

November 17, 2017

Michael Melendez
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Sandra Phelps
Centers for Medicare & Medicaid Services
Center for Medicare and CHIP Services
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Dear Mr. Melendez and Ms. Phelps:

Disability Rights New Jersey (DRNJ) is New Jersey's federally funded protection and advocacy system for people with disabilities. As you may know, New Jersey's Department of Human Services (DHS) operates several self-directed programs for the delivery of home and community based supports. Two of these programs, the Division of Developmental Disabilities' (DDD) HCBS Self-Directed option and the Division of Disability Services' (DDS) Personal Preference Program (PPP), operate under the 1115(a) demonstration Medicaid waiver, which allows Medicaid beneficiaries to directly hire, fire, and manage their own staff persons with funding provided through the waiver. The state contracts with a fiscal intermediary (FI) to assist participants of both programs with payroll, tax withholding, and budget management.

Until this summer, each program contracted for their own FI services, and each had a different FI. When those contracts expired, New Jersey contracted with Public Partnerships, LLC (PPL) to assist the participants in managing disbursement of their self-directed budget.

Since PPL took over as FI in July 2017, beneficiaries and families have been reporting widespread interruptions to the delivery of waiver services. They have reported problems with incorrect, inconsistent, and missing payments, non-responsive customer service, and poor communication about significant changes that affect the implementation of self-directed services.

Detail of complaint

DRNJ has received complaints from approximately 100 different participants and three support coordinators representing another 30 participants.

Implementing Weekly vs. Monthly Authorizations

Currently, the participant's Managed Care Organization (MCO) evaluates each participant's need for Personal Care Assistance and authorizes PCA hours on a weekly basis. For self-directed services, the MCO authorization is translated into a cash budget used to pay employees. Before the transition, all programs used a weekly budget that aligned with the MCO authorization. Since PPL took over, a monthly budget is being imposed allocating the same amount of money to each month regardless of its length. For at least two months after the transition until August 28, 2017, participants were not given notice that their budgets were being calculated differently. This change has caused confusion among participants and has made it difficult for them to plan for their care needs.

A monthly allowance is a significant change; participants must now adjust the hours they use each week depending on how many days are in a month and whether a pay period crosses into another month. This change has resulted in timesheets being denied or rejected (often with no explanation) because of exceeding the monthly allowance. The new monthly accounting and weekly accounting results in a budget shortfall on longer months, while on shorter months, a portion of the budget goes unused and cannot be carried over.

Participants continue to have difficulty accessing their PPL consultant to assist with configuring the cash management plan (or even acquiring a copy of their cash management plan) to know how many hours to schedule their employees. Many still owe their employees for services rendered since the beginning of the transition.

New Jersey's RFP required the winning bidder to pay for all hours worked and to address timesheet issues with participants, including overpayments. Unfortunately, PPL is not in compliance; and participants are left with significant wage liability to their employees. Neither DDD, DDS, nor PPL have proposed a plan to compensate self-directed employees for unpaid time or to protect participants from liability.

Unpaid Employee Wages and Delays in Processing New Hires

Participants have reported that since the transition, PPL has consistently paid incorrectly, or not at all. PPL consultants have confirmed that an incorrectly submitted timesheet was denied, often without explanation or assistance to correct the problem. Some participants report that PPL staff changed timesheets after submission without authorization from the employee or the participant.

Participants report difficulties securing employees because of the enrollment problems. For example, staff hired in the spring of 2017 still have not been able to enroll with PPL. Participants who have lost staff or need to hire new staff have not been permitted to enroll anyone new. Staff who lost benefits as a result of the transition have not yet had their pay adjusted as promised. And participants who negotiated new pay rates for employees have not seen the new rates take effect more than six months later.

The failure of the FI to pay for hours worked by self-directed employees is creating a wage liability for Medicaid beneficiaries, who are required to become the employer of record in order to participate in any of the self-directed programs. Participants' longtime employees have left for other jobs as a result of non-payment of wages. DRNJ has received reports from individuals whose employees filed unpaid wage complaints against them with the Department of Labor.

Unresponsive Support from New Jersey and PPL

Exacerbating the substantive problems, participants report that PPL consultants provide incorrect information or fail to respond to inquiries. Excessive hold times, hang-ups, and unreturned calls are common complaints. Almost all participants who contacted DRNJ have reported difficulty accessing customer service for help navigating new policies and procedures.

Despite repeated assurances from DDD, DDS, and PPL over the past months, the problems have not been resolved. New Jersey and PPL are out of compliance with their obligations to Medicaid beneficiaries under the special terms and conditions of the Comprehensive Waiver. DRNJ is requesting that CMS take action to resolve these issues so that Medicaid beneficiaries do not continue to experience interruptions in service delivery and to ensure that beneficiaries are not held liable for unpaid wages.

Should you have any questions, or if you need further detail, please do not hesitate to contact us. Specific information about individual complaints is available upon request. Your attention in this matter is greatly appreciated.

Very Truly Yours,

s/Jill Hoegel
PADD Coordinator

s/Michael Brower
Staff Attorney

JH/MB/tyw