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June 18, 2019

Division of Medicaid Services
Bureau of Adult Programs and Policy
PO Box 309
Madison, WI 53701-0309
dhsfcwebmail@wisconsin.gov

Re: [Family Care 1915\(c\) Waiver Renewal](#)

To the Bureau of Adult Programs and Policy:

In the past five years, we at Psychiatric Service Dog Partners have continued to build our advocacy portfolio on behalf of service dog users (not related businesses, such as service dog programs or accreditation organizations). We are a peer-led group whose efforts have touched the US Supreme Court, legislators, and federal regulators at various agencies, leading to multiple invitations to provide expert consultation services. We serve as expert witnesses and publish authoritative resources, such as our 358-page recent history of service animal recommendations through our USAUSA service animal coalition.

I note the time period of five years because that is when we were last able to comment on the topic at hand, attempting to point Wisconsin in a more equitable direction for service dog users with its previous 1915(c) application. You'll find our earlier comment appended to this letter.

Support for owner-training still needed

The spirit of our 2014 comment remains in force and remains necessary for your office to heed. We sincerely appreciate that Wisconsin has waiver program coverage pertaining to *some* service dogs. However, the way in which the previous and current waiver applications are written anticipates only the existence of service dog programs, thus excluding and discriminating against the numerous owner-trainers of service dogs.

We provided a primer and references on this in our attached 2014 comment, so I will not reprise it all here. It may suffice to note that individuals using owner-trained service dogs have the same federal access rights as those using program-trained service dogs—federal access laws do not discriminate based on the training source, as agencies such as the US Department of Justice explicitly recognized this would be wrong.*

Here I will direct you to the relevant portions of the present application so that we can see what remains in need of improvement. The adaptive aids service Wisconsin elects to cover in its application includes the following on page 77:

[...] (1) the purchase of a fully trained service dog from a reputable provider with experience providing structured training for service dogs; (2) the post-purchase training necessary to partner a fully trained service dog with its owner (i.e. enable the fully trained service dog and the member to work together); and (3) the ongoing maintenance costs of a fully trained service dog based on DHS guidelines. For the purpose of coverage as an adaptive aid benefit, a service dog is a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.

Note that *only* (3) may apply to an owner-trained service dog. (1) and (2) cover the costs of (a program) developing a service dog and pairing it with someone.

* In "Subpart C—Specific Requirements" of DOJ's 2010 "Appendix A to Part 36—Guidance on Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and Commercial Facilities", DOJ elaborates:

Training requirement. Certain commenters recommended the adoption of formal training requirements for service animals. The Department has rejected this approach and will not impose any type of formal training requirements or certification process, but will continue to require that service animals be individually trained to do work or perform tasks for the benefit of an individual with a disability. While some groups have urged the Department to modify this position, the Department has determined that such a modification would not serve the full array of individuals with disabilities who use service animals, since individuals with disabilities may be capable of training, and some have trained, their service animal to perform tasks or do work to accommodate their disability. A training and certification requirement would increase the expense of acquiring a service animal and might limit access to service animals for individuals with limited financial resources.

https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=1fcb95e0991fa49ff719bbe362cdddc1&ty=HTML&h=L&n=28y1.0.1.1.37&r=PART#ap28.1.36.0000_0nbspnbspnbsp.a

Under the limitations on the same page (emphasis added below), the renewal application specifically excludes the training of service dogs or the maintenance costs of a service dog in training, as if the purchase price of a program dog were not merely that rose by another name:

*Costs related to a dog that does not meet the definition of a service dog (i.e. emotional support dog, therapy dog, **dog training to become a service dog**, household pet).*

Consider here that it is common for a program to require partial or total payment before a dog is fully trained. As the renewal application is written now, even for a program dog, the person with a disability would likely have to be Atlas to shoulder the costs before the dog is ready for delivery!

In asking you to make minor adjustments that prioritize people with disabilities, rather than service dog businesses, our community does not ask you for special treatment. We do ask Wisconsin for fair and reasoned treatment.

Fair and reasoned treatment

Reasoned treatment in this regard would include that Wisconsin should not simply assume that any business set up to appear as a service dog program is a "reputable provider". Some organizations, through intention or simply effect, function as scams when they relieve a party of tens of thousands of dollars with little recourse and do not provide a dog able to perform as a service dog. Even accredited programs can provide dogs that fall short.

Thus, I would expect that any on-the-ground official administering this benefit would perform at least a quick, non-expert review of the service dog program the waiver funds were to be directed toward. A central guiding inquiry would be about what the plan is to produce a functioning service dog, such that there is a reasonable chance of a positive outcome from the investment.

