



Department of Law
Monroe County, New York

Maggie Brooks
County Executive

William K. Taylor
County Attorney

Bruce Darling, CEO/President
Center for Disability Rights, Inc.
497 State Street
Rochester, NY 14608

July 22, 2010

Dear Mr. Darling:

The purpose of this correspondence is to inform you that the Monroe County Department of Human Services (DHS) will no longer utilize the Center for Disability Rights, Inc (CDR) as a provider agency for the provision of Consumer Directed Personal Assistance Program (CDPAP) services. DHS will not enter into a contract for such services with your agency and therefore our relationship is hereby terminated.

Letters have been sent to CDPAP clients informing them that your agency will no longer be a CDPAP vendor and instructing them to select another vendor. Due to the volume of clients, we estimate this transition will occur over the next sixty days, starting immediately. In the interests of insuring un-interrupted services for the clients served, DHS asks for CDR's full cooperation during the transition of clients and aides from your agency to the other five CDPAP vendors on contract with DHS.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Marchese".

Richard A. Marchese
Second Deputy County Attorney

cc: Matthew Fusco, Esq.
Kelly Reed
Iris Turner
Barbara Bloomer



Department of Human Services
Monroe County, New York

Maggie Brooks
County Executive

Kelly A. Reed
Commissioner

To: Maggie Brooks, County Executive

Date: July 14, 2010

Subject: CDR Contract for CDPAP Services

CC: Dan DeLaus, Deputy County Executive
Rick Marchese, Deputy County Attorney
Robert Franklin, Deputy Commissioner, MCDHS
Marc Natale, Director, Administrative Services, MCDHS
File

County Executive Brooks,

As Commissioner of the Monroe County Department of Human Services, I feel obligated to inform you of recent findings and serious concerns regarding a Department of Human Services (DHS) vendor, the Center for Disability Rights, Inc. (CDR).

Monroe County has worked with CDR in earnest for nearly a year to rectify what we feel is an unacceptable level of performance on the part of any County-contracted vendor. In our opinion, CDR has acted, or failed to act, in a way that not only represents a disservice to taxpayers, but blatantly jeopardizes the health and overall wellbeing of some of our community's most vulnerable residents. Furthermore, it is Monroe County's understanding that CDR has been under and continues to be under investigation by the New York State Attorney General's Office for cases of client neglect, resulting in ongoing prosecutions of client aides in both Monroe and Ontario counties. One of these instances involved aides who allegedly left patients with severe disabilities un-attended on several occasions while they were off-site playing BINGO. Other aides were revealed to be both using and selling illegal drugs from a patient's residence. Both of these were cases involving CDR.

It is important to recall that concerns with CDR were a driving force behind Monroe County's implementation of the Voice Recognition System (VRS) in the DHS Consumer Directed Personal Attendant Program (CDPAP). VRS was launched in July 2009 to ensure the safety of clients in the CDPAP Program as well as to reinforce Monroe County's commitment to eliminating waste, fraud, and abuse in all Social Service programs. We had hoped at the time that VRS would effectively put an end to our concerns with CDR. However, not only did CDR take serious issue with our implementation of a program designed to protect the very clients they are contracted to serve, but DHS continued to hear of instances where CDR was allegedly making program decisions that compromised the safety and best interest of our clients.

These concerns ranged from direct complaints by clients who reported that CDR was not performing routine home visits to an extremely unsettling complaint involving a quadriplegic client living with Multiple Sclerosis. This client reported that she was often left unattended, with the knowledge of CDR, despite the fact that she is largely unable to do anything for herself and her medical needs require 24

hour care. During a recent home visit conducted by a Physical Therapist from Home Care of Rochester, the client was found alone, as the CDR attendant had failed to arrive for coverage at all that day. When the client was found, the puffer apparatus that assists her in moving her wheelchair had fallen out of her mouth (meaning she was not able to operate her chair or call anyone for help), and her urine bag was overflowing. It was later revealed that CDR was directly aware of this incident and knew it had not provided sufficient coverage for a 24-hour case, but failed to inform DHS of the dire need to reassess for a different plan of care.

The client was hospitalized as a result of this incident. She is now in nursing home care – where it is expected she will be forced to remain.

When this appalling case was brought to our attention, DHS initiated a series of unannounced home visits to 24-hour clients receiving services through the Center for Disability Rights. In each case, we found some degree of negligence on the part of CDR. The following includes four specific findings of the twelve cases we investigated:

- A DHS investigator knocked on the door of Client #1's home, but there was no answer. The investigator was told by a neighbor that the client had moved. Our Home Care Unit (HCU) located the client with the assistance of family members, finding that he had moved nine days prior and had notified CDR of his move. This represents a safety issue because HCU must assess the suitability of an apartment to ensure the well being of a client. It also appears, through Medicaid billing, that this client frequently goes without coverage. From 2/1 – 4/4/2009, for instance, this client had less than 24-hour coverage for 24 out of 63 days, including days where he received only 8, 12, and 16 hours of coverage. CDR receives timesheets weekly. CDR's Service Coordinator is explicitly assigned to review coverage hours and notify DHS of any change in conditions for a client within 2 days. This was never done, yet CDR is under contractual obligation to do so.
- Client #2 is a spasmodic paraplegic and is unable to care for himself without assistance. A CDR Attendant was present when the investigator's visit was conducted. However, the attendant had not checked-in on the VRS system, as required. The client relayed to the investigator that he sometimes has trouble with his aides who call in at the last minute and say that they are not able to come for their shift. As a result, this client often goes without coverage for a period of time, usually throughout the night. In a shoddy attempt to mitigate this issue, CDR provided the client with a Lifeline call button to push in case there was an emergency when an aide was not present. The obvious concern with this plan is that the client does not have dexterity in his arms or hands to utilize the call button. The client stated that it was his opinion that, "it is done this way so that they (CDR) avoid any liability/responsibility". CDR has not notified DHS about coverage issues with this client. A check of Medicaid billing shows that for 30 of the past 69 days this client has received less than 24-hour coverage, and at times he has had coverage for only 6 or 10 hours in a 24 hour period.
- Client #3 is a disabled 90 year-old gentleman whose attendants had not used the VRS system at all prior to the home visit conducted by our investigator. The client reports he was having issues with an aide who was showing up late on a regular basis thereby presenting periods of time where he had no coverage. The client notified CDR of this concern, but CDR failed to report this to DHS or to directly address it for the client.

- Client #4 lives with disabilities requiring 24-hour service. She cannot write and has a Self Directing Other (SDO) who schedules her aide service for her. She fears for her safety because the SDO schedules aides without the approval of the client. For example, one aide came to her home intoxicated and fell asleep on her couch. The SDO threatens to put the client in a nursing home if she complains. This client had told CDR on two separate occasions about her concerns, the most recent being a week before the unscheduled visit by our investigators, but CDR failed to do anything to ensure the safety of the client. CDR also failed to notify DHS about the concern.

These are just some examples of unannounced home visits to CDR clients conducted by DHS investigators. All visits demonstrated an obvious lack of professionalism, care, concern, and diligence on the part of CDR, and an inability to perform the necessary obligations to ensure client safety as a vendor for Monroe County. Based on these investigations, attorneys from the Monroe County Law Department have deemed 4 accounts – at the very least – serious enough to terminate CDR from operating in a business capacity for Monroe County.

DHS has also met with multiple State agencies who indicated their continued interest in pursuing CDR for fraud and abuse of the Medicaid program. Due to ongoing investigations of this vendor for both patient neglect and financial mismanagement, the Monroe County Law Department has ultimately advised that Monroe County not enter into a new contract with CDR. Continuing a business relationship with CDR under these circumstances would ultimately place many DHS clients in immediate and grave danger.

I cannot conclude any discussion regarding the County's business relationship with CDR without also making mention of the two dual and distinctly different roles that CDR holds within our community. CDR is primarily an advocacy organization for local residents living with disabilities, which ultimately chose to enter into business as a for-profit home care provider several years ago. With this in mind, we must hold CDR to the same standard as we do any other County-contracted vendor, regardless of its advocacy roots. This is especially true when the safety of DHS clients is placed at risk.

Therefore, in closing, it is my recommendation that Monroe County end its relationship with the Center for Disability Rights as a vendor for the CDPAP Program immediately.

Sincerely,

Kelly A. Reed
Commissioner

Center for Disability Rights, Inc.

July 23, 2010

Maggie Brooks
County Executive
County Office Building
39 West Main Street
Rochester, NY 14614

Re: CDPAP Contract

Honorable Executive Brooks:

On July 22nd, CDR received a letter from Monroe County indicating that "the Monroe County Department of Human Services (DHS) will no longer utilize the Center for Disability rights, Inc (CDR) as a provider agency for the provision of Consumer Directed Personal Assistance Program (CDPAP) services." No reason was given in this letter.

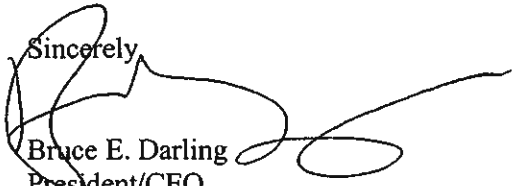
As I am sure you are aware, Monroe County shared a great deal of information with the Democrat and Chronicle, and possibly other media outlets, regarding Monroe County's concerns with CDR's CDPAP services. It is very unfortunate that Monroe County would choose to use the media to express such concerns when Monroe County has not communicated similar concerns to CDR directly.

