

Center for Disability Rights, Inc.

July 26, 2010

Maggie Brooks
County Executive
County Office Building
39 West Main Street
Rochester, NY 14614

Re: Commissioner Reed's Letter of July 14, 2010

County Executive Brooks:

I am following up on our correspondence dated July 23, 2010. After writing you a letter asking to meet so we could discuss your decision to terminate Monroe County's contract with the Center for Disability Rights to provide fiscal intermediary services under the Consumer Directed Personal Assistance Program, a member of the media provided me with a copy of the letter that Commissioner Kelly A. Reed sent to you on July 14, 2010. I am deeply disappointed that Monroe County chose to communicate its concerns to the media rather than address the issues directly with the Center for Disability Rights, but I am even more disturbed by the inaccuracy of the allegations in Commissioner Reed's letter.

Given the significant number of inaccuracies in Commissioner Reed's letter on which you have based your decision to discontinue our contract, I am once again requesting that you delay implementation of this decision until after you have met with us to review the facts of the situation and been able to make an informed decision. To facilitate such a process, I will address Commissioner Reed's inaccuracies below.

Commissioner Reed's letter states that "Monroe County has worked with CDR in earnest for nearly a year to rectify" concerns about CDR's performance. I have attached a series of documents which clearly demonstrate that CDR's requests for meetings with Monroe County's Home Care Unit (HCU) over the course of the year were not granted. In several instances, Monroe County staff simply stated that they are "too busy" to meet. Furthermore, an internal review of documentation of communications with the HCU gives no indication of the level of concern that Commissioner Reed has reported to you in her letter.

Commissioner Reed's letter alleges that CDR is being investigated by the Attorney General's office. CDR is aware of on-going investigations, but those are investigations of attendants and/or consumers in CDR's Consumer Directed Personal Assistance Program (CDPAP). CDR has cooperated fully with these investigations and assisted the Attorney General's office in securing evidence for arrest and prosecution of the individuals involved.

Commissioner Reed's letter describes Medicaid fraud "involving CDR". It is important to recognize that CDR was never a party to any Medicaid fraud. There were criminal charges filed against attendants, but no charges were ever filed against CDR. CDR's systems clearly allowed the case to be successfully prosecuted, and based on a recommendation from the Attorney General's office, we added additional attestations on our timesheets that make prosecution easier in the future. CDR continues to contact the Attorney General's office when we identify suspicious activity, and we are assisting in on-going investigations.

Regarding Commissioner Reed's indication that "concerns with CDR were a driving force behind Monroe County's implementation of the Voice Recognition System (VRS)," I am concerned that prior to such implementation there had been no communication from Monroe County to CDR that there was any concern. As Commissioner Reed indicates, CDR did take issue with the implementation of the voice recognition system, but that was because we feel strongly that our paper timesheet system, which as I have just stated was refined in collaboration with the Attorney General's office, is more effective at dissuading and prosecuting Medicaid fraud. It seems important to note that since the VRS was implemented, there have been many significant problems with the system.

In meetings with Monroe County staff, CDR had clearly identified that the VRS would not prevent fraud. In fact, I personally demonstrated this fact to Mr. Marchese by using an online service to "spoof" his home phone number when I called him about this issue. When Monroe County implemented a call back feature of the VRS, it was met with an overwhelming negative response by consumers which forced Monroe County to deactivate that feature. Without this feature, VRS does nothing to prevent the "Bingo" situation described in Ms. Reed's letter and does less than CDR's paper timesheets to identify or prosecute such a situation. Our last communication with Monroe County on this issue was an understanding that CDR would maintain our unique paper timesheets because of DHS staff felt the combined systems provided the best level of fraud control.

It is important to note that the VRS has flagged every attendant call-in and call-out since mid-March as a "location fail." Despite multiple communications from CDR to Monroe County and to the VRS vendor, this remains unresolved. Furthermore, the VRS has flagged every attendant call-in and call-out since July 19, 2010, as a voice fail. The voice recognition system cannot recognize voices.

Accessibility and language barriers also prevent effective use of this system. Specifically, the VRS does not accommodate individuals who are Deaf, and is unusable by CDR's attendants of Somali origin. Because of a strong commitment to serving the Hispanic community, many of CDR's attendants speak Spanish as their primary language. While it is true that after CDR raised concerns about such access that the prompts have been translated into Spanish, the numbers themselves remain in English. We have found that many individual accents are unrecognized by the system and cause false "red flags" in the system.

