



March 16, 2024

The Honorable Peter Fischer  
Chair, Human Services Policy Committee  
Minnesota House of Representatives  
551 State Office Building  
St. Paul, MN 55155

The Honorable Debra Kiel  
Republican Lead, Human Services Policy Committee  
Minnesota House of Representatives  
203 State Office Building  
St. Paul, MN 55155

**Re: Legal Aid letter in support of HF 4568**

Dear Chair Fischer, Lead Kiel, and Members of the Committee:

Legal Aid and the Disability Law Center write in strong support of HF 4568.

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 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)

HF 4568 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:

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**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.

**Allow for SMRT referrals from any hospital-based or clinic-based licensed independent clinical social worker in the state, not just counties and tribes.** There are currently limits on the types of social workers who can make referrals to initiate the State Medical Review Team (SMRT) process to determine if a person can be "certified disabled." Being "certified disabled" by either SMRT or the Social Security Administration is a necessary requirement to access disability waivers. This provision should help speed up the SMRT process and enable more individuals to access disability waivers and CDCS.

**Eliminate the 30% reduction to the base rate in the CDCS formula.** Participants who use CDCS often use less funds than participants who use traditional waiver services. CDCS participants should not be further penalized or receive less funding for wanting to be in charge of their lives. Even if the 30% reduction were eliminated, the state would still save money. For example, the cost of 24-hour awake care in a setting using traditional waiver services is \$300,000. With CDCS, that same care is approximately \$220,000 (\$25/hour X 24 hours X 365 days/year X ~20% employee fees (FICA, PTO, worker's comp, etc.)). Yet, CDCS participants rarely have the funds to cover the staffing that is authorized, and instead have to rely on friends and family members to cover the unpaid gaps, or, worse, go without if they do not have a support network.

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**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 an enhanced 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 wish to pay higher wages to their staff. 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 an enhanced rate.

Legal Aid Letter re: HF 4568  
March 16, 2024

Thank you for allowing us to submit input HF 4568. We hope you will support this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Purrington".

Jennifer Purrington  
Legal Director/Deputy Director  
Minnesota Disability Law Center

A handwritten signature in black ink, appearing to read "Ellen Smart".

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.

# Improving Consumer-Directed Services

## HF 4568/SF 4420

Contact: Ellen Smart, Legal Services Advocacy Project,  
Mid-Minnesota Legal Aid, [eesmart@mnlisap.org](mailto:eesmart@mnlisap.org), 612/807-5111

Consumer-Directed Community Supports (CDCS) is Minnesota's self-directed care option under Home and Community-Based Services (HCBS) Waivers and is used by thousands of people with disabilities across the state. Individuals who elect to use the CDCS option receive an annual waiver budget from the county, and then choose how to spend that budget within the parameters of the program. CDCS participants currently experience a variety of obstacles that inhibit their ability to receive services. There is vast confusion with how budgets are calculated. Moreover, counties have adopted their own policies to administer the program, leading to different outcomes for participants based on what county they live in.

We seek changes to:

- 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.
- Establish that county CDCS policies cannot be inconsistent with DHS policy and have no force or effect of law in an appeal.
- Allow for SMRT referrals from any hospital-based or clinic-based licensed independent clinical social worker in the state, not just counties and tribes.
- Require the commissioner to amend the waiver plan to:
  - ✓ Eliminate the 30% reduction to the base rate in the CDCS formula
  - ✓ Clarify that goods and services that directly benefit a CDCS recipient can be used by others
  - ✓ Clarify that goods and services that promote community integration are allowed
  - ✓ Clarify that individuals providing personal assistance, including parents, can be paid at an enhanced rate if necessary to meet the person's assessed needs



Mister Chair and members of the House Human Services Policy Committee,

We write today on behalf of The Arc Minnesota to demonstrate support for H.F. 4568 authored by Representative Virnig.

For many years, our organization has supported proposals related to Minnesota's Consumer Directed Community Supports (CDCS) option of the Home and Community Based Services (HCBS) waivers. CDCS offers people with disabilities and their family members more choice and control over their services and supports. People accessing CDCS have more flexibility in hiring staff, setting wages, and purchasing non-traditional goods and services like assistive technology - all of which are cost-effective and reduce constraints on the workforce.