We firmly believe that we operate a very good CDPAP service. There's a reason that we are the biggest vendor for this service in Monroe and the surrounding counties. We also believe that when Monroe County has raised concerns to us in the past, we have resolved the concerns. Such was the case in the June 16 meeting between staff from Monroe County's Home Care Services Unit (HCSU) and CDR's CDPAP support staff. HCSU requested information regarding gaps in services of two hours or greater for individuals approved for 24 / 7 services. CDR promptly began providing this information on a weekly basis.

We believe there are substantial misunderstandings between your administration and ours. Because Monroe County has not communicated its concerns previously, we respectfully request the opportunity to meet with you to eliminate any further misunderstandings and resolve concerns in order to successfully continue CDR's CDPAP services. Given the severity of this situation and the tight time frames which Monroe County has ascribed to our consumers, we will be contacting your office this morning in hopes of meeting this afternoon.

I can be reached at (585) 546-7510 or bdarling@cdrnys.org. Thank you for your time and attention to this matter.

Sincerely,



Bruce E. Darling
President/CEO

Rochester Office 497 State Street Rochester, New York 14608 (585) 546-7510 V/TTY (585) 546-5643 FAX
Edgerton Community Center 41 Backus Street Rochester, New York 14613 (585) 546-7510 V/TTY (585) 458-8046 FAX
Albany Office 99 Washington Avenue, Suite 806B Albany, New York 12210 (518) 320-7100 (518) 320-7122 FAX
Geneva Office 34 Castle Street Geneva, New York 14456 (315) 789-1800 V/TTY (315) 789-2100 FAX

Center for Disability Rights, Inc.

July 26, 2010

Maggie Brooks
County Executive
County Office Building
39 West Main Street
Rochester, NY 14614

Re: Commissioner Reed's Letter of July 14, 2010

County Executive Brooks:

I am following up on our correspondence dated July 23, 2010. After writing you a letter asking to meet so we could discuss your decision to terminate Monroe County's contract with the Center for Disability Rights to provide fiscal intermediary services under the Consumer Directed Personal Assistance Program, a member of the media provided me with a copy of the letter that Commissioner Kelly A. Reed sent to you on July 14, 2010. I am deeply disappointed that Monroe County chose to communicate its concerns to the media rather than address the issues directly with the Center for Disability Rights, but I am even more disturbed by the inaccuracy of the allegations in Commissioner Reed's letter.

Given the significant number of inaccuracies in Commissioner Reed's letter on which you have based your decision to discontinue our contract, I am once again requesting that you delay implementation of this decision until after you have met with us to review the facts of the situation and been able to make an informed decision. To facilitate such a process, I will address Commissioner Reed's inaccuracies below.

Commissioner Reed's letter states that "Monroe County has worked with CDR in earnest for nearly a year to rectify" concerns about CDR's performance. I have attached a series of documents which clearly demonstrate that CDR's requests for meetings with Monroe County's Home Care Unit (HCU) over the course of the year were not granted. In several instances, Monroe County staff simply stated that they are "too busy" to meet. Furthermore, an internal review of documentation of communications with the HCU gives no indication of the level of concern that Commissioner Reed has reported to you in her letter.

Commissioner Reed's letter alleges that CDR is being investigated by the Attorney General's office. CDR is aware of on-going investigations, but those are investigations of attendants and/or consumers in CDR's Consumer Directed Personal Assistance Program (CDPAP). CDR has cooperated fully with these investigations and assisted the Attorney General's office in securing evidence for arrest and prosecution of the individuals involved.

Commissioner Reed's letter describes Medicaid fraud "involving CDR". It is important to recognize that CDR was never a party to any Medicaid fraud. There were criminal charges filed against attendants, but no charges were ever filed against CDR. CDR's systems clearly allowed the case to be successfully prosecuted, and based on a recommendation from the Attorney General's office, we added additional attestations on our timesheets that make prosecution easier in the future. CDR continues to contact the Attorney General's office when we identify suspicious activity, and we are assisting in on-going investigations.

Regarding Commissioner Reed's indication that "concerns with CDR were a driving force behind Monroe County's implementation of the Voice Recognition System (VRS)," I am concerned that prior to such implementation there had been no communication from Monroe County to CDR that there was any concern. As Commissioner Reed indicates, CDR did take issue with the implementation of the voice recognition system, but that was because we feel strongly that our paper timesheet system, which as I have just stated was refined in collaboration with the Attorney General's office, is more effective at dissuading and prosecuting Medicaid fraud. It seems important to note that since the VRS was implemented, there have been many significant problems with the system.

In meetings with Monroe County staff, CDR had clearly identified that the VRS would not prevent fraud. In fact, I personally demonstrated this fact to Mr. Marchese by using an online service to "spoof" his home phone number when I called him about this issue. When Monroe County implemented a call back feature of the VRS, it was met with an overwhelming negative response by consumers which forced Monroe County to deactivate that feature. Without this feature, VRS does nothing to prevent the "Bingo" situation described in Ms. Reed's letter and does less than CDR's paper timesheets to identify or prosecute such a situation. Our last communication with Monroe County on this issue was an understanding that CDR would maintain our unique paper timesheets because of DHS staff felt the combined systems provided the best level of fraud control.

It is important to note that the VRS has flagged every attendant call-in and call-out since mid-March as a "location fail." Despite multiple communications from CDR to Monroe County and to the VRS vendor, this remains unresolved. Furthermore, the VRS has flagged every attendant call-in and call-out since July 19, 2010, as a voice fail. The voice recognition system cannot recognize voices.

Accessibility and language barriers also prevent effective use of this system. Specifically, the VRS does not accommodate individuals who are Deaf, and is unusable by CDR's attendants of Somali origin. Because of a strong commitment to serving the Hispanic community, many of CDR's attendants speak Spanish as their primary language. While it is true that after CDR raised concerns about such access that the prompts have been translated into Spanish, the numbers themselves remain in English. We have found that many individual accents are unrecognized by the system and cause false "red flags" in the system.

I recognize that, at times, CDR's systems fail and our staff make mistakes, such was the case with the woman with Multiple Sclerosis cited in Commissioner Reed's letter. We accept responsibility for our staff person's failure to inform Monroe County of the health concerns of which he was aware. However, this was an isolated incident and ensuring scheduled attendant coverage of this or any other person in our program is not CDR's responsibility per the Memorandum of Understanding (MOU). According to the most recent MOU signed by Monroe County, the consumer is responsible for arranging and scheduling back up coverage. CDR does

provide training and support to assist consumers with recruitment. In fact, CDR is the ONLY vendor in Monroe County that provides every consumer with a private voicemail box so that they do not have to publicize their home phone number when recruiting attendants. CDR also holds "open interview" nights at least once a month. At this popular event, people can interview prospective attendants in our offices, rather than having strangers come into their homes. CDR also makes meeting space available to consumers for this purpose at their request.

Another inaccuracy in Commissioner Reed's letter can be found in the story of Client #1. Nowhere has it been communicated to CDR that Monroe County assesses the suitability of people's homes before a move can occur. The nursing abstract written by Monroe County for this client actually identifies that he had moved several times in the preceding month. According to the MOU, it is our understanding that the person is him or herself responsible to communicate a new address to their caseworker at Monroe County. Client #1 continues to choose to receive CDPAP from CDR.

Commissioner Reed also states that CDR's "Service Coordinator is explicitly assigned to review coverage hours and notify DHS of any change in conditions for a client within 2 days"... and "is under contractual obligation to do so." I have attached the most recent MOU signed by both CDR and Monroe County which provides the contractual basis for our work. The MOU neither implicitly nor explicitly requires any CDR staff to review and notify Monroe County of such information. There is no mention in the 2007 MOU that any information must be communicated to Monroe County within two days (see enclosure).

Regarding Client #2, at this consumer's most recent recertification by Monroe County on or about July 22, 2010 the County staff did express a concern to him about him using less than 168 hours of service each week. He pointed out that his paperwork indicated that he was authorized for between 112 and 168 hours of service each week. He didn't always need round-the-clock assistance, so he said that he didn't understand why he was being held responsible for covering the full 168 hours during the week. He was clear that he wanted to use less hours because he wanted to have time alone and has additional supports available to him.

Even if there is a disagreement between the consumer and the County about this issue, it is clearly stated in the most recently signed MOU, that the consumer is responsible to "recruit, interview, hire, train, supervise, schedule and terminate" his attendants. Additionally, the MOU requires Client #2 to "arrange and schedule back up CDPA coverage for vacations, holidays, and in case of illness." I do not understand why CDR is being held responsible for his scheduling decisions and I completely fail to understand why Monroe County is forcing consumers to use more home care services than they need or want.

The letter also indicates that:

"In a shoddy attempt to mitigate this issue, CDR provided the client with a Lifeline call button to push in case there was an emergency when an aide was not present. The obvious concern with this plan is that the client does not have dexterity in his arms or hands to utilize the call button."

The Medicaid-funded personal emergency response system or PERS was actually provided by Monroe County, not CDR. In case you are concerned that your staff made the grievous error that Ms. Reed is accusing CDR of committing, I would like to reassure you that the consumer can in fact use the call button despite his limited dexterity. He can push the button with his knuckle or nose, depending on the position he is in, or he can put

it in his mouth and bite it. He always makes sure he is in a position where he can use the call button before his attendants leave. Furthermore, he is a quadriplegic, not a paraplegic as indicated in Ms. Reed's letter. Paraplegics would not have the described dexterity limitations.

