

Advocacy Center
Quarterly Report to the DD Council
(March 20, 2015)

Update/progress on agency initiatives

1. Update on Settlement Involving Medicaid Notices

The Advocacy Center is currently working with the Department of Health and Hospitals to ensure Medicaid notices are clear and use plain language. Notices should be in compliance now, but many are not. The Advocacy Center has notified DHH of non-compliance. If you receive a notice that is not easy to understand or have suggestions to improve notices, contact the Advocacy Center.

2. AC Helps Children and Youth with Disabilities Obtain Dental Care

The grandmother of an 18 year-old young man with a developmental disability recently contacted the Advocacy Center because her grandson had compacted wisdom teeth, which his oral surgeon recommended extracting. The young man had received a denial from Medicaid on two of the four teeth to be removed, for no apparent reason. The oral surgeon's office told them that Medicaid had recently been denying these claims on "everybody."

Because the young man was a Chisholm class member (Medicaid-eligible individuals under the age of 21 who are on the waiting list for a NOW waiver), and the notice of denial showed that procedural requirements of the Chisholm settlement regarding prior authorization denials had not been followed, AC Director of Litigation & Systems Advocacy Nell Hahn contacted the LA Dept. of Health & Hospitals asking for immediate attention to our client's situation. She also requested information on all other Chisholm class members who had dental claims denied by the Medicaid contractor.

Almost immediately, the dental services for our client were approved. In addition, DHH identified 65 other Chisholm class members whose dental claims had been denied by the Medicaid contractor using the same procedures. When their claims were reviewed, 57 of them were approved. The other 8 got new notices, giving them a chance to appeal, and the Advocacy Center sent them a letter asking them to contact us if they need help.

3. Overtime Regulation Changes for Personal Care Workers

Last year, the U.S. Department of Labor changed the overtime regulations for personal care workers, making them subject to a rule that requires employers to pay "time and a half" when they work more than 40 hours per week. These workers had previously been exempt from such overtime rules. This new rule was supposed to go into effect in January 2015, but a court in the District of Columbia has held that the change is not valid. The regulation is on hold while the case is being appealed.

However, some provider agencies are making policy changes that affect people with disabilities who currently receive personal care services.

Some things that people with disabilities and their families need to know now:

1. These overtime changes have no effect on the total number of hours of direct support care you receive. The hours you receive are based on your needs and funding limitations set by the state. Providers cannot require you to accept fewer hours to comply with overtime regulations.
2. You have the right to choose a provider agency that can meet your needs. If your current provider agency says it will only provide a limited number of hours, will not serve you at night, or otherwise cannot meet your needs, you have the right to change to another agency.

Providers may choose to limit a personal care worker's hours each week to avoid paying overtime. If your provider decides to limit the hours worked by a single staff person, you can choose to have more than one worker, or look for a new provider agency.

If you must have one worker for more than 40 hours a week in order for your needs to be met and you cannot work this out with your provider agency, contact Stephanie Patrick at 1-800-960-7705 x143 or spatrick@advocacyla.org.

4. Advocacy Center Negotiates Clarifications to State Waiver Policies

The Advocacy Center, in collaboration with attorney David Williams, negotiated clarifications to Louisiana's waiver eligibility policies to better explain that individuals with an income over 300% of the federal SSI benefit rate are still eligible for most waivers.

This is very important for people with disabilities, particularly those who want to work but cannot afford to lose their waiver services. Many Advocacy Center clients with developmental disabilities have tried to verify this eligibility option in order to pursue employment, without success. At least one decided not to pursue employment, despite assurances from the Advocacy Center that the eligibility exists.

In calculating eligibility, the state disregards over half of earned income, deducts medical expenses, and allows a deduction equal to at least the average cost of facility care. The state also has policies in place to require individuals to contribute to the cost of their care in certain circumstances.

Fact Sheet on Community Choices Waiver with Eligibility

Information: http://dhh.la.gov/assets/docs/OAAS/publications/CCW_Fact_Sheet.pdf

Fact Sheet on New Opportunities Waiver with Eligibility:

<http://dhh.louisiana.gov/assets/docs/OCDD/waiver/NOW/NOWFactSheet011515.pdf>

If you receive SSI and waiver services and want to work, contact the Advocacy Center's WIPA program at 1-855-877-8599 or by email at work-pays@work-pays.org. Work Incentives Coordinators can help you understand how working will impact your benefits.

If you believe that your income was not calculated properly and this impacted your eligibility for waiver services, contact the Advocacy Center at 1-800-960-7705 or advocacycenter@advocacyla.org.

