

Participant Directed Programs Policy Collaborative Meeting
June 26, 2013
MS Society 900 South Broadway Suite 200 Denver, CO 80210

Executive Summary:

This was a frustrating meeting as members felt that the purpose was to be discussing HOW eligible attendants of clients on the CDASS program were going to be offered health insurance from PPL. The discussion was not what was anticipated and there was a presentation from HCPF about other options for employees, including Medicaid, and a proposal by HCPF to change the fiscal agent (which is clearly outlined in the CMS waivers and the state CDASS rules at 10 CCR 2505-10 8.510) model and alter the contractual relationships between HCPF, PPL and clients. There was a high degree of frustration about the difference between what people thought the meeting was to be and what it was, and with the idea of a state health agency promoting a change in a contract that would have the effect of denying employer based health care required under federal law to qualified employees that do important work. The group made a unanimous recommendation to HCPF to NOT proceed with any changes or contractual amendments until such time as the group had all relevant information and could make an informed decision. Specific questions were outlined and additions must be quickly submitted. Public comment raised a concern about the formulas used to calculate the rate increase. Mary Colecchi was elected as co-chair due to the resignation of Chanda Hinton.

Present:

In the room:

Linda Andre
Linda Skaflen
Jessica Tribolet
Bonnie Silva
Mary Colecchi
Elena Leonard
Rosemary Colby
Renee Salas
John Darling
Don Riestter
Ryan Zeiger
David Bolin
Dawn Russell
Dan Lowe
Ann Dyer
Debbie Miller
Sam Murillo
Jose Torres-Vega
Kelly Morrison
Roberta Aceves
Amy Scangarella
April Boehm

Julie Farrar
Julie Reiskin
Tyler Deines

On the Phone:

Heather Jones
Gabrielle Steckman
Sean Bryan
Collin Laughlin
Sarah Roberts
Cathey Forbes
Josh Winkler
Robin Bolduc
Martha Beavers
Corrine Lindsey
Robert Lindsey
Maria Rodriguez
Leslie Ritzer

Excused:

Sara Horning
Sueann Hughes
Candie Dalton

Bonnie called the meeting to order at 1:07 p.m.

Administrative Matters:

- Sam agreed to co-facilitate the meeting.
- Linda Skaflen verified the attendance and voting rights, this was sent out ahead of time and there were no challenges.
- Sam read the PDPPC agreements
- The MS Society has a new phone system and there were some challenges with figuring this out.

Minutes:

Jose moved and Linda Andre seconded a motion to accept the minutes as written. Motion carried unanimously with Mark Simon abstaining as he was not present.

Co-Chair Position:

A new co-chair is needed due to the resignation of Chanda. Linda Skaflen was asked to do this but she felt it should be someone receiving services through a waiver. *Julie Reiskin nominated Mary Colecchi* for the following reasons (some contributed by others)

- Mary has been a consistent participant
- Mary has completed the CCDC advocacy leadership training
- Mary has demonstrated excellent leadership skills and follow through
- Mary has attended MSB and represents the community well

- Mary has demonstrated strong written skills
- Mary receives services through the BI waiver and wants to be on CDASS and will be as soon as it is in the BI waiver in January. Mary therefore is personally and professionally highly motivated to see this group and these programs be successful.

This motion was seconded by Linda Andre and there were several comments supportive of Mary and the motion carried unanimously.

Mary will connect with Chanda to make sure she receives information on all duties.

As per previous agreement the meeting was to focus solely on how the Affordable Care Act will apply to our attendants:

Bonnie gave a presentation that had been prepared by Lorez. Lorez was on a mandatory vacation (she had to take the time or lose it) and Candie had a family emergency and could not be present. During this discussion there were questions that Bonnie promised to get to us. For clarity these are all outlined at the end of the minutes:

The presentation was for people who do not have insurance and the options they will have under the Affordable Care Act: The PowerPoint was handed out and sent out electronically. There was an error on slide 2 guiding principles –the 3rd bullet says it is a HCPF guiding principle that a caregiver directs and controls whom, how and when services are provided. That should say client not caregiver and will be corrected.

The presentation offered two options for attendants: Medicaid or the Exchange (now called the Marketplace). It did not address having PPL provide insurance but did discuss definitions such as what is an employer.

