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COLORADO MEDICAID AGENCY TAKES MONEY AWAY FROM MEDICAID CLIENTS & DENIES DUE PROCESS RIGHTS TO COLORADANS WITH DISABILITIES:

Second lawsuit against department in less than one week in Denver district court

Today, the Colorado Cross-Disability Coalition (“CCDC”) filed a class action lawsuit against the Colorado Department of Health Care Policy and Financing (“Department”) in the Denver District Court of Colorado requesting that the Court order the State to retract the cuts in the amounts Medicaid clients are entitled to receive to pay for in-home attendant until it is able to implement the cuts without violating the due process rights of Colorado residents with disabilities. See attached complaint.

Today’s lawsuit is the second lawsuit filed this week by the CCDC against the Department recently. The other recent lawsuit, filed December 18, alleges the Department failed to insure payment for needed Medicaid services for an individual with multiple disabilities who needs additional in-home services after having a tracheotomy performed and being discharged from the hospital.

The present case alleges the Department is taking money away from Medicaid clients for needed services without giving them notice and an opportunity to appeal the decision in violation of longstanding Supreme Court rulings and federal law regarding due process rights under the United States Constitution.

Since the Consumer Directed Attendant Support Services (“CDASS”) program was implemented in 2003, approximately 1,000 Colorado residents with disabilities have enjoyed the ability to manage their own in-home attendant care to assist with activities of daily living. They are responsible for such administrative tasks as interviewing, hiring, training, supervising, and sometimes firing the attendants of their choosing.

In addition to giving people with disabilities control over their own attendant care, the CDASS program was implemented to save the State money by eliminating the payments to home health care agencies for the administrative tasks that many Medicaid clients are more than capable of performing themselves. The State, in conjunction with the Medicaid client, determines the allotted amount of Medicaid funds each CDASS client can use towards their in-home attendant care.

In September, 2009, according to the Department, due to State budget cuts, CDASS clients’

allocations were reduced by 1.5%. However, many clients did not receive any notice of this reduction until six weeks later in mid-October, and some received no notice at all. For some CDASS clients, any reduction they have available to pay for attendant services means they must forego those needed services. Clients were terrified to learn suddenly that they may have gone over budget paying their attendants. County case workers can impose consequences on clients who over budget that can endanger a person's independence within the CDASS program. Over-budgeting can mean they are kicked off the program altogether.

In the first week of December, 2009, CDASS clients received another letter informing them that their allocations were once again being cut, this time by 1%. Again, some clients received no notice of this change at all. Those who did receive a letter became very concerned when looking at the numbers stated in the correspondence. Although the letters stated they would see a 1% decrease, their new allocations reflected a much different scenario. From what CCDC has learned so far, clients received reductions anywhere from 2.14% to 4.06% (and possibly more) with no explanation of the mathematic inaccuracies, except that some unknown amount of their funding was taken away to pay a new fiscal intermediary service the Department hired, starting December 1, 2009. This company is Public Partnerships LLC Colorado ("PPL Colorado").

Many clients are already using every last cent of their monthly allocations, carefully scheduling attendants down to the minute, while minding their responsibility to avoid going over their allocation budget. It is nearly impossible for CDASS clients to effectively schedule their attendant care without any idea as to the financial limitations to which they are expected to adhere.

The additional, unexplained inconsistent reductions in allocations can only be explained as the payment to PPL Colorado. The Department told clients the change to the new company would have "no affect" on allocations.

The Due Process clause of the United States Constitution, federal and Colorado law require that Medicaid clients receive advanced notice and an explanation of their right to appeal these allocation reductions. By not doing so, the State is violating the due process rights of Colorado residents with disabilities.

CCDC is Colorado's only statewide disability rights advocacy organization. CCDC's mission and purpose include preventing discrimination against people with disabilities, including the forced institutionalization of individuals with disabilities. CCDC works to ensure that state agencies like the Department provide due process of law when depriving individuals with disabilities of benefits for needed services. For more information about CCDC go to www.ccdconline.org.

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