5. Integration of Behavioral Health Services into Bayou Health

On December 1, 2015, Magellan will stop managing LA's Medicaid funded behavioral health (mental health and substance abuse) services. The current 5 Bayou Health providers (Aetna Better Health, Amerigroup Real Solutions, AmeriHealth Caritas, Louisiana Healthcare Connections, and United Healthcare) will begin integrating the management of behavioral health services into their programs.

According to state officials, all Medicaid funded behavioral health services will be managed by these companies, including behavioral health for individuals on waivers and waiver waiting lists, unless the state implements managed long term supports and services by December 1st.

The Office of Behavioral Health and Medicaid have partnered to manage this transition. It is very important that they hear from people with disabilities as they plan for the integration. Visit <http://new.dhh.louisiana.gov/index.cfm/form/135> to share your thoughts.

It will be important for consumers of these services to plan ahead regarding appointments with doctors and other mental health professionals, prescription renewals and other services to ensure a smooth transition.

It is not clear how or if members will be able to change Bayou Health plans because of difficulties accessing behavioral health services prior to open enrollment. If you have trouble getting the mental health or substance abuse services you need, call the Advocacy Center at 1-800-960-7705.

Advocacy Center staff will share additional information at future meetings.

6. Recent Successes

Systems change in N.O. Recovery School District

Recently, AC discovered that a Hearing Officer with the Recovery School District was ordering children with disabilities to be expelled and placed at the alternative school based on an incidents not related to the children's disabilities. This violates federal

law, which requires that the student's IEP Team, not the school district, must select the setting to which the student will be removed regardless of the reason for the removal. AC attorneys advised the school district that it was violating State and Federal law. After much back and forth, the Recovery School District agreed that it will now refer all students with disabilities who are expelled for an incident found not related to their disability back to an IEP team and the team will determine placement of the student. As a result AC's advocacy, the rights of children with disabilities are now better protected.

College Bound

TW has a developmental disability. He came to the Advocacy Center with questions about how work might affect his SSI benefits after he received a notice that he owed money to the Social Security Administration (SSA). When he arrived at AC, TW had almost given up. He said it was too much trouble to work and deal with Social Security.

An AC staff member found that SSA had neglected to apply certain rules in TW's case. He explained these rules to TW and encouraged him to advocate for himself to SSA. TW went to his local SSA office after receiving this guidance and advocated for himself, requesting that SSA reconsider its decision and apply the rule that they should have applied originally. SSA reversed its decision and reduced TW's overpayment by approximately 90%. TW is now pursuing college and planning to transition off of SSI.

AC stops defective assessments for waiver services

The Advocacy Center won an administrative appeal on behalf of a man whose hours of Community Choices Waiver services had been reduced because his latest assessment showed him able to move himself around in bed. However, the client was not able to sit up in bed without assistance. The Department had started using a definition of "bed mobility" in April 2014 that treated people who could not sit up in bed by themselves as "independent." The Administrative Law Judge found that this violated the law. The judge ordered the state to restore his services and revise its policies and procedures to ensure bed mobility is properly defined.

The Advocacy Center followed up with DHH to make sure that they correct the assessment results for any other individuals who might have been affected by this policy. DHH reported that the problem was confined to Region I (Metropolitan), and is reviewing all cases that may have involved the policy since April 7, 2014.

Child placed in therapeutic foster care through Medicaid

Therapeutic foster care (TFC), is a service or group of services for children and youth with severe mental, emotional, and behavioral health needs who need to be in a home setting, but are unable to live in their own family homes. TFC services allow the child to benefit from a home environment and community-based setting while receiving additional intensive treatment and clinical services, as needed. Many states provide

Therapeutic Foster Care as a Medicaid benefit. Services include services provided by a foster parent/family to a person residing in their home in order to implement the in-home portion of the person's behavioral health service plan. The only component of Therapeutic Foster Care that is not reimbursable with Medicaid funds in any State is the cost of room and board.

Until recently, parents of Louisiana children with severe behavioral issues that make it unsafe for them to be around younger siblings were not able to get this service through Medicaid. (While it was included in the RFP for behavioral health services that was released in the summer of 2014, that RFP has not been implemented) They had to give up custody to DCFS in order for their children to get this service.

Starting in February 2014, the Advocacy Center began advocating with DHH on behalf of a young man who had been severely abused as an infant, who could not live at home with his younger siblings. His mother did not want to give up custody to the State. He was in a psychiatric treatment facility, and his treatment team believed that he could benefit from Therapeutic Foster Care on his discharge. He was finally discharged recently, and was able to be placed with a therapeutic foster family, with DHH paying for the services. We hope that this service will become more generally available to children who need it.

Status of agency's activities/participation on DDC plan initiatives and impact

Objective 3.1 4,000 people on the waiting list will begin receiving home- and community-based services by educating stakeholders, policy makers and the public about the waiting list and needed systems reforms.

