

# Chapter 1

## Background

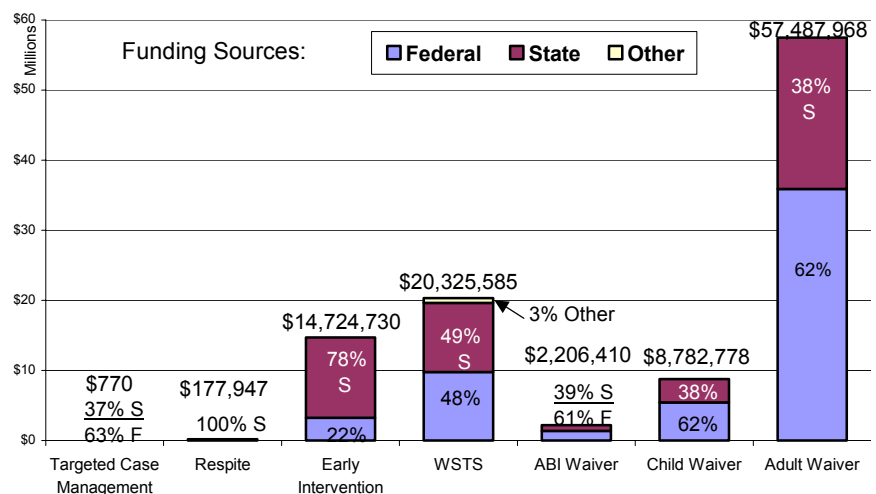
### Report Focuses on Adult Waiver

Wyoming faces a variety of challenges in meeting the needs of its citizens with mental retardation and other developmental disabilities. Increased demands for services place a strain on limited resources, forcing difficult decisions about how best to balance cost and need.

***The Adult Waiver accounted for 55% of the Division's FY '03 expenditures.***

Wyoming citizens with developmental disabilities receive services through the Developmental Disabilities Division (the Division) of the Department of Health. Seven Division programs provide services: Respite Care, Early Intervention, Wyoming State Training School, Targeted Case Management, and three Medicaid waivers: Adult, Children, and Acquired Brain Injury. This report focuses on the Adult Waiver, as it accounts for more than half of the Division's \$104 million FY '03 expenditures.

**Figure 1.1**  
**Developmental Disabilities Program Expenditures, FY '03**



Source: LSO analysis of Division Data

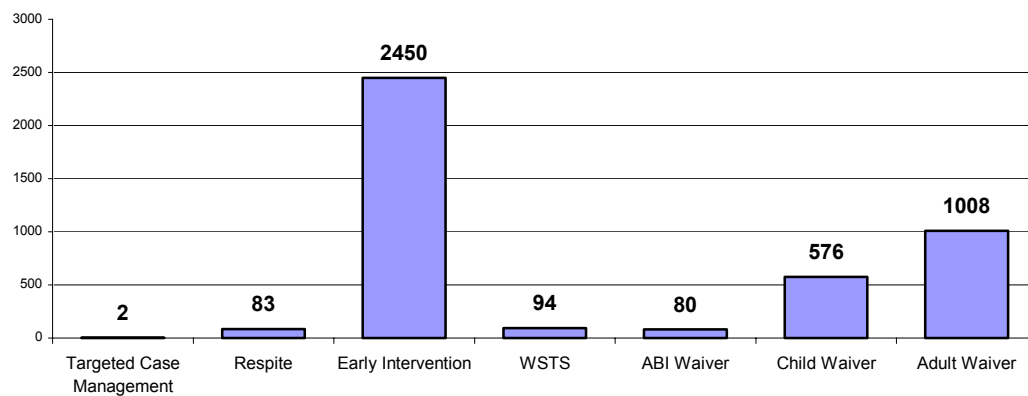
### The Division's Six Other Developmental Disabilities Programs

The **Early Intervention Program** provides home services to children aged 0-2 years and preschool services to children aged 3-5 years. Both are federal programs governed primarily by the federal *Individuals with Disabilities Act* of 1997, and their services are considered entitlements, requiring the state to serve all who qualify. The State contributed 78 percent of the program's \$15 million FY '03 budget; the remaining 22 percent were federal funds. Services are provided to 2,450 children, at an average cost per child (FY '03 expenditures divided by that year's number of participants) of \$6,010.

The **Wyoming State Training School (WSTS)** in Lander is the state's only Medicaid-certified Intermediate Care Facility for the Mentally Retarded (ICF/MR), serving 94 developmentally disabled people in FY '03 at a cost of \$20.3 million. The average cost per person was \$216,230, with federal funds covering approximately half the cost.

