3 Program Safeguards

SUMMARY

The Department of Human Services lacks sufficient controls over Consumer-Directed Community Supports, which were intended to give MR/RC Waiver recipients and their families the option to directly manage their own services and choose their care providers. Insufficient controls have led to questionable purchases, inequitable variation in how counties administer Consumer-Directed services, and unmet prospects for cost efficiencies. We recommend that the department design additional safeguards and evaluate how well its proposed controls work before implementing the Consumer-Directed option statewide. Counties reported taking various measures to ensure that waiver recipients received services for which the MR/RC Waiver program was billed, but there were inconsistencies in following the most common measures. The Department of Human Services does not know how many providers may be billing incorrectly. Counties generally follow state rules on determining and updating MR/RC Waiver recipients' needs in a timely way and ensuring the availability of services, but there are exceptions. We recommend that the department assess county compliance with state rules when it begins its county reviews in 2004.

In Minnesota, both state and county governments are involved with safeguards for the Mental Retardation or Related Conditions (MR/RC) Waiver program, including the component of the program known as Consumer-Directed Community Supports. In this chapter, we address the following questions:

State and county governments are involved with safeguards for the MR/RC Waiver program.

- **Does the state have sufficient controls to ensure that funds for the Consumer-Directed Community Supports component of the MR/RC Waiver are spent appropriately?**
- **Are safeguards sufficient to verify that MR/RC Waiver recipients receive the services for which the program is billed?**
- **How well do counties comply with certain state rules that govern the administration of the MR/RC Waiver program?**

To answer the questions, we analyzed literature on controls over Medicaid Home and Community-Based Waiver programs. We interviewed personnel from the Department of Human Services and from a number of counties. To gather information and opinions on MR/RC Waiver administration and Consumer-Directed Community Supports, we conducted separate surveys of county MR/RC

Waiver administrators, advocacy organizations, and associations of service providers.

Finally, we reviewed a stratified random sample of 267 individual case files in 12 counties around the state, chosen from counties that offered Consumer-Directed Community Supports in fiscal year 2003.[1] Our sample is representative of the 12 counties, which account for about 94 percent of the 3,074 recipients using Consumer-Directed services in the first half of fiscal year 2003. All cases in the 12 counties, including people using Consumer-Directed services and others using traditional MR/RC Waiver services, represented 55 percent of MR/RC Waiver recipients at that time. Our sample is not representative of the entire state.[2]

In this chapter, we examine the extent of controls used to regulate appropriate spending of funds on Consumer-Directed Community Supports. We assess the adequacy of controls to verify whether recipients receive services for which the MR/RC Waiver program is billed. We also consider how well counties comply with select state rules that govern how the MR/RC Waiver program is administered.

SAFEGUARDS FOR CONSUMER-DIRECTED COMMUNITY SUPPORTS

Consumer-Directed Community Supports allow MR/RC Waiver recipients the option to take direct control for planning and managing their own services, as Chapter 1 described. For fiscal year 2002, Consumer-Directed services were offered in 33 counties and accounted for 7 percent of all MR/RC Waiver spending, but this amount will likely increase because the Department of Human Services intends to expand the use of Consumer-Directed Community Supports statewide as well as to each of the other Medicaid Waiver programs. In assessing whether waiver funds are spent appropriately through Consumer-Directed services, we looked at the controls over the services to determine 1) whether purchases were appropriate, 2) how consistent the service option was from county to county, and 3) whether the cost of Consumer-Directed services was comparable to other MR/RC Waiver service costs. As Consumer-Directed Community Supports now stand, we found that:

In fiscal year 2002, Consumer-Directed services accounted for 7 percent of all MR/RC Waiver spending.

- **The Department of Human Services lacks sufficient controls over Consumer-Directed Community Supports, which has led to questionable purchases, inequitable variation in how counties administer the services, and unmet prospects for cost efficiencies.**

1 The 12 counties were: Blue Earth, Crow Wing, Dakota, Hennepin, Mower, Olmsted, Ramsey, Saint Louis, Scott, Steele, Todd, and Washington. About 63 percent of the cases were of persons using Consumer-Directed services, and about 37 percent were of persons using traditional MR/RC Waiver services.

2 Additional details on the methodologies we followed are available on-line at www.auditor.leg.state.mn.us/ped/2004/pe0403.htm.

Insufficient state controls raise equity questions about services and supports that are allowed in some counties but denied in others.

Consumer-Directed Purchases

Counties and waiver recipients use Consumer-Directed services to fund informal supports and services typically not included among the traditional MR/RC Waiver services, which was, in part, one of the objectives. Allowing recipients greater leeway in choosing from among informal providers of care, such as relatives or neighbors, has been a success, according to many participants.[3] We examined the Consumer-Directed budgets in 168 case files chosen randomly from the 12 counties that served as our case studies. From this review we concluded that:

- **Controls were insufficient to prevent questionable expenditures on Consumer-Directed services.**

Although the Department of Human Services does not control spending on Consumer-Directed Community Supports, and it has not defined unacceptable purchases, counties typically reported having procedures to control Consumer-Directed spending. In answering our survey, 26 of 27 counties said they consistently followed a county policy that set general parameters for services allowed under the Consumer-Directed option; the remaining county indicated it somewhat followed such a policy. About 79 percent of counties reported consistently having case managers or waiver teams decide about Consumer-Directed services based on their perceptions of the waiver recipients' needs. Table 3.1 illustrates other ways counties reported controlling the selection of Consumer-Directed services.

Most counties offering Consumer-Directed services reported that they set their own policies on what services are covered.