If Monroe County had such serious concerns about this man's safety, I don't think Commissioner Reed's staff would have recertified him for the program last week. As described in the MOU, it is clearly the county's responsibility to determine eligibility of the consumer for this program and to facilitate transfer to another delivery model, should the county determine that the consumer is inappropriate for this type of service.

Finally, Client #2 indicates that "it is done this way so that they (CDR) avoid any liability/responsibility". He is correct and understands the nuances of this issue well because, in fact, he was involved in developing CDR's original program policies. To be clear, CDR serves as a fiscal intermediary. We do not assume the consumer's responsibilities of recruiting, interviewing, hiring, training, supervising, scheduling and terminating attendants. We provide assistance and support, but recognize the consumer's responsibility to perform these functions and monitor their ability to do so.

Client #2 is clear that he wishes to continue to receive CDPAP through CDR.

We are deeply concerned about organizations that perform some or all of these functions while claiming to be a consumer directed program. They are not fiscal intermediaries. Instead of supporting consumers in managing their own services, they are using the consumer directed personal assistance program to bypass the regulations which oversee home care. That was never the intent of the program.

Commissioner Reed's letter indicates that Client #3 had not used the VRS. Because he is Spanish speaking, as are many of his attendants, they have experienced a great deal of difficulty with the VRS. We have made the county aware of this problem since the system was first announced so your staff should not be surprised about this issue. The attendant who was frequently late, as described in Ms. Reed's letter, was terminated by the supervisor. Client #3 continues to receive services from CDR and reports that he is very satisfied at this time.

I saw Client #4 at CDR's fundraising Gala Friday night. She reports that she is pleased with her CDPAP services, although there are sometimes difficulties between herself and her self-directing other (SDO) who manages her services. She indicated that she is upset that Monroe County is distorting her statements and using them to close down a program with which she is satisfied. CDR was aware of the situation with the attendant reportedly under the influence and supported the client and the SDO in their decision to discipline the attendant. Client #4 continues to choose CDR as her vendor for CDPAP.

Commissioner Reed makes a vague and unsupported allegation that "multiple State agencies" have "continued interest in pursuing CDR for fraud and abuse". CDR has been reviewed by various state agencies over the years, including the Attorney General and the Office of the Medicaid Inspector General. These "multiple State agencies" have conducted reviews of our programs and the negative findings have been minimal. I will acknowledge that we have been cited for billing CDPAP services when consumers were hospitalized, but did so because the consumer and attendants submitted timesheets and avoided CDR finding out about the hospitalization. As I have mentioned previously, we have referred questionable situations, such

as this, to the Attorney General and the Officer of the Medicaid Inspector General and cooperated in their investigations, some of which are on-going.

Based on a recommendation from the Attorney General's office, we modified our timesheets making the prosecution of those who commit fraud more likely, and as we explained to your staff, our Medicaid billing is generated directly from the timesheet data. This system prevents any staff person in our office from generating erroneous or fraudulent billing. CDR has an extensive fraud prevention program, and we are happy to give you a presentation on it. I am sure that none of the other agencies has controls that would match ours.

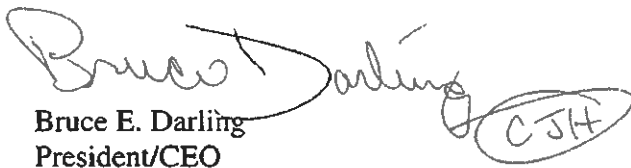
There are two more inaccuracies I found in the second to last paragraph of Commissioner Reed's letter. Commissioner Reed indicated that "CDR is primarily an advocacy organization." Although CDR began as a volunteer advocacy organization, we changed our mission in 1998 to include service delivery. Many people in the community may only recognize CDR as an advocacy organization, but the vast majority of our budget comes from and goes to the delivery of services. Commissioner Reed goes on to state that CDR "chose to enter into business as a for-profit home care services provider several years ago." CDR is a 501(c)3 not-for-profit organization, and CDR has been providing CDPAP in Monroe County for over 10 years.

In closing, **the allegations of widespread neglect are clearly false**, and there appears to be a substantial misunderstanding by Commissioner Reed of what is required of a CDPAP vendor under the MOU. **We cannot understand why Commissioner Reed would want to shut down a non-profit provider which has better fraud control measures, provides better consumer support, maximizes consumer control and costs less.** We remain committed to resolving this crisis and continuing to be a CDPAP vendor in Monroe County.

Please contact me at (585) 546-7510 to arrange a meeting so we can avoid further disrupting the lives of people with disabilities, their families and their attendants. These people should not be penalized because of a decision that was clearly made based on such inaccurate information.

Thank you.

Sincerely,


Bruce E. Darling
President/CEO

cc: Kelly A. Reed, DHS Commissioner
Kara Halstead, Special Assistant, Monroe County
Marc Natale, Director of Community Relations, Monroe County

MEMORADUM OF UNDERSTANDING

For the Provision of the
Consumer Directed Personal Assistance Program (CDPAP)

By and between
**The Monroe County Department of Human Services,
Division of Social Services**

And

Center for Disability Rights, Inc.

In accordance with Sections 365-f and 367-p (c) of the Social Services Law, the parties seek to enable Medicaid recipients (the "Consumer") to utilize the Consumer Directed Personal Assistance Program (CDPAP). The CDPAP Provider Agency, **Center for Disability Rights (CDR)** with offices at **412 State Street, Rochester, NY 14608** will provide services for the **Monroe County Division of Social Services** with offices at **111 Westfall Road, Rochester, NY 14620**.

WHEREAS, the MCDSS desires to have CDR provide such services for eligible Medicaid recipients (hereinafter, the "Consumer"),

NOW, THEREFORE IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

CDR will assume the role of fiscal intermediary and act as paymaster of record for the Consumer's Personal Assistant (hereinafter the "CDPA"). CDR will provide local assistance (e.g., instructing the Consumer about his/her responsibilities as outlined below), quality assurance (e.g., meeting periodically with MCDSS to review quality control issues) and facilitate peer support, including the establishment of an advisory committee for the purpose of program review and support. CDR will work closely with the MCDSS in all phases of the delivery of CDPAP to be provider under this agreement.

Although the consumer is not a party to this agreement, the consumer will be required to execute a separate agreement confirming his/her responsibilities as enumerated below.

The parties hereby agree as follows:

Responsibilities of the Consumer

The consumer and/or the consumer's guardian shall undertake the following:

1. Recruit, interview, hire, train, supervise, schedule and terminate the CDPA.
2. Provide equal employment opportunities as specified in the Consumer's Agreement with CDR and the Employment/Wage Agreement, which is signed by both the Consumer and the CDPA.
3. Inform CDR of any changes in status including, but not limited to, address, telephone number, CDPA's names, addresses, hours worked and hospitalization. Inform the social services district of any change in status, including address and telephone number changes and hospitalizations.

4. Process the required paperwork for CDR including time sheets, annual worker health assessments, and required employment documents.
5. Arrange and schedule back up CDPA coverage for vacations, holidays, and in case of illness.
6. Distribute paychecks to each CDPA.
7. Insure that each CDPA works the hours indicated on the time sheet.
8. Meet with a registered nurse as well as a nurse from MCDSS once every six months for the required nursing review.
9. Enter into a written Agreement with CDR, which acknowledges these responsibilities.
10. Cooperate with requirements to maintain Medicaid eligibility, including re-certification and "spend-down" requirements.

Responsibilities of CDR

Upon the completion of the rate approval process by the New York State Department of Social services, CDR shall undertake the following:

1. Process the payroll for each CDPA, including withholdings for Federal, State and local income tax and Social Security (FICA). Act as the employer of record for Social Security (FICA).
2. Monitor the completion of the required annual worker health assessment and all required employment documents.
3. Act as the employer of record for insurance, unemployment and worker compensation benefits.
4. Coordinate annual leave, health insurance, and other benefit programs for each CDPA.
5. Monitor the completion of the required nursing assessment forms and the Consumer Agreement outlining responsibilities assumed thereby.
6. Maintain a personnel record for each DCPA which shall include, at a minimum, copies of the enrollment forms, the annual worker health assessments, and the information needed for payroll processing and benefit administration.
7. Maintain consumer record, which includes copies of the MCDSS approval/referral, the MCDSS service authorizations, the agreement signed by the Consumer outlining the responsibilities assumed thereby, the periodic nursing assessments, and other documentation of the CDR's efforts to monitor the Consumer's ability to meet its obligations.
8. Assist the Consumer with recruitment and service coverage referrals, and provide informational support for training, supervision, advocacy and personal management.
9. Monitor the Consumer's ability to meet contractual obligations.

10. Provide local support to the Consumer by coordinating payroll distribution, the distribution of forms, and the collection of information.
11. Coordinate access to health facilities capable of providing the required annual worker health assessment and other health related program requirements.
12. Establish an advisory committee, which will consist of disabled consumers, advocates and/or other interested parties. The committee will oversee quality assurance of this agreement and provide MCDSS and CDR with assistance and support, which may include peer counseling, referral and program monitoring.
13. Provide the MCDSS with monthly statistical reports in the manner and form determined by the Division to be necessary and appropriate, to permit the proper documentation of the growth of the CDPAP and the level of savings achieved as a result of this agreement.
14. Monitor the Consumer's continuing suitability for the CDPAP.
15. Cooperate and participate in any administrative hearings regarding the termination or modification of the care plan for the Consumer.