Unfortunately, though, there are many barriers that prevent people from accessing the CDCS option. One of the main barriers is inequity between individuals' budgets through the CDCS option and traditional waivers. Individuals' CDCS budgets are approximately thirty percent lower than traditional waiver budgets. The stated rationale for this massive reduction is that people accessing the CDCS option do not have the same administrative and overhead costs as individuals accessing more traditional waiver services. This discounts the significant amount of time and effort it takes for people using the CDCS option to hire, train, and manage their own staff and services.

Furthermore, there are dramatic differences in how the CDCS option is administered depending on where an individual lives. Some lead agencies have developed distinct policies and procedures regarding CDCS implementation which diverge from state policy, creating confusion and perpetuating bureaucratic barriers. For example, we have heard from many individuals whose chosen goods and services were denied by lead agency staff, only to be approved when they moved to a different county.

These financial and administrative barriers act as disincentives to the CDCS option - pushing people with disabilities toward more costly, restrictive service models.

H.F. 4568 would correct these barriers and imbalances, making the CDCS option more streamlined and consistent. We hope you will support this bill and promote equitable access to the CDCS option for Minnesotans with disabilities statewide.

Tina Rucci, Public Policy Director  
The Arc Minnesota



**U.S. Department of Justice**  
*Civil Rights Division*

**Department of Health and  
Human Services**  
*Office for Civil Rights*



December 15, 2014

Dear Colleague:

On October 1, 2013, the Department of Labor promulgated a rule extending the minimum wage and overtime protections of the Fair Labor Standards Act (FLSA) to most home care workers (“Home Care Rule”). Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60,454 (Oct. 1, 2013). The Home Care Rule becomes effective on January 1, 2015.<sup>1</sup>

The Civil Rights Division and the Department of Health and Human Services’ Office for Civil Rights (OCR) recognize the importance of ensuring adequate workplace protections for home care workers, who provide critical services to millions of Americans. At the same time, it is important that states implement the Department of Labor’s rule in ways that also comply with their obligations under Title II of the Americans with Disabilities Act (ADA). In particular, because home care workers, such as personal care assistants and home health aides, often provide essential services that enable people with disabilities to live in their own homes and communities instead of in institutions, states should consider whether reasonable modifications are necessary to avoid placing individuals who receive home care services at serious risk of institutionalization or segregation.

The Department of Justice and OCR enforce the rights of people with disabilities to live integrated lives free from unnecessary segregation in institutions. Specifically, Title II of the ADA requires that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”<sup>2</sup> As directed by Congress, the Attorney General issued regulations implementing Title II, which are based on regulations issued under section 504 of the Rehabilitation Act.<sup>3</sup> The Title II regulations require public entities to “administer services, programs, and activities in the most integrated setting

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<sup>1</sup> The Department of Labor announced that it will not bring an enforcement action against any employer related to FLSA obligations under the new Home Care Rule before June 30, 2015. It will then use prosecutorial discretion until December 31, 2015 to determine whether to bring enforcement actions, taking into account the good faith efforts of states and other entities to bring their home care programs into compliance with the Home Care Rule. Application of the Fair Labor Standards Act to Domestic Service; Announcement of Time-Limited Non-Enforcement Policy, 79 Fed. Reg. 60,974 (Oct. 9, 2014).

<sup>2</sup> 42 U.S.C. § 12132 (1990).