Activity 3.1.2 Collaborate with other advocacy groups to plan and support Disability Rights Rallies.

Activity 3.1.3 Advocate for systems change initiatives, revenue generating strategies, policies and practices needed to expand supports and services.

Activity 3.1.4 Monitor the possible restructuring of long-term supports and services to a managed care system and advocate for an increased quality and quantity of services to be included in the reorganized system.

Activity 3.1.5 Research impact of managed care on individuals determined to be dual eligible and make recommendations to DHH.

Activity 3.1.6 Monitor the effect of Medicare/Medicaid dual eligibility on services for people with developmental disabilities.

The Advocacy Center is concerned that the state has frozen most waiver slots for the remainder of 2015 and FY 2016, especially considering the long waiting list for services. Staff will continue to advocate in individual cases and on a systemic level.

Objective 3.2 Admissions to residential facilities will decrease by increasing access to behavioral and medical intervention in the community and the discontinuation of people adjudicated into state-operated facilities.

Activity 3.2.1 Advocate in collaboration with the Advocacy Center for

- additional providers with specialized expertise in behavioral services;
- the development of plan upon admission that includes specific activities, persons responsible and timelines for discharge or transition; and
- improving the home and community based system by soliciting feedback from individual families using or trying to access behavioral health services and sharing that information with the DHH leadership.

Activity 3.2.2 Advocate for self-direction to be exempted from medication administration requirements.

Activity 3.2.3 Advocate for adequate rates that support services for people with complex medical and behavioral needs.

The Advocacy Center is very concerned with the continuity of behavioral health services as the state moves to integrate behavioral healthcare into Bayou Health. It is important that people with mental illness, family members and advocates are a strong voice during this process. The Advocacy Center is continuing to advocate on these issues.

Objective 3.3 The number of people in private ICFs/DD per capita in Louisiana will decrease to reach the national average through the transition of people to home- and community-based services.

Activity 3.3.1 Advocate for

- changes to the rate structure of the Residential Options Waiver to encourage private ICF/DD providers to convert their beds so individuals can transition to waiver services,

Activity 3.3.2 Advocate for initiatives that allow residents of private ICFs/DD to obtain waiver services.

The Advocacy Center continues to monitor access to waiver services for individuals with disabilities, particularly for individuals in group homes. Nothing new to report.

Objective 7.3 There will be an increase in the number of charter schools, early education programs, and other publically funded education facilities that approximate the percentage of students statewide served with developmental disabilities across all LEAs.

Activity 7.3.1 Advocate for improved oversight and monitoring of admissions and service delivery to students with disabilities in Charter Schools, early education programs, and other publicly funded education facilities in collaboration with the Advocacy Center.

The Advocacy Center is continuing to represent individual students with disabilities in charter schools to access evaluations and prevent unlawful removals from school. We welcome referrals. Advocacy Center staff will continue to collaborate with the DD Council and LA TEACH to address systemic educational issues as resources permit.

Objective 7.4 Students will be protected from discipline practices that cause harm and/or violate their rights.

Activity 7.4.1 Monitor and advocate as necessary against the use of harmful practices (e.g., restraint and seclusion, corporal punishment, unnecessary use of law enforcement, etc.) and alternative positive evidence based options (e.g., positive behavior practices, etc.) and advocate for policies and practices that promote the safe and effective practices in collaboration with the Advocacy Center.

Nothing new to report.

Objective 9.1 Louisiana will develop and implement an Employment First plan.

Activity 9.1.1 Advocate for

- policies that incentivize services for individualized integrated, competitive employment and dis-incentivize segregated, sheltered day habilitation services,
- sheltered workshops to transition people into individualized, competitive, paid employment and discontinue admissions into segregated day programs,
- collaborative policy making and practices across state agencies that promote students being supported in and transitioning into competitive paid employment,
- LRS and OCDD will collaborate to mandate that all supported employment vendors/providers complete a university-based 40-hour training,
- Support family members and other advocates to serve on the Louisiana work team in developing an Employment First agenda and implementation plan including participation in state level meetings.

The Advocacy Center continues to monitor sheltered workshops to ensure they are complying with federal wage and hour laws and to advocate for systemic changes to promote integrated employment.

Objective 9.3 The Louisiana Vocational Rehabilitation (VR) program’s federal draw down will increase.

Activity 9.3.1 Advocate for Louisiana to draw down the entire VR grant award and serve individuals with the most severe disabilities.

The Advocacy Center will continue to support efforts to increase LRS funding as resources allow.

Objective 9.4 Family members and others will be knowledgeable about options for integrated, competitive employment in collaboration with the Advocacy Center and the LSU-HSC Human Development Center.

Nothing new to report.