

Participant-Directed Programs Policy Collaborative (PDPPC) Minutes

Executive Summary:

This was an intense meeting where we discussed the fact that there was a rate increase for personal care and homemaker that was applied only to agencies and not CDASS during the budget process behind closed doors and unbeknownst to HCPF or advocates. We had discussion about what to do to reverse this. We also received updates including the update that the two-signature requirement on timesheets will not be changed and the existing rule will be enforced as of 10/1/15.

Date and Time: Wednesday, July 22, 2015, 1:00 pm – 4:00 pm

Location: MS Society, 900 S. Broadway, 2nd Floor (Snowmass Room), Denver, CO 80203

The meeting was called to order at 1:00 pm.

Introductions were made:

Present:

In the room Gerrie Frohne, Sueann Hughes, Linda Andre, Joan Strain, Jed Ziegenhagen, Roberta Aceves, Curt Wolff, Sara Horning, Rhyann Lubitz, Anaya Robinson, Linda Medina, Candie Dalton, Debbie Miller, Keith Copen, Jennifer Martinez, Sharita Richmond, Jeff Pratt, Jason Smith, Linda Skaffen, John Barry, David Bolin, Carol Mitchell, someone else from consumer direct, Natalie Armstrong, Hanni Raley, Sheri ???, Kirk Miller, Betsy Murray.

On the phone: Kelly Tobin, Margaret Proctor, Kelly Morrison, Renee Farmer, Heather Jones, Alicia Singleton, Rhonda Ross, Mark Simon, Mark Fenton, Cathey Forbes, Ann Dyer, Caitlin Brady, Gina Gugizberg, Jeff Epp, Liz Wuest, Stephanie Williams, Julie Reiskin, Sarah Engels, Leslie Taylor, Christina Ulmer, Kristy Michael, Ellen Caruso.

Excused: Kevin Smith

Agenda Approval: The group agreed to an Agenda change to move the rate issue to first substantive issue. This was moved and seconded and unanimous.

Attendance: Linda Skaflen reviewed attendance and voting rights. Names of people with voting rights were read and there were no concerns.

Minutes: June minutes were sent out ahead of time. Kathy Forbes had one correction: Page 10 first paragraph, first bullet, 2nd sentence not complete. With this correction David moved and Linda seconded approval of minutes. Motion passed unanimously. John will make correction on final minutes that will be posted on HCPF website.

Agreements: There was a short discussion about agreements and need to fight tooth and nail on issues that are important to CDASS/IHSS clients.

Rate Issue:

Jed led the discussion and explained that the department recently confirmed with Joint Budget Committee staff that the legislatively approved rate increase for PCP and homemaker was ONLY for agency based care and not CDASS. This is a substantial increase of 9% bringing the rate up to about \$17 an hour. The assumption by everyone was that the rate increase when going through the process would apply to all personal care and homemaker regardless of delivery method.

The following are questions and answers and statements:

Who decided it? Did HCPF decide this? HCPF did NOT decide this, they submitted package of targeted rate increases and HCPF rate increases were not even for personal care or homemaker or home health at all. The JBC said yes to some –no to others and added some increases. The JBC asked HCPF to price several increases and HCPF did so. When HCPF submitted requested pricing for homemaker and personal care HCPF pricing included

CDASS. . The JBC approved an action that did not include CDASS though JBC members have told community members that they did not realize this had happened.

Did they (JBC) realize agency care cannot meet many of our needs? Answer HCPF cannot speak to what they knew. Several people said they did not think the JBC knew as at least some JBC members have been historically very supportive of CDASS and do know that agency care cannot meet our needs and also know the many other advantages of CDASS.

Leslie: We have problem to solve-instead of speculating or trying to figure out who dropped the ball we need to figure out how to solve it. Perhaps some other program that does not really help anyone can be cut and the funds can be used to apply the same increases to CDASS.