Responsibilities of Monroe County Division of Social Services

The Monroe County Division of Social Services shall undertake the following:

1. A. Determine that the Consumer is a resident of the authorizing county and is Medicaid eligible.
 - B. Determine that the Consumer is eligible for long term care and services provided by a certified home health agency, the long term home health care program, the AIDS home care program or personal care services.
 - C. Determine, pursuant to an assessment of the person's appropriateness for the program conducted with an appropriate long term home health care program, certified home health agency, or an AIDS home care program or pursuant to the personal care program, that the Consumer is in need of home care services or private duty nursing.
 - D. Determine that the Consumer is able and willing or has a legal guardian able and willing to make informed choices, or has designated a relative or other adult who is able and willing to assist in making informed choices, as to the type and quality of services, including but not limited to nursing care, personal care, transportation and respite services.
2. Determine Consumer's eligibility for the program through its approved annual plan procedure including the initial assessment and periodic reassessments. The MCDSS will authorize the level and amount of services required and will authorize the reimbursement for CDPAP services to the CDR as prescribed by the New York State Department of Social Services.
3. Facilitate the transfer the Consumer to other programs with more traditional agency control should the Consumer be deemed inappropriate to continue participation in the CDPAP.
4. Provide all eligible individuals receiving home care with notice of the availability of the program and an opportunity to apply for participation in the program.

- 5 Provide Consumers with the appropriate fair hearing notice and the opportunity for a fair hearing with aid-continuing, if appropriate, at such times as the MCDSS requires.

Right to Terminate Agreement

1. Upon sixty (60) days notice, any party may terminate this agreement without further liability.
2. This agreement will terminate upon notification from the New York State Department of Social Services that State and/or Federal funds are unavailable for these services or for any other reason specified by the Department.
3. In the event either party wishes to terminate this agreement, written notice by either party shall be delivered via registered mail to the individuals whose signatures appear on the attached signature page at the address noted.
4. The period of this agreement is **1/1/07 through 12/31/07**.

The parties agree that the following attachments are part of this agreement:

Attachment A: Debarment Certification

Rev. 1/07

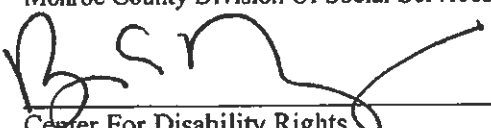
IN WITNESS THEREOF, the parties have hereunto signed this agreement on the day and year appearing opposite their respective signatures.

Date 2/28/07



Kelly A. Reed, Commissioner
Monroe County Division Of Social Services


Date 1/8/07



Center For Disability Rights
Federal ID #22-3141275

STATE OF NEW YORK) SS
COUNTY OF MONROE)

On this 28 day of Feb., 2007, before me personally came **KELLY A REED**, to me known, who being by me duly sworn, did depose and say that she resides in Rochester, N.Y., that she is the **COMMISSIONER** of the **MONROE COUNTY DIVISION OF SOCIAL SERVICES**, the Agency described in and which executed the above instrument; that as Commissioner of said Agency she signed her name thereto.




NOTARY PUBLIC

Notary Public for the State of New York
My Commission Expires: 9/19/10

STATE OF NEW YORK) SS
COUNTY OF MONROE)

On this 8th day of JANUARY, 2007, before me personally came BRUCE E. DARLING, to me known, who duly sworn, did depose and say that (s)he resides in HILTON, NJ; that (s)he is the EXECUTIVE DIRECTOR of CENTER FOR DISABILITY RIGHTS, the corporation described in and which executed the foregoing instrument, that (s)he signed his/her name thereto by order of the Board of Directors.



NOTARY PUBLIC

7-15-2009

April Oakes

From: April Oakes
Sent: Thursday, December 17, 2009 1:33 PM
To: 'DeRycke, Carol (DFA2-A26)'; Turner, Iris (DFA2-A26)
Subject: RE: Prior Approvals

I am not receiving prior approvals regularly in the mail...the information may be opened by our receptionist and given to finance without me seeing it though. However, when I do receive them they are immediately given to our finance department for entry. I will follow up with our finance department to see what their process is for entering this information and why I am not getting this information weekly.

I was not aware the team was not making it to recerts they had prior notification of. My staff have reported that they haven't been invited to several recerts and only find out after the fact that the recert was done. They cannot make Monday recerts due to timesheet processing which is now more involved due to the HHVS. Please include me in on the emails sent with the recertification dates so I can follow up with staff appropriately.

I usually ask staff to follow up with prior approval numbers after a month or so after the recertification date if we have not received the information. I will be sure they check with our finance department before bothering you guys. Hopefully this will help! We can also review this info at our monthly meetings when we resume them.

Happy Holidays!

April M. Oakes
 Assistant Director, CDPAS

From: DeRycke, Carol (DFA2-A26) [mailto:Carol.DeRycke@dfa.state.ny.us]
Sent: Thursday, December 17, 2009 1:17 PM
To: April Oakes; Turner, Iris (DFA2-A26)
Subject: RE: Prior Approvals

I am forwarding this on as an example only, because I'm concerned about the paper trail for these PA's that are mailed out each Friday to CDR. April, are you not receiving the paperwork via US mail? These requests are becoming very frequent (two to three times per week), and it is a waste of time & resources to go back to these things unnecessarily.

I will say that some of this confusion could be avoided by the team making it to recert visits. That only happens roughly 50% of the time now, and that estimate could be generous. Just an observation.

Please let us know what is happening there, thank you.

From: Johnson, Elaine (DFA2-A26)
Sent: Thursday, December 17, 2009 10:27 AM
To: 'Gloria Calderon'
Cc: Robinson, Takisha (DFA2-A26); DeRycke, Carol (DFA2-A26)

April Oakes

From: April Oakes
Sent: Monday, April 05, 2010 12:11 PM
To: Turner, Iris (DFA2-A26)
Subject: rate code clarification

Hi Iris,

I am hopeful you can answer a couple of questions and clarify some changes for me.

Carol recently changed [redacted] and [redacted] to the shared aide code (2402). You may recall the email correspondence back and forth regarding the change... we had many questions and Carol was very helpful with assisting us to sort it all out. We were told that the new code would go into effect on 4/6/10 but the prior approval for 12/9/09 is also the (2402) code. Could you please look into this?

After further review we have identified several other consumers with the same rate code (2402). The SDO's for these consumers state they were not notified at the recertification or any time after that a staffing change was supposed to take place... [redacted] states that she was told the billing code was changing, but she had no idea what that meant and was not given any other information. My staff also state that they were not notified by the nurse of the change. It is not possible for SDO's to adjust scheduling and potentially lay off attendants if they are not made aware of the change in their services or are not aware of what the changes mean.

I realize using this code is new to all of us...perhaps the nurses realized after the recertification that the (2402) code was more appropriate and forgot to notify us so we could assist consumers/SDO's with the change.

Can you have your staff adjust the prior approvals for the following individuals back to the regular rate pending notification of changes in service to the consumer/SDO and CDR staff so that there is ample time to adjust schedules and make appropriate staffing changes? The change in the billing code results in significant changes in how the services are delivered. If the nurses could send my staff an email when there is a significant change in service that would also be very helpful. We will be having the SDO's call the nurses to discuss the changes so the nurses can explain why the change is taking place and what it means.

Feel free to give me a call if you need clarification on anything or want to have further discussion. I am definitely open to getting together to talk about this. Perhaps we could revisit scheduling face-to-face meetings on a regular basis again?

Thanks for your help!

April M. Oakes
Assistant Director, CDPAS
Center for Disability Rights, Inc.
497 State Street
Rochester, NY 14608
(585)-546-7510 (Voice)
(585)-546-7512 (TTY)
(585)-546-7566 (Fax)
www.cdrnys.org

"Helping People Help Themselves"

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Melanie Menough

From: Turner, Iris (DFA2-A26) [Iris.Turner@dfa.state.ny.us]
Sent: Thursday, April 15, 2010 2:57 PM
To: Melanie Menough
Subject: RE: Scanned document from a Xerox 7345

never responded

Hi Melanie,
Sorry I haven't returned you email; I too have had some family matters in which I have been attending too. My husband was seriously injured 2/26/10, and hospitalized; he is doing better, but I am not always available lately; this week as been a bear, and next week is looking the same when I am in. Hopefully there will be time to work out these concerns. Thanks for your patience.

-----Original Message-----
From: Melanie Menough [mailto:MMenough@cdrnys.org]
Sent: Tuesday, April 13, 2010 5:10 PM
To: Turner, Iris (DFA2-A26)
Subject: RE: Scanned document from a Xerox 7345

Hi Iris, I am sorry for my delayed response, but I had a very sick baby yesterday,, had to call off work and take him to the doctor. I would be happy to meet with you, can you send me some dates and times you are available and I can come to you.