<sup>3</sup> *See id.* § 12134(a); 28 C.F.R. § 35.190(a) (1991); Exec. Order No. 12,250 (1980), 45 Fed. Reg. 72,995 (1980), *reprinted in* 42 U.S.C. § 2000d-1. Section 504 of the Rehabilitation Act of 1973 similarly prohibits disability-based discrimination. 29 U.S.C. § 794(a) (“No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .”).

appropriate to the needs of qualified individuals with disabilities.”<sup>4</sup> The preamble discussion of the “integration regulation” explains that “the most integrated setting” is one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible . . . .”<sup>5</sup>

In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the Supreme Court held that Title II’s integration mandate prohibits the unjustified segregation of individuals with disabilities. Furthermore, compliance with Title II’s integration mandate requires that public entities reasonably modify their policies, procedures, or practices when necessary to avoid discrimination.<sup>6</sup> The obligation to make reasonable modifications may be excused only where the public entity demonstrates that the requested modifications would “fundamentally alter” its service system.<sup>7</sup>

Moreover, the ADA and the *Olmstead* decision are not limited to individuals currently in institutional or other segregated settings. They also apply to persons at serious risk of institutionalization or segregation. For example, a public entity could violate *Olmstead* if it fails to provide community services, or reduces those services, in a way likely to cause a decline in health, safety, or welfare leading to an individual’s eventual placement in an institution.

The Department of Labor’s Home Care Rule narrows the circumstances in which the companionship services and live-in domestic service employee exemptions from FLSA protections apply, both by updating the definition of “companionship services” and by prohibiting third party employers from claiming either exemption. Because of these changes, most home care workers, including those providing services through publicly funded programs, will be entitled to receive at least the Federal minimum wage for all hours worked and overtime compensation—one and a half times the worker’s regular hourly rate of pay—for all hours worked over 40 in a workweek.

Implementation of the Home Care Rule will require each public or private agency that administers or participates in a consumer-directed home care program, including those funded by Medicaid, to evaluate whether it is a joint employer under the FLSA. If it is a joint employer, the entity will then be responsible for compliance with the requirements of the FLSA. The Act’s minimum wage requirement applies to any time spent traveling between worksites—in the home care context, the consumer’s home—when employed by the same sole or joint employer at each worksite. The FLSA’s overtime compensation requirement includes, in the home care context, combined hours spent working for more than one consumer as part of the joint employment by the third party entity. More information and guidance regarding the Home Care Rule can be found at: U.S. Dept. of Labor, Wage and Hour Div., *We Count on Home Care*, available at: <http://www.dol.gov/whd/homecare/> (last visited December 5, 2014).

The Civil Rights Division and OCR encourage states to conduct a thorough analysis of all their home care programs to determine whether any changes must be made to comply with the FLSA once the Home Care Rule becomes effective. In planning implementation steps, states must

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<sup>4</sup> 28 C.F.R. § 35.130(d) (1991).

<sup>5</sup> 28 C.F.R. Pt. 35, App. B at 673 (2011).

<sup>6</sup> 28 C.F.R. § 35.130(b)(7) (1991).

<sup>7</sup> *Id.*; see also *Olmstead*, 527 U.S. at 604-07.



consider whether reasonable modifications are necessary to avoid placing individuals who receive home care services at serious risk of institutionalization or segregation.<sup>8</sup> A state's obligation to make reasonable modifications to its policies, procedures, and practices applies even when a home care program is delivered through non-public entities.

Many states are already taking concrete steps to implement the Home Care Rule. Some states are developing budget proposals to pay overtime and travel time for home care workers who work over 40 hours in a week. The Centers for Medicare and Medicaid Services (CMS) has published guidance to assist states in understanding Medicaid reimbursement options that will enable them to account for the cost of overtime and travel time that may be compensable as a result of the Home Care Rule. See Cindy Mann, *CMCS Informational Bulletin: Self-Direction Program Options for Medicaid Payments in the Implementation of the Fair Labor Standards Act Regulation Changes* (July 3, 2014), <http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/CIB-07-03-2014.pdf>.

Other states are planning to comply with the new rule by setting limits or capping direct care workers' hours or travel time. We are sensitive to states' budgetary constraints. However, implementation of across-the-board caps risks violating the ADA if the caps do not account for the needs of individuals with disabilities and consequently places them at serious risk of institutionalization or segregation. For example, if a state prohibits home care workers from exceeding 40 hours a week of work, individuals who need more than 40 hours a week of care may not receive their full hours where home care workers are scarce. And even where home care workers are available, consumers with extraordinary medical or behavioral needs may not be able to tolerate multiple workers in their home. Emergency situations may also arise where a scheduled second worker is not available and the individual's home care support needs would not be met without immediate authorization of overtime hours and pay.