I recognize that, at times, CDR's systems fail and our staff make mistakes, such was the case with the woman with Multiple Sclerosis cited in Commissioner Reed's letter. We accept responsibility for our staff person's failure to inform Monroe County of the health concerns of which he was aware. However, this was an isolated incident and ensuring scheduled attendant coverage of this or any other person in our program is not CDR's responsibility per the Memorandum of Understanding (MOU). According to the most recent MOU signed by Monroe County, the consumer is responsible for arranging and scheduling back up coverage. CDR does

provide training and support to assist consumers with recruitment. In fact, CDR is the ONLY vendor in Monroe County that provides every consumer with a private voicemail box so that they do not have to publicize their home phone number when recruiting attendants. CDR also holds “open interview” nights at least once a month. At this popular event, people can interview prospective attendants in our offices, rather than having strangers come into their homes. CDR also makes meeting space available to consumers for this purpose at their request.

Another inaccuracy in Commissioner Reed’s letter can be found in the story of Client #1. Nowhere has it been communicated to CDR that Monroe County assesses the suitability of people’s homes before a move can occur. The nursing abstract written by Monroe County for this client actually identifies that he had moved several times in the preceding month. According to the MOU, it is our understanding that the person is him or herself responsible to communicate a new address to their caseworker at Monroe County. Client #1 continues to choose to receive CDPAP from CDR.

Commissioner Reed also states that CDR’s “Service Coordinator is explicitly assigned to review coverage hours and notify DHS of any change in conditions for a client within 2 days”... and “is under contractual obligation to do so.” I have attached the most recent MOU signed by both CDR and Monroe County which provides the contractual basis for our work. The MOU neither implicitly nor explicitly requires any CDR staff to review and notify Monroe County of such information. There is no mention in the 2007 MOU that any information must be communicated to Monroe County within two days (see enclosure).

Regarding Client #2, at this consumer’s most recent recertification by Monroe County on or about July 22, 2010 the County staff did express a concern to him about him using less than 168 hours of service each week. He pointed out that his paperwork indicated that he was authorized for between 112 and 168 hours of service each week. He didn’t always need round-the-clock assistance, so he said that he didn’t understand why he was being held responsible for covering the full 168 hours during the week. He was clear that he wanted to use less hours because he wanted to have time alone and has additional supports available to him.

Even if there is a disagreement between the consumer and the County about this issue, it is clearly stated in the most recently signed MOU, that the consumer is responsible to “recruit, interview, hire, train, supervise, schedule and terminate” his attendants. Additionally, the MOU requires Client #2 to “arrange and schedule back up CDPA coverage for vacations, holidays, and in case of illness.” I do not understand why CDR is being held responsible for his scheduling decisions and I completely fail to understand why Monroe County is forcing consumers to use more home care services than they need or want.

The letter also indicates that:

“In a shoddy attempt to mitigate this issue, CDR provided the client with a Lifeline call button to push in case there was an emergency when an aide was not present. The obvious concern with this plan is that the client does not have dexterity in his arms or hands to utilize the call button.”

The Medicaid-funded personal emergency response system or PERS was actually provided by Monroe County, not CDR. In case you are concerned that your staff made the grievous error that Ms. Reed is accusing CDR of committing, I would like to reassure you that the consumer can in fact use the call button despite his limited dexterity. He can push the button with his knuckle or nose, depending on the position he is in, or he can put

it in his mouth and bite it. He always makes sure he is in a position where he can use the call button before his attendants leave. Furthermore, he is a quadriplegic, not a paraplegic as indicated in Ms. Reed's letter. Paraplegics would not have the described dexterity limitations.

If Monroe County had such serious concerns about this man's safety, I don't think Commissioner Reed's staff would have recertified him for the program last week. As described in the MOU, it is clearly the county's responsibility to determine eligibility of the consumer for this program and to facilitate transfer to another delivery model, should the county determine that the consumer is inappropriate for this type of service.

Finally, Client #2 indicates that "it is done this way so that they (CDR) avoid any liability/responsibility". He is correct and understands the nuances of this issue well because, in fact, he was involved in developing CDR's original program policies. To be clear, CDR serves as a fiscal intermediary. We do not assume the consumer's responsibilities of recruiting, interviewing, hiring, training, supervising, scheduling and terminating attendants. We provide assistance and support, but recognize the consumer's responsibility to perform these functions and monitor their ability to do so.

