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# **AGENCY RESPONSE**

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**Developmental Disabilities Division:  
Adult Waiver Program**

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## MEMORANDUM

**DATE:** December 18, 2003

**TO:** The Honorable April Brimmer Kunz  
Chairman, Management Audit Committee  
c/o Barbara Rogers, Program Evaluation Manager  
Legislative Service Office

**FROM:** Deborah K. Fleming, Ph.D., Director  
Wyoming Department of Health

**SUBJECT:** Developmental Disabilities Division Adult Waiver Review

**REF:** Ref: F-2003-865

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The Wyoming Department of Health (WDH) appreciates the opportunity to respond to the Legislative Service Office (LSO) staff report on the Developmental Disabilities Division (DDD), which focused on the Medicaid Adult Developmental Disabilities Home and Community-Based Waiver.

There are a number of areas in which the Department agrees with the information and analysis provided by LSO staff. There are also a number of areas in which the Department is not in agreement. We appreciate your careful review of this information, and stand ready to answer any questions you may have.

Most importantly, we believe that we have a common goal – the provision of quality services and supports to individuals with developmental disabilities in a manner that is cost-effective and meets state and federal statutory and regulatory requirements. We believe the Department and Division are fulfilling this mission, and have been nationally recognized for doing so. The LSO recommendations provide good opportunities to continue to enhance and improve the operations of the Division. In that spirit, and with the common goal in mind, we accept or partially accept the recommendations as noted below, and include action steps intended to implement them, along with specific completion dates.

## Chapter 1. Background

*“We are confident in the ability of the state to operate the waiver in accordance with the six assurances required for waiver approval. The DDD is very conscientious in addressing concerns and assuring the health and welfare of waiver consumers.” Federal CMS Adult Waiver Review 2002*

The adult waiver has undergone a number of successful federal reviews since its inception. These have included both commendations and recommendations, to which the Division has always been responsive. The State of Wyoming has never received any sanctions as a result of noncompliance. Wyoming DD waiver renewals, expansions, or modifications have always been approved – in many instances by the same federal regional officials who conducted reviews. As an example, the most recent federal communication (December 11, 2003) approved required fiscal reports “assuring cost-effectiveness.”

## Chapter 2. Division has Broadened Access to the Adult Waiver

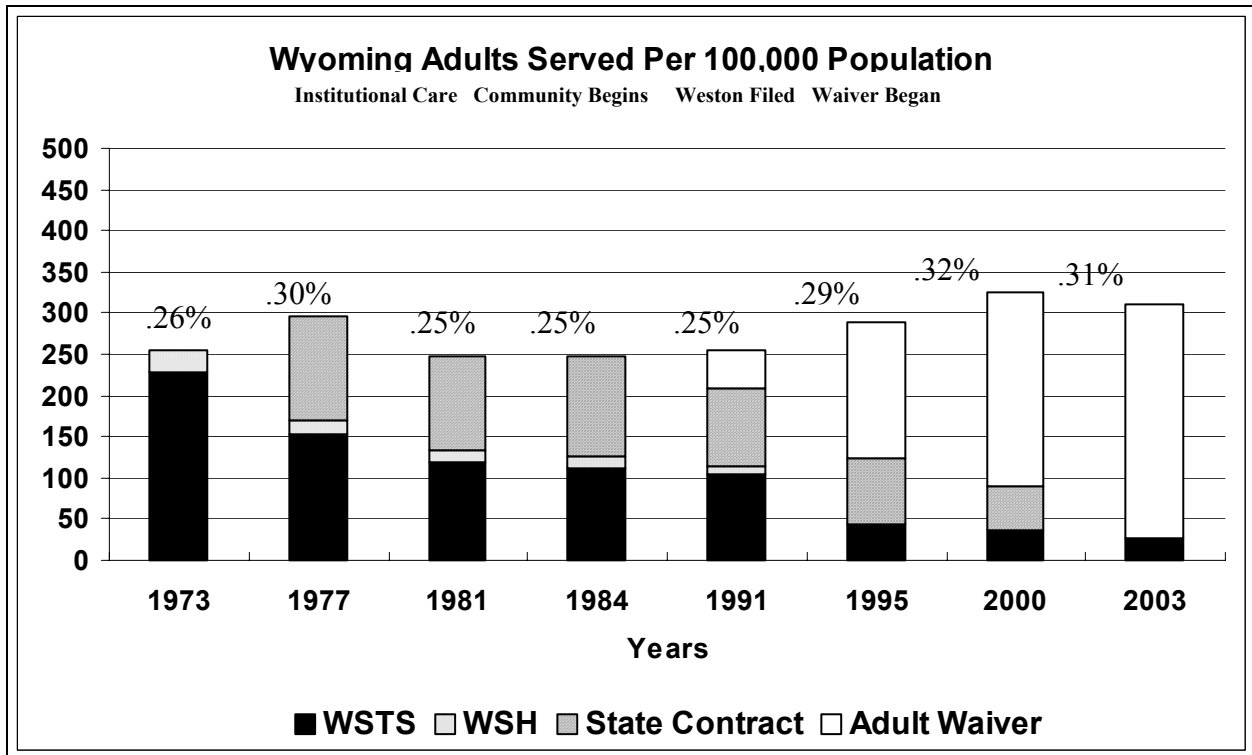
*“Wyoming has employed Medicaid funding heavily to finance DD services. This has benefited Wyoming financially, while further narrowing the number of qualifying people. Wyoming’s eligibility criteria for child and adult services are more stringent than is typical in other states. These criteria mean that the individuals who are presently served or will qualify in the future have especially severe impairments.” Human Services Research Institute, 2003*