- One option presented is Medicaid for people under 133% of poverty. Julie Reiskin pointed out and others agreed that unless an attendant only works a couple hours a week for only one client, no CDASS employee should be poor enough to qualify for Medicaid under this standard. Julie expressed that we should pay our workers living wages.
- For people who do not have employer based insurance, Medicaid, Medicare or other government insurance there will be the Colorado Marketplace formerly known as the Exchange. The Marketplace along with many non profits under contract to help people “navigate” the system will administer subsidies for premiums and co-pays for lower income people. No health insurance premium can cost more than 9.5% of the persons income. There are tax credits for businesses. There are insurance reforms. The law outlines what are essential health benefits.
- The law requires ALL individuals to have insurance of some sort. (Government, employer or through the exchange).

- Individuals' earnings between \$15,856-\$45,960 get help to reduce the cost of premiums. Under \$28,725 they get help to reduce out of pocket costs.
- For a family of four they get up to \$94,200 a year for premiums via a tax credit applied up front and help with out of pocket costs up to \$58,875.
- Employer Requirements: Large employers with at least 50 FTE pay a penalty for each employee that obtains a premium credit through the exchange. The penalty is less than insurance now, but increases each year so will become prohibitive over time.
- HCPF says that this is not an employer mandate.
- A full time employee works 30 hours a week or 130 a month according to proposed regulations.
- If an attendant works 30 or more hours a month for PPL even if it is for two or more clients they are an FTE. If an attendant works 30 hours for both PPL and an agency but not 30 hours for one or the other then they are not a full-time employee.
- The fine is \$3000 per employee per year if employer offers NO insurance and \$2000 per employee per year if insurance is offered but is not affordable. Affordable means that the lowest cost plan is not more than 9.5% of what the employee earns. This is calculated on annual basis.

Julie asked if HCPF could put together a chart showing each step of earnings for individual, and family size of 1, 2, 3, 4 and 5 and what one can get at each level. This should include how much of a subsidy applies at each level and for what: If there is a difference between subsidy and tax credits this should be included as well.

Several people felt that the IRS standard on what is an employee must govern whatever we do. This means that when the worker is under the control and direction of the employer they are an employee rather than a contractor. This led to a discussion about whether CDASS employees are employees or should be employees.

There was a long discussion/debate about the CURRENT status: Currently we use the AGENCY WITH CHOICE option and PPL is the employer of record for attendants. Clients are managing employers, also referred to as supervisors or co-employers

There are two kinds of Fiscal Management Services (FMS) types according to Amy S.

- 1) Agency with Choice Model:
- 2) Fiscal Employer Agent

CDASS is an agency with choice model. Bonnie said that no other state did their program exactly like Colorado in terms of the how the FMS works. Bonnie said that HCPF was considering a change because they feel that agency with choice is not "true consumer direction". Bonnie said that as the employer of record PPL technically has

say over our hiring, firing, etc. Committee members disagreed with her interpretation. Committee members pointed out that PPL does have some say over hiring such as the criminal background check matter but that via a contract that all clients must sign, the day to day authority is delegated to supervisors or managing employers (the clients).

Under the current model if PPL does not provide insurance to employees that work 30 hours a week or 130 hours a month they will be fined as they are liable under the ACA. . If we change to a Fiscal Employer Agent PPL would not have an obligation to provide insurance to attendants and would not be fined for failure to do so. Bonnie said that HCPF feels that we should make this change because HCPF feels it is best for the program and because if we do not make this change CDASS will cost more because HCPF believes that they would have to pay PPL whatever it cost for them to either comply with the new federal law or reimburse for the fines.

There was discussion about how this came about: The contract with PPL was negotiated originally in 2009. It was to expire 12/31/2013 but HCPF renegotiated it last year and extended it to 12/31/2014. When HCPF negotiated the contract in 2009 there was a notation that clients had been lobbying for insurance for attendants and if insurance was going to become a requirement then HCPF would work with PPL on a change in language. The discussion included what people thought PPL had an obligation to do and the difference between an employee and contractor.

