

PRIORITIZATION OF DSPD SERVICES

BACKGROUND INFORMATION FOR THE HEALTH AND HUMAN SERVICES INTERIM COMMITTEE July 20, 2005 Meeting, Agenda Item 2

Office of Legislative Research and General Counsel

July 2005

COMMITTEE OBJECTIVE

At the Health and Human Services Interim Committee's April meeting, the Department of Human Services requested that the committee review how funds are distributed to persons on the DSPD (Division of Services for People With Disabilities) waiting list for services. DSPD will discuss its current practice and make recommendations at the committee's July 20 meeting.

SUMMARY

This background brief is designed to inform the committee of statutes, administrative rules, and legislative intent language affecting the use of waiting list funds. This brief also highlights several points made by a 2001 legislative audit and provides historical data on the size and funding of the waiting list.

ELIGIBILITY

INDIVIDUALS AND THEIR FAMILIES ARE ELIGIBLE FOR SERVICES Utah law charges DSPD with "the responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities and their families in this state." (§62A-5-102)

A PERSON MUST MEET SEVEN CONDITIONS TO BE ELIGIBLE FOR SERVICES "Disability" is defined as a "severe, chronic disability that:

- (i) is attributable to:
 - (A) mental retardation;
 - (B) a condition that qualifies a person as a person with a related condition, as defined in 42 C.F.R. 435.1009;
 - (C) a brain injury; or
 - (D) a physical disability;
- (ii) is likely to continue indefinitely;
- (iii) results in a substantial functional limitation in three or more of the following areas of major life activity:
 - (A) self-care;
 - (B) receptive and expressive language;
 - (C) learning;
 - (D) mobility;
 - (E) self-direction;
 - (F) capacity for independent living; or
 - (G) economic self-sufficiency; and
- (iv) requires a combination or sequence of

special interdisciplinary or generic care, treatment, or other services that:

- (A) may continue throughout life; and
- (B) must be individually planned and coordinated." (§62A-5-101(9)(a).
Text underlined here and in other excerpts for emphasis.)

CERTAIN CONDITIONS ARE SPECIFICALLY EXCLUDED "Disability" is also defined to exclude "a condition due solely to:

- (i) mental illness;
- (ii) personality disorder;
- (iii) hearing impairment;
- (iv) visual impairment;
- (v) learning disability;
- (vi) behavior disorder;
- (vii) substance abuse; or
- (viii) the aging process." (§62A-5-101(9)(b))

PRIORITIZATION OF SERVICES

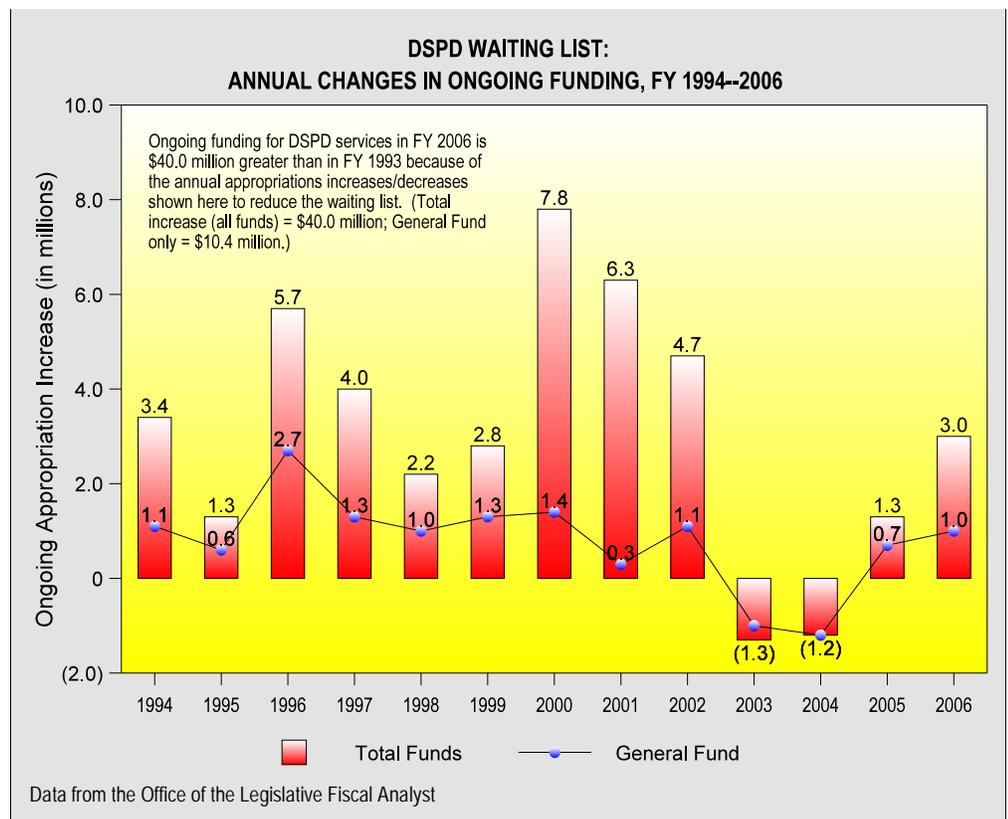
SOME SERVICES ARE LIMITED BY FUNDING "Within appropriations from the Legislature, the division shall provide services to any person with