*“Wyoming has had the best client specific data in the U.S. for almost 15 years. Wyoming has been a national leader in attempting to define eligibility...” Brad Hill, Managing Author, Inventory for Client and Agency Planning (ICAP), 2003*

The “broadening” of eligibility described by LSO actually constituted an adjustment based on practical experience to bring waiver eligibility back to its original intent: to cover clients who had been Division of Community Programs/DD traditional clientele for decades. **The purpose of implementing the waiver in the first place was not to eliminate DD individuals from services, but to provide those services using a funding source which could better meet the State’s obligations under the Weston lawsuit in a cost-effective manner.**

Further, this perception of “broadening” is belied by the fact that the percentage of the total Wyoming adult population served by various state programs for adults with developmental disabilities has changed very little over the past 30 years.

It is true that there are more adults on the waiver now than at its inception, but when one also includes the number of adults with DD served at various times through state-funded contracts, the Wyoming State Training School, the Wyoming State Hospital, and other programs, the overall proportion of adults served has remained within a variance of less than one-tenth of one percent, as shown in Figure 1. **What has changed is not the universe of people supported by the State, but the location, type of service and funding source, with the waiver being the most cost-effective method due to its ability to capture federal participation.**



**Figure 1**

It is also important to recognize that the number of individuals to be served through the adult waiver has been specified in every budget narrative presented to the WDH Director, the Governor and the legislature. **The Division has never exceeded the maximum number of individuals authorized in the budget process.**

LSO Recommendations: The Division should seek broader input into its policy making for the Adult Waiver.

**Agree–action plan underway.**

◆The Division will promulgate rules regarding program eligibility, to supplement current Medicaid and Division regulations as guided by the Office of Medicaid and the Office of the Attorney General by December 31, 2004. Broad input will be obtained, using the following methods: publication of proposed regulations, widespread notification to stakeholders of opportunities for input, statewide hearings utilizing videoconferencing from multiple sites, solicitation of written input from other agencies, and close coordination with entities having a statutory interest in these issues, such as the Governor’s Planning Council on Developmental Disabilities and the Department of Health Advisory Council.

### Chapter 3. Division Operates With Minimal Formal Rules and Makes Policies for the Adult Waiver With Minimal Input

*“Statutes, rules, and regulations governing the DD adult waiver are unrelated to the Administrative Rules promulgated in 1988 by the Division of Community Programs. The DD adult waiver is a Medicaid program and as such is governed by the statutes, rules and regulations promulgated by the State for the provision of services under the Wyoming Medical Assistance Act (W.S. 42-4-101 et seq.). It is specifically authorized by W.S. 42-4-103 (xvii).*

*“Taken together, the Medicaid Administrative Rules, the DFS Eligibility Rules, the Developmental Disability rules that have been promulgated since the inception of the waiver, and the CMS-approved Waiver itself constitutes a significant body of guidance and control for the operation of the DD Adult Waiver.” Wyoming Department of Health, Office of Medicaid 2003*

Although, as noted below, the Division agrees that we should continue to enhance formal decision making and clear communication with stakeholders, it is important to recognize that there has been extensive interaction with key decision makers (including legislators) about essential elements of this system, as well as interaction with thousands of stakeholders around Wyoming over the past decade. For example, over 350 providers, advocates, and family members received copies of the most recent revision of the adult waiver provider manual for comment before it was issued.

