

MAY 2018

Children, Families, Health, and Human Services Interim Committee
Sue O'Connell, Legislative Research Analyst

HJR 24 STUDY: FLEXIBILITY IN FUNDING

Background

During the House Joint Resolution 24 study of community services for developmentally disabled adults, providers have said they have little flexibility in the use of the Medicaid waiver funds that pay for community services. Their concerns generally have focused on the difficulty in billing for services under the current rate structure and the inability to transfer funds among waiver services for a specific individual or among clients to meet the needs of all clients.

Providers have suggested at previous meetings that the state should use a daily rate, rather than an hourly rate, when reimbursing for some services. They say they often must pay overtime to meet the staffing requirements for billing the hourly rate or that they have been unable to bill for services if staff members don't work their scheduled hours. Providers say a daily rate would give them more flexibility in staffing and make it easier to access funding from a client's Individual Cost Plan.

The Children, Families, Health, and Human Services Interim Committee expressed interest in March in exploring options for flexibility in funding. This briefing paper looks at the historical trends in funding for community services and at current policies on the use of Medicaid waiver funding. It also provides options and questions for the committee's consideration.

Development of Community Services in Montana

In the Beginning: General Fund and Federal Block Grants

The state began investing in community services for people with developmental disabilities in the 1975 biennium. The executive budget proposal given to the 1973 Legislature noted: "The means must be provided by which a locally based continuum of services can be available and thus the need to enter an institution is eliminated."¹

In 1975, the governor proposed and lawmakers agreed to significantly increase funding for community services. The post-session fiscal report noted that the 1975 Legislature appropriated \$4.6 million for the biennium to "spearhead a major state effort" to develop community services. The existing program was "greatly expanded" in order to establish a full range of community services so 278 people could move out of institutions in Boulder and Galen and others in the community could avoid institutionalization. The report noted that because the concept of community services was new to Montana, the Legislature appropriated less than the governor requested. Lawmakers believed it would be "advisable to fund a less ambitious program" until they had a clearer idea of how communities would accept the idea and whether placements could be made.²

¹ Executive Budget 1973-1975, *Department of Administration*, Dec. 12, 1972, p. 258.

² "Appropriations Report," *Office of the Legislative Fiscal Analyst*, July 1975, p. 182.

Legislative Fiscal Division reports summarizing the appropriations made each session show that those early years of system development were paid for primarily with money that the state could use as it wanted — general fund dollars and federal block grant funds. Most of the federal funds came from the Social Services Block Grant. States have broad discretion in using those federal funds.

Moving to Medicaid Funding

The 1979 Legislature appropriated \$1 million in federal Medicaid funds specifically to provide day services to developmentally disabled individuals in nursing homes and to possibly pay for some group homes. However, the Medicaid funds largely went unspent that biennium.

That prompted the 1981 Legislature to include language in the appropriations bill encouraging the use Medicaid funds for community services where possible. The Legislature also specifically authorized the agency to use any savings from the developmental disabilities budget to bolster community services.

By the mid-to late 1980s, the state began relying more heavily on Medicaid funding for community services as it transitioned into funding the program through a Medicaid home and community-based services waiver. Now, most services for adults are paid for under that waiver.

Medicaid Limitations

People who have worked in the community system over the decades recall times when dollars slated for one client could be used to pay for services for other clients if the money was going unspent. They also remember times when the state reallocated money that was unspent at the end of a fiscal year or biennium so providers could use it for capital projects or other purposes. That type of flexibility, they say, helped providers sustain or improve their services.

State officials say DPHHS was able to reallocate funding when general fund and federal grants made up the bulk of the program's funding. However, the move to Medicaid funding of community services came with tighter federal requirements, and subsequent federal reviews of the waiver program led state officials to change some of their past practices.³ For example, officials say that Medicaid funds need to be spent on necessary services and on the person for whom the money is allocated. If that person doesn't need all the services that were funded in his or her Individual Cost Plan, the federal Medicaid money can't be diverted to another person or purpose.

Where Does Flexibility Exist?

DPHHS does have a process through which funding within a person's cost plan can be reallocated to different types of services if the person needs more support in one area and less in another.

The state's *ICP Development Guidelines for Individuals in the MT Developmental Disabilities Waivers* notes that funds are sometimes allocated to a service that isn't used or invoiced as expected, adding: "It may be reasonable to take future dollars and unspent past dollars (under-utilized funds) and enhance another service, or use them for a new service for a person." The guidelines detail the process for making changes to both cost-based services, such as adaptive equipment, and rate-based services, such as group homes. Any change must be approved by DPHHS staff.

³ Discussion with DPHHS Medicaid and Health Services Branch Manager Marie Matthews, Developmental Services Division Administrator Rebecca de Camara, and Developmental Disabilities Program Bureau Chief Novelene Martin, April 9, 2018.

In addition, if a person's needs exceed the current Individual Cost Plan, the provider can submit a request for an increase to cover unanticipated needs. That increase could become permanent if the person continues to need a higher level of services.

2017 Session: House Bill 334

The 2017 Legislature passed House Bill 334, which would have required that House Bill 2 Medicaid appropriations be used only to pay for or administer Medicaid services. The Bullock administration opposed the bill, with Budget Director Dan Villa testifying against it. He said that when Medicaid costs are lower than anticipated, the general fund that was appropriated to match the federal Medicaid dollars currently can be transferred to other DPHHS programs that are experiencing higher-than-expected costs. He said if HB 334 passed, DPHHS probably would need a supplemental appropriation for other programs that may overspend their budgets because of extraordinary needs.⁴

The bill passed, but the governor vetoed it. The veto message said HB 334 would “place counterproductive restrictions on the Department’s budgeting and accounting processes” and affect other safety-net services that DPHHS provides.⁵

An effort to override the veto failed.

Committee Considerations

If the committee decides to pursue legislation related to funding flexibility, members should decide the following questions to guide the drafting of a bill:

1. Does the committee want to direct DPHHS to use a daily rate for some services? If so, does the committee want to:
 - a. specify the services for which daily rates should be used or allow DPHHS to identify the services best suited to daily rates?
 - b. set a deadline by which DPHHS must request a change to the waiver to allow daily rates?
2. Does the committee want to require that any unspent general fund appropriated to match federal Medicaid funds for the waiver program be used for purposes specific to the developmental disabilities program? If so:
 - a. for what purposes should the money be used?
 - b. should there be a formula or other means of distributing the money?
 - i. Should a formula be outlined in statute or established by DPHHS in rule?
3. Are there other bills involving funding flexibility that the committee would like to have drafted for the June meeting?

CI0425 8124soxc.docx

⁴ House Bill 334 Hearing, House Human Services Committee, Feb. 10, 2017.

⁵ Veto Message, Gov. Steve Bullock, May 4, 2017, available at <http://leg.mt.gov/bills/2017/AmdHtmH/HB0334GovVeto.pdf>.