Comments about if attendants are employees or contractors included:

- Currently PPL is the employer of record and clients are managing employers or supervisors. According to the IRS this is a classic employee definition.
- Attendants are told what to do, when to work, and how to do their job by their supervisors. Supervisors are clients. Supervisor/clients sign a contract with PPL to take over that responsibility.
- PPL does not engage directly in hiring and training each attendant. This role is delegated to supervisors. Delegating hiring and firing decisions to supervisors outside of a corporate office is common. It was pointed out that Sue Birch does not personally hire and train each HCPF employee but delegates as appropriate to managers.
- PPL does control who is hired somewhat, by not allowing us to hire someone without a background check clear of barrier crimes and by not allowing someone to start until paperwork is complete to their satisfaction.
- CCBs recently got in trouble for having people say they were independent contractors under similar circumstances.
- The IRS does not allow a change in relationship to occur when there is not an actual fairly large change in the actual relationship. Attendants cannot be the kind of worker that can come and go when they please and work without direct supervision.
- To make each client an employer would be impossible.

Comments about the PPL obligation or lack thereof to provide insurance or pay a fine included:

- The ACA was signed more than three years ago and affirmed by the Supreme Court for one year—why were no plans made before now? PPL has to have been planning for this as a large national company.
- Paying for insurance for workers is part of the cost of doing business for large companies.
- People felt that it was devaluing attendants, and therefore devaluing us as people with disabilities to make a contractual change that would leave full time attendants without an employer based coverage option.

Other Comments and Discussions:

Jose asked that members of this committee be treated with respect and said that it was disrespectful to tell us “we do not want to hear about PPL because that is not the issue”. An apology was made.

Two home health and IHSS agency directors mentioned that they pay insurance not only for attendants but for families. People asked why they could do this and PPL could not. While the overall rate is the same, the department reduces our allocation by 10.75% and those funds are given to PPL in the form of a per person monthly payment of \$310. Home Health agencies get a flat rate per hour and can manage it. This led to a discussion about how we cannot have a reasonable intelligent discussion about this issue without knowing what costs PPL has in managing the employer function.

Bonnie said that this group had been adamant that nothing happened to make CDASS cost more than home health and the group agreed. Bonnie said that if PPL was fined for not paying insurance then HCPF would have to pay for that. Julie Reiskin asked that HCPF get an attorney general opinion on that matter. The question is there anything in the contract or in state or federal law that would allow PPL or any contractor, to force the state to cover their obligation.

There was also a strong sentiment that HCPF of all agencies should be a leader in promoting the ACA. The state, with HCPF as a lead should be expecting contractors to provide insurance for workers and certainly should not actively help contractors get out of their obligations under ACA.

The group felt that we could not move forward or make reasonable decisions or recommendations without facts. Julie had asked that a number of questions be answered before the meeting. Bonnie was not aware of the questions Julie submitted as they were sent to Candie, Lorez and John. The entire email is at the bottom of the minutes.

Bonnie said that now that the law goes into effect in January we have to act quickly. She said that HCPF had been waiting for federal guidance which was not forthcoming. She said that between waiting for federal guidance and with all of the other work going on addressing this did not happen earlier and now it was urgent.

The group expressed disappointment and anger that this had been left to such a late date. Many in the group expressed a feeling of betrayal that this had happened again and felt

that this group in particular had gotten beyond this problem of creating a crisis by waiting so long. Bonnie said that the Department had not been able to come up with any alternative to changing the contract and having a different signature and agreement between clients and PPL so that PPL would not be responsible for either insurance or fines under ACA. Bonnie said that the department was “committed” to working with us on a longer term solution but wanted to move forward on the changes now for the immediate. The group adamantly opposed any changes occurring until we had all of the facts, which includes answers to all of our questions. To that end *Jose Moved and Julie Seconded that NO contact change, amendment or any sort of agreement between HCPF and PPL or anything regarding CDASS should occur at this point. Any such change should only be allowed after all of the facts are presented to this group and the group agrees. The motion carried unanimously in a roll call vote of voting members present.* Role call vote document available upon request.

Bonnie said that HCPF was open to other alternatives: The group again said that to provide a robust menu of alternatives we needed information. Nevertheless the following alternatives were offered at the meeting. Additional alternatives may be submitted to Bonnie.