The Division has documented active participation and input for many years with stakeholders such as the federally-mandated Governor's Planning Council on Developmental Disabilities, currently associated with the office of the Wyoming Attorney General, which has always had legislative membership; the Division's own statutorily-authorized advisory council, which was heavily involved in the early development of waiver policy, and has had representation on the Department of Health Advisory Council, also with legislative membership; and a wide variety of other stakeholders, including hundreds of family members, consumers, agency representatives, and government officials who were invited to participate in statewide Wyoming Tomorrow system planning processes co-sponsored by the Division over a multi-year period.

The Division promulgated case management rules that govern team processes through the Administrative Procedures Act, and has regularly solicited broad input when updating waiver manuals under the provisions of Medicaid statutes. **The process for revising and issuing waiver manuals has always been accomplished with input from, and guidance by, the Office of the Attorney General. These manuals have provided a firm foundation for an unbroken record of success in any hearings or court challenges to Division waiver procedures or practices.**

LSO Recommendation: The Division should promulgate formal rules, not provisional manuals, to establish important program rights, definitions, and procedures.

**Partially-Agree. Waiver manuals are issued under auspices of the Wyoming Medical Assistance Act (W.S. 42-4-101 et seq.).**

◆With consultation and guidance from the Office of the Attorney General and the Office of Medicaid, the Division will review, update, and promulgate rules, as appropriate, in the following area:

- Division of Community Programs Rules (1988)
- Management of Waiting Lists
- Development and Modifications of Manuals and Bulletins issued by DDD under Medicaid Authority

◆The Division will expand the use of hearings, public town meetings, interviews, surveys, Internet, statewide videoconferencing, and email responses to harvest additional input into its policy making for the Adult Waiver. Implementation: in process.

#### Chapter 4. Division Practices Need to Ensure Cost-Effective Allocation and Use of Waiver Funds

*“The DOORS methodology promotes fairness and equity and, equally as important, promotes individual and family choice. The federal Centers for Medicare and Medicaid Services (CMS) has identified DOORS as a “Promising Practice” for other states to consider because it promotes consumer choice and control and clearly promotes the goals and objectives embodied in President Bush’s New Freedom Initiative.”*

*Gary Smith, HSRI, principal author of CMS Medicaid Primer*

The objective of the DOORS model is to allocate scarce resources across a broad range of clients in such a way that the clients with greater disability and who require more services are allocated an Individual Budget Amount (IBA) with a higher dollar cap than those with less disability who require less services.

A variety of questions related to the DOORS funding distribution model were raised by LSO, most based on similar questions in a federal review report. The Division responded effectively to CMS concerns and has established revised procedures for the review and revision of requests for changes in a client’s IBA. The final federal response noted, “The State implemented changes that we feel address the findings and recommendations mentioned in this report. **It is important to note that we are confident in the State’s ability to operate this program. We also commend the State for being innovative with its DOORS methodology.”**

While the Division believes further study will be valuable, it should also be recognized that the Wyoming DOORS model has already been the subject of extensive internal and national study, with input from a variety of independent experts. For example, see Having It Your Way: Understanding State Individual Budgeting Strategies (Moseley, Gettings, & Cooper, 2003) and Wyoming DOORS Setting IRAs for HCB Waiver Services, Smith 1999. As noted above, this kind of study culminated in the publication of information about DOORS as a “Promising Practice” by CMS. CMS has also within the past year requested, and provided funding for, Wyoming DDD staff to travel to Washington and Milwaukee to provide training to top-level federal and state administrators in Wyoming’s service-delivery and rate-setting methodologies. Forty-eight states have requested information or consultation about Wyoming’s system. Rhode Island, Pennsylvania, Montana, Utah, and North Carolina have paid for the costs of Wyoming DDD staff to train their staff and stakeholders about the Wyoming system.

LSO Recommendation: The Division should obtain an independent analysis of the DOORS model and its affect on client services and program costs.

**Agree–action plan underway.**

◆ A study focusing on enhancing the DOORS model by incorporating specific cost elements with clinical characteristics will be completed by December 31, 2004, with the assistance of the CMS-approved External Professional Advisory Committee. On the recommendation of CMS this group was developed and has been functioning since August 2003. This group is composed of experienced nationally-recognized experts in this specialty area from the CMS-sponsored Human Service Research Institute, as well as experts from the states of Nebraska and South Dakota (referenced by LSO in their report) who were primary architects in the development of those systems.