Melanie Menough
Director of Programs
Center for Disability Rights, Inc.
497 State Street
Rochester, New York 14608
(585) 546-7510 (Voice)
(585) 546-7512 (TTY)
(585) 546-7579 (Fax)

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-----Original Message-----
From: Turner, Iris (DFA2-A26) [mailto:Iris.Turner@dfa.state.ny.us]
Sent: Friday, April 09, 2010 5:31 PM
To: Melanie Menough
Cc: Bloomer, Barbara (DFA2-A26); Natale, Marc (DFA2-A26)
Subject: RE: Scanned document from a Xerox 7345

Melanie,
After reading your letter of various concerns, I feel it is appropriate to convene a meeting with the LDSS administrator, Barb Bloomer, LDSS CDPAP staff, myself, and your CDPAP staff to have an honest discussion of your concerns.
Please let me know if you are in agreement with this format. Thanks for your cooperation.

-----Original Message-----
From: Melanie Menough [mailto:MMenough@cdrnys.org]
Sent: Friday, April 09, 2010 4:34 PM
To: Turner, Iris (DFA2-A26)
Subject: FW: Scanned document from a Xerox 7345

Attached, please find a letter in PDF format for you.. thank you.

Melanie Menough
Director of Programs
Center for Disability Rights, Inc.
497 State Street
Rochester, New York 14608
(585) 546-7510 (Voice)
(585) 546-7512 (TTY)
(585) 546-7579 (Fax)

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-----Original Message-----

From: WorkCentre 7345 [mailto:it@rochestercdr.org]
Sent: Friday, April 09, 2010 4:15 PM
To: Melanie Menough
Subject: Scanned document from a Xerox 7345

Please open the attached document.

Number of Images: 2
Attachment File Type: PDF

Device Name: WorkCentre 7345

Please DO NOT REPLY to this email it was generated by a Xerox 7345 copier.

Center for Disability Rights, Inc.

April 9, 2010

Iris Turner
Department of Human Services – Home Care Services Unit
111 Westfall Road
Rochester, NY 14620

Re: Consumer Directed Personal Assistance Program

Dear Ms. Turner:

It has come to the attention of the Center for Disability Rights that on numerous occasions in the past several months, you and the nurses working under your direction within Monroe County's Home Care Services Unit have steered Consumer Directed Personal Assistance Program (CDPAP) eligible consumers away from CDR, an eligible vendor. In at least one case, the consumer has been told that they cannot receive CDPAP if they choose CDR as a vendor. It appears that for each of the individuals steered away, or prohibited, from receiving services through CDR, your reasoning for this steering is that the consumer needed "nursing oversight."

It is our understanding that you have steered the consumers to All Metro and Maxim as possible vendor alternatives. It is also our understanding that you chose these vendors for the consumer because these vendors employ Registered Nurses (RN) in the administration of the CDPAP and Licensed Home Care Service Agency (LHCSA) services provided by these vendors. It is unclear to us how these agencies provide nursing oversight within either of these models of service delivery, so we are seeking clarification from you so that we may broaden the array of services CDR provides.

As you are well aware, CDPAP is a non-medical service delivery model and New York State does not require any level of nursing staff to be involved in the delivery of services. In order to be eligible for CDPAP, an individual must be "medically stable," as determined by you and your team. By New York State Medicaid law, a person is either eligible for services, or they are not. A person's eligibility is never dependent upon their vendor of choice.

In addition to being medically stable, there are several basic components of eligibility for CDPAP. None of these components directly involves nursing oversight. For consumers getting their personal care needs satisfied by CDPAP, if additional nursing is needed, such needs can readily be met by a Certified Home Health Agency (CHHA) or Private Duty Nursing. I am sure you are aware that CDR and other providers frequently arrange for CHHA services to supplement CDPAP for periods of time when needed by a consumer. These services are designed by New York State to meet this kind of nursing need and appear to CDR to be the appropriate means of providing nursing oversight in accordance with NYS Medicaid regulations.

While LHCSAs are required to have RNs overseeing the care delivered to individuals receiving LHCSA services, the RNs do not actually provide nursing oversight to the consumer in Medicaid or Medicare reimbursed cases. LHCSA RNs train and supervise the Personal Care Aides and Home Health Aides employed by the LHCSA.

I hope you can understand our confusion as to how a CDPAP vendor, whether or not it is affiliated with a LHCSA, can provide nursing oversight to consumers. We hope you can enlighten us as to how you expect a CDPAP vendor to provide nursing oversight to its consumers.

Because CDR has never been informed by Monroe County, as it appears our competitors have, that nursing oversight is an appropriate, and even required, component of CDPAP, we would appreciate your clarification as to which regulations govern this and what the Home Care Unit's expectation are for implementation of such nursing oversight. We are concerned that without clear guidance, efforts to provide nursing oversight as part of CDPAP may be in violation of the Nurse Practices Act and arbitrary and capricious in their application to consumers.

As you are aware, CDR has an affiliated LHCSA, called All About You Home Care (AAY). AAY is located within the same building as CDR's CDPAP services. CDR is willing to investigate the possibility of contracting AAY, or possibly hiring separate per diem RNs to provide nursing oversight in accordance with the guidance you provide.

We would appreciate your prompt response in this matter, as several CDR CDPAP consumers who have been happy with their services through CDR, have already been steered to other vendors because of this "nursing oversight" requirement.

Sincerely,



Melanie Menough
Director of Programs

April Oakes

From: April Oakes
Sent: Tuesday, June 02, 2009 1:17 PM
To: 'Turner, Iris (DFA2-A26)'
Cc: DeRycke, Carol (DFA2-A26); Keller, Elizabeth (DFA2-A26); Robinson, Takisha (DFA2-A26)
Subject: RE: reschedule CDPAS meeting

Thanks for getting back to me. Let me know when you are available to meet!

April M. Oakes
Assistant Director, CDPAS

From: Turner, Iris (DFA2-A26) [mailto:Iris.Turner@dfa.state.ny.us]
Sent: Tuesday, June 02, 2009 1:07 PM
To: April Oakes
Cc: DeRycke, Carol (DFA2-A26); Keller, Elizabeth (DFA2-A26); Robinson, Takisha (DFA2-A26)
Subject: RE: reschedule CDPAS meeting

Hi April,
At this time we are unable to reschedule the next meeting; the ladies are extremely busy with new cases, training and vacation coverage; as soon as their is light at the end of the tunnel, we will be glad to reschedule; if there are any pressing matters which need to be addressed, please feel free to email us, and we will do our best to get back to you'll as soon as possible. As you know there has been many difficult cases in the last month or so that has been very time consuming in addressing the issues([redacted] which required about two full weeks of our time to keep him safe, and he has filed for a fair hearing in addition) etc. Hope things are going well for you'll. we will be in touch.

From: April Oakes [mailto:aoakes@cdrnys.org]
Sent: Tuesday, June 02, 2009 10:02 AM
To: Turner, Iris (DFA2-A26); Melanie Menough
Cc: DeRycke, Carol (DFA2-A26); Keller, Elizabeth (DFA2-A26); Wendy McLaughlin; Robinson, Takisha (DFA2-A26)
Subject: reschedule CDPAS meeting

Hi Iris,

I was hoping we could reschedule our CDPAS meeting that was canceled May 21st. Wendy McLaughlin would also like to attend so she can give you the NHTD plans for your review. Would you be up for a lunch meeting Thursday June 18th at 1pm? We would be happy to provide food and beverages.

Hope to see hear from you soon!

April M. Oakes
Assistant Director, CDPAS
Center for Disability Rights, Inc.
497 State Street
Rochester, NY 14608
(585)-546-7510 (Voice)

(585)-546-7512 (TTY)
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April Oakes

From: Turner, Iris (DFA2-A26) [Iris.Turner@dfa.state.ny.us]

Sent: Wednesday, June 30, 2010 12:52 PM

To: April Oakes

Subject: Meeting

Hi April,

Well the last thing I wanted to be doing this summer; I have been summoned for jury duty during the week of 7/12/10, and possibly the next week; ~~I was able to get out of jury duty once this year, but can't get out of this one;~~ therefore we will need to reschedule our next meeting date. Hope you are having a great summer. Thanks.

7/22/2010

CDPAANYS *Consumer Directed Personal Assistance Association of New York State*

272 Broadway • Albany, New York 12204 • (518) 813-9537 • (518) 813-9539 *fax*

Maggie Brooks, Monroe County Executive
110 County Office Building
39 W. Main Street
Rochester, NY 14614

July 27, 2010

Dear Ms. Brooks:

I am writing to you as President of the Consumer Directed Personal Assistance Association of New York State. CDPAANYS is a statewide association dedicated to increasing awareness and implementation of the Consumer Directed Personal Assistance model (CDPAP) across New York.

I read with concern comments in a newspaper story regarding Monroe County's decision to terminate its contracts with the Center for Disability Rights (CDR). The comments appeared to reflect a fundamental misunderstanding of the Consumer Directed Program.

Consumer directed care is an exciting alternative to traditional home care. Consumer directed care puts the person receiving care in charge. Once admitted into the Consumer Directed Program, the consumer makes the decisions. 06 OMM/LCM-02 (Q&A 3) "*It is the responsibility of the consumer or "self-directing other" to supervise the personal assistant.*" The consumer hires the attendants, trains the attendants, sets their work hours and otherwise directs the attendants. Because the consumer is responsible, the Consumer Directed Program is not for everyone. The consumer must be able to direct his or her own care.

This is very different from more traditional home care. In the usual home care program, the home care agency directs the care. The traditional home care agency sends its employees to the patient's home and is responsible for overseeing the performance of those employees. For those who are able to take advantage of the Consumer Directed Program, the program is liberating. The individual is in charge, not the agency.

