JAN 20 2011

The Honorable Edward J. Kasemeyer
Chair, Budget and Taxation Committee
3 West, Miller Senate Building
Annapolis, MD 21401

The Honorable Norman H. Conway
Chair, House Appropriations Committee
121 House Office Building
Annapolis, MD 21401

RE: 2010 Joint Chairmen’s Report, Page 88, Annual Level of Care Re-Evaluations

Dear Chairmen Kasemeyer and Conway:

Pursuant to page 88 of the Joint Chairmen’s Report of 2010, the Department of Health and Mental Hygiene respectfully submits the attached report which provides information pertaining to the methods used by the Developmental Disabilities Administration to conduct Level of Care Re-Evaluations and the aggregate data from them. Please be advised that $100,000 in General Funds is being withheld pending approval of the report.

I hope this information is useful. If you have any questions regarding the report, please contact Ms. Wynee Hawk, Director of the Office of Governmental Affairs, at 410-767-6480.

Sincerely,

Joshua M. Sharfstein, M.D.
Secretary

Enclosure

cc: Renata Henry
    Michael Chapman
    Wynee Hawk, RN, JD
    Kathleen Wunderlich
Introduction
This report, as required by page 88 of the 2010 Joint Chairmen’s Report, provides specific information related to the Department of Health and Mental Hygiene (DHMH), Developmental Disabilities Administration (DDA) method and documentation used in conducting annual Level of Care Re-evaluations.

Level of Care evaluations and re-evaluations are required by the two Medicaid 1915 (c) home and community-based service waivers, Community Pathways and New Directions, administered by DDA. An initial evaluation is conducted to determine the Level of Care needed by the waiver recipient. Re-evaluations occur at least once a year, as required by Medicaid regulations. Level of Care determinations are performed by DDA staff with assistance from case managers in local health departments and contractual Resource Coordinators. All utilize the same eligibility determination tools throughout the process. Recommendations regarding eligibility are reviewed and approved by DDA.

Level of Care Criteria
All waiver participants must meet the federal definition in 42CFR483.102 (a)(3) or 42CFR435.1009 which is comparable to the criteria for developmental disability per the Annotated Code of Maryland, Health General Article, §7-101 (e).

HG §7-101 (e) states “a developmental disability means a severe chronic disability of an individual that:
1) Is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness or to a combination of mental and physical impairments;
2) Is manifested before the individual attains the age of 22;
3) Is likely to continue indefinitely;
4) Results in an inability to live independently without external support or continuing and regular assistance; and,
5) Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are individually planned and coordinated for the individual.”

Process for Level of Care Evaluation/Re-evaluation
The DDA uses a critical needs list recommendation form based on the criteria stated above to make a recommendation on DDA eligibility for all individuals who apply for services. As part of the initial DDA eligibility determination, a critical needs list recommendation form is completed by case managers in local health departments and contractual Resource Coordinators and forwarded to the Developmental Disabilities Administration (DDA) regional office. The DDA regional office staff review the critical needs recommendation form along with the supporting documentation and make a final determination on eligibility. Supporting documentation includes assessments such as psychological, neuropsychological, and medical evaluations; special education evaluations; behavioral rating scales; autism rating scales; evaluations conducted by Speech-Language, Physical, and Occupational Therapists; and social histories. Under Maryland’s system, individuals applying to one of the DDA waivers who meet all “DD eligible” eligibility criteria meet the Level of Care eligibility requirement for the waivers. Individuals applying to one of the DDA waivers who have a disability but do not meet Level of Care criteria have the right to a Medicaid Fair Hearing if they believe the waiver eligibility determination, including Level of Care, is incorrect.
Re-evaluations
The individual’s waiver level of care eligibility is reviewed annually for changes by the Resource Coordinator. Changes in an individual’s needs, services, and eligibility are reviewed during the annual Individual Plan meeting. Certification of continued Level of Care eligibility is documented by the Resource Coordinator and submitted to DDA for review and approval. A change in Level of Care is rare given the eligibility criteria listed in HG §7-101 (e) for “developmental disability” includes a severe chronic disability that continues indefinitely. If an individual no longer meets level of care or other eligibility requirements, DDA notifies the individual advising them of their right to a Medicaid Fair Hearing.

The DDA ensures that all enrolled waiver individuals obtain an annual re-evaluation of their Level of Care. At least quarterly, reports are prepared for each resource coordination agency to notify them of the need to obtain re-evaluations for their clients. The Resource Coordinator reviews all supporting documentation and the Individual Plan and completes a Recertification of Need form to confirm Level of Care is current and returns a signed copy for monitoring purposes. Copies are kept on file with both the DDA and the Resource Coordination agency.

