



June 15, 2011

Mr. Reggie Bicha
Executive Director
CO Dept. of Human Services

Ms. Sue Birch
Executive Director
CO Health Care Policy and Financing

Re: Potential Olmstead and ADA Implications of Amendments to CO Medicaid Waivers for Persons with Developmental Disabilities

Dear Mr. Bicha and Ms. Birch,

The Legal Center for People with Disabilities and The Arc of Colorado are writing to express our concerns regarding the drastic service reductions under consideration by the Division for Developmental Disabilities (DDD). Specifically, DDD has proposed reducing day habilitation, behavioral supports for individuals currently receiving services under the Home and Community Based Services (HCBS) - DD waiver in addition to reducing case management services for individuals receiving adult services and for children in the Early Intervention program –more than 8 million dollars. These proposed service reductions could have a dramatic impact on the health and civil rights of thousands of program participants who have been determined by the State to be at risk of institutionalization if they do not receive these services.

We urge the state to view proposed service reductions with an eye to ensuring the state's compliance under the ADA and *Olmstead*. In the August, 2010 State Medicaid Director Letter, Cindy Mann, Director of CMS comments: "...the demand for [community living opportunities] services continues to grow, and many individuals in need of these services struggle without them. In addition, State budget constraints threaten the progress that has been achieved, raising concerns about compliance with the ADA and *Olmstead*."

We believe that the proposed service reductions could lead to further risk of institutionalization and hospitalization for many individuals.

(References to these service reductions were made to the Joint Budget Committee in January of 2011. Drafts of the waiver amendments were publicly distributed about three months later; public comment will continue through June 30. We have not received details of case management reductions.)

Inasmuch as waiver amendments require CMS approval—a rather lengthy process—it is highly unlikely that the amendments, even if they were to be approved as they currently stand, could be implemented during 2011. The actual savings to be realized by service reductions will be less than half of the amount estimated by the department in January. There is no way to know the actual savings to be realized through reductions in case management but for certain it will be considerably less than original estimates.

Consequently, the service reductions proposed could result in minimal cost savings, significant cost shifting because of unmet needs and considerable harm to many of the individuals affected in addition to inadequate supports for people to remain in the community. We respectfully ask that you reconsider the wisdom of these service reductions as presented.

In August 2010, our State adopted the *Olmstead State Plan* with extensive stakeholder involvement and buy-in. The *Olmstead* policy recommendations clearly indicate the state's intention to eliminate institutionalization of persons in need of community-based long term services and supports. The *Colorado Olmstead Plan* recommendations also address policy changes needed to re-structure the entire system of Long Term Services and Supports. We believe the restructuring process should begin as quickly as possible and offer our assistance at every step.

We submit that the HCBS waiver amendments to reduce individual services might be short-sighted and provide a distraction from the primary goal of system re-design and infrastructure building. We acknowledge the need for the state to reduce expenses and make better use of scarce resources. We know that the CDHS/DDD and CHCPF leaders are eager to move forward with developing creative service delivery and payment models that can effectively support individuals with challenging long term needs. But, we suggest that the proposals currently on the table will neither save money nor contribute to strategic system-reform goals.

As you review the proposed waiver recommendations, please consider that the proposed service reductions will not only tax or shift service burdens to other agencies and State systems, but such reductions will impact the community integration mandate set forth in both *Olmstead* and in numerous CMS directives. It is important to acknowledge the steps Colorado has taken since the Supreme Court's decision in *Olmstead v. L.C.* and not, unintentionally, embark on a regressive path.

The critical questions we ask you to consider are the following:

1. How will the State ensure that individuals will receive the full complement of *Olmstead's* community integration mandate?
2. What are the time frames for implementing these service reductions relative to current statutory time tables for service plans?
3. Are there any proposed and adequate "alternative services" to meet the identified needs of the HCBS waiver recipients?

We appreciate your leadership on all matters related to *Olmstead* compliance and system re-design and we are eager to assist you in any way that we can.

Sincerely

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