Because of the program differences, a Consumer Directed Agency has a very different role and responsibility than a traditional home care provider. A Consumer Directed Agency acts as a fiscal intermediary becoming the interface with the State Medicaid program and otherwise provides administrative support for the program. For example, the Consumer Directed Agency processes the paperwork necessary for Medicaid participation and provides payroll services and Workers' Compensation coverage. It does not undertake direct care. That is the individual's responsibility. As stated in the authorizing statute "*providers shall not be liable for fulfillment of responsibilities agreed to be undertaken by the eligible individual.*"¹

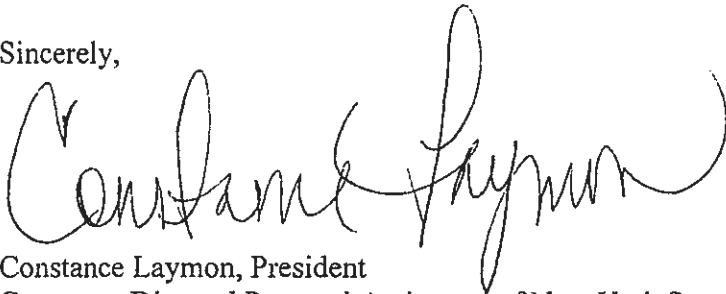
¹ New York State Social Services Law, Title 11, Article 5, § 365-f. Consumer Directed Personal Assistance Program (3)

A Consumer Directed Agency does take on the responsibility to monitor program compliance, but that is a very different responsibility than providing or overseeing care. Program monitoring is *"monitoring the consumer's or, if applicable, the consumer's designated representative's, continuing ability to fulfill the consumer's responsibilities under the program and promptly notifying the social services district of any circumstance that may affect the consumer's or, if applicable, the consumer's designated representative's ability to fulfill such responsibilities,"*².

Program monitoring is also different than Case Management. Unless delegated to the Consumer Directed Agency, Case Management is the responsibility of the authorizing social services district. *"Case management may be provided either by social services district professional staff who meet the department's minimum qualifications for caseworker, professional staff of one or more agencies to which the district has delegated case management responsibility and that meet standards established by the department, or both."*³

The lack of care and the circumstances of the individuals described in the press reports is indeed unfortunate. Nevertheless, the Consumer Directed Agency cannot be faulted for failing to deliver care that it was never intended to deliver. Fiscal intermediaries are *not* home care agencies and should not operate on a clinical basis.

Sincerely,

A handwritten signature in cursive script that reads "Constance Laymon". The signature is written in black ink and is positioned above the typed name and title.

Constance Laymon, President
Consumer Directed Personal Assistance of New York State (CDPAANYS)

² New York State Department of Health 3/17/09 Draft CDPAP Regulations, (1)(vi)

³ NYCRR Title 18 Section 505.14 (g)(2)

Bruce Darling

From: Constance Laymon [IMCEAEX-
_O=CDC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=CLAYMON@cdchoices.local]

Sent: Wednesday, April 07, 2010 8:34 PM

To: 'Margaret Willard (mow01@health.state.ny.us)'

Cc: 'Leslie A. Galusha'

Subject: Roles & Responsibilities Document!

Importance: High

Attachments: CDPAANYS CDPAP Roles & Responsibilities FINAL.doc

Margaret – as we discussed, here was our final version!



Please consider the environment before printing this email.

*"If we don't take action now
We'll settle for nothing later
We settle for nothing now
And we'll settle for nothing later"*

Rage Against the Machine

CONSTANCE LAYMON

FOUNDER & CHIEF EXECUTIVE OFFICER

Consumer Directed Choices, Inc.

PRESIDENT

Consumer Directed Personal Assistance Association of New York State, Inc.

7 WASHINGTON SQUARE
ALBANY, NY 12205
(518) 464-0810
(800) 335-0810 TOLL FREE
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(866) 335-7153 TOLL FREE (FAX)
constance@cdChoices.org
www.cdChoices.org
www.cdpaanys.org



Roles and Responsibilities with Corresponding Aspects of Accountability (As of 10/1/08)

Document Key:

Triplicate Form:

| | |
|-----------------------|---|
| <u>Description:</u> | Outlines the roles, responsibilities and interaction between the County Department of Social Services and the consumer / self-directing other (SDO) |
| <u>Initiated by:</u> | The County Department of Social Services |
| <u>Signed by:</u> | The County Department of Social Services and consumers / SDOs |
| <u>Maintained by:</u> | The County Department of Social Services, consumers / SDOs and Fiscal Intermediaries |

Consumer Agreement:

| | |
|-----------------------|--|
| <u>Description:</u> | Outlines the roles, responsibilities and interaction between the Fiscal Intermediary and the consumer / self-directing other (SDO) |
| <u>Initiated by:</u> | The Fiscal Intermediary |
| <u>Signed by:</u> | The Fiscal Intermediary and consumers / SDOs |
| <u>Maintained by:</u> | The Fiscal Intermediary and consumers / SDOs |

Wage Agreement:

| | |
|-----------------------|--|
| <u>Description:</u> | Outlines the roles, responsibilities and interaction between the Fiscal Intermediary, the consumer / self-directing other (SDO) and the personal assistant |
| <u>Initiated by:</u> | The Fiscal Intermediary |
| <u>Signed by:</u> | The Fiscal Intermediary, consumers / SDOs and personal assistants |
| <u>Maintained by:</u> | The Fiscal Intermediary, consumers / SDOs and personal assistants |

Plan of Care:

| | |
|-----------------------|--|
| <u>Description:</u> | Outlines the county approved tasks for the individual consumer |
| <u>Initiated by:</u> | The County Department of Social Services |
| <u>Signed by:</u> | The County Department of Social Services and consumers / SDOs |
| <u>Maintained by:</u> | The County Department of Social Services and consumers / SDOs |

Program Guide:

| | |
|-----------------------|--|
| <u>Description:</u> | A document / pamphlet / binder consisting of the detailed roles and responsibilities of all entities, may provide reference and support materials for consumers / SDOs |
| <u>Initiated by:</u> | The Fiscal Intermediary |
| <u>Maintained by:</u> | Consumers / SDOs |

Responsibilities of Fiscal Intermediaries

Fiscal intermediaries should:

- Provide orientation and training materials for consumers / self-directing others (SDO) regarding CDPAP roles & responsibilities; Assist the consumer with informational support regarding recruitment, training, supervision, advocacy and personal management;

ACCOUNTABILITY: WRITTEN EDUCATIONAL MATERIALS PROGRAM GUIDE, CONSUMER AGREEMENT

- Assure the consumers compliance with timely, accurate completion of required program paperwork including time sheets, annual worker health assessments, required employment documents and the consumer agreement outlining their responsibilities;

**ACCOUNTABILITY: “INTERNAL” SYSTEMS TRACKING
TIMEFRAMES / DUE DATES OF THE VARIOUS
DOCUMENTS**

- Evaluate and document the consumer's ongoing ability to meet the CDPAP responsibilities outlined within the CDPAP consumer agreement, notifying counties when un-resolvable issues arise;

**ACCOUNTABILITY: “INTERNAL” DOCUMENTATION RELATING TO
THE CONSUMER / SDO’S INABILITY TO MEET
PROGRAM EXPECTATIONS (PHONE
CONVERSATIONS, MEETINGS, ETC.), COPIES
OF CORRECTIVE CORRESPONDENCE**

- On behalf of employing consumers, process the payroll for each PA, including required withholdings. Pay the personal assistant on behalf of the consumer for the hours of service indicated on the consumer’s time sheet and authorized by the local department of social services. Facilitate PA’s benefit programs such as annual leave, health insurance, etc. and statutorily required insurances, such as disability, unemployment and worker compensation benefits;

**ACCOUNTABILITY: TIME SHEETS, PAYROLL / ACCOUNTING
PROGRAMS / SOFTWARE**

- Bill, process and receive reimbursement only for the personal assistance hours the local social services district has authorized for the consumer and for which a personal assistant has provided services to the consumer.

**ACCOUNTABILITY: TIME SHEETS (WITH THEIR CORRESPONDING
ATTESTATIONS FOR BOTH CONSUMERS /
SDOs AND PERSONAL ASSISTANTS), PLAN OF
CARE ACKNOWLEDGEMENT, “INTERNAL”
CONTROLS REGARDING TIME SHEET REVIEW**

- Maintain the original personnel record for each PA which shall include, at a minimum, the original enrollment forms, the annual PA health assessments

and the information needed for payroll processing and benefit administration;

ACCOUNTABILITY: “INTERNAL” TRACKING SYSTEMS TO ENSURE ACCURATE AND COMPLETE FILING

- Maintain the original consumer record which shall include the original county department of social services department approval/referral, county department of social services department service authorizations, the consumer agreement and other documentation of the FI’s effort to monitor the consumer’s ability to meet obligations;

ACCOUNTABILITY: “INTERNAL” TRACKING SYSTEMS TO ENSURE ACCURATE AND COMPLETE FILING

- Coordinate access to health facilities capable of providing the required annual worker health assessment and other health related program requirements as per NYCRR Title 10, Section 766.11 [relevant sections: (c), (d), (g)];

ACCOUNTABILITY: “INTERNAL” LIST OF FACILITIES THE FISCAL INTERMEDIARY CONTRACTS WITH PROVIDED TO CONSUMERS TO COMMUNICATE WITH NEWLY HIRED PAs AND PAs WHO MUST COMPLETE ANNUAL ASSESSMENTS

- Establish an advisory committee which will consist of consumers with disabilities, advocates and/or other interested parties. The committee will oversee ongoing quality assurance / the integrity of model and provide the county department of social services and the FI with assistance and support, which may include peer counseling, referral and program monitoring;

ACCOUNTABILITY: COUNTY CONTRACT

Fiscal intermediaries should not:

- Provide case management.