Table 3.1: Controls Counties Reported Using Over Recipients' Selection of Consumer-Directed Services, 2003

	Does Consistently	Does Somewhat	Does Not Do
Follow county policy describing general parameters for allowable services (*N*=28)	96%	4%	0%
Case manager or team decides based on perceived MR/RC waiver recipient needs (*N*=29)	79	14	7
Follow guidance from Department of Human Services (*N*=28)	70	26	4
Use county list of disallowed items (*N*=27)	65	12	23
Rely on MR/RC waiver recipient's choices (within budget limits and state parameters) (*N*=30)	59	41	0
Use county list of allowed items (*N*=28)	52	19	30

NOTES: The question read: "In what ways does your county control the types of CDCS services that recipients may select?" Rows may not sum to 100 percent due to rounding.

SOURCE: Office of the Legislative Auditor, County Questionnaire on the Mental Retardation or Related Conditions Waiver, September 2003.

3 Minnesota Department of Human Services, *Consumer Directed Community Supports Focus Groups Summary of Findings* (St. Paul, June 2002), 12.

Consumer-Directed Community Supports paid for some questionable items, such as Internet fees.

Despite the counties' spending controls, Consumer-Directed spending for items that are not covered by Medicaid went beyond informal caregivers and included questionable items. For example, Consumer-Directed Community Supports have been used in the past year to pay for cell phones, playground equipment, Internet connectivity fees, tax preparation costs, and various community activities such as museum memberships, tickets to Minnesota Wild hockey games, and annual passes to Camp Snoopy at the Mall of America. While Minnesota's Consumer-Directed Community Supports do not prohibit these activities or supports, some counties have disallowed them, as is discussed later in this chapter.

About three-quarters of the 168 case files we reviewed had budgets that included at least one item (other than informal caregivers) that the Medicaid MR/RC Waiver program does not typically fund. In total, the items amounted to about $620,000, representing 11 percent of all the services and items budgeted through Consumer-Directed services in the cases we reviewed.

Although most spending of Consumer-Directed funds in the files we reviewed was supported by documentation, not all purchases appeared justified. In our review, we noted whether items in budgets for Consumer-Directed services were unusual by type or amount. Of the 376 items we characterized as unusual, 89 percent were related to needs articulated in the individual service plans.[4] At the same time, 41 services or products (about 11 percent of the unusual items and amounting to about $64,850) were not connected to any needs described in the waiver recipient's individual service plan or related Consumer-Directed planning documents. As an example, one case tapped Consumer-Directed Community Supports for $1,600 of vacation expenses even though the file did not relate this expenditure to the recipient's needs. In another case, Consumer-Directed Community Supports paid $1,200 for concerts, plays, movies, and arcades, which by itself was not uncommon when compared to other cases that contained similar services but were related to recipients' needs. This case, however, presented no link between such community activities and the recipient's stated needs.

VARIATION IN CONSUMER-DIRECTED COMMUNITY SUPPORTS

Although the Department of Human Services has set the general parameters for Consumer-Directed services, the 33 counties that have chosen to offer the option have had a great deal of flexibility in administering it. This has proven to be a double-edged sword in that it provided for individualization but allowed practices to differ from county to county and within a given county. A June 2002 department report remarked that one of the challenges was that "policies regarding [Consumer-Directed services] frequently differ from county to county."[5] A study in early 2002 of Consumer-Directed users and their families revealed mixed results: Interviews with users and a survey showed a high degree of support for Consumer-Directed services but revealed families' concerns about

4 We accepted the needs listed in service plans at face value and did not judge their appropriateness.

5 Department of Human Services, *Consumer Directed Community Supports Focus Groups*, 2.

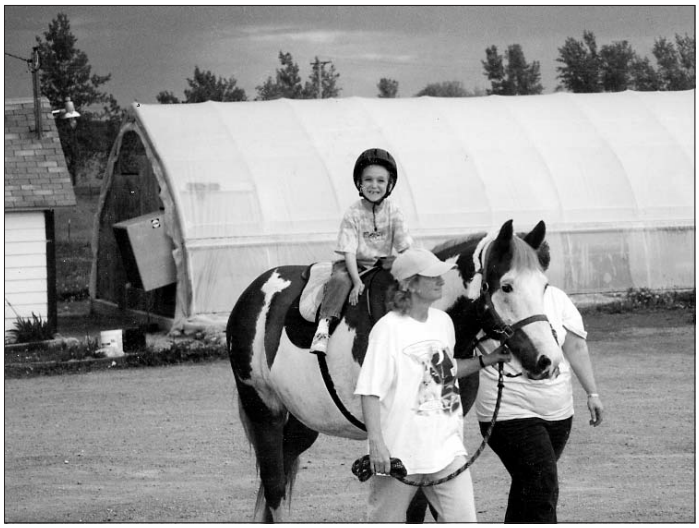
too much micromanaging and increasing restrictiveness, as well as inconsistent guidelines.[6]

Our analysis also shows that:

- **Without adequate statewide controls, Consumer-Directed services have varied among counties, and counties' uses of the Consumer-Directed option have varied, raising questions about inequities and meeting objectives.**

In some counties, Consumer-Directed Community Supports paid for certain items that other counties expressly forbid.

The items and services paid for with Consumer-Directed Community Supports funding vary from county to county. Our file review showed that some counties allow Consumer-Directed expenditures on services that are disallowed in other counties. For instance, some counties allowed the purchase of dietary supplements while others did not. Some allowed the purchase of clothing, while others expressly disallowed it. One county prohibited spending on extra pairs of eyeglasses, while another permitted it.



Services covered by Consumer-Directed funds vary from county to county.