a disability...." (§62A-5-102(3)) Many services and supports are available as an entitlement under Medicaid; others are funded under Medicaid, but in practice are limited by available state funding (waiver services); and some are wholly funded and limited by the availability of state funds (non-Medicaid services).

UTAH STATUTE SPECIFIES ELEMENTS TO CONSIDER BUT NOT PRIORITY "The needs of a person [eligible for DSPD services] shall be evaluated based on the:

- (a) severity of the disability;
- (b) urgency of the need for services;
- (c) ability of a parent or guardian to provide the person with appropriate care and supervision; and
- (d) length of time during which the person has not received services from the division."
(§62A-5-102(4))

Although this statute identifies specific elements that the division must consider as it evaluates potential clients, it stops short of specifying how much weight must be given to the outcome of each element and whether or not services must be



allocated to those with the highest needs first.

ADMINISTRATIVE RULE REQUIRES THAT PERSONS WITH HIGHEST NEEDS BE FUNDED FIRST

By administrative rule, DSPD conducts a standardized needs assessment and ranks each person against all other potential clients in the state:

- (1) Pursuant to Subsection 62A-5-102(3), the Division shall determine a Person's eligibility for service, followed by a determination of that Person's priority relative to others who are also eligible. Each region shall use a standardized Needs Assessment to score and prioritize the Person's level of need. Persons with the highest scores shall receive support first. The Support Coordinator shall assess with the Person the array of services that may be needed. If funding is not immediately available, the Person shall be placed on a waiting list for support. Persons who have been determined eligible for the Division's Medicaid Waivers can choose to wait for Division Support services or seek services available through Medicaid in an approved facility.
- (2) If the Person requires and qualifies for services, on the day of intake, the Person is thereby qualified as having an immediate need; otherwise, the Person has a future need.
- (3) A Needs Assessment Form 2-2 shall be completed for all Persons with an immediate need for support services. The Needs Assessment calculates the score of each Person by using the following criteria:
 - (a) severity of the disabling condition;
 - (b) needs of the Person and/or family;
 - (c) length of time on the waiting list, if applicable;
 - (d) appropriate alternatives available; and
 - (e) other factors determined by the Region to reflect accurately on the Person's need:
 - (i) family composition;
 - (ii) skills and stress of primary caregiver;
 - (iii) finances and insurances;
 - (iv) ability to be self-directing;
 - (v) special medical needs;
 - (vi) problem behaviors;
 - (vii) protective service issues;
 - (viii) resources/supports needed;
 - (ix) projected deterioration issues; and
 - (x) time on immediate need waiting list.
- (4) The Region Needs Assessment Committee determines the Person's score, rank orders the scores, and enters the Person's name and score on the statewide waiting list.

- (5) A Person's ranking may change if the Person's needs change or as Needs Assessments are completed for new Applicants.
- (6) No age limitations apply to a Person placed on the waiting list for community living support or family support." (R539-2-4)

LEGISLATIVE INTENT

The allocation of funding for DSPD services has been the subject of appropriations intent language for many years.

1999: MAXIMIZE "ABILITY TO SERVE INDIVIDUALS" "It is the intent of the Legislature that the Division of Services for People with Disabilities seek to maximize its ability to serve individuals on the waiting list [through] reviewing existing policies, budgets, and service allocations and pursuing any appropriate additional federal waivers or funding or other creative mechanisms." (Identical language was adopted each year through 2002.)

2000: LIMIT HCBS WAITING LIST FUNDS TO DIRECT SERVICES AND RELATED SUPPORT "It is the intent of the Legislature that funds appropriated for the home and community based services waiting list for people with disabilities be used exclusively for direct services and related support. (Identical language was adopted each year through 2005.)