ACCOUNTABILITY: THIS DOCUMENT

- Participate in direct employment processes relegated to the employing consumer (recruitment, interviewing, selection, hiring, reference checking, training, supervision or termination)

ACCOUNTABILITY: THIS DOCUMENT

- Set parameters for personal assistants not set forth in regulation, law, etc.

ACCOUNTABILITY: THIS DOCUMENT

Responsibilities of the County Department of Social Services

The County Department of Social Services should:

- Discuss CDPAP & share written clarification of the roles & responsibilities with (POTENTIAL HOME CARE RECEIPIENTS) consumers / self-directing others (SDO) to ensure the consumers / SDO are making an educated, informed choice to utilize the CDPAP;

ACCOUNTABILITY: WRITTEN EDUCATIONAL MATERIALS & THE TRIPLICATE FORM

- Determine:
 - that the consumer is a resident of the assessing county;
 - is long term care Medicaid eligible;
 - pursuant to an assessment of the person's appropriateness for personal care / home care;
 - that the consumer is appropriate for participation in CDPAP: is able and willing or has a self-directing other able and willing to make

informed choices and that the consumer has the ability to recruit, hire, train, supervise and terminate the Personal Assistant (PA);

- the consumer's eligibility for the program through its approved annual plan procedure including the initial assessment and periodic reassessments, authorizing the level and amount of services required based on need and will authorize the reimbursement for CDPAP services to the FI as prescribed by the New York State Department of Health.

ACCOUNTABILITY: PHYSICIAN, NURSING & SOCIAL ASSESSMENTS

- Provide:
 - the consumer with a copy of the plan of care, discussing the tasks to ensure consumers understand so they can adhere to the plan of care;
 - consumers with the appropriate fair hearing notice and the opportunity for a fair hearing with aid-continuing, if appropriate, at such times as the Department requires.

ACCOUNTABILITY: PROVIDE WRITTEN PLAN OF CARE AND MAINTAIN THE DOCUMENT IN THE DISTRICT FILE

- Decide the end date of participation in CDPAP and (if applicable) transfer the consumer to other programs with more traditional agency control should the consumer be deemed inappropriate to continue participation in the CDPAP.

ACCOUNTABILITY: CASE MANAGEMENT NOTES

The County Department of Social Services should not:

- Delegate county responsibilities to fiscal intermediaries

ACCOUNTABILITY: MAINTAIN ALL OF THE COUNTIES' PAPERWORK WITHIN THEIR OWN FILE

- Participate in direct employment processes relegated to the employing consumer (recruitment, interviewing, selection, hiring, reference checking, training, supervision or termination)

ACCOUNTABILITY: THIS DOCUMENT

Responsibilities of the Consumer

The Consumer and/or the consumer's self-directing other should:

- Be comfortable and educated with the roles / responsibilities of the CDPAP.

ACCOUNTABILITY: THE TRIPLICATE FORM / CONSUMER AGREEMENT / WAGE AGREEMENT

- Have the ability to perform the following functions: recruit, hire, train, supervise and terminate the personal assistant (PA), distribute paychecks to each PA, timely, accurate completion of required program paperwork including time sheets, annual worker health assessments and required program documents.

ACCOUNTABILITY: THE TRIPLICATE FORM

- Maintain appropriate work conditions and define the work responsibilities to the PA (orient) in compliance with the Plan of care.

ACCOUNTABILITY: PLAN OF CARE

- Direct each PA to work within the weekly authorized hours, ensuring each PA works the hours, in adherence to the county plan of care, that are indicated on the time sheet.

ACCOUNTABILITY: THE SIGNED STATEMENT ON TIMESHEET

- Have awareness of, and be in compliance with Labor Laws, providing equal employment opportunities as specified in the consumer's agreement with the

fiscal intermediary and the “Wage Agreement” which is signed by both the consumer and the PA.

ACCOUNTABILITY: THE FISCAL INTERMEDIARY PROVIDES DISCRIMINATION INFORMATION TO CONSUMERS

- Inform the county department of social services of any change in status, including address and telephone number changes, hospitalizations and other information mandated by the county department of social services and/or New York State Department of Health and/or Medicaid. Inform the fiscal intermediary of any changes in status including, but not limited to, address, telephone number, PA’s names, addresses, hours worked and hospitalization.

ACCOUNTABILITY: THE TRIPLICATE FORM & CONSUMER AGREEMENT

- Have a contingency plan that addresses PA coverage gaps, including utilization of potential informal supports (if available), arranging and scheduling back up PA coverage for vacations, holidays, illness and emergencies. The plan should include aspects of emergency preparedness whenever possible.

ACCOUNTABILITY: THE TRIPLICATE FORM

- Comply with the local department of social services Medicaid Program requirements that include the completion of assessments and ongoing Medicaid eligibility.

ACCOUNTABILITY: THE TRIPLICATE FORM?

- Enter into a written agreement with the fiscal intermediary which acknowledges these responsibilities.

ACCOUNTABILITY: CONSUMER AGREEMENT

The Consumer and/or the consumer’s self-directing other should not:

- Direct PAs to perform tasks outside of the scope of the county authorized plan of care.

ACCOUNTABILITY: PLAN OF CARE ACKNOWLEDGEMENT

- Delegate their responsibilities to personal assistants

ACCOUNTABILITY: THE TRIPLICATE FORM, THE CONSUMER AGREEMENT, THE WAGE AGREEMENT

Responsibilities of the Personal Assistant

The Personal Assistant should:

- Be familiar with and provide assistance within the scope of the plan of care providing services directly to the consumer unless services are typically provided outside of the consumer's proximity, such as grocery shopping, etc.;

ACCOUNTABILITY: PLAN OF CARE

- respect the consumer as the employer, agreeing to abide by the consumer's expectations regarding his/her health, well-being, privacy and property;

ACCOUNTABILITY: WAGE AGREEMENT

- agree to complete an initial health assessment / immunization and annually thereafter;

ACCOUNTABILITY: WAGE AGREEMENT

- notify the FI if a consumer is hospitalized / institutionalized and agrees not to provide services (work) other than the date of admittance and/or date of discharge;

ACCOUNTABILITY: WAGE AGREEMENT

- Notify the FI of concerns of safety issues, fraud and/or abuse.

ACCOUNTABILITY: WAGE AGREEMENT

The Personal Assistant should not:

- Complete, encourage or cause the completion or submission of a time sheet for payment under the CDPAP program that includes hours that the PA knew or should have known had not been authorized by the local Social Services District or that included hours the PA did not work.

ACCOUNTABILITY: TIME SHEETS (WITH THEIR CORRESPONDING ATTESTATIONS FOR BOTH CONSUMERS / SDOs AND PERSONAL ASSISTANTS), WAGE AGREEMENTS

- Work for the Medicaid Program while a consumer is hospitalized / institutionalized.

ACCOUNTABILITY: WAGE AGREEMENT

Bruce Darling

From: Margaret O. Willard [mow01@health.state.ny.us]

Sent: Thursday, April 08, 2010 7:52 AM

To: Constance Laymon

Subject: Re: Roles & Responsibilities Document!

Thanks Constance for sending me the info we discussed! I am going to have Leslie move forward the LCM since we are all in agreement to what was developed at the meetings. I think it is a win all around if we get something out there giving clarity to all the players! Thanks!

IMPORTANT NOTICE: This e-mail and any attachments may contain confidential or

www.WHEC.com

Quadriplegic: Monroe County made decision on inaccurate investigation

Posted at: 07/28/2010 12:41 AM
 Updated at: 07/28/2010 10:25 AM
 By: Nikki Rudd



For the first time we're hearing from one of the 12 people the County claims was neglected by the Center for Disability Rights (CDR).

Stephen Kasper of Rochester says Monroe County made a decision based on an inaccurate investigation and is making the lives of people with disabilities worse.

This is all about the County's decision to terminate its business relationship with the CDR. CDR helped patients hire their own home health aides who were paid by the County through Medicaid.

Kasper says his words were twisted and taken out of context in report given to County Executive Maggie Brooks by Department of Human Services Commissioner Kelly Reed. The report is based on an investigation by DHS.

"They are not true," said Kasper. "And these other individuals, I just wonder if their claims are being twisted."

Kasper says he's Client #2 in the report, but says they got it all wrong. He says he was never neglected and wants to stay with CDR.

Dozens of other CDR clients had the same thing to say at Tuesday night's Monroe County Human Services Committee meeting.

"I always say that my wheelchair gave me legs, but the CDR gave me wings," said CDR client Michelle Fridley. "They've done so much for me."

For the first time Human Services Commissioner Kelly Reed spoke publicly about the issue. Reed is the one who recommended that the County cut ties with CDR.

"Quite frankly, I was shocked and appalled by what we found," said Reed.

She says CDR clients are misinformed and safety is the County's first priority. Reed says the investigation began after complaints from clients.