Betsy Murray, not a member of PDPPC then spoke up. She said she has been a professional lobbyist for 25 years. She said that the Department has never asked for a rate increase. She went on trying to blame HCPF for this. (Note from Julie R who was muted at the time—this is not accurate—the Department has asked for rate increases for home care in the past)

Ellen Caruso, also not a member, asked about point .05% increase that department asked for all providers.

Julie R explained the difference between a targeted rate increase and a community provider or common policy rate increase. Jed also explained. Basically there is usually a community provider or common policy increase that applies to all providers beyond Medicaid. In bad years this can be a decrease. The only excluded providers are those who have rates set in statute such as nursing facilities or federally qualified health centers. Over the recent past there have been targeted rate increases also. A targeted increase is when a specific provider (not one whose rates are in statute) is recommended for a bigger increase usually to solve a specific problem. HCPF has public criteria for targeted rate increases that are used and their process involves stakeholder input. Each year HCPF puts out a call for requests for targeted rate increases. HCPF decides which ones they want to fund and then HCPF makes requests

to the JBC with the dollar amounts attached. The JBC can put in rate increases. However increases have never differentiated between delivery options—Increases are usually to increase access or solve a quality problem.

HCPF was not asked if they supported leaving CDASS out or not and HCPF did NOT support this. HCPF has always supported ALL delivery options getting the same rate increases.

Sara Horning has anyone tried to solve this problem –and how do we do this?

Jed –there is a process for emergency supplemental but his understanding is that this would not be considered an emergency. There are specific criteria for an emergency supplemental. (The criteria are emergency, act of God, error in calculation, data not available at the time, or unforeseen contingency, etc) The statute has been attached to the meeting minutes by Julie Reiskin to provide the specific information to the PDPPC group.

Sara could we get it retroactively implemented in January? Response: CMS has not yet approved the other increases. Waivers require an amendment for rate increases, this is fairly new. If it is not across the board it requires amendment and this requires public input and cannot be done retroactively. This means we will have opportunity to give input on this proposed increase to CMS.

Mark Simon: Where in the law does it say this is only for agencies---staff interpretation is not binding! The JBC can take up almost anything under emergency supplemental, subject to approval of general assembly in next session. Mark has never seen the JBC second guessed. Mark says if it is nowhere in statute or in long bill, HCPF should adjust rate to apply to all programs or go to JBC and get it fixed. Mark does not believe most JBC members would vote to give increase only to agencies and not CDASS. Mark suggested that PDPPC, HCPF and disability community should go back to JBC and ask for increase or clarification that it should be spread amongst all programs—meaning keep the appropriated dollar amount the same but lower the percent increase so all workers are covered. This is called a 1331 supplemental process.

Jed: JBC staff told department that JBC was informed. However, at that time things were moving very quickly. Jed has no idea and does not want to speculate about what JBC members did or did not know. Jed said that there was a court case that said that the executive branch has broad latitude to administer program, the legislature can say how much but executive branch can determine how it is used. However, he has never seen executive branch exercise that authority. Jed said that he is not sure if 1331 could originate with executive branch but it usually does.

Mark: In litigation one looks at legislative intent and we should do that here, need to listen to recordings to see if there was clear intent to exclude CDASS workers from raises. If there was an executive decision we need to know where the decision is being made, by whom, etc. Mark says this does not pass the smell test and most people in the room and on the phone agreed.

Jed- The long bill focuses on categories of clients –not explicit rates for specific providers or services. He said it is the opinion of HCPF budget staff that work papers are for agency use. They asked JBC staff about if work papers were for agency use only and they said yes .

Ellen Caruso, not a PDPPC member again asked Jed if the across the board .05% rate increase included all providers in medical services premiums that do not have statutory requirement for different types of rate setting. Jed said yes that this is the common policy. This was not really relevant to the discussion.