◆ The Division will develop and publish written guidelines and procedures for using and updating new versions of the DOORS model by December 31, 2004. This will be done with extensive and broad community input and hearings, including multiple stakeholders, legislators, and the public.

Recommendation: The Division should establish a system to account for the money it uses to fund emergency cases and forced rates.

**Agree–action plan underway.**

◆ The current adult waiver database contains this information now. New reports and analysis of emergency cases and forced rates will be added by September 1, 2004. This will allow us to be able to use our standard computer system to routinely report on and evaluate these areas.

Chapter 5. Division Needs to Improve Monitoring to Ensure Fiscal Accountability

*The Division, Department, and Medicaid utilize a number of methods to assure financial accountability. These include individual caps on expenditures, mandatory preapproval of service plans, individualized review of requests for expenditures outside previously authorized limits, and a number of other review and audit elements.*

While the Division agrees that it can continue to enhance monitoring, it is important to recognize that it has always served the number of people authorized by the legislature and no more, within the budgets approved by the legislature for this purpose. The dollars spent are the dollars approved. When specific instructions have gone with the funding, for example, footnote 9 salary increases to direct service staff, or provider cost of living, the specific requirements have been incorporated in the applicable DOORS funding model, and the result tracked and reported in detail. **In all instances, adult waiver cost increases identified by LSO were in direct response to legislative budgetary mandates.**

The Division pays a great deal of attention to fiscal accountability in its plan approval and monitoring process. It always gets more requests for more money or more services from local teams than it can approve. Eighty-five percent of requests to exceed a prior authorization are turned down. Any unspent dollars between plan authorization and plan use are recaptured and applied to emergency high-cost situations. During FY 03 electronic billing reports demonstrate a reduction of \$250,000 during that period.

LSO Recommendation: The Division should require more justification of rates for major services.

### **Agree–action plan underway.**

◆The Division will use the DOORS cost study in Chapter 4 to develop additional individual service rates with price screens and service rate filters that control provider rates contributing to the overall cost of each individual adult waiver plan of care (individual budget). This will allow additional preapproval controls for waiver specialists in the Cheyenne office, and teams and Area Resource Specialists in the field. To be published and implemented by December 31, 2004, with appropriate public and stakeholder input.

◆Currently the Division is sampling 100 team meetings a year with Area Resource Specialists and back-checking in local communities with the client and/or guardian on the need for every single forced rate request from providers. The Division will increase the fiscal training of Area Resource Specialists and Individually-Selected Service Coordinators to increase their effectiveness in promoting cost-effectiveness in individual client team meetings.

◆The Division will identify a fiscal officer specifically charged with the responsibility to coordinate and oversee the Division’s comprehensive program of fiscal accountability assurance. This will include expanding the independent CPA audits of services and billings, continuing to implement federal review recommendations, and publishing an annual report of fiscal accountability and results. To be implemented by December 31, 2004, subject to availability of necessary position and consultant funding.

◆The Division and Department have managed the adult waiver since its inception in accordance with the identified expectations and regulations of the state and federal government. The adult DD waiver is currently undergoing a regular four-year Medicaid waiver audit. The Developmental Disabilities Division and the Wyoming Department of Health will invite the WDH fiscal office and the office of the State Auditor to join in this review of the adult Medicaid DD waiver, and use this as an opportunity to seek recommendations to further update and strengthen processes and procedures.

### **Chapter 6. Conclusion**

In the United States there are currently 218 different waivers dealing with developmental disabilities, with a wide variety of provisions. Newly available specialty waivers, such as the President’s New Freedom Initiative waivers or single service waivers, are used by some states to limit the amount of services and costs available to local teams for a person served. Individual budgeting systems with individualized spending caps are also used by many states, including Wyoming, to limit costs. Some of these approaches have been endorsed, but some have been viewed unfavorably by CMS, or led to litigation. The merits of these various waiver options and opportunities will be identified and considered by the CMS-approved External Professional Advisory Committee and the Division, and reviewed with stakeholders and decisionmakers.



The Division and the Department of Health appreciate the efforts made by the staff and management of the Legislative Service Office. It is our firm belief that all are working toward common goals – a cost effective system which meets the needs of individuals with developmental disabilities while at the same time demonstrating good stewardship of state resources. We will implement the LSO recommendations as described above, and believe this will continue to improve the statewide service system for adults with developmental disabilities.

DKF/RC/jf/jg

c: Robert Clabby, Administrator, Developmental Disabilities Division  
Phyllis J. Sherard, Ph.D., Deputy Director of Programs