



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Health and Social Services

GOVERNOR'S COUNCIL ON DISABILITIES
& SPECIAL EDUCATION
Patrick Reinhart, Executive Director

3601 C Street, Suite 740
Anchorage, Alaska 99503-5924
Main: 907.269.8990
Toll Free: 1.888.269.8990
Fax: 907.269.8995

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RE: Proposed Changes to Regulations Regarding HCBS Waiver Provider Certification

The Governor's Council on Disabilities and Special Education (the "Council") fills a variety of federal and state roles, including serving as the State Council on Developmental Disabilities (SCDD) under the Developmental Disabilities Assistance and Bill of Rights Act. As the state DD Council, we work with Senior and Disabilities Services (SDS) and other state agencies to ensure that people with intellectual and developmental disabilities and their families receive the services and supports that they need, as well as participate in the planning and design of those services. One of the duties of the state DD Council is providing comments on proposed recommendations that may have an impact on individuals with intellectual and/or developmental disabilities and their families.

The Council is pleased to see progress on bringing Alaska into compliance with the Centers for Medicare and Medicaid (CMS) final rule on conflict-free care coordination. These proposed regulation changes to provider certification are one of many steps in the right direction towards this large-scale effort. The Council would like to see further clarification regarding these proposed changes. We suggest that the phrase "in a non-urban geographic area" be inserted on page 2 into provision (j) so that it reads:

*(j) The department may grant an exception to a provider **in a non-urban geographic area** under (a) of this section....*

Likewise, provision (j) (2) should add this text to clarify that these agencies must be in non-urban locations as follows:

*(j) (2) an agency, certified as a provider of home and community-based waiver services in **a non-urban** geographic area, is willing ...*

We also suggest moving up the definition of a "non-urban geographic area" from within item (3) up to provision (j). This move will clarify what is, and what is not, an urban geographic area up front, before the other details are provided. These three aforementioned changes make clear that it is not just *any* provider in the state who could apply for an exception, as the current regulation seems to indicate, but only those located in rural areas approved by CMS for exclusion from conflict-free care coordination.

The Council is also unclear on whether care coordinators will continue to be certified statewide or if they will be restricted to providing services only in specific locations. If so, this regulation needs to more clearly state that statewide care coordinator certification will be changing to locality-based certification. Further, if this is the case, this regulation should also spell out the new rules for care coordinators; for example, can they certify in several locations? Will the state be monitoring that care coordinators are actually providing quality services in these locations? The Council is in full support of a move toward more localized services, wherever possible. We are concerned that statewide organizations may claim to provide services to some of our more remote regions, without the ability or intent to truly provide the local information of services and frequent face-to-face visits that our recipients need and desire.

The third point of clarification involves the intended implementation date for these proposed changes. The Council assumes this will be June 30, 2016, so that some measure of conflict-free care coordination is in place by the time CMS reviews your waiver renewal application. We suggest that an implementation date go out on all public notices and future communications regarding proposed regulation changes so that the public may be advised as to when they can expect such changes may take place.

Additionally, provision (k) delineates an evaluation period of three years; however, current provider certifications are done every two years. We suggest the provider certifications be done every three years to correspond to these proposed timelines of the exception evaluations. This will reduce multiple deadlines and confusion for providers as well as serve as a cost-saving measure, lengthening the recertification timeline from every 2 years to every 3 years. This will also allow SDS to use the most current provider information when making their determination on exceptions.

It is imperative that provision (k) clarify how and by whom in the department will determine when there is no longer a need for an exception, as stated in the last sentence. For example, would one independent care coordinator moving into a rural area be considered sufficient reason to revoke a conflicted agency's exception? What about two coordinators? Why or why not? Provision (k) needs to be significantly expanded to reduce ambiguity in determining exceptions.

The Council also agrees that the last sentence of (k) could be simplified to read:

*If the department determines there is no longer a need for an exception [as determined by ...], **the exception will expire.***

When an agency exception is revoked or expires, the proposed regulation should require the agency to submit a transition plan for how and when people will be moved from their agency to another care coordinator. The Council requests that such language be added to these regulations before they go into effect to protect the waiver recipients and provide detailed guidelines for how agencies and care coordinators are to proceed. Without such measures in this regulation, agencies will be left to determine transitions on their own, if at all. We fear the burden will fall to the recipient if explicit blueprints are not outlined in these regulations.

Lastly, the Council wishes for further clarification on the 4 items under provision (l), which is quite vaguely written. Items 3 and 4 should require both internal dispute processes as well as external dispute processes (involving the state). We strongly believe it is important for SDS to be immediately notified of disputes and resolutions within conflicted agencies, and to be ready to play a significant role in resolving such disputes, if they cannot be resolved internally. A process needs to be detailed in these regulations for such documentation, and timely submission, of internal and external dispute resolutions. This is an extremely important issue for the Council, as we fear that internal dispute/resolution processes may not be transparent, and could even be detrimental to the recipient and their family. Conflicted agencies will have a vested interest in resolving their issues internally but the Council believes the state needs to interject themselves into such processes to protect individuals. We request that SDS implement a process to frequently check in on conflicted agencies to be sure that quality services are being provided, that conflicts are being reported and handled appropriately, and that recipients are satisfied with their care coordination and other services.

Overall, we are pleased to see the state moving toward conflict-free care coordination. Independent care coordinators will allow for greater freedom and choice for the individual, as well as someone to advocate on behalf of the recipient. The Council is extremely pleased that SDS held a webinar, open to the general public, in which staff walked participants through the proposed changes. This session was recorded to capture public comment and questions. These are all excellent efforts toward greater inclusion of the general public and waiver recipients in the formation of policies and regulations that affect the lives of people with disabilities. As always, we thank SDS for the chance to provide input on proposed regulation changes to make our service delivery system conflict-free, increasing the quality of life for all Alaskans.

Sincerely,



Dean Gates, Chair
Medicaid ad hoc Committee



Jeanne Gerhardt-Cyrus, Chair
Developmental Disabilities Committee &
FASD Workgroup