Another point of inconsistency is that not all counties have policies to stop the use of Consumer-Directed services when problems occur. Five of 30 counties with Consumer-Directed services reported in our survey that they have not established a policy to terminate the use of Consumer-Directed services when recipients overspend, commit fraud, or compromise their health and safety.

Five of 30 counties offering Consumer-Directed Community Supports reported that they do not have a policy to terminate use when problems occur.

Some counties have used Consumer-Directed services mostly in instances when the county, not the recipients or their families, determines who might benefit from the services. Key objectives of Consumer-Directed Community Supports are to increase consumer control and self-reliance and provide activities at the request and direction of the recipients and their legal representatives.[7] When recipients and their families do not choose the Consumer-Directed option, these objectives are not fully met. In these cases, the option functions less as a reflection of the

6 Minnesota Governor's Council on Developmental Disabilities, *Consumer Directed Supports Survey Individual Comments* (St. Paul, May 2002), 2-3.

7 Minnesota Department of Human Services, "New Services Available Through the MR/RC Waiver: A Guidebook for County Agencies," in *MR/RC Waiver Amendments Announced Bulletin 98-56-15* (St. Paul, October 1998), 3; and Minnesota Department of Human Services, "The Shift to Increased Consumer Control," from *Consumer Directed Community Supports Tool Kit – 2003* (St. Paul, 2003), 3.

recipient's self-direction and more as a supplementary funding source. As an example, in one of the counties we visited, county staff realized that a specialized form of physical therapy would not be eligible for Medicaid reimbursement, but they agreed with the family that the therapy could help the recipient develop tolerance to physical contact. Consequently, the county opted to pay for the touch therapy using Consumer-Directed services as the billing mechanism even though the waiver recipient and his family did not choose Consumer-Directed services. By contrast, in other counties, recipients and their families decide whether to use Consumer-Directed Community Supports (often with county guidance).

In some counties, MR/RC Waiver recipients and their families were not involved in the decision to use Consumer-Directed services.

The degree of oversight in using money for Consumer-Directed services varied, according to our interviews with county personnel. In some counties, all payments for Consumer-Directed services were made through the county. Elsewhere, counties set up checking accounts for families using Consumer-Directed services. Families wrote checks off the accounts when purchasing Consumer-Directed services. Oversight of the accounts varied by county and occurred weeks or months after purchases were made. Several counties told us that they discontinued use of the checking accounts after problems arose.

Prospects for Cost Efficiencies

Allowing recipients and their families to manage their own direct-care workers is viewed both as a way to increase self reliance and "maximize the public dollars" spent for support because waiver recipients may choose care providers from among family and friends instead of exclusively from formal service providers.[8] In its 2001 report to the Legislature, the Department of Human Services acknowledged the need to improve Consumer-Directed services so that services better meet personal needs and preferences and recipients avoid institutional care "within an efficient and cost-effective framework."[9] Particularly during a time of tight resources, it is important to review whether Consumer-Directed Community Supports achieve possible cost efficiencies. We found:

- **MR/RC Waiver spending on participants using Consumer-Directed services was higher than spending on other MR/RC Waiver recipients with similar characteristics.**

We compared the cost of serving MR/RC Waiver recipients who used Consumer-Directed services with the cost of serving recipients with similar needs who did not use such services in fiscal year 2002. We restricted our comparisons to waiver recipients who lived at home because most Consumer-Directed participants live at home, and living arrangement has a large effect on cost, as Chapter 2 described. We separately analyzed two county groups: (1) the ten

8 Minnesota Department of Human Services, "The Disability Service Division's Consumer Directed Services Initiative," from *Consumer Directed Community Supports Tool Kit – 2003* (St. Paul, 2003), 3. While some observers told us that using informal caregivers could be less expensive than other care providers, others said certain MR/RC Waiver families used Consumer-Directed services so they could pay their caregivers higher salaries and retain those aides with whom they were most satisfied.

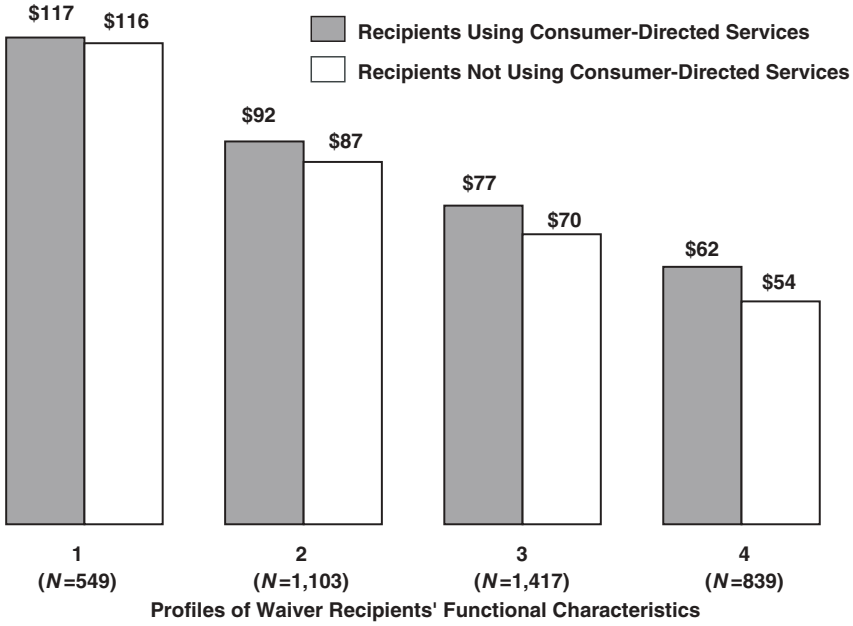
9 Minnesota Department of Human Services, *Home and Community Based Services for Persons with Mental Retardation and Related Conditions: A Report to the Minnesota Legislature* (St. Paul, December 2001), 24.

largest counties and (2) nine small or medium-sized counties that had three or more participants using Consumer-Directed services in fiscal year 2002.[10] For each group of counties, we compared recipients within the same profile.[11]

The large counties spent, on average, 8 percent more on Consumer-Directed participants than nonparticipants with the same profile. The spending gap ranged from an average $1 to $8 per recipient per day, as shown in Figure 3.1, representing 1 to 16 percent higher costs for the Consumer-Directed participants.[12] We obtained a similar pattern of results for the small or

In large counties, spending on Consumer-Directed participants was, on average, 8 percent higher than spending on other MR/RC Waiver recipients in fiscal year 2002.