Fair treatment allows equal access to the funds designed to pay for the development and pairing of a service dog. This means that the focus would be on the ability of the party in question to produce the proper end result (a working service dog). Given that so many people with disabilities have asserted their rights and actually produced a plethora of functioning service dogs, officials may no longer hide behind the prejudice that a disability means a person is totally incapable of doing anything productive and must

be wholly cared for by others, as through a "charity model" of disability. Many people with disabilities can accomplish what they are empowered to do with the appropriate support.

This is why our community implores you that it is only fair to consider an individual's well-articulated application on equal footing with any other party's application. Not even to allow the possibility of aiding an owner-trainer with the more economical and tailored production of a service dog is tantamount to declaring your state has no faith in people with disabilities to do great things through their own determination. Excluding owner-trainers from a service dog benefit is a straightforward way to disempower the disability community.

Beyond the basics of civil rights, it can be in Wisconsin's economic interest to support the typically much, much lower cost of owner-training. The point of the waiver program is to help people stay integrated in their communities, but also to honor the fact that providing such waiver program support can easily be more fiscally responsible overall.

Updating the application language

Let us be clear: I am not asking Wisconsin to approve any random, poorly thought out application for service dog waiver benefits. But that need to evaluate applies to all comers. Below I suggest language adjustments for the renewal application that could lay the groundwork for this more fair approach.

First, it is easy to modify the limitations entry quoted above not to exclude the use of funds for owner-training. The entry could read as follows:

Costs related to a dog that either does not meet the definition of a service dog or is not being trained and expected to meet that definition (e.g. a dog that is only an emotional support dog, therapy dog, or household pet).

The main entry from page 77 needs a bit more attention, but the modifications related to owner-training would not be difficult in item (1):

[...] (1) the purchase of a fully trained service dog from a reputable provider with experience providing structured training for service dogs, or the approved initial purchase of a dog obtained for the express purpose of executing a specific plan to owner-train the dog as a service dog, as well as ongoing

training and maintenance costs based on DHS guidelines while reasonable training progress is made; (2) the post-purchase training necessary to partner a fully trained service dog with its owner (i.e. enable the fully trained service dog and the member to work together); and (3) the ongoing maintenance costs of a fully trained service dog based on DHS guidelines. For the purpose of coverage as an adaptive aid benefit, a service dog is a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.

I do not intend to over-specify how this would work in practice. The use of such funds for service dogs is not common and should be evaluated on a case-by-case basis (including working with a program's payment structure). However, as in the case I made above, this evaluation should at least be open to the possibility of people with disabilities being capable of training their own service dogs to meet their needs. This is not only a possibility, but is solidly and undeniably our reality.

Just as with program-trained dogs, the chance of success is not 100%. Program dogs are returned to be "washed out" from service or re-trained all the time, so we could expect the same imperfection from owner-trainers. But this is a public investment and should be thought of as similar to a loan or job application.

If an applicant comes in with a responsible approach, the applicant should not be discriminated against for choosing a path simply because it was not as present or understood in the minds of the application drafters of yesteryear. Our community has hope that this time, Wisconsin will seize the opportunity to ratchet up the progress for people with disabilities by eliminating undue discrimination against owner-training in the 1915(c) renewal application.

Sincerely,



Bradley W. Morris, MA, CPhil
Director of Government Relations
on behalf of the Board of Directors
Psychiatric Service Dog Partners

Psychiatric Service Dogs Partners' purpose is to promote the mental health of people using service dogs for psychiatric disabilities by educating, advocating, providing expertise, facilitating peer support, and promoting responsible service dog training and handling.



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August 25, 2014

Division of Long Term Care
Office of Family Care Expansion – Attn: 1915(c) Waiver Application
1 West Wilson St, Room 518
PO Box 7851
Madison WI 53707-7851
DHSOFCE@dhs.wisconsin.gov

Dear Wisconsin Department of Health Services, Office of Family Care Expansion,

The Board of Directors of Psychiatric Service Dog Partners (“PSDP”), which has stakeholders in Wisconsin, the rest of the United States, and internationally, generally supports efforts in regulations to recognize the functions service dogs provide as analogous to those provided by other medical equipment. We find this recognition, and pursuant treatment, is justified on grounds of parity and economics, in accordance with the stated purposes of the [renewal application draft of the Medicaid Home and Community-Based Services \(HCBS\) Family Care waiver program](#) (“waiver program draft”) authorized in §1915(c) of the Social Security Act.

While PSDP supports and sincerely appreciates these efforts, we find it imperative to address a flaw of great detriment to our community in the currently proposed waiver program, regarding the absence of an avenue for owner-trainers of service dogs to participate in the service dog benefit. We explain the flaw and its ramifications below, then suggest alternative language that we believe would patch the error so that the waiver program does not unduly discriminate against a great deal of current and prospective service dog users.

