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SENIOR BULLETIN: MEDICAID – INSTITUTIONAL/COPEs

**Ninety-six and 184 hour limits ended
for parent and other caregivers**

On March 9th, the Governor signed a bill reaffirming the right of people who get in-home care under DSHS administered programs to choose their own care providers (so long as the providers meet DSHS qualifications). This right cannot be restricted to the first 96 or 184 hours of care. The bill, HB 2933, was adopted by unanimous vote in both houses, with the active support of SEIU Local 775, the union that represents home care workers.

On March 11th, in response to the new legislation, the Department repealed its recently adopted 96/184 hour rule, WAC 388-71-0531.¹ Under the repealed rule, adults who lived with, and received care from, their parents could not use a parent for more than 96 hours of DSHS-paid care per month. (If they needed additional paid care, it had to be provided by someone other than a parent.) No DSHS client could choose any one provider for more than 184 hours of DSHS-paid in-home care per month.

The 96/184 hour rule had only recently been adopted, over considerable public opposition.² But even before its adoption, a 96/184 hour limit had been informally imposed on many clients.³ Shortly after the rule was adopted, it was challenged in a lawsuit filed in Thurston County, based on State and Federal statutes and regulations protecting an individual's right to choose a qualified provider. (Plaintiff is represented by Amy Crewdson and Ann Vining of Columbia Legal Services and Daniel Gross of the Public Interest Law Group, PLLC.)

An electronic message issued March 12th by DSHS Home & Community Programs Office Chief Bill Moss contained the following announcements:

"1. Effective immediately, management bulletin 03-63 "Authorization to Parent Providers Who Live with Adult Clients Receiving In-Home Services and Total Hours an Individual Provider Can Work for a Client" is repealed.

"2. Effective immediately, individual providers who are parents, stepparents or adoptive parents living in the same household with the client, are no longer limited to 96 hours. This change applies to all future assessments and those now in pending status. Case managers and social workers are reminded that services may not replace other available resources, both paid and unpaid, and that all informal support must be encouraged and reflected in the assessment.

"With regard to assessments in current status, the parent, step parent, or adoptive parent will continue to receive 96 hours unless the client or their

representative requests an increase in the authorized hours; not to exceed the maximum hours on the care plan screen.

“3. Effective immediately, individual providers will no longer be limited to 184 hours per client. This applies to all future assessments and those now in pending status. For assessments in current status, the provider will continue to receive 184 hours unless the client or their representative requests an increase in the authorized hours, not to exceed the maximum hours on the care plan screen. Case managers and social workers are reminded that they must take into consideration whether the provider is available to meet the needs of the client as outlined in the plan of care and that the health and safety of the client is not jeopardized.”

As of this writing, DSHS has not announced a plan for notifying clients already affected by the old 96/184 hour policy of the change and of the opportunity to reallocate hours to a provider of their choice. In the interim, responsibility for promptly notifying affected clients falls on individual case managers.⁴

Endnotes:

¹ The rulemaking order is at the following address:

<http://www1.dshs.wa.gov/msa/rpau/1033384E.html>

² Letters in opposition to the proposed rule were filed by the Elder Law Section of the Washington State Bar Association, the Washington Protection & Advocacy System, The Arc of Washington State, SEIU Local 775 and many others.

³ The 96-hour policy was apparently intended to save the State money. Savings would occur on the assumption that many parents would provide additional needed hours of care for their adult children without payment, even at considerable hardship to themselves, to assure that their children get the care they need and to avoid the need for nursing home placement. (In many cases, it simply isn't possible to hire an appropriate alternative caregiver at the hourly rate paid by the Department, \$8.43.) On the other hand, to the extent that application of the rule resulted in otherwise avoidable institutionalization, costs to the State would have increased.

⁴ It is case managers (generally employed by an area agency on aging or a subcontractor) who must ordinarily represent the Department in connection with changes in in-home care contracting. Independent of any legal requirements, applicable ethical norms require that clients promptly be given information they need to exercise their right to self determination. See, for example, the discussions in the National Association of Social Workers Code of Ethics under the values “Dignity and Worth of the Person” and “Integrity,” and under 1 (social worker’s responsibilities to clients). The NASW Code is on line at the following address:

<http://www.socialworkers.org/pubs/code/code.asp>.