Figure 3.1: Mental Retardation or Related Conditions Waiver Average Spending per Day, Consumer-Directed Recipients Compared With Other Recipients in 10 Large Counties, by Profile, FY 2002



NOTE: These comparisons include only MR/RC Waiver recipients who lived at home during fiscal year 2002 and only those who had received Consumer-Directed services for at least 180 days that year.

SOURCE: Office of the Legislative Auditor, analysis of Department of Human Services' data on individual MR/RC Waiver recipients.

10 The ten large counties were: Anoka, Carver, Dakota, Hennepin, Olmsted, Ramsey, St. Louis, Scott, Stearns, and Washington counties. The nine small or medium-sized counties were: Blue Earth, Crow Wing, Houston, Morrison, Mower, Rice, Steele, Todd, and Wright counties. Other counties offering Consumer-Directed services had too few cases for analysis.

11 Following the department's methodology for assigning profiles, we classified waiver recipients who had not been assigned their own profile by the department into a profile appropriate to their diagnosis and behavior challenges.

12 Overall results for the 10 large counties were statistically significant at the 95 percent confidence level. We also compared costs for recipients with the same open-enrollment status because recipients who joined during open enrollment tend to have lower average costs than other recipients, as Chapter 2 described. We found a similar pattern of results when we compared costs by profile and open-enrollment status.

medium-sized counties that offered Consumer-Directed services, with an average 19 percent difference in costs between Consumer-Directed participants and nonparticipants with the same profile. Because these counties had much lower participation rates in Consumer-Directed Community Supports, however, the low number of cases was too small to show statistical significance.

Need for State Controls

Statewide controls over Consumer-Directed Community Supports could help ensure appropriate program spending and diminish equity concerns. Most counties we surveyed reported that they would welcome certain state assistance for working with Consumer-Directed services. About 82 percent of counties with Consumer-Directed services indicated in our survey that state requirements on allowable uses of Consumer-Directed money would be very useful, as Table 3.2 shows. Further, one of the items that users of Consumer-Directed services liked least was inconsistency regarding services, according to the 2002 Department of Human Services study mentioned above.[13] For instance, one participant remarked on the arbitrary nature of decisions on services because it "varied from social worker to social worker." In addition, advocacy organizations we surveyed indicated that guidance on what purchases are allowed may be insufficient. Five of the 12 advocate organizations either disagreed or somewhat disagreed that

Most counties offering Consumer-Directed services told us that state requirements on allowable uses of Consumer-Directed funds would be useful or very useful.

Table 3.2: County Opinions on Potential Usefulness of State Assistance for Working With Consumer-Directed Community Supports, 2003

	Very Useful	Useful	Somewhat Useful	Not Useful
Requirements on allowable uses of CDCS money (*N*=29)	82%	11%	4%	4%
General parameters outlining allowable use of CDCS money (*N*=31)	77	13	3	7
Specifications for allowable environmental modifications and equipment (*N*=30)	76	10	10	3
Standardized budget worksheets (*N*=31)	63	13	10	13
State-set recipient budgets calculated using a formula (*N*=28)	56	22	4	19
Limits on amounts allowed for a single expense, e.g., home modifications (*N*=29)	50	18	14	18
Cost estimates for environmental modifications and equipment (*N*=30)	48	24	21	7
Training for county staff working with CDCS (*N*=31)	47	33	13	7
Training for recipients and families receiving CDCS (*N*=31)	40	27	20	13
Training for fiscal agents working with CDCS recipients (*N*=30)	34	38	14	14

NOTES: The question read: "To what extent would state assistance be useful to your county for working with CDCS?" Rows may not sum to 100 percent due to rounding.

SOURCE: Office of the Legislative Auditor, County Questionnaire on the Mental Retardation or Related Conditions Waiver, September 2003.

13 Department of Human Services, *Consumer Directed Community Supports Focus Groups*, 13.

counties provide sufficient guidance on what Consumer-Directed expenses may or may not be funded, and six organizations only "somewhat agreed," as Table 3.3 shows.

Table 3.3: Advocacy Organizations' Opinions on Consumer-Directed Community Supports, 2003

	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Don't Know
Counties typically provide sufficient guidance on what expenses may or may not be funded through CDCS	0%	50%	33%	8%	8%
Generally, CDCS is administered consistently from county to county	0	0	8	58	33

NOTES: The question read: "Considering how consumer-directed community supports generally operate in counties today, please indicate whether you agree or disagree with the following statements." Rows do not sum to 100 percent due to rounding. (*N*=12)

SOURCE: Office of the Legislative Auditor, Mental Retardation or Related Conditions Waiver Questionnaire for Advocacy Groups, October 2003.

The Department of Human Services has proposed changes to Consumer-Directed Community Supports that will limit use of the option to waiver recipients living in their own homes.

