

CEJW Policy Brief: Dual Integration Demonstration Project

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California is one of 15 states selected by the federal Center for Medicare and Medicaid Services (CMS) to design “person-centered approaches to better coordinate care for Medicare-Medicaid enrollees.” California’s Department of Health Care Services (DHCS) is implementing the “Dual Integration Demonstration,” which refers to the fact that the project affects “dual eligible’s,” those individuals who are beneficiaries of both Medicare and Medi-Cal. In a recent publication, AARP’s Public Policy Institute described *dual eligible’s* as “the poorest, sickest, and costliest of all Medicaid beneficiaries.” The project will serve up to 150,000 dual eligible’s by December 2012 and expand statewide no later than 2015.

Because the Dual Integration Demonstration makes fundamental changes in the way seniors and people with disabilities receive long-term services and supports (LTSS), it has raised widespread concerns. Primary among these is how In Home Support Services (IHSS) consumers and providers will be impacted since 70-85% of the state’s IHSS caseload are dual eligible’s. In particular, advocates have urged the state to ensure that IHSS remain an entitlement and that IHSS consumers retain the right to hire, fire, and supervise their personal care providers.

CEJW agrees that the demonstration project should empower consumers to direct their own care—ensuring client autonomy and self-determination are among the principles that guide practice in our field. Empowering vulnerable people to live in the community, however, carries with it the responsibility for ensuring that consumers have what they need to exercise choice and that they are protected against unscrupulous, opportunistic, predatory, disturbed, and dangerous individuals.

We further believe that the Dual Integration Demonstration provides an unprecedented opportunity to build critical safeguards into the foundation of California’s LTSS system. Ensuring consumers’ economic and physical security and rights requires attention to the following:

- 1) Assessing high-risk situations
- 2) Facilitating consumer choice
- 3) Workforce needs
- 4) Response to abuse, neglect, exploitation, and the violation of rights

1. Assessing high-risk situations

On Dec. 29, 2012, Joseph McCoy, 30, of Lake Isabella, and his mother, 54-year-old Darlene Green of Weldon, were in Kern County Superior Court facing charges in connection with the April 1, 2011 death of Green’s mother, Margaret Gray. The elder Gray was found by paramedics in her home in Lake Isabella on Feb. 11 suffering from extensive bed sores and lying in her own feces with areas of her skin stuck to the bed sheets. Dr. Manual Sacapano, the ER director at Kern Valley Hospital where she was taken called it “the worst case of elder abuse I

have ever seen.” Mrs. Gray was later moved to an elder care facility where she died from cardio respiratory arrest, sepsis, and Alzheimer’s disease. Joseph McCoy had been Gray’s IHSS worker since turning 18 years old in 1999.

Although the extent to which elderly IHSS clients suffer abuse or neglect at the hands of their workers is not known, cases like Mrs. Gray’s are commonly reported to Adult Protective Service programs, elder abuse multidisciplinary teams, forensics centers, and law enforcement. Further:

- 10% of people ages 60 and older reported emotional, physical, or sexual mistreatment or potential neglect in the past year (Acierno, et al., 2010).
- 47% of caregivers have engaged in physical and psychological elder abuse and neglect (Wiglesworth et al., 2010).
- A 2010 investigation by SACRAMENTO KABC-TV revealed that nearly 1,000 convicted felons were identified as either seeking jobs or working in California’s In-Home Support Service program during the previous year.
- In 2006, the Legislature passed a law that required the Department of Social Services to maintain a centralized database of workers who had been sanctioned that state departments could access to find out if those who wanted to work with vulnerable populations had ever gotten into trouble with other state regulators. Four years later, the database did not exist.
- California Welfare and Institutions Code Section 15660 allows private individuals who are thinking of hiring in-home caregivers to request criminal background checks from the Department of Justice. The law also mandates that if the caregiver commits a new reportable offense, the employer will be notified. According to a 2011 report by the California Senate Office of Oversight and Outcomes, only 22 private individuals took advantage of the service in 2010.

2. Facilitating Consumer Choice

Consumer choice in the LTSS marketplace requires that consumers 1) be capable of exercising choice or consent, and 2) have accurate information about products and services on which to base their decisions.

The ability to exercise informed consent may be compromised by mental and physical illness, diminished mental capacity, and undue influence. These factors may interfere with consumers’ ability to evaluate the suitability of services and providers, assess risks, detect abuse, supervise workers, terminate abusive or negligent caregivers, or even seek help.