"Our special investigation unit found that in 100% of the randomly chosen 12 cases there were issues of concern," said Reed.

Again, Kasper says he's one of those cases, and he says the County Executive made her decision on false information.

His message for Maggie - "Investigate the claims that these people are making before you condemn an entire organization."

When we asked him if he was happy with the services CDR provides Kasper said, "Absolutely! The longer I'm with them the better my service gets."

CDR serves more than 300 clients in this program and employs more than 730 home care aides. They will all be out of jobs. The County says they are eligible to be hired by any of the other five providers the County works with, but some aides tell us they are already having problems getting hired.

County Executive Brooks says the decision is final and hopes to have everyone transitioned within two months.

You can see the letter and other documents, including more detailed accounts of the allegations of neglect, by clicking on the link below.

[View](#) -- Letter sent to CDR from Monroe County

[View](#) -- Allegations against CDR

[View](#) -- Letter from CDR to Monroe County

[View](#) -- CDR's website

For more Rochester, N.Y. news go to our website www.whec.com.

CDR clients noted in county report defend agency

Patti Singer • Staff writer • July 28, 2010

Three clients cited in the report by Monroe County Department of Human Services refuted claims that they were neglected or received substandard care by attendants in a home care program administered by the Center for Disability Rights.

Stephen Kasper and Pam Stover said they were identified as Clients No. 2 and 4 respectively in a report last week by Department of Human Services Commissioner Kelly A. Reed that led to the county ending a contract with CDR for the Consumer Directed Personal Assistance Program. Rebeca Juarez spoke on behalf of her grandfather Agustin Zabala, who does not speak English and whom she identified as Client 3.

The person identified in the report as Client No. 1 did not attend a news conference this afternoon at CDR offices on State Street.

CDR has maintained that the county's allegations of widespread lapses in care are false.

Chris Hilderbrant, chief operating officer of CDR, said that over the past few days the agency had been speaking to the individuals it believed were the ones in the county report. CDR invited the individuals to refute what clients said are inaccuracies in the county's report.

The county report cited instances in which attendants did not report for work, were intoxicated, or had other issues that compromised the care of the consumer.

The individuals said they had been visited by investigators from the human services department, but they were not sure of the purpose of the visit. They said the investigators asked them whether they were satisfied with their care and whether there were any problems. They said that when asked about their care, they replied that they were satisfied.

They said that because they hired their attendants through a self-directed program, it was up to them to deal with problems. They said that CDR offered them support in how to do that.

PSINGER@DemocratandChronicle.com

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TOP STORIES

07/28/2010 09:25 PM

CDR Clients: Claims Against Organization Inaccurate

By: Sheba Clarke

It has been a battle for days and now clients with the Center for Disability Rights are speaking out against claims against the advocacy group.

The clients say they were part of the county's investigation that led to its decision to cut ties with CDR.

The report completed by the Department of Human Services, according to several clients, has distorted and misused information.

It is a report that cited CDR negligent as a provider to the county's Consumer Directed Personal Assistance Program (CDPAP). As a result, the county cut its ties.

But three out of four who say they are in the report believe it is inaccurate.

"I'm just here to clear up that no he has never been left alone. The county has lied and yes his nurses have always clocked in and clocked out," said Rebeca Juarez.

Juarez is speaking of her 90-year-old grandfather. She said he is client number three in the report, that states he had aides showing up late on a regular basis and there were periods of time with no coverage.

But Juarez said the voice recognition system, required by her grandfather's Spanish speaking aides to check in, only recognized English.

"The system won't register them because they're not native speakers in the English language," added Juarez.

Stephen Kasper is said to be another client named in the report. According to the paperwork, client number two told investigators he often went without coverage at night because of aides calling in at the last minute.

"Automatically they assume I'm at risk, I'm not safe and I'm in danger," said Kasper.

According to CDR, having these clients speak out is a way to clear misinformation about the organization.

"This program is a very large part of this agency. It would be a horrific loss to this agency, the community, and the county for us to not have this agency providing the program. For us it's not a done deal yet," said Chris Hilderbrandt, CDR chief operating officer.

According to County Executive Maggie Brooks it is. She said no matter what these clients claim, there s still plenty of evidence that finds CDR negligent out of the 12 cases investigated.

"In each of these cases we found documented evidence that CDR was not performing its contractual duties. There was neglect and there was Medicaid fraud. In fact, four people, individuals, were actually prosecuted and found guilty," said Brooks. "We just can't do business with a vendor like that."

From the protest to the press conferences, Brooks calls it a publicity stunt. She said it is unfortunate to be getting in the way of client care.

"That's disappointing because this is a group that claims to advocate for the rights of these individuals and they are the ones putting these clients at risk right now," said Brooks. "Our relationship with CDR is concluded. Going forward our relationship is now with the clients, the aid and the new vendors."

Brooks also stressed that clients don't have to change aides, only providers as a result of this decision.

Hilderbrandt said it is not over and legal action is being considered.

Unexpectedly, County Executive, Maggie Brooks has terminated the County's long-standing contract with the Center for Disability Rights (CDR) to provide administrative services for home attendants who are hired by people with disabilities who want to control their own in-home personal care. Ms. Brooks' version of the facts, evidence and reasoning are blatantly wrong.

Hear Their Side of the Story...

Go to <http://www.youtube.com/user/cdrnys>

Marie Webster, CDPAS consumer for 10 years
One of 12 consumers investigated by Monroe County

"Ten years ago, CDR saved my life by getting me out of the nursing home. I have wonderful attendants...they've been very good to me. They've been wonderful in all aspects...."

"She (the inspector) wrote that I was neglected; no way was I ever neglected. My aides are too good to me. When one comes, the other one leaves. I always...I have 24/7 and they're very good. They make sure I'm covered at all times, and to say that I'm neglected upsets me very much. I think it's ridiculous, and I'm shocked over her there and saying those things. I'm very, very fortunate to have CDR. And it just...the accusations are absurd. That's what I wanted to say."

Augustin Zabala, 90, CDPAS consumer for 4 years
Client #3 cited in Monroe County's letter shared with the media

"The man to my left is my grandfather, and he's being alleged by the county saying that he's been left alone without no care at times.... I'm here to clear up that no, he has never been left alone, the county has lied."

-Rebeca Juarez, Mr. Zabala's grand-daughter

Tell Maggie to STOP the word games!

Call (585) 753-1000

It's time she talked to people, not about them!

Monroe County's 10 Myths BUSTED!

County MYTH

REALITY

| | | |
|----|--|---|
| 1 | The consumers identified by the County as the sample have all experienced problems with and neglect from the Center for Disability Rights (CDR). | All four of the identified clients have made public statements that they are pleased with their services from CDR and that Monroe County has distorted their statements and other information. |
| 2 | CDR is being investigated for fraud and abuse by the Attorney General's Office and multiple State agencies. | There is NO widespread investigation of CDR. There have been case-specific investigations into consumers or attendants, but these were not investigations into CDR. CDR fully cooperated with these investigations. |
| 3 | Attendants will be able to keep their jobs with the new providers. | While Consumer Directed Personal Assistance Programs (CDPAP) do not require certification, the other vendors require attendants to be trained as Personal Care Aides, a State certification. Due to language barriers and other reasons, many attendants will not be able to receive this certification. Some WILL loose their jobs. |
| 4 | Consumers will be able to easily transition to one of the five alternative providers. | Many of CDR's consumers are Hispanic or Somalian, requiring attendants and office staff who are sensitive to their cultures and speak their language. Several of the new providers have admitted that they are not capable of providing services to non-English speaking consumers. |
| 5 | There is widespread neglect in CDR's CDPAP. | All of the individuals who have been able to be identified as part of the 12 specific cases cited by the County indicate that there was no neglect. |
| 6 | The County has worked "in earnest" with CDR to resolve these issues. | CDR has made public documentation of meeting requests with Monroe County's Home Care Unit, which went unaddressed for nearly ONE YEAR. During that time, Monroe County met with CDR regarding the phone system, but did not meet regarding programmatic concerns. |
| 7 | CDR is negligent because it failed to protect consumers from mistreatment by attendants. | According to the Memorandum of Understanding (Log #90-07) signed by Monroe County, "CDR shall undertake the following...provide local support to the Consumer by coordinating payroll distribution, the distribution of forms, and the collection of information..." No where in the MOU—nor in NYS Social Service Law §365-f, the authorizing statute of CDPAP—does it state that the provider is responsible for actions of the attendants who are employees of the consumer. |
| 8 | CDR is negligent because it failed to guarantee coverage of hours for consumers. | According to the MOU (Log #90-07), "The consumer and/or the consumer's guardian shall undertake the following...arrange and schedule back up CDPA coverage..." NOT CDR. |
| 9 | CDR is primarily an advocacy organization. | While CDR is proud to have a strong advocacy arm, defending the civil rights of people with disabilities to live independently in the community, advocacy comprises just 3 PERCENT of CDR's total budget. CDR has in fact been providing services to County residents for over 10 years and, in 1998, officially changed its mission to reflect this service delivery. |
| 10 | Changing 300 consumers to vendors that charge several dollars more per hour will not impact Medicaid costs. | CDR provided 880,000 hours of service in 2009. In order to move this number of hours to substantially more expensive vendors (based on rates), only means that balancing cost would result in CUTTING HOURS. Is that what the County intends? |