In its proposal to expand Consumer-Directed services statewide and across all Home and Community-Based Waiver programs, the Department of Human Services is adding state requirements to govern the option. For instance, the proposal requires each participant to submit a community support plan that identifies the goods and services to be provided and reflects the individual's strengths, needs, and preferences. Another change is that the state will set a maximum amount for each individual's Consumer-Directed budget. Eligibility for Consumer-Directed services will be limited to waiver recipients who live in their own home rather than in a licensed setting such as foster care. Further, the proposal provides guidelines on allowable expenditures and lists specific items that will not be allowed, such as Internet access and tickets to sporting events. Table 3.4 lists many of the changes the department proposes in its amendment of Consumer-Directed Community Supports.

The department plans to begin implementing the revised Consumer-Directed services six months following the proposal's approval by the federal Centers for Medicare and Medicaid Services. It expects to use this time to revise its Consumer-Directed materials and help prepare counties. Counties currently offering Consumer-Directed services will be the first to use the revised services, with statewide implementation to occur sometime later.

We think the department should be prepared to offer more guidance on items not allowed by Consumer-Directed funding. Although the proposal for the revised Consumer-Directed services contains lists of "allowable" and "unallowable" expenditures, certain items remain questionable. For instance, there is no guidance on setting priorities among expenditures, such as when a county faces a decision between approving dietary supplements or recreational equipment. Certain purchases, such as cell phones or computer software, may be justifiable under particular circumstances but may appear as lower priority in other situations. For these types of items it may be appropriate for the department to require additional county review prior to approving the purchases. Further, it is

Table 3.4: Department of Human Services' Proposed Changes for Consumer-Directed Community Supports, 2003

- Recipients must develop a community support plan reflecting their needs and defining all goods and services to be paid through the program
- Only waiver recipients living at home will be eligible
- State will set the maximum budget amount for recipients' budgets; maximum spending may not exceed 70 percent of average costs of nonCDCS recipients with comparable conditions and service needs
- Recipients must verify goods or services before claims are paid
- County must review expenditures quarterly for consistency with approved plans
- Certain items, such as membership dues, are expressly prohibited
- Environmental modifications (e.g., wheelchair ramps) and assistive technology (e.g., computer adaptations) exceeding $5,000 per year require county approval
- Criteria are specified to declare a recipient ineligible for consumer-directed services
- County must provide notice and suspend recipients' services under certain conditions, such as concerns about recipients' health and safety
- Billing for services must occur through designated "fiscal support entities" (persons designated to provide payroll and billing assistance)
- Fiscal entities must maintain records of all spending for consumer-directed supports and services
- Parents or spouses may be paid through the program under certain conditions

SOURCE: Department of Human Services, *Consumer Directed Community Supports Proposal Submitted to the Centers for Medicare & Medicaid Services* (St. Paul, December 11, 2003).

Even with the department's proposed changes, county-by-county differences in Consumer-Directed services could occur.

unclear whether the amounts for certain expenditures are reasonable, such as $7,000 for yard fencing. Without more detailed guidance, additional county-by-county differences could result as counties judge what is or is not appropriate.

The department should consider providing additional guidance on conditions for terminating the use of Consumer-Directed services. Although the department's proposal would give authority to counties to suspend Consumer-Directed services when health and safety concerns arise or for misuse or abuse of public funds, it does not define what constitutes "misuse." Nor does it specify whether suspension should occur after a single incident.

RECOMMENDATION

The Department of Human Services should set additional controls to ensure equitable and appropriate spending of Consumer-Directed funds.

Before implementing Consumer-Directed Community Supports statewide, the state should evaluate how well its proposed controls work. Based on what it learns from counties that use the revised option, the department can make additional adjustments to prevent problems from recurring in other counties. Although such an evaluation will come at a cost, and it could further delay the

opportunity for Consumer-Directed services in counties that have not heretofore offered them, it is preferable to perpetuating problems that serve to weaken the option and frustrate users.

RECOMMENDATION

The Department of Human Services should evaluate its proposed controls for the revised Consumer-Directed Community Supports before implementing Consumer-Directed services statewide.

VERIFYING SERVICES FOR WHICH THE MR/RC WAIVER PROGRAM IS BILLED

The state and counties follow procedures to ensure that MR/RC Waiver program recipients receive services for which providers bill the program. In looking at how well these procedures verify service delivery, we found:

- **Counties reported taking measures to ensure that waiver recipients received services for which the MR/RC Waiver program was billed, but there were inconsistencies in following the most common measures. The Department of Human Services does not know how many providers may be billing incorrectly.**

The Department of Human Services monitors county activities for verifying services only when complaints arise. All but two counties reported taking certain measures to regularly verify services, and most reported taking multiple steps, as Table 3.5 presents. However, although counties most commonly reported that their case managers visit on-site periodically to verify service delivery, from our case file reviews we estimated that 17 percent of the cases in the 12 counties

Although most counties reported that case managers visit waiver recipients on-site to verify service delivery, we estimate that 17 percent of cases in 12 counties we visited had no evidence of face-to-face contacts.

Table 3.5: Methods Counties Reported Using to Verify That Waiver Recipients Receive Services for Which the Program is Billed, 2003

	Percentage of Counties
Case managers periodically visit on-site to verify service delivery	93%
Monitor periodic provider reports	77
Routinely solicit feedback from recipients (or families)	75
Regularly review invoices submitted by providers	63
Monitor feedback from providers about service cancellations	48

NOTE: The question read: "How does your county verify that MR/RC waiver recipients actually receive authorized services billed by providers?" (*N*=83)

SOURCE: Office of the Legislative Auditor, County Questionnaire on the Mental Retardation or Related Conditions Waiver, September 2003.

we visited showed no evidence of face-to-face contacts between case managers and waiver recipients or their families in the past year.[14] For cases where the case manager had not met personally with the waiver recipient, it would have been difficult to conduct an on-site verification of service delivery.[15]

Not all service providers produce reports of the services they provide to waiver recipients.

