



June 15, 2010

John Martin
Director
Ohio Department of Developmental Disabilities
30 East Broad Street
12th Floor
Columbus OH 43215

Re: Follow up on ODJFS Waiver Review

Dear Director Martin:

I am writing to follow up on discussions I have recently had with you and your staff regarding the ODJFS review of the IO Waiver. As you know, the ODJFS Individual Options Waiver A Comprehensive Review (IO waiver review) was issued on December 15, 2009. Since that time, OPRA has provided its written comments to you and has participated in a follow up meeting regarding how the Ohio Department of Developmental Disabilities (DODD) intends to address the findings and concerns articulated by ODJFS. I believe we have reached consensus with the department and the county boards on an initial plan to address many of the issues found in the report. However, we feel strongly that certain issues require specific, immediate and thoughtful attention by the DODD and that is the purpose of this letter. We are concerned that continued fiscal pressures will exacerbate these issues.

While the DD system has come a long way from the days of the systemic non-compliance with the fundamentals of Medicaid, we believe that there are certain foundational issues that must be addressed by the DODD as we move forward. As you will recall, CMS has historically had issues with the potential for a conflict of interest to exist where county boards act as both the Medicaid administrator and a provider. CMS has also had concerns about the improper delegation of Medicaid administration through Ohio's three-tiered level of administration (ODJFS/ODODD/county boards of DD). We still contend that these two issues are the root cause of the majority of findings recently articulated in the ODJFS Individual Options (IO) waiver review. Unless these two issues are addressed, we believe these findings will be cited over and over again in future waiver reviews. Accordingly, we would ask that DODD convene a discussion with key stakeholders to create a specific action plan containing steps to correct the issues articulated by ODJFS in its recent report.

I expressed OPRA's views in our response to the IO waiver review and also in meetings with your staff. This letter serves as a summary of OPRA's major concerns pursuant to our earlier discussions with you and your staff.

1. **Individual Service Planning**

It is not a surprise to see that ODJFS concluded that they were "unable to determine precisely how many units of particular services were authorized in these plans."

As I know you are aware, there are specific waiver assurances that the State provides to CMS relative to individual service planning. The individual service plan (ISP) is supposed to be a document that the individual/guardian/family/provider understands and that reflects the nature and scope of the services to be provided to an individual. In an increasing number of cases, ISPs are drafted by county boards and county boards alone. ISP revisions are many times drafted with little or no input from the ISP team. Our members know from experience that, in some counties, the ISP is not an expression of an individual's service needs but, rather, is a document that oftentimes is merely a reflection of a county board's policy position. In these cases, the ISP creates a presumption that the services are to be provided in a certain way as dictated by the county board and if the individual or the provider do not agree, the ISP presents a presumption which the individual or provider must then rebut. In other cases, the ISP is so unclear that no one can determine what actual services have been authorized.

Further compounding the problem is the lack of a means to address these issues through intervention from DODD, if the issue cannot be resolved at the local level. With the elimination of the regional consultants at the department, there is no one at the state level to go to in order to mediate these disputes. While we are hopeful that a uniform, online ISP can assist in addressing the ODJFS findings long term, in the short term, we respectfully request that the department consider putting a mechanism in place so that there is a way for providers and individuals to address local disputes short of filing for due process or requesting a special review every single time an ISP is unilaterally changed by a county board.

Additionally, from a provider perspective, we think that the lack of a clear ISP leaves both providers and county boards vulnerable to audit findings. The ISP should be clear and should express the specific service needs of individuals in the system. If it is not clear, we are concerned about the ability of providers, through no fault of their own, to substantiate the amount of services that they have provided. Further, because county boards are also providers and are providing TCM as a Medicaid service, we believe there is vulnerability to the county boards themselves when they bill TCM as a provider of Medicaid services if the ISP is incomprehensible or does not otherwise reflect an individual's service needs.

Finally, consistent with our previous statements regarding improper delegation and conflicts of interest, we believe there must be a way for providers, individuals and families to access the department for resolution of disputes where, for instance, it is clear that the county board is making unilateral service reductions for purely financial interests and/or without any clinical justification whatsoever. OPRA believes that these situations are likely to grow in number and significance as financial pressures at the state and local level mount.

2. **Free Choice of Provider**

As the ODJFS findings suggest, there are still limitations being imposed on individual free choice of provider rights in certain counties and for certain services. This is especially true where there exists a conflict of interest of county board as the single point of contact (SSA Intake) and also as a provider (for day services). We suggest that DODD continue to monitor this problem, as it is unacceptable that individuals are being denied their free choice of provider.

Further, we are concerned about the growing recent use of county boards utilizing “Provider Scorecards.” In certain counties, county boards are ranking providers using their own methodologies. These same providers are sometimes competitors of the county board for the provision of day services, which creates a conflict. These rankings are based on surveys conducted of some, but not all providers in a county system. Moreover, some county boards, when acting as a provider, do not allow the same standards to be applied to themselves and are missing from the rankings. County boards perform a governmental oversight function vis-à-vis local Medicaid administration for private providers, the very same private providers with whom the county boards compete for service provision. We think this is a prime example of the conflict of interest that exists when county boards act as the Medicaid administrator and a provider. We ask that DODD look into this issue as soon as possible and order counties that provider scorecards and rankings be discontinued immediately as an unlawful delegation of Medicaid administration and a violation of ODJFS and DODD’s rules of free choice of provider.

3. **Medication Administration/Behavioral Support/Compliance Reviews**

OPRA believes that the entire system needs to be better informed on medication administration and behavioral support requirements. Our members tell us that the standards that exist today are not uniformly applied statewide, and the ODJFS findings support our members’ experiences. For example, we understand that some quality assurance reviews are not performed in accordance with statewide requirements and that some “best practice” requirements are being imposed in one county but not in another. The standards need to be better understood and applied statewide. OPRA will be happy to work with the state to better train all those in the system on the legal requirements relative to medication administration and behavioral support.

There also appears to be a lack of coordination between the nursing quality assurance reviews and the county board and state provider compliance reviews. OPRA has offered ideas and suggestions on how to coordinate these reviews so as not to duplicate efforts. This is also consistent with the department futures recommendations on eliminating duplicative reviews processes.

4. **Due Process Violations**

We find it very troubling that only 73.3% of Medicaid recipients interviewed by ODJFS were given notice of their due process rights if they did not agree with a decision about their services. We think this poor showing is indicative of the systemic problem of the conflict of interest of county boards as Medicaid administrators and providers. Additionally, it is extremely concerning that only 61.9% of ODJFS adjudicated hearing orders were complied with by county boards. It is imperative that the state enforce its own orders in a timely and efficient way. Anything less is an unlawful delegation of Medicaid authority and violates the dictates of the waiver assurances that the state has made to CMS.

Again, we are grateful for the opportunity to work with DODD to move forward together to address the ODJFS findings. As we do, we need to be mindful of some of the systemic issues that continue to prevent our system from fully maturing and more comprehensively servicing those individuals in need of our care. We welcome the opportunity to discuss these issues with DODD and other stakeholders.

Sincerely,

A handwritten signature in cursive script that reads "Mark Davis".

Mark Davis
President