2001: LIMIT MINI-GRANTS In response to a division practice of providing limited funding to people other than those at the top of the waiting list, the Legislature adopted the following intent language: "It is the intent of the Legislature that [DSPD] place limitations on the use of one-time mini-grants to individuals and families on the waiting list. Such limitations shall restrict the use of funds to meet the most critical immediate one-time needs of those on the waiting list. It is further the intent of the Legislature that the final approval of each request shall be done exclusively by the Division after a review to assure that each request meets the requirements of legislative intent. The Division shall provide a detailed report to the Health and Human Services Appropriations Subcommittee regarding all grants awarded."

2002: LIMIT NON-MEDICAID/NON-WAIVER INDIVIDUALS TO 15% OF CLIENTS AND SPENDING TO \$6.5 MILLION Appropriations intent language in 2002 provided: "It is the intent of the Legislature that no more than 15 percent of the individuals served by the Division of Services for People with Disabilities shall be non-Medicaid or non-waiver eligible. It is further the intent of the Legislature that in fiscal year 2003, a maximum of

\$6,500,000 in state General Funds and Federal Funds other than Medicaid, be expended on non-Medicaid, non-waiver individuals or services by the Division."

2003: LIMIT NON-MEDICAID/NON-WAIVER SPENDING TO 10% OF BUDGET "It is the intent of the Legislature that [DSPD] not spend more than 10 percent of [its budget] providing services to individuals served by the division who are non-Medicaid or non-waiver eligible."

2004: PAY FOR SPECIFIED SERVICES WITH NONLAPSING FUNDS AND EVENTUALLY BUDGET SAVINGS "It is the intent of the Legislature that the Division of Services for People with Disabilities use non-lapsing funds carried over from FY 2004 to provide services for people needing emergency services, aging out of state custody, child welfare services and juvenile justice services, or being court ordered into DSPD services. It is further the intent of the Legislature that the Division will use generated budget savings to continue funding services for these people by FY 2006. The Division will report regularly to the Office of Legislative Fiscal Analyst on progress in the efforts to generate these cost savings." (Legislation enacted in 2003 made all DSPD funding nonlapsing.)

2005: RENEWAL AND EXPANSION OF LANGUAGE TO PAY FOR SPECIFIED SERVICES WITH NONLAPSING FUNDS "It is the intent of the Legislature that the Division of Services for People with Disabilities (DSPD) use nonlapsing funds carried over from FY 2005 to provide services for individuals needing emergency services, individuals needing additional waiver services, individuals who turn 18 years old and leave state custody from the Divisions of Child and Family Services and Juvenile Justice Services, and individuals court ordered into DSPD services. DSPD will report to the Office of Legislative Fiscal Analyst on the use of these funds."

LEGISLATIVE AUDIT

FINDINGS ADDRESSED ACCURACY OF THE WAITING LIST, USE OF FEDERAL FUNDS, AND DECISIONMAKING In December 2001 the Legislative Auditor General released an audit designed to:

- evaluate the accuracy of DSPD's waiting list;
- evaluate how effectively DSPD utilizes federal matching funds; and
- evaluate the effectiveness of DSPD's decision-making process

In short, the auditor found:

- the waiting list at that time was unreliable;
- it would be helpful to the Legislature if the

division presented various funding options based on alternate policy choices;

- better policy decisions could be made if more information was collected at intake;
- federal funds were not maximized; and
- policy clarification would improve funding decisions.

DIVISION IMPLEMENTED MOST

RECOMMENDATIONS WITHIN ONE YEAR Within one year of the audit, the auditor general found that DSPD had fully implemented 15 of the auditor's 18 recommendations, partially implemented two others, and was in the process of implementing another.

AUDITOR RECOMMENDED DSPD PROVIDE LEGISLATURE WITH MORE FUNDING SCENARIOS AND A WAITING LIST CLASSIFIED BY LEVEL OF NEED

In response to these two recommendations, which the auditor judged partially implemented, the division presented information to the Health and Human Services Interim Committee in September 2002.