Counties also said they commonly verify services by reviewing periodic reports they receive from providers. This method for verifying services is of limited value, however, because some counties told us that not all service providers present counties with periodic reports of the services they offer to MR/RC Waiver recipients. In addition, on our survey of provider associations, only four of eight associations reported that all or nearly all of their members provide at least quarterly reports to counties on services provided. The other associations either did not know how many of their members provided such reports or said that either some or most of their members did so.

On-site visits and provider reports are safeguards, but by themselves they cannot identify all types of problems or potential fraud. Such methods would not, for instance, determine whether a provider submits bills for more services than were actually provided. A separate study our office released in August 2003 focused on improper payments in the state's Medicaid program, including the Home and Community-Based Waiver programs. It concluded that, despite the department's various payment control activities, the department has not comprehensively assessed the amount or nature of improper Medicaid payments occurring in Minnesota.[16] As a result, the state does not know how many providers may be billing incorrectly or the size of the problem.

The Department of Human Services has taken steps to control payments to service providers. The department sends forms to recipients indicating the services for which providers are being reimbursed. When consumers review these "explanation of medical benefits" forms, they help safeguard against inappropriate spending, but the extent to which waiver recipients or their families read and use the forms is unknown. In addition, the Department of Human Services has designed its computerized billing system, which pays service providers for Medicaid services including MR/RC Waiver services, in ways to help detect problems, such as when providers bill for more services than were authorized. As part of processing the claim, the system automatically checks for several items, including whether the claim duplicates or conflicts with other claims and whether the county has authorized the service for the recipient. In this study we did not investigate the reliability of the department's systems for identifying and correcting service and billing problems.

14 We calculated a confidence interval to indicate the range of values within which we expect the actual value to fall; we can be 95 percent confident that between as few as 11 percent and as many as 25 percent of the cases in the 12 counties we visited were unlikely to have had face-to-face contacts.

15 Case managers often check logs of services provided, which is useful but does not verify that recipients actually received what was planned.

16 Office of the Legislative Auditor, *Controlling Improper Payments in the Medicaid Program* (St. Paul, August 2003), 19.

COUNTY COMPLIANCE WITH STATE RULES ON THE MR/RC WAIVER PROGRAM

We looked at how well counties complied with select state rules to administer the MR/RC Waiver program. We analyzed rules related to: 1) determining MR/RC Waiver recipients' needs and updating the needs; 2) the availability of services to meet recipients' needs; and 3) the timeliness of determining MR/RC Waiver recipients' needs. Although we assessed county compliance with state rules, we did not study the effect that lack of compliance might have on waiver recipients. We found that:

- **Counties generally follow state rules on determining and updating MR/RC Waiver recipients' needs in a timely way and ensuring the availability of services, but there are exceptions.**

Determining and Updating Waiver Recipients' Needs – State rules contain several requirements intended to govern how counties determine MR/RC Waiver recipients' needs and how the needs might change over time. These are important because counties base waiver recipients' services on the recipients' identified needs. To the extent the documented needs are inaccurate or out of date, recipients may not receive appropriate services. The rules we examined apply to: the need for up-to-date individual service plans, the need for case managers to monitor recipients' services, periodic reviews of recipients' diagnoses, and the content of the individual service plans. Although we reviewed county compliance with these rules, we did not determine the extent to which waiver recipients may have received inappropriate services due to noncompliance.

From reviewing cases in 12 counties, we estimate that 6 percent of cases did not contain a 2003 individual service plan or equivalent document.

Minnesota Rules require counties to update each waiver recipient's individual service plan at least annually.[17] The service plans are intended to help determine appropriate services, among other things, as Chapter 1 describes. When we visited a select number of counties to review case files, we saw that although most of the files contained a 2003 individual service plan or similar document, about 6 percent did not, as shown in Figure 3.2.[18] Beyond that, about 15 percent of cases with a service plan (or similar document) in a recent year did not have one from the year prior.[19] These case files held no evidence that the waiver recipients' service plans had been updated on an annual basis.

Another state rule requires case managers to conduct a monitoring visit with each waiver recipient at least semiannually.[20] Such interactions between case managers and waiver recipients or their families help ensure that case managers have the information needed to update the service plan and determine that the recipient is getting needed services. Based on our case file review, 40 percent of all waiver recipients or their families had fewer than two face-to-face contacts in

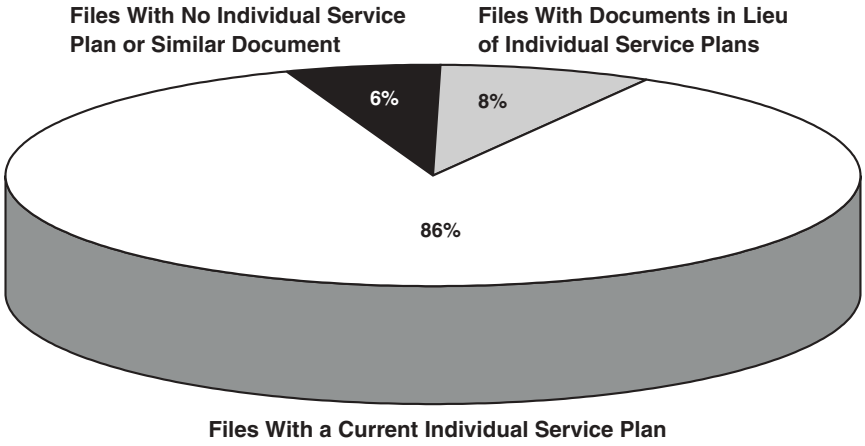
17 *Minn. Rules* (2003), ch. 9525.0016, subp. 13.

