

Comments and Responses on ARC 7626B
County Responsibility for Persons Without Legal Settlement
Received April 2, 2009

The following persons and organizations provided comments, which are included in the summary below:

Frank Cal Tenuta, managing attorney, Iowa Legal Aid
Deb Schildroth, central point of coordination administrator, Story County

Definition

COMMENT: It is unclear why it is necessary to insert this additional language [about the county where the person is living into the definition of “county of residence”] beyond what is already in the statute. Also, the language, on first reading seems to be contradictory, and does not add to the definition. If the intention of the additional language is to distinguish adults from children, a new definition regarding the residence of minors should be proposed to that it can be reviewed and commented on. If the intention of the additional language is to distinguish non-Iowa residents, some explanation of who is an Iowa resident is required and that would seem to run into serious constitutional issues under *Memorial Hospital v. Maricopa County*, 415 U.S. 250(1974) and *Saenz v. Roe*, 526 U.S. 489(1999).

RESPONSE: The intention of the additional language is not to distinguish between residents and non-residents of Iowa, nor is it to distinguish between children and adults. It is to clarify who is responsible for the service coordination function of persons moving to or living in congregate care facilities.

This language originated because of large institutions located in small counties and the increase in the service coordination function that would be required to handle the number of clients living in congregate care. The MH/MR/DD/BI Commission made a decision in 2003 that congregate care placement would be the responsibility of the county placing the client, not the county where the congregate care facility is located.

Clients who move into a county freely, live in the community (not being sent there specifically for the congregate care facility services) and would need 100% county funded services would go through the county of residence CPC.

Intake Procedures

COMMENT: When moving a client from the county of legal settlement to another county to receive services in a residential care facility, does the client go through the county of residence? What about clients in community based services, such as living in their own apartment, paying rent and receiving supported community living? (Schildroth)

RESPONSE: When a client moves into a residential care facility, the client is going to that county explicitly to receive residential services in that facility and is not moving to that county because of the client’s own free will. Therefore, the client would not go through the

county of residence CPC. If the client moves to a county, pays rent, and needs support services, then the client would go through county of residence CPC. This policy is based on a decision by the MH/MR/DD/BI Commission in 2003.

COMMENT: If the county of residence has a new client come through the local mental health center, the county of residence CPC does the notice of decision that is sent to the client, the provider and the county of legal settlement. What is the responsibility of the CPC of the county of legal settlement in respect to that notice of decision? (Schildroth)

RESPONSE: The county of legal settlement is to accept or dispute legal settlement, sign off on the notice of decision and return a copy to the county of residence CPC and the provider. The client does not need a copy of the second notice of decision because the client has been approved for funding and it is up to the county of residence to argue the legal settlement status for the client. This should be less confusing for the client.

Waiting List

COMMENT: Under Item 3, there is new language regarding the use of the county of legal settlement waiting list. This provision appears to be in accord with Iowa Code §331.439(5). However, it does raise questions about individuals who are residents of the same county being treated differently based on the fact that one of those residents has legal settlement in a different county,. As a result, this may implicate equal protection and right to travel issues. See *Memorial Hospital v. Maricopa County*, 415 U.S. 250(1974) and *Saenz v. Roe*, 526 U.S. 489(1999). (Tenuta)

RESPONSE: The waiting list language does reflect Iowa Code section 331.439(5). The Commission has no authority to make rules that supersede Iowa Code.

Reauthorization

COMMENT: Item 3, subsection g(3) requires the county of legal settlement to manage the reauthorization of enrollment. This provision could create confusion among those providing or receiving services. They would be required to apply in their county of residence initially, but then would be required to deal with their county of legal settlement regarding ongoing eligibility. (Tenuta)

COMMENT: Story County wants the county of legal settlement to do the reauthorization for clients with residency in another county. Story County would like to suggest that in 25.14-2g(2) “The consumer shall apply for additional services with the CPC of the county of residence...” the word “shall” be changed to “may”. (Schildroth)

RESPONSE: These comments are well taken, but we have decided to maintain the word ‘shall’ in the document. Once the county of residence has made the decision that a client is eligible for funding and the county of legal settlement has accepted responsibility for payment of services, the county of residence no longer has any responsibility for that client, unless there is a service change.

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The county of legal settlement is handling the contractual requirements with the providers for payment of the services the client is receiving and is responsible for the utilization review for those services. As the funder, the county of legal settlement must also verify on a regular basis that the clients receiving funding continue to meet financial and diagnostic eligibility requirements of their county of residence.

Until the funding that counties receive is based on a client's county of residence rather than the client's county of legal settlement, this process will continue to be complicated.