Therefore, states need to consider reasonable modifications to policies capping overtime and travel time for home care workers, including exceptions to these caps when individuals with disabilities otherwise would be placed at serious risk of institutionalization.<sup>9</sup> Whether a reasonable modification is needed and what the modification should be depends on the specific factual circumstances. States should also consider implementing processes that reliably and expeditiously enable individuals with disabilities to obtain cap exceptions when they are warranted. Finally, where implementation of the Home Care Rule disrupts services, states should collect and monitor data to ensure that the service disruption does not place individuals with disabilities at serious risk of institutionalization.

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<sup>8</sup> In the final Home Care Rule regulations, the Department of Labor recognized states' obligations to comply with the requirements of the Americans with Disabilities Act when considering changes to implement the Home Care Rule. 78 Fed. Reg. 60,454, 60,485-87.

<sup>9</sup> CMS has similarly encouraged states to consider exceptions to limitations on overtime and travel time when necessary to avoid placing an individual at risk of harm. See Cindy Mann, *CMCS Informational Bulletin: Self-Direction Program Options for Medicaid Payments in the Implementation of the Fair Labor Standards Act Regulation Changes* (July 3, 2014), <http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/CIB-07-03-2014.pdf>; see also CMS, *Application for a § 1915(c) Home and Community-Based Waiver, Instructions, Technical Guide and Review Criteria* at 141 (January 2008), <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Downloads/Technical-Guidance.pdf>.

For more information regarding states' obligations under *Olmstead* and the Americans with Disabilities Act's integration mandate, visit *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.*, available at: [http://www.ada.gov/olmstead/q&a\\_olmstead.htm](http://www.ada.gov/olmstead/q&a_olmstead.htm) (last visited December 5, 2014).

The Civil Rights Division and OCR recognize and appreciate the work that states do in supporting individuals with disabilities to live integrated lives in their communities.

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Vanita Gupta  
Acting Assistant Attorney General  
Civil Rights Division  
U.S. Department of Justice

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Jocelyn Samuels  
Director  
Office for Civil Rights  
Department of Health and Human Services

Heather Kainz  
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March 18, 2024

Re: Improving Consumer-Directed Services, HF 4568/SF 4420

To Whom It May Concern:

I am the mother and primary caregiver to my 12-year-old son, Parker, who has complex medical needs with both physical and cognitive disabilities. Parker has benefited from being granted a CADI waiver and we utilize the CDCS option, managing what services he will most benefit from within his budget. I am writing in support of HF 4568/SF 4420, as it seeks to require CDCS recipients to be provided with a “big picture view” of how their budget is calculated, what they would receive on a traditional waiver budget, and clear information on their rights to appeal budget decisions. Additionally, this bill would help align CDCS policies across the state to help ensure that regardless of where a person lives, the playing field is more equal. It would also provide clarity on what a recipient’s CDCS budget is allowed to be utilized for.

In my experience, I have seen the need for these improvements firsthand. When Parker was younger, we lived in northern St. Louis County, and although it is a part of St. Louis County, due to the size of the service area, the county is split into north and south “teams.” We had a major challenge with the “north” team in accessing the waived services Parker was eligible for, with multiple people on the “north” team refusing to admit that a CDCS option existed at all. When I finally found someone who admitted it existed, I was told Parker was not eligible for CDCS and his waiver was suddenly “closed.” Our family packed up and moved to southern St. Louis County while appealing the decision and his waiver was immediately reopened, with no issues when we requested the CDCS option. These disparities are within the SAME county. I have since spoken with families from all over the state who are told a variety of different things about what is or is not allowable on a CDCS budget. Still, even between north and south St. Louis County different items and services are allowed to be paid for through CDCS budgets. It is clear that a firm set of guidelines needs to be in place state-wide so that it is not dependent on where one lives as to whether a service or item that is needed will be allowed.

Thank you for your time and consideration.