18 We can be 95 percent confident that the value is between 4 percent and 12 percent of the cases.

19 We can be 95 percent confident that the value is between 9 percent and 22 percent of the cases.

20 *Minn. Rules* (2003) ch. 9525.0024, subp. 8. The rule does not define "monitoring visit."

Figure 3.2: Individual Service Plans for Mental Retardation or Related Conditions Waiver Recipients, 2003



NOTE: *N*=194 case files.

SOURCE: Office of the Legislative Auditor, Review of County Case Files, October 2003.

the past year, as shown in Table 3.6.[21] When we counted face-to-face visits together with telephone contacts, 21 percent of waiver recipients in our case studies still had fewer than two case manager contacts in the past year.[22] As reported earlier, in 17 percent of the cases, there was no evidence that case managers had any face-to-face meetings with waiver recipients or their families. In response to our survey, about three-fourths of counties reported having a standard for a minimum number of contacts with waiver recipients, and in all but one of these counties the standard was a minimum two contacts per year. More than half of the counties with minimums reported that they did not meet them for all of their waiver recipients.[23]

State rules also require that counties review a waiver recipient's diagnostic assessment once every three years.[24] These reviews are needed to determine whether diagnoses reflect recipients' current levels of functioning. We asked counties whether they take steps to ensure that case managers review the diagnoses every three years, and eight counties reported that they did not. Many counties reported that they review the diagnosis on a yearly basis at the same time they review the recipients' needs and services. Five counties specified that they

21 We can be 95 percent confident that the value is between 32 percent and 48 percent of the cases.

22 We can be 95 percent confident that the value is between 14 percent and 29 percent of the cases.

23 The most common reasons given for failing to meet the minimum was "other demands on case managers' time," particularly in small counties, and "lack of waiver recipient cooperation."

24 *Minn. Rules* (2003), ch. 9525.0016, subp. 6. By state rule, the diagnostic assessment that counties review contains several components, including tests of intellectual functioning administered by qualified psychologists.

Table 3.6: Number of Case Manager Contacts, 2003

	Contacts With Recipient or Family					Contacts With Others				
	Face-to-Face	Phone	Written	Face-to-Face or Phone	All Types	Face-to-Face	Phone	Written	All Types	Total of All Types of Contacts
Mean	3.2	5.3	1.3	8.5	9.8	1.5	9.8	2.5	13.8	23.6
Median	2	3	0	6	7	1	4	1	8	17
Maximum	25	67	13	77	77	19	107	42	168	201
Cases with fewer than two contacts	62	66	127	28	20	119	47	99	23	5
Cases with no contacts	23	45	89	13	7	74	27	67	12	1

NOTE: The term "Others" includes persons such as service providers or special education teachers who work with the waiver recipient. (*N*=172 case files.)

SOURCE: Office of the Legislative Auditor, Review of County Case Files, October 2003.

use a different schedule for reviewing diagnoses, such as every five years for adults and every three years for children.

Minnesota Rules also mandate the content of waiver recipients' individual service plans, as Chapter 1 described. One component required of service plans is the recipient's long- and short-range goals.[25] One percent of the case files in the 12 counties we visited had neither short- nor long-term goals.[26] This is consistent with county responses to our survey, in which all counties indicated that they verify the completeness of individual service plans by using at least one of several methods, such as a form listing all of the required information.[27] Although nearly all service plans we reviewed contained goals as required, 15 percent did not clearly distinguish between short- and long-range goals or contained one or the other but not both types of goals. The distinction between short- and long-range goals may be important in determining how well the services are directed at achieving recipients' goals, as state rules require.[28]

Nearly all of the individual service plans we reviewed for cases in 12 counties contained short- and long-range goals, as state rules require.

Availability of Services – State rules pertaining to the availability of services are designed to ensure that waiver recipients receive services they need regardless of where in the state they reside. The rules say that case managers shall arrange for authorized services consistent with, among other things, the needs and preferences of the waiver recipient as identified in the individual service plan.[29] Case managers are responsible for assisting waiver recipients to secure the services identified in their individual service plans, even if the services are not currently available.[30] In our assessment of service availability, we did not independently verify how many waiver recipients may have been affected by unavailable services.

25 *Minn. Rules* (2003), ch. 9525.0024, subp. 3.

26 We can be 95 percent confident that the value is likely between 0.5 percent and 3.7 percent of the cases.

27 One county did not respond to the question.

28 *Minn. Rules* (2003), ch. 9525.0024, subp. 8 A.

29 *Minn. Rules* (2003), ch. 9525.0016, subp. 11 A.

30 *Minn. Rules* (2003), ch. 9525.0024, subp. 5-6.