Client #2 is clear that he wishes to continue to receive CDPAP through CDR.

We are deeply concerned about organizations that perform some or all of these functions while claiming to be a consumer directed program. They are not fiscal intermediaries. Instead of supporting consumers in managing their own services, they are using the consumer directed personal assistance program to bypass the regulations which oversee home care. That was never the intent of the program.

Commissioner Reed's letter indicates that Client #3 had not used the VRS. Because he is Spanish speaking, as are many of his attendants, they have experienced a great deal of difficulty with the VRS. We have made the county aware of this problem since the system was first announced so your staff should not be surprised about this issue. The attendant who was frequently late, as described in Ms. Reed's letter, was terminated by the supervisor. Client #3 continues to receive services from CDR and reports that he is very satisfied at this time.

I saw Client #4 at CDR's fundraising Gala Friday night. She reports that she is pleased with her CDPAP services, although there are sometimes difficulties between herself and her self-directing other (SDO) who manages her services. She indicated that she is upset that Monroe County is distorting her statements and using them to close down a program with which she is satisfied. CDR was aware of the situation with the attendant reportedly under the influence and supported the client and the SDO in their decision to discipline the attendant. Client #4 continues to choose CDR as her vendor for CDPAP.

Commissioner Reed makes a vague and unsupported allegation that "multiple State agencies" have "continued interest in pursuing CDR for fraud and abuse". CDR has been reviewed by various state agencies over the years, including the Attorney General and the Office of the Medicaid Inspector General. These "multiple State agencies" have conducted reviews of our programs and the negative findings have been minimal. I will acknowledge that we have been cited for billing CDPAP services when consumers were hospitalized, but did so because the consumer and attendants submitted timesheets and avoided CDR finding out about the hospitalization. As I have mentioned previously, we have referred questionable situations, such

as this, to the Attorney General and the Officer of the Medicaid Inspector General and cooperated in their investigations, some of which are on-going.

Based on a recommendation from the Attorney General's office, we modified our timesheets making the prosecution of those who commit fraud more likely, and as we explained to your staff, our Medicaid billing is generated directly from the timesheet data. This system prevents any staff person in our office from generating erroneous or fraudulent billing. CDR has an extensive fraud prevention program, and we are happy to give you a presentation on it. I am sure that none of the other agencies has controls that would match ours.

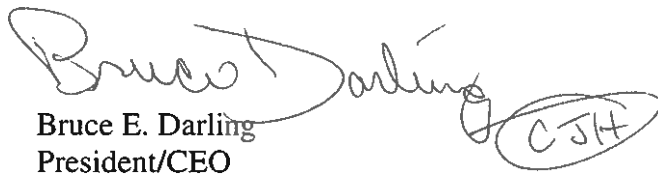
There are two more inaccuracies I found in the second to last paragraph of Commissioner Reed's letter. Commissioner Reed indicated that "CDR is primarily an advocacy organization." Although CDR began as a volunteer advocacy organization, we changed our mission in 1998 to include service delivery. Many people in the community may only recognize CDR as an advocacy organization, but the vast majority of our budget comes from and goes to the delivery of services. Commissioner Reed goes on to state that CDR "chose to enter into business as a for-profit home care services provider several years ago." CDR is a 501(c)3 not-for-profit organization, and CDR has been providing CDPAP in Monroe County for over 10 years.

In closing, **the allegations of widespread neglect are clearly false**, and there appears to be a substantial misunderstanding by Commissioner Reed of what is required of a CDPAP vendor under the MOU. **We cannot understand why Commissioner Reed would want to shut down a non-profit provider which has better fraud control measures, provides better consumer support, maximizes consumer control and costs less.** We remain committed to resolving this crisis and continuing to be a CDPAP vendor in Monroe County.

Please contact me at (585) 546-7510 to arrange a meeting so we can avoid further disrupting the lives of people with disabilities, their families and their attendants. These people should not be penalized because of a decision that was clearly made based on such inaccurate information.

Thank you.

Sincerely,

A handwritten signature in cursive that reads "Bruce Darling". To the right of the signature is a circular stamp containing the initials "CJH".
Bruce E. Darling
President/CEO

cc: Kelly A. Reed, DHS Commissioner
Kara Halstead, Special Assistant, Monroe County
Marc Natale, Director of Community Relations, Monroe County