- 1) Take all or part of the increase recently received and pool that with funds from PPL to buy our workers coverage: The increase approved by the JBC to take effect on July 1, 2013 was 8.2% which is close to what the affordability limit on insurance under ACA must be (which is 9%).. Does the math work out that this would come close to covering the cost of insurance?
- 2) Can Medicaid pass a rule to exempt income that is paid under the CDASS program as countable for Medicaid allowing most of the PPL employees to get Medicaid without severe impoverishment? There is precedence for this where SSI exempts income when family member is paid to provide attendant care. This may be only feasible for family members. (See below the SSA policy principle)
- 3) Can we look at what we are paying PPL and move some funds into health insurance? One example is the Program Support Specialists, which were not in the previous contract. With the large monthly payment some of that money should be able to be diverted to help cover insurance.

The group did agree to further discuss with HCPF after we received answers to our questions and also after Bonnie could look into our suggestions. If people have other suggestions please email Bonnie at bonnie.silva@state.co.us . If the legal opinion requested by Julie Reiskin comes back that HCPF really does have to provide additional funds to contractors including PPL to assure their ability to comply with ACA, the group will then need to consider either changing the model OR using one of the alternatives will have to happen by January. **In any case this will all have to happen quickly.**

Bonnie did agree that a more thoughtful process for what we want out of a fiscal agent should take place over a longer period of time. Bonnie also agreed that expansion could not be delayed due to this issue.

Many people felt that it would not be possible to make a change in the contract and process between now and January.

Questions: The group asked the following questions during the course of the meeting:

- 1) Under ACA what income is counted and how? Are there exemptions?
- 2) Under ACA are there asset considerations at all?
- 3) For Medicaid coverage up to 133% income how is income counted and are there asset restrictions?
- 4) How many PPL attendants in Colorado are FTE under ACA guidelines?
- 5) What is the amount of tax credit for employers and what is the frequency?
- 6) How does tax credit work if someone is low enough income where they are not currently paying taxes?
- 7) What exactly are PPLs cost for each element of the contract. For example how much do they spend for payroll per person, how much does it cost them to process a new employee, how much does it cost to do a training, etc? Without this knowledge it is hard to know what we could or should give up. It is also impossible to assess the severity of the financial burden that ACA would cause. How is \$310 PMPM justified? There must have been a cost based justification of some sort when the change was approved by CMS.
- 8) If Colorado moves from Agency with Choice to Fiscal Employer Agent what is different?
 - a. Would we pay less PMPM to PPL or a new contractor?
 - b. What other changes would there be in the roles?
 - c. Would PPL no longer do background checks and deny hiring to people with barrier crimes?
 - d. Who would be responsible for payroll taxes (payment and filing)
- 9) If attendants are independent contractors would they each have to have independent liability insurance? What about workers compensation and unemployment?
- 10) Does the state have any policy statements about expectation of contractors in terms of providing insurance under ACA?
- 11) If the W4 and I9 and paycheck say that PPL is the employer how is that not the case?
- 12) Are there any notes about the phrase in the contract that if there is a requirement for insurance that HCPF would “work with” PPL? Did that mean that if HCPF or even the Colorado General Assembly required insurance due to clients lobbying for that HCPF would engage PPL on the costs or that HCPF would accept responsibility for changes based on federal law.
- 13) What is the difference between offering insurance that employee can pay for and paying for the insurance under ACA?

Public Comment:

Debbie Miller said that she was very appreciative of the raise but that there appeared to be a problem with the calculations. She said that for her son and several people for whom

she is the authorized representative (AR) that the clients overall allocation is less after the raise. She thinks this is due to the certification period versus CDASS period. She said numbers were changing and even retroactively. She said that in some cases there were vast differences in allocation, such as over \$100 a month. Julie said that differences due to the CDASS period should be only a few dollars a month for only some months of the year and no difference should be apparent when the whole year was viewed. Bonnie agreed and asked Debbie to get her the specifics so she could review. Debbie said that PPL tells her to go to the case managers and the case managers tell her to go to PPL.

The meeting adjourned shortly after 4:00 p.m.