AUDITOR RECOMMENDED LEGISLATURE CONSIDER PROVIDING ADDITIONAL POLICY GUIDANCE ON NON-MEDICAID NON-WAIVER EXPENDITURES

This recommendation was addressed by legislation considered during the 2002 General Session. As introduced, H.B. 339 directed DSPD to "give priority to persons who are eligible for Medicaid; and...have the highest ranking need." Need was to be determined by ranking both persons waiting for services and persons already receiving services and excluding time without services as a consideration. These provisions of the bill did not pass. Instead, they were replaced by a requirement that the Board of Services for People With Disabilities:

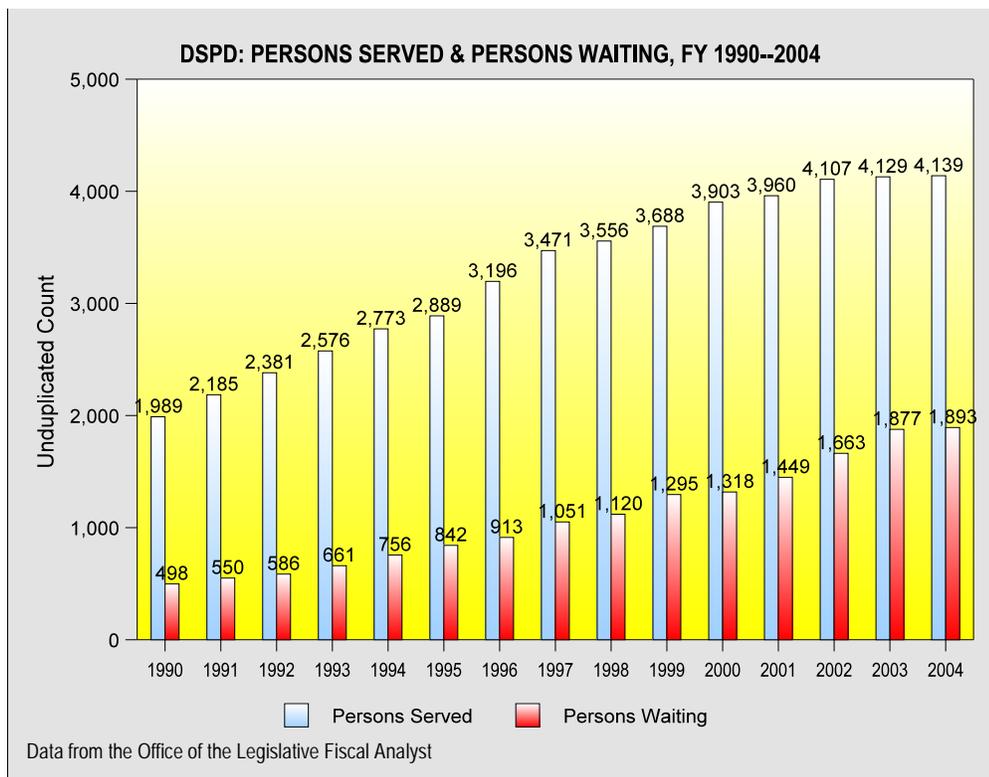
- "(i) establish and periodically review the criteria used to determine who may receive services from the division and how the delivery of those services is prioritized within available funding; and
- (ii) make periodic recommendations based on the review...to the Health and Human Services Interim Committee...." (§62A-5-105)

The Board made an initial report to the committee in September 2002.

SIZE OF WAITING LIST

PRE-2005 GENERAL SESSION:

1,893 PEOPLE WAITING FOR SERVICES (\$8.4 MILLION GENERAL FUND) + 123 PEOPLE WAITING FOR ADDITIONAL SERVICES (\$1.1 MILLION GENERAL FUND) + 796 PEOPLE WITH FUTURE NEEDS WAITING FOR SERVICES (See chart on this page.) In January, the Office of the Legislative Fiscal Analyst reported the following:



"As of October, 2004, there were 1,893 people on the "immediate needs" waiting list who are currently not receiving any services. These include 179 waiting for community residential services, 273 for supported living, 1,230 for family support, 385 for supported employment, 254 for day training, and 69 for personal assistance services. Some individuals are waiting for more than one type of service. It would take approximately \$8.4 million dollars (General Fund) to fund the current waiting list. In addition there are 123 people currently in service who have an immediate need for additional services, with an estimated cost of about \$1.1 million (General Fund). The Division maintains a second list of people identified with future service needs numbering 796 individuals. The total number of all people waiting for services, either with immediate needs, future needs, or both, is 2,225 (unduplicated).

POST-2005 GENERAL SESSION:

\$2.98 MILLION REDUCES WAITING LIST BY 235

During the 2005 General Session the Legislature appropriated \$2.98 million in total ongoing funds (\$1.0 million General Fund) for fiscal year 2006 to reduce the waiting list by approximately 235 people.

FUNDING OF WAITING LIST

(See chart on the first page of this brief.) Over many years, the Legislature has increased funding specifically to address the needs of persons waiting for DSPD services. As a result of these appropriations, ongoing funding for DSPD services in fiscal year 2006 is \$40.0 million

greater than in fiscal year 1993. Other increases have been made during the same period but have not been tied specifically to the waiting list.