Julie asked for if work papers are public and said she wanted a copy. **HCPF staff said they would find out.**

Curt asked why CDASS workers increases would be suddenly segregated and could we have the JBC staff come and explain why this was separated out. (Note –this was not answered)

Leslie said that this is political and a problem and rather than assigning blame we should figure out which line items can be reduced to solve this. (Note-this was not answered)

Gerrie: We recently heard about the legislative audit and how they erroneously thought negative things about CDASS. Is this connected and was someone misinformed? What was chronology? Did this have influence on JBC

making this decision? Julie said she did not think they were connected as the JBC issue happened first, we were not just not informed.

Kirk: What do we have to do to get transparency on what happened and who makes the decisions? (Note-this was not answered but the budget process is where this happened and we need to listen to all tapes of all meetings)

Jed: said HCPF adheres to policy direction of JBC

Leslie: We need to make a commitment that we resolve this particular problem within the next month. Resolution means money is restored within specific time period not to exceed two months. **Leslie made this a motion to work with HCPF to get appropriation through the 1331 supplemental process.**

Jed: said HCPF does not lobby for budget increases. John clarified that HCPF does not have a vote.

Linda Andre seconded. Motion passed unanimously

The recommendation will be put in writing and sent to Rhyann and John

Betsy Murray the lobbyist said that no one is getting \$17 rate yet and it will be next year before CMS approves it. She said she hoped that we would consider motion in future to work together to make it higher.

Other Updates:

- 1) Rhyann and her staff are working to get all rate increases of .5% done ASAP but they may not be able to hit the 9/1 date but they are trying. There was discussion about if there is a .5% increase for all of CDASS or just health maintenance. As long as PCP and Homemaker left out of other increase the .5% should occur but if we

get the problem fixed then the .5% would not apply as we would get the same rate increase as others using the different delivery method.

- 2) Rhyann said she is posting the FMS responses and FMS FAQ document. Rhyann is working on this and is addressing some changes due to fair labor standard delay, numbers 20-25 not implemented yet. Linda Andre asked how long FLSA will be put off, answer is no one knows.

Two signature issue:

Rhyann explained that as we discussed before there is two signature requirement in place so that both the client/AR and attendant should sign and verify the timesheets. This is the rule and has been forever. This has not been enforced. Initially Sarah Roberts said we might be able to do rule change but legal department said we cannot change the requirement. Rhyann said that given this we need to figure out how to implement this and communicate to clients and attendants. This can be verification by attendant if the client/AR does the initial time sheet. PPL has said in August and September they will do info in client newsletter and payroll fliers to attendants and PPL portal message. The reason PPL is the target for getting this info out is that the other two FMS agencies already enforce this. Another problem is that if only PPL is able to ignore the rule it is an unfair playing field. Also Rhyann said SEPs will know about this.

Questions/answers/discussion:

Keith: is this for manual timesheets only? Answer NO it is for all timesheet. For electronic timesheets the attendants will have to verify and then go back to client for final approval. This was determined that the work flow needs to be defined and clarified to make sure it the right process.

When does this start? 10//15

How will it work? The attendant will have log in and create time sheet, they will then they submit to client and approve or reject.

Julie: said this was incredibly irresponsible of the HCPF legal department. She explained that verification is meaningless and does not want to get into situations like agencies have where people pre-sign time sheets and also if there is a small error and changing it is a huge hassle and may cause a late timesheet will that cause people to just approve rather than go through hassle of correcting knowing it would delay payment.

Debbie Miller: agreed and gave an example: She often does her timesheets at midnight on the last day. She is an AR for people that do not always have internet access. If there is error then there is no time to get it fixed.

Rhyann:said that this increases transparency for attendants. Several people agreed that transparency for attendants is important but not sure a two signature requirement is the way to get increased transparency.

Keith: aid our current system cannot be any more transparent. He said that he currently does them electronically and then gives them a copy and it goes into their personnel folder. He says he will no longer do it electronically and he will do it manually. He feared that lots of caregivers will sign blank timesheets

Several agreed this will create more problems

Jeff: said we are making this more difficult than it needs to be. He said the old fashioned system of putting the calendar on the wall and using that data works. He said if the workers do not document their time on the calendar or with whatever process is determined then if pay is not on time it is not the fault of the supervisor. He said if they need money, then the attendants have to take personal responsibility

Mark: We are making it too complicated (agreeing with Jeff). He asked is there a problem—has anyone lied? Are attendants complaining they are being shorted? If there has not been a problem why do we need to change how we have been operating for years? If the rule is the problem change the rule. Also, he said if HCPF does not want people signing blank forms why do we need to sign blank releases when we apply for Medicaid?

