Minnesota Senate
2207 Minnesota Senate Bldg.
St. Paul, MN 55155

Re: Legal Aid letter in support of the CDCS amendment

Dear Chair Hoffman, Ranking Minority Member Abeler, and Members of the Committee:

Legal Aid and the Disability Law Center write in strong support of Senator Mann's CDCS amendment.

Consumer-Directed Community Supports (CDCS) is a service option that allows participants who qualify for home and community-based waiver services to select the supports and staffing they need themselves. This program allows participants to stay in their own homes and live the lives they choose, instead of living in institutions or group homes where they receive a prescribed set of supports.

CDCS is available to Minnesotans who qualify for the following programs:

- Alternative Care (AC)
- Brain Injury (BI) Waiver
- Community Alternative Care (CAC) Waiver
- Community Alternatives for Disabled Individuals (CADI) Waiver
- Developmental Disabilities (DD) Waiver
- Elderly Waiver (EW)
- Minnesota Senior Health Options (MSHO)

This amendment addresses ways to increase transparency and improve CDCS for participants. The bill includes the following provisions, which we would like to explain in more detail:

Require lead agencies to provide information on how the CDCS budgets are calculated, what you would get if you chose traditional waiver services, and your right to appeal. Currently, CDCS budget determinations are based on a complex formula created by the Department of Human Services, which considers a person's service needs. Participants that receive a budget determination based on this formula are normally not provided with any information as to how that budget was calculated. Many county employees are unaware of how the budgets are calculated and are unable to explain to participants why they are receiving a particular budget amount. DLC attorneys have found errors when they ask for an explanation of the budget because our clients' needs were assessed incorrectly. Participants have the right to appeal their budget determinations, but it is difficult to do so when the budget determination process is not transparent.

Establish that county CDCS policies cannot be inconsistent with DHS policy and have no force or effect of law in an appeal. Many counties have internal handbooks and policies about CDCS that are not public. This creates disparities in the supports and services that participants receive based on the county that they live in. For example, in some counties, a cell phone is viewed as a necessary item for safety and community integration, and those counties will cover the cost of a phone and the monthly phone plan. In other counties, just the purchase of the phone is approved. In others, no phone expenses of any kind are approved. Counties cite to these internal documents that are not usually available on websites nor made available to participants. Federal law establishes that DHS alone should set policies for Medicaid programs, see 42 C.F.R. § 431.10(e), and policies that are more restrictive than DHS policies should not be considered in appeals.

Clarify that goods and services that directly benefit a CDCS recipient can be used by others. The state waiver plans states that CDCS "services, goods or supports provided to or directly benefiting persons other than the individual" are not allowed. Unfortunately, some counties implementing CDCS have interpreted this language in a way that prohibits funds to be used on any service or goods where it is possible that someone else may receive an ancillary benefit. Here are two examples to demonstrate this issue that DLC attorneys have run into:

- A client has issues with toileting and frequently soiled his clothes and sought to use CDCS funds towards the purchase of a washing machine. The request was denied because the county believed other family members might use the washing machine.
- A child's physical therapist recommended that a trampoline would be beneficial for a child receiving CDCS. The county denied the request unless the family fenced in the trampoline to ensure that the child's siblings and other children in the neighborhood could not access it.

These interpretations needlessly limit a CDCS participants' ability to purchase needed goods and services. This provision asks for a direction to the commissioner that makes clear that CDCS funds may be used to purchase goods and services that provide a direct benefit to a CDCS participant, even if those goods and services may also provide ancillary benefits to other people.

Clarify that goods and services that promote community integration are allowed. Many counties do not allow CDCS participants to spend their funds on activities that promote community integration, such as conferences or social events. These counties deny these requests because CDCS funds cannot be used for activities that are “diversionary” or “recreational.” These denials, however, ignore one of the fundamental purposes of disability waivers, which is to promote community integration for people with disabilities, as required by the ADA and the *Olmstead* decision. This provision asks for a direction to the commissioner to ensure that funds may be used on activities that promote community integration.

Clarify that individuals providing personal assistance, including parents, can be paid at a higher rate if necessary to meet the person’s assessed needs. As you are likely aware, there is a direct support staff crisis throughout Minnesota where there are simply not enough direct support workers to provide care and services to people with disabilities. In order to attract direct support workers, some CDCS participants need to pay higher wages to their staff—especially participants with greater health care needs or participants in outstate Minnesota. However, the current interpretation of the waiver plan can prohibit these higher wages, particularly in instances where the direct support staff person is a relative of the CDCS participant. This provision would make clear that CDCS participants can use the money in their existing CDCS budget to pay higher hourly wages than normal to their direct support staff when the CDCS participants have an *assessed* need for a higher rate.

Thank you for allowing us to submit input. We hope you will support this amendment.

Sincerely,



Jennifer Purrington
Legal Director/Deputy Director
Minnesota Disability Law Center



Ellen Smart
Staff Attorney
Legal Services Advocacy Project

This document has been formatted for accessibility. Please call Ellen Smart at 612/746-3761 if you need this document in an alternative format.