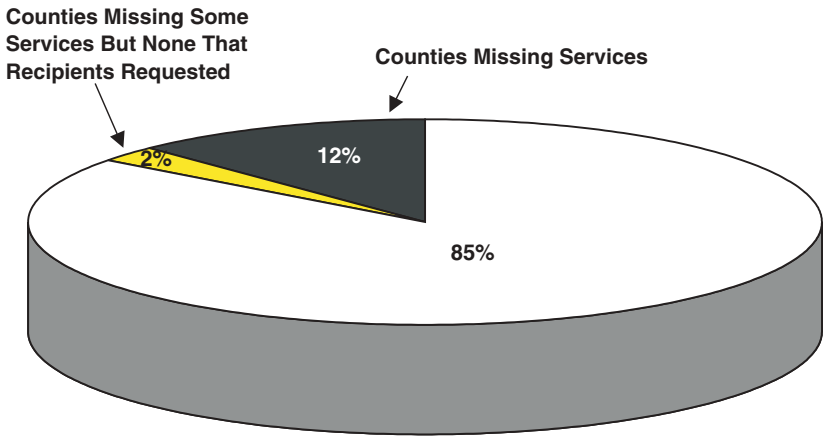
The Department of Human Services does not monitor the availability of services from county to county. About one in eight counties reported on our survey that they did not have a full range of MR/RC services available at the end of 2002 for their MR/RC Waiver recipients. Another two counties said they did not have all services but did have available those services being requested at the time, as Figure 3.3 shows. Most often, counties reported that the unavailable services were 24-hour emergency assistance, adult day care service, and housing access coordination. All of the counties without full services, however, reported taking steps to correct the situation. Counties most often said that they either approach current providers to discuss expanding existing services or attempt to obtain the service from providers in neighboring counties.

One in eight counties reported that they did not have a full range of MR/RC Waiver services available at the end of 2002.

The open-enrollment period of 2001 exacerbated the lack of services in certain counties. Only 20 percent of counties, most of which were smaller counties, reported having services in place when open enrollment ended in July 2001 to accommodate all or nearly all of MR/RC Waiver recipients' needs. Within six months of the end of open enrollment, 73 percent of all counties reported having full services available. Two counties indicated they did not have full services available a year and a half after open enrollment ended.[31]

Ensuring Assessment of Needs in a Timely Way – Several state rules specify timelines for certain county activities. One applies to the timing for completing

Figure 3.3: Range of Services Available in 2002 as Reported by Counties, 2003



NOTES: The question read: "As of the end of 2002, was the full range of MR/RC waiver services available for your county's MR/RC Waiver recipients?" Percentages do not total 100 percent due to rounding. (*N*=82)

SOURCE: Office of the Legislative Auditor, County Questionnaire on the Mental Retardation or Related Conditions Waiver, September 2003.

31 In one case, most of the new waiver recipients were children, but the county's services at the time were more appropriate for adults. In another case, a county reported that its remote location and small number of potential recipients made it difficult to attract providers.

diagnostic evaluations, and a second applies to the initial meeting of screening teams. These rules help ensure that applicants for waiver services and new recipients do not wait excessively before receiving services to which they are entitled. In reviewing county compliance, we did not assess how the lack of timeliness affected waiver recipients.

Many counties acknowledged difficulties in meeting timeliness requirements for completing diagnostic evaluations of MR/RC Waiver applicants.

When individuals apply for the MR/RC Waiver program, state rules require counties to complete diagnostic evaluations within 35 days to determine applicants' eligibility.[32] The Department of Human Services does not review the timeliness of counties' activities, but many counties acknowledged difficulty in meeting the timeline for completing the diagnostic evaluations. Just 29 percent of counties reported in response to our survey that they completed the diagnostic evaluations in a timely way for all applicants in 2002; about a third of counties reported meeting the timeline for less than 90 percent of their applicants.[33] State statutes give waiver recipients the right to file an appeal when they believe that a county agency has taken longer to act than statutes require.[34] Appeals are an insufficient method for controlling county timeliness because the appeals process can be time consuming and drawn out, and recipients file relatively few appeals for any reason, with just 6 MR/RC Waiver appeals in 2001 and 16 in 2002.

Service planning teams identify waiver recipients' needs and preferences for services.

A second timing requirement applies to screening teams, which review diagnostic evaluations and other data and determine a person's level of needed care. State rules require that counties convene screening team meetings within 60 days of a person's initial request for service.[35] About one-third of counties reported in our survey that they did not meet the screening team deadline for all of their MR/RC

32 *Minn. Rules* (2003), ch. 9525.0016, subp. 3.

33 In addition, three counties, including two of the largest counties, responded that they did not have information to answer the question. About 79 percent of counties reported that they did not meet the timelines because applicants did not meet their responsibilities to complete the diagnostic evaluations and 72 percent of counties reported that the limited availability of psychologists to administer tests was a barrier to meeting the timelines, although this was far more common in the medium- and small-sized counties than in the large ones.

34 *Minn. Stat.* (2003) §256.045, subd. 3.

35 *Minn. Rules* (2003), ch. 9525.0016, subp. 7.

Waiver recipients, but most reported meeting the 60-day requirement for 90 to 99 percent of their waiver recipients.[36]

NEED FOR STATE REVIEW OF COUNTY ADMINISTRATION

In 2004, the Department of Human Services plans to begin reviewing county administration of all Medicaid Home and Community-Based Waiver programs. Its goals for the county reviews are to: gain familiarity with local practices, target training and technical assistance, and correct any inappropriate behavior.

The Department of Human Services' county reviews will allow the department to help ensure compliance with state rules.

RECOMMENDATION

When the Department of Human Services begins formally reviewing county administration of Home and Community-Based Waiver programs in 2004, it should assess county compliance with practices required in state rules for the MR/RC Waiver program.

All counties are obligated to follow state rules governing the MR/RC Waiver program. Formal county reviews offer the department an opportunity to examine county practices more closely and help ensure compliance. While addressing our recommendation may increase the cost of the reviews, it fits with the department's goals for the reviews.

36 Counties most commonly said that the reason for delay was that recipients did not meet their responsibilities to participate in a meeting. A number of smaller counties volunteered that the need to wait for eligibility determinations or diagnostic information prevented them from meeting the timing requirement.