Linda Andre: said that there is rule and this is compliance issue to prevent fraud so we need to have two signatures.

Bonnie: said that each FMS contract it says they have to follow all rules. It is not fair to make two follow the rules and not make all of them follow all of the rules.

Mark moved and Leslie seconded that we ask for rule change taken directly to MSB.

Discussion:

- Julie said that we already did this and HCPF legal department quashed it –
- Mark wants to see legal rationale about why they quashed it. Rhyann said that the answer is that attendants are treated as potential Medicaid providers.
- Leslie talked about how much happier attendants are with us
- Julie said she did not want to see fraud happen like it does with agencies
- Maria said that changing this would open door to fraud, she said she has had times when attendants have not been paid or paid late due to PPL error, not because it is submitted late. She said that maybe we need longer window to submit time sheets if there is going to be additional requirement. She said that some attendants work several jobs.
- Gabrielle clarified that rule not being enforced was based on HCPF direction and our feedback
- **Jed said that the Department has a relationship with state department of labor and HCPF will reach out and get clarification from a labor perspective on how important the two signature requirement is from that perspective.**

- Julie clarified that the issue is not whether or not the attendant knows what is being submitted and said that of course the attendant should know what is submitted but that this is the responsibility of the client/AR. Sometimes it is the same hours all of the time. Other situations it is not. She said most clients/ARs have a system in place for verification but that they do not always require everyone to log into some account.

A vote was taken by roll call and the motion did not pass: All FMS agencies abstained

9 YEA 13 NO MOTION FAILS:

Julie R. said that she had dropped the call and had to call back in and that there were more than 40 on the phone line and less than 20 identifying themselves. Mark said that this was a violation of the eavesdropping statute. John said they can get a list of the numbers that called in and he would get that and send to Julie R. and Linda S. (Note from Julie, after this two emails were received from people that joined late and did not want to interrupt but who identified themselves via email and they were identified in the minutes.

Future PDPPC Meetings:

John Barry said that we can no longer meet at the MS Society because they now have requirements to sign a waiver of liability. The requirement is broad and says that anyone signing would take full liability in even of any injury, not just absolving the MS Society. Therefore not only can HCPF not sign, but other agencies that they thought could sign (CCDC) cannot sign it either. John is working with the Hosting Company (same building but 3rd floor) and they would be willing to commit unless they had emergency. There are two issues:

A. We cannot use that room until October

B. They cannot do the 4th Wed but can commit a Tuesday or Thursday

John suggests that we keep the 4th week but change the day.

After discussion David moved and Linda A seconded the following:

We will do a phone only meeting for next two months. If someone cannot do a phone call they can go to CCDC, HCPF or Atlantis and join staff at those locations. We will begin to meet on the 4th Tuesday beginning in October.

Motion carried unanimously.

AFTER THE MEETING WE HEARD FROM MS SOCIETY WHO WILL ALLOW US TO USE THE ROOM AS WE HAVE BEEN. WE NEED TO AGREE TO RESCHEDULE IF THEY NEED THE ROOM BUT THEY FEEL THEY CAN USUALLY GIVE US A MONTH NOTICE. We need to thank Sharon O'Hara who intervened for us. John Barry will be following up and letting us know details.

Open Forum:

- 1) People were invited to the Punchbowl to celebrate Linda Andre and her service to PDPPC immediately after the meeting.
- 2) Anaya announced she took a job with DRCOG. Therefore she will not be on PDPPC anymore. People expressed how much they appreciated her work and that she would be sorely missed.

The meeting adjourned at 3:55 PM.

Respectfully submitted

Julie Reiskin