Level of Care (LOC) Re-evaluation Aggregate Data

<table>
<thead>
<tr>
<th>Community Pathways Waiver</th>
<th>2010</th>
<th>2009</th>
<th>2008</th>
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<tbody>
<tr>
<td>Number of LOC Re-evaluations</td>
<td>11,673</td>
<td>11,157</td>
<td>10,278</td>
</tr>
<tr>
<td>Number Recertified to Meet LOC</td>
<td>11,673</td>
<td>11,157</td>
<td>10,278</td>
</tr>
<tr>
<td>Number Determined Not to Meet LOC</td>
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<table>
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<tr>
<th>New Directions Waiver</th>
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<th>2008</th>
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<tbody>
<tr>
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<td>125</td>
<td>88</td>
</tr>
<tr>
<td>Number Recertified to Meet LOC</td>
<td>152</td>
<td>125</td>
<td>88</td>
</tr>
<tr>
<td>Number Determined Not to Meet LOC</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Appeal Rights
Any person who disagrees with a final decision by DDA has the right to appeal. If an individual no longer meets level of care or other eligibility requirements, the individual is removed from the waiver and advised of their right to a Medicaid Fair Hearing with a formal letter.

Individual and their representative have the right to appeal any decision and may request:

1. An informal hearing before the Secretary of the Department of Health and Mental Hygiene in accordance with the Code of Maryland Regulations (COMAR) 10.22.16 within 45 days of the date of the letter OR
2. A Medicaid Fair Hearing before the Office of Administrative Hearings within ninety (90) days of the date of the notice in accordance with the Code of Maryland Regulations 10.01.04

OR

3. Both a Medicaid Fair Hearing and an informal hearing.

If the appeal relates to a Medicaid waiver service the individual is currently receiving, they must appeal the adverse action within ten (10) days of the date of the notice to stay the action and maintain their benefit until a decision is rendered.

Informal Hearing Description

An Informal Hearing is conducted before a Developmental Disabilities Administration (DDA) staff member who is designated by the Secretary of Health and Mental Hygiene to hear appeals. Unless agreed upon by all parties, the DDA will schedule an informal hearing between 10 days and 30 days after an appeal is requested. Reasonable advance notice will be given in writing to the appellant of the issue or issues to be decided, the date, time, and place of the hearing, the right to be present, the right to be represented by an attorney, and the right to request and present witnesses and documentary evidence. At an informal hearing, the individual and/or their representative will have an opportunity to explain to DDA staff why they believe a decision was incorrect. If the individual and/or their representative is not satisfied with the outcome of an informal hearing, they may appeal it to the formal Medicaid Fair Hearing level. The individual and/or their representative may also decide to waive their right to an informal hearing and proceed directly to a formal Medicaid Fair Hearing. Informal Hearing requests must be made in writing within 45 days of the postmark on the decision letter. The hearing procedures can be found at Code of Maryland Regulations (COMAR) 10.22.16.

Medicaid Fair Hearing

As provided in COMAR 10.01.04, the individual and/or their representative have the right to appeal a decision through a Medicaid Fair Hearing process. The request must be made in writing within 90 days of the postmark on the decision letter. If the individual and/or their representative wish, someone may assist them in filing the appeal.

The individual and/or their representative will be expected to be present. If for a compelling reason they cannot be present, the individual and/or their representative must notify the Office of Administrative Hearings to reschedule the hearing or to identify the person who will attend in their place. The individual may represent themselves, or if they wish, they may be represented by legal counsel or by a relative, friend or other person. It is not necessary, however, that someone represent them. The individual may bring any witnesses or documents they desire to help establish pertinent facts and to explain their circumstances. A reasonable number of persons from the general public may be admitted to the hearing if desired.

Prior to the hearing, the individual and/or their representative may review the documents and records that the Department will use at the time of the hearing and they can ask for the names of the witnesses the Department intends to call.

During the time before the hearing, if the individual and/or their representative have new or additional information they wish the Department to know about, they may request a reconsideration of their case by calling their resource coordinator.
Under some circumstances, the Department may pay for transportation and other costs if they are necessary for the proper conduct of the hearing.

All these procedures and a fuller explanation of the fair hearing process can be found in the state regulations, COMAR 10.01.04 and COMAR 28.02.01 and in federal regulations 42 C.F.R. § 431.200. If the individual does not appeal the decision within 90 days from the postmark on the notice, the decision of the Department becomes final as of the date of the notice.

To assist individuals and families in requesting a hearing, the DDA developed a Hearing Request Form noted on the next page.
Dear Mr. Chapman:

This letter is to request *(check only one)*:

- [ ] AN INFORMAL HEARING FIRST, FOLLOWED BY A FORMAL HEARING IF REQUESTED
- [ ] WAIVE THE RIGHT TO AN INFORMAL HEARING AND PROCEED WITH A FORMAL HEARING

Name of Applicant: ____________________________________________________________

If you need to have the hearing immediately, please explain why:

__________________________________________________________

The formal hearing may be held either at the Office of Administrative Hearings in Lutherville, Maryland, or in your county.

- [ ] Please check if you need to be contacted regarding location or special needs.

Describe special needs:

__________________________________________________________

- [ ] Please check here if you need a copy of the hearing procedures and DDA will send them to you.

Please provide additional information about why you are asking for this hearing:

__________________________________________________________

In order to assist in expediting your appeal, please attach a copy of the decision letter that you are appealing.
Please contact me at:

Name: ________________________________

If contact person is not the applicant, state relationship to applicant:
________________________________________________

Address: ________________________________
________________________________________

Telephone #: ____________________________

E-mail: _________________________________

Sincerely,

_______________________________

Date: _________________