The two basic options for obtaining a service dog are to purchase/receive one from a program* and to train one oneself (“owner-training”). Most people are familiar with the former possibility since large organizations experience more publicity, but owner-training remains less in the public

* While it is not within our purview to explore the impact of the waiver program draft language on those who want to obtain a service dog from a program, there is something we find worth noting in this regard. Many programs do not outright “sell” or offer for “purchase” any service dogs, but they require that a certain amount of money be raised/donated in the name of the party that is to receive a service dog from the program. We will not comment on whether this sort of disconnected sale is right or wrong, but we note that the language regarding the “initial purchase of a service dog” in the waiver program may keep prospective service dog users from availing themselves of the waiver program benefit in conjunction with such organizations.

eye without the means for such publicity, in spite of the large number of individuals who use owner-trained service dogs. It is very difficult to estimate the number of service dogs in the United States, but in September of 2013 our Secretary conducted a study indicating there are between 15,000 and 45,000 service dogs in the U.S., and that 5,000–20,000 of these were owner-trained. Long-term trends signal that the numbers in both categories have been rising.

We respectfully contend that if the waiver program extends benefits to those who purchase a dog from a program that trains service dogs, it must extend an equivalent benefit to those who purchase a dog for the express purpose of owner-training it as a service dog. The prohibitive cost and waiting times for many programs (as well as the proliferation of less-than-desirable programs) make owner-training a must for many people with disabilities who wish to be afforded the same benefits of independence and community-integration.

In addition, the inherent benefits of owner-training make it not only preferable for some types of disabilities, our experience is that owner-training is practically essential for a successful working relationship for many teams. We do not mean to say that program-dogs are not enormously beneficial for those with certain other types of disabilities; to some extent, service dogs may be “interchangeable” between persons with disabilities requiring the same assistance behaviors, like a particular size and type of wheelchair would be.

However, for many types of work and tasks a service dog can provide, it is simply not possible to purchase a service dog that is “ready-to-go, fresh out of the package”. The training of some assistance behaviors simply requires that the dog spend an extended period of time with the disabled individual, in order to be able to recognize and respond to departures from the individual's physiological or emotional baseline. In cases of this type, the dog must undergo extensive training while cohabiting with the person with a disability, and so a dog simply could not be purchased as a fully-trained service dog for such a person.

This means that restricting a service dog benefit to those types of service dogs that can be successfully trained independent of the end-user is a restriction that discriminates against those with disabilities that cannot be mitigated by a one-size-fits-all program dog. It may also lead to persons with disabilities turning to programs when an owner-training path would be significantly more beneficial, merely because the waiver program only provides a financial conduit for the program-training path.

For more information, see “Do I train my own dog or get a dog from a program?” under our “Choosing a Service Dog Prospect” Frequently Asked Questions webpage:

<http://www.psychdogpartners.org/resources/frequently-asked-questions/faq-choosing-service-dog-prospect>

Also see “Why is it important that I'm involved in my dog's training?” under our “Training—Basics” Frequently Asked Questions webpage:

<http://www.psychdogpartners.org/resources/frequently-asked-questions/faq-training-basics>

For the aforementioned reasons, we recommend modifying the language on pages 64 and 65. Currently, the relevant portions under “**Service Definition**” and under “**Provider Qualifications**[...]”**Other Standard**”, respectively, read:

“The service may also include the initial purchase of a service dog and routine veterinary costs for a service dog.”

“Reputable provider with experience providing and training service dogs.”

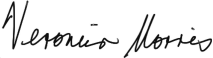
In order to best serve the stated goals of the waiver program, we offer the following language instead (in the two respective locations):

“The service may also include the initial purchase of a service dog, or the initial purchase of a dog obtained for the express purpose of executing a specific plan to owner-train a service dog, as well as routine veterinary costs for either such dog.”

“Reputable provider with either (1) experience providing and training service dogs (in the case of program-trained dogs), or (2) experience breeding dogs with health checks and temperament determinations sufficient to assess the suitability of the dog as a service dog prospect.”

Since the information and reasoning we have provided is not something readily available to those without the relevant highly specialized expertise, PSDP recognizes that we cannot expect waiver program drafters to operate with a perfect knowledge of this specialized subject matter without feedback from those stakeholders with this expertise. We sincerely hope our comments are helpful in this regard, and we look forward to hearing how Wisconsin's DHS will incorporate what we have offered. Please do not hesitate to contact us if we may be of further assistance.

With great respect,


Veronica Morris, PhD
President, Board of Directors
on behalf of the PSDP Board of Directors

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