Currently, there are no agreed upon standards or guidance for determining when LTSS consumers in California are capable of exercising choice in the LTSS market. This determination can be extremely complex, particularly in light of emerging evidence about the impact of subtle deficits on judgment and decision-making. In 2011, the Alzheimer’s Association and the National Institute of Neurological Disorders and Stroke updated their guidelines for diagnosing Alzheimer’s disease. The new guidelines reflect an emerging consensus that everyone who eventually develops Alzheimer’s experiences a period of minimal impairment preceding full onset of the disease. Although detectable, this

“preclinical” stage, or mild cognitive impairment (MCI), is rarely diagnosed. Further, some experts believe that MCI may be an important risk factor in elder abuse, neglect, self-neglect, and exploitation. The extent to which MCI affects consumers’ ability to exercise informed LTSS decisions remains unclear. Clearly, determinations as to whether consumers are capable of exercising choice must be informed by current research and information.

In a December 14 letter to state officials, county representatives affirmed the right of “individuals who are unable to exercise their right to hire and fire their personal care providers “to be represented by another person who will protect their interests and preserve their basic rights.” The process and resources for doing so need to be explicitly spelled out.

Consumers must also have adequate information about the qualifications and backgrounds of service providers. This is particularly important in light of the extreme vulnerability of the LTSS population, the extended periods of unsupervised time consumers may spend alone with providers, and recent revelations that a significant number of personal workers have been found to have criminal records. This information is not, however, readily available. In 2008, the state legislature authorized Public Authorities, which recruit, screen and train IHSS workers, to help private employers of in-home caregivers check prospective workers’ criminal histories. When the Senate Office of Oversight and Outcomes contacted 26 of the 56 IHSS Public Authorities and asked whether they could help consumers check out potential caregivers, all 26 said they could not. Consumers also need information and assistance to help them understand background checks, what formation is relevant, and how to evaluate risks.

3. Workforce Needs

Consumers need an adequate supply of qualified, trustworthy, and trained service providers from which to choose. The supply of screened and trained workers in California, however, is inadequate to meet the need. To a great extent, this shortage is attributed to the fact that reimbursements are so low that even full-time workers do not earn a living wage and further lack basic protections and rights. The *Raising Expectations State Scorecard Report* ranked California 42nd among the states on the “availability of home health and personal care aides for older Californians.” Elder justice advocates recognize that consumer choice with inadequate choices or help in choosing can be a dangerous combination.

4. Response to Abuse

Empowering LTSS consumers further carries with it the responsibility for providing a timely and effective response when problems or abuses occur. The need for emergency services, particularly for those whose decision making capacity is uncertain, is particularly critical. Options available for doing so must be clearly spelled and criteria developed in consultation with providers of protective and legal services. Dramatic cuts to critical safety net services, including APS, public guardians, mental health services, law enforcement, and legal assistance has compromised the safety net, and the “realignment” of some has created additional uncertainties about local communities’

capacity to respond when problems arise.

Even after serious abuse has occurred, those designated to respond are often unable to ensure that abusive workers are prevented from endangering others. A 2010 report by the California Senate Office of Oversight and Outcomes revealed that the lack of cross-reporting among licensing and regulatory agencies enable abusive workers to move from one system of care to another.

Recommendations

CEJW recommends that the following safeguards be implemented by plans selected to participate and the state entities that oversee them.

Plans must demonstrate that adequate safeguards are in place, including:

- Screening of LTSS consumers and providers that reflects current understanding of risk factors associated with elder and dependent adult abuse, self-neglect, and decision-making capacity;
- Protocols for reporting elder and dependent adult abuse and neglect that include provisions for data sharing and care coordination;
- Partnerships and linkages with elder justice agencies, including APS, Ombudsmen, elder abuse prevention multidisciplinary teams and forensics centers, mental health service providers, discharge planners;
- Inventories of local elder justice resources; and
- Training to LTSS providers in elder abuse and their duty to report abuse.

State entities that oversee LTSS demonstrations must:

- Develop uniform risk assessment tools (or incorporate risk assessment measures into existing tools) that reflect current understanding of vulnerability to elder abuse, neglect, exploitation, and legal standards of decision-making capacity and consent;
- Provide information and referral resources for reducing vulnerability, including referrals for legal assistance in drafting “safe” advance directives, counseling or mediation to address conflicts related to caregiving, etc.;
- Clarify the steps that APS, Ombudsman, law enforcement and others can take to discharge abusive IHSS workers whose clients are incapable of doing so as a result of incapacity, coercion, or undue influence; and prevent them from securing employment with others. Criteria and procedures should also be developed to override clients’ choices when failure to do so poses an unacceptable risk to the person, to others, or to the integrity of the LTSS system.
- Develop information systems to “red flag” abusers (those whose abusive actions have been substantiated by protective service, oversight, or law enforcement entities) and prevent them from gaining employment that endangers others.
- Provide information on training for LTSS consumers and providers on best practices for screening direct care providers.

CEJW urges state and county officials, Public Authorities, and participating plans to explore and implement these recommendations. We further urge them to consult with elder justice experts and advocates, forensics centers, legal professionals, and others in

developing risk assessment tools, screening procedures, training to workers, interagency agreements, and resource inventories.

References

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