Heather Kainz



Testimony of Katrin Bachmeier  
Before the Minnesota Legislature  
Regarding the Proposed Changes to Minnesota Statutes 2022, Sections 256.01 and  
256B.4911

Dear Members of the Legislature,

My name is Katrin Bachmeier, and I have been a passionate disability advocate for over 20 years. As a parent of multiple disabled children, including one adult receiving disability services in Minnesota, I have firsthand experience navigating the challenges and complexities of the system. Additionally, as a member liaison of multiple federal self-direction organizations, I have gained expert knowledge on Federal laws, policies, and best practices specific to self-direction on Home and Community Based Services.

Today, I write to support the proposed changes, and to share my personal experiences and the experiences of the thousands of participants in the support groups I manage.

Firstly, I wholeheartedly support the budget procedure section. In my advocacy work and through trends observed in our support groups, we have encountered a lack of transparency, noncompliance with formal government data requests, and frequent mistakes or misinterpretations that lead to service interruptions, delays, terminations, and implementation issues. For example, I am aware of a highly egregious recent CAC waiver denial and termination in St. Louis County involving a highly medically complex minor participant requiring nursing facility level of care. The participant's medical needs have not changed, yet she was denied her waiver originally approved in Hennepin once she moved back to St. Louis County.

Appeals judges quickly rubber-stamp lead agencies' positions, even when assessors do not properly follow MNchoices trainings, best practices, Federal laws, or DHS policy. Without access to the MNchoices assessment documents and procedures, appellants and appeals judges have no way to determine whether or not the assessor or lead agency followed proper procedures.

The loss of these vital, life-sustaining services leads to participant death, hospitalization, and forced placements that violate the ADA. When we reach out to the Disability Services Division, we were told that counties have broad discretion. Disability Legal Services have largely stopped assisting with these appeals because they are being told through lost appeals that counties can do as they please. This undermines the entire purpose of MnCHOICES assessments, that Minnesota taxpayers spent millions on in order to implement and revise, in order to prevent these kinds of inconsistencies.

Yesterday, I testified in front of the Human Services committee about the catastrophic impact of the MnCHOICES 2.0 revision assessment. We are seeing budget reductions of up to 50% and, in some cases, service eliminations altogether.

After my testimony about MNchoices 2.0 revision assessments, Natasha Merz of DHS testified to the Human Services Committee, stating that they will address these reductions and eliminations resulting from the extremely costly recent revision. We need to ensure follow-through on this testimony and require all the supporting documentation from the assessments to gain perspective on what is needed for the appeal and what might be required from medical professionals to qualify for these vital, life-sustaining supports moving forward.

Secondly, I want to highlight the challenges participants face in accessing disability services, a barrier further exacerbated by pandemic-related constraints and the loss of specialist providers. My own children were unable to access services for over three years. Without access to these providers, obtaining the necessary medical documentation to access disability services through traditional routes becomes impossible. I support the proposed change allowing licensed social workers to make referrals for disability determinations, regardless of their employment with county or Tribal agencies. This change will help ensure participants can access the services they need, even when specialist providers are unavailable.\*\* It may also be helpful for case managers to make participants aware that they can, as I understand, also self-refer for SMRT!

Thirdly, I want to stress the importance of timely processing of disability determinations by the state medical review team (SMRT). During our own process, I repeatedly asked the reviewing team what they needed from us, but their responses were vague and unhelpful. The SMRT team ignored input from collateral witnesses, including professionals such as teachers and childcare providers who have known the participant for many years. They also utilized developmentally inappropriate SSA

criteria design for adult for my minor children. Hyper fixating on lack of medication's, which according to SSA should not be the focus for a four year old minor.

Fourthly, I want to address the lack of consistency between counties in approving goods and services for participants with disabilities. Goods and Services should be approved in Minnesota based on the disability need, not the location where one lives.

I can speak to how the service denials apply and discriminate against participants with siblings or housemates. For many years, when my eldest daughter was an only child, we were able to get therapy equipment and other goods and services that helped meet her health, safety, integration, and inclusion needs approved. These same approvable items are now consistently denied because case managers allege her siblings might benefit from her equipment.