Respectfully submitted
Julie Reiskin

Pasted below two enclosures:

- 1) Email sent by Julie Reiskin to HCPF staff referenced above
- 2) SSA rules re deeming income of CDASS like payments in reference to suggestion that HCPF deem CDASS income exempt for Medicaid purposes.

Entire email Julie Reiskin sent to HCPF staff John Barry, Lorez Meinhold and Candie Dalton: This email was sent on June 4th and June 18th.

Dear John and Candie and Lorez

We are very excited as a community that we will finally be able to work on health care for our workers. People would like some information ahead of time so we can come prepared and make the best use of our time. Here is what they have to date and you might have some other info such as basic ACA info that we should review. If you could get this to us ahead of the meeting it would be helpful.

I also wanted to be sure that you were not looking at Medicaid as anything that would be helpful for most employees. While it may be OK for a few, it will not for most because we have worked hard to pay our workers living wages. Other than clients that have very few hours if there are workers doing more than 20 hours week and at 133% of poverty I see that as a problem but do not think it is happening much. While we are allowed to go as low as minimum wage we strongly discourage that as peers. Also, many of our workers have gone years without having any health care so many have pre-existing conditions. I think this is particularly true for family providers who may be living under high stress situations and who may be working 80+ hours a week, have sleep deprivation, etc. My understanding is that they cannot be excluded but not sure if that is an issue related to rates or not.

In terms of info we would like to be prepared --please provide info responsive to the following IN ADDITION to whatever you think is necessary.

First is the benefits section of the current PPL employee manual. I figure it would be most appropriate that you ask for this as the contractor but if you want me to do so I am happy to--just let me know.

Other questions that have arisen include:

1. What constitutes full-time? 30 hours 40 hours? ANSWERED
2. How much of the cost of the insurance can they pass on to the employees? All - part?
3. What is the basic plan that they need to provide? ANSWERED
4. What happens if they don't provide it - specific to PPL? ANSWERED
5. I would assume that PPL provides health insurance for its nonexempt staff - can't they just provide the same coverage to hourly staff?
6. Isn't health insurance the cost of doing business now? They knew that this was coming when they negotiated their contract with the state - why should this come out of the allocations? Allocations are based on client need not employer expenses!!

thanks very much--this is a terrific opportunity!!

SSA policy principle

SI 01320.175 Deeming - In-Home Supportive Services Payments

Authority: Regulations 20 CFR 416.1161(a)(16), (b), (c), (d)

A. General

A number of States have established programs funded under title XX of the Social Security Act or other State funding sources which provide benefits to pay for in-home supportive services necessary to enable an individual who needs these services to live in his or her home. The payments are made either to the individual to pay for the services or to the person performing the services. Also, the Veterans Administration pays an allowance for medically qualified veterans, widows, or widowers in need of the aid and attendance of another person. This aid and attendance payment is included in the pension or compensation payment to the veteran or widow(ery).

In-home supportive services (chore, attendant, homemaker) payments are medical or social services and are not income when paid directly to an eligible individual to pay for the services ([SI 00810.030](#)). However, the payment is income to the individual providing the care or services.

NOTE: If an ineligible spouse or parent receives in-home supportive services payments for services provided to anyone other than his/ her eligible spouse or eligible child, the payments are included as income subject to deeming.

B. Policy Principle

Payments provided under title XX or other Federal, State, or local governmental programs to an eligible individual and paid by the individual to his/her ineligible spouse, parent, or ineligible child living in the same household in return for in-home

supportive (chore, attendant, homemaker) services, are excluded from income for deeming purposes.

- **Such payments, made directly to the ineligible spouse, parent or child to provide the services to the eligible individual, are also excluded from income for deeming purposes. The payments may be in the form of wages if the provider/deemor is an employee of the agency.**

- Such payments to an eligible alien in return for in-home supportive services to an eligible individual are excluded from income for purposes of reducing the eligible alien allocation when the eligible individual's ineligible spouse or parent is the alien's sponsor.

- Such payments to an essential person or a sponsor of an alien are income subject to deeming.

NOTE: Qualifying in-home supportive service payments disbursed by a non-governmental agency follow general medical or social services policy found at [SI 00815.050D.1](#). Payments from a governmental medical or social services program that are disbursed by a non-governmental agency are not income for SSI purposes and are not included in the deeming computation.