Some case managers suggest illegal and exclusionary practices and measures for approval, such as caging/fencing in the equipment from the siblings or keeping the participant in their bedroom so they can't access shared spaces in the home where siblings or housemates allegedly benefit from her services. Legal violations and cruelty aside, these suggestions defeat the entire purpose of the requested goods and services.

Finally, I want to emphasize the critical need for flexibility in allowing enhanced service rates and exceptions for participants with extraordinary needs. My daughter requires Neurobehavioral, nursing facility level of care performed by highly qualified and trained staff that would normally be performed by skilled behavioral and medical professionals. Without support service and wage exceptions, these participants end up in chronic crisis, boarding in ambulance garages for months while ERs are over capacity. We must ensure a level of flexibility that allows these participants and/or their responsible parties to direct their care needs and maintain their chosen homes and community.

I would like to draw your attention to the attached federal documents from the Department of Justice (DOJ) and the Centers for Medicare and Medicaid Services (CMS) stating that limiting policies that place participants at risk for placement violate the ADA. The proposed changes which seek to clarify that enhanced service rates may be allowed for participants with assessed needs in accordance with the ADA.

The document also explains that states must accommodate support needs for participants who either cannot access or tolerate outside staffing. This document

supports the change clarifying that a participant's spouse or a parent of a minor may be paid for support services at a rate that exceeds that which would otherwise be paid to a provider of a similar service or that exceeds what is allowed by the commissioner if the participant has an assessed need for an enhanced rate.

I urge you to support the proposed changes that will help ensure participants with disabilities can access the services they need in a timely manner, that there is consistency in the approval of goods and services across counties, that there is transparency in the assessment process, that goods and services are provided to meet the health and safety needs of participants and support their inclusion and integration in the community and household, and that there is necessary flexibility in allowing for enhanced rates for participants with extraordinary needs.

Thank you for your time and consideration.

Sincerely,  
Katrin Bachmeier  
Nylaroseprogram@gmail.com  
(651) 246-4753

March 19, 2024

Dear members of the Human Services Policy Committee,

I am writing in support of House File 4568. I am a parent of a young man with cerebral palsy who uses Consumer Directed Community Supports (CDCS). He has been using CDCS on the Developmental Disability waiver for over 20 years. Now that he is an adult living independently in his own apartment, the CDCS budget matrix and funding model simply does not work without relying on my husband and I volunteering over 65 hours a week of unpaid care. For us that means that:

- My husband has not been able to work outside of caregiving for our son for the past 8 years.
- My son often needs to come home on weekends or my husband or I stay at his apartment because there is not the budget to hire additional staff.
- We are exhausted and have no idea how this is sustainable long-term as we near retirement.

The budget provided for CDCS is not comparable to budgets provided for individuals with similar needs using non-CDCS waived services and does not provide a budget that covers my son's assessed staffing needs. Why do we continue to try to continue using CDCS?

- Even with adding the amount of funding to cover my son's assessed staffing needs, it would be **more cost-effective** than traditional or PCA Choice waived services, group home or other institutionalized setting.
- It offers my son the **most self-directed** options for services. This is what the Olmstead Plan is all about. Being forced to move off CDCS means less choice for him.
- Leaving CDCS will **negatively impact his current staff** and could result in losing trusted, dependable staff that are critical for him to live independently. Being forced to use licensed or Medical Assistance homecare services means:
  - Less choice in pay rates, hiring, employee management, back-up care, and scheduling.
  - Staff would need to do additional training that is not necessary for his care needs.
- Being forced to move to licensed services would mean some items that he currently receives through his CDCS budget will no longer be available to him.

Links that DHS provides on its website for CDCS services point to 2017 legislation stating that "The new methodology should develop individual consumer-directed community supports budgets **comparable to those provided for similar needs individuals if paying for non-consumer-directed community supports waiver services.**" ([Chapter 6 - MN Laws](#) Chapter 6, Section 46). The MN Department of Human Services extols person-centered planning, self-direction, and choice, yet does not provide people who want these choices with enough funding to meet their assessed needs. This forces many adults to leave CDCS, costing the state far more than just making CDCS a viable, equitable service option.

Thank you,

Kris Schulze and Michael Smith

White Bear Township, MN 55110