**Figure 1.2**

**Participation Level by Program, FY '03**



Source: Division data

The **Respite Care Program** is a state program authorized by W.S. 35-1-628, providing respite services to families with children under 21 who are not eligible for the waiver. Respite services provide parents a short reprieve from continuous care for their child. The FY '03 budget was \$178,000, with 83 children receiving services at an average cost per child of \$2,144.

The **Targeted Case Management Program** is essentially a referral service to help individuals on the Adult and Child Waiver waiting lists find interim services. This service, currently provided to two adults, is available at no cost to the individual. FY '03 expenditures were \$770, for an average per-person cost of \$385.

The **Acquired Brain Injury Waiver Program (ABI)**, started in July 2001, provides vocational, learning, and residential services to individuals from 21 to 64 years of age who have sustained a brain injury since birth. In FY '03, 80 individuals were served at a cost of \$2.2 million, for an average cost per person of \$27,580.

The **Child Waiver Program** provides services to eligible children from birth through age 20. Eligibility is similar to the Adult Waiver Program, but clinical eligibility is age-adjusted. Services for the 576 clients include case management, personal care, respite care, residential habilitation, and specialized therapies. FY '03 expenditures were \$8.8 million, for an average per-child cost of \$15,248.

Note: LSO analysis of FY 2003 data reported by Division

## Medicaid Waivers Are Optional and Flexible

Under federal law, states have the option of providing home and community services to persons who would otherwise require institutional services that are reimbursable by Medicaid. For people in Wyoming with developmental disabilities, institutional care would be provided at the state's single Intermediate Care Facility for the Mentally Retarded (ICF/MR), the Wyoming State Training School (WSTS), and the cost of care would be covered by the state Medicaid plan.

***States can control waiver program services, number of clients, and overall expenditures.***

Wyoming obtained a waiver for adults with developmental disabilities in 1991. With home and community based service (HCBS) waivers, Medicaid "waives" its requirement that services be provided in institutional settings, to allow payment for non-medical services such as case management and habilitation services. These services are intended to keep people from being institutionalized and help them live more independently.

Medicaid gives states great flexibility in designing waivers. States can limit the availability of service geographically, target specific populations or conditions, and cap overall expenditures. In contrast to the standard Medicaid program, waiver programs can also limit the number of persons served.

### **Current Adult Waiver participation and cost**

***FY '03 Adult Waiver expenditures were more than \$57 million.***

According to Division data, FY '03 expenditures for the Adult Waiver were \$57,487,968, with the state General Fund contributing 38 percent of the total. The average FY '03 cost per person served was \$57,032. The Adult Waiver's 1,008 clients, ranging in age from 21 to 83, have various disabilities such as mental retardation, epilepsy, autism, deafness, and cerebral palsy. In addition to receiving services related to their disabilities, Adult Waiver participants also receive regular Medicaid benefits for their health care.

### Changes in Wyoming's system

From 1912 until 1989, the Wyoming State Training School (WSTS) provided the majority of services for people with developmental disabilities. Since then, community-based providers have become the dominant service providers. This shift was sparked by the 1990 filing of a civil class action lawsuit against WSTS and the State of Wyoming, Weston, et al. v. Wyoming State Training School, et al. (C90-0004), by the federally funded, non-profit Wyoming Protection & Advocacy System, Inc. (P&A).

### ***Services shifted to a community-based focus after the Weston lawsuit.***

The Weston lawsuit dramatically changed the face of service delivery to Wyoming persons with developmental disabilities. It was filed on behalf of “all individuals with mental retardation, currently at the WSTS, or who are currently, or may be in the future, at risk of placement at the WSTS...” The State of Wyoming and P&A negotiated a settlement, approved by the Federal Court, which resulted in a Consent Decree. According to the Division, the decree guided the progressive change from WSTS-centered services to community-based services (see Appendix B for Weston principles). The Division holds compliance with Weston principles as being imperative to avoid additional litigation and meet the state’s commitment to the final written Settlement Agreement (January 1, 1995) “to continue to provide appropriate and necessary services and supports, including but not limited to residential and habilitation, to members of the class and other people with developmental disabilities.” Funding for developmental disability services has more than tripled since the Consent Decree.

When the Division applied for the Medicaid HCBS Waiver in 1991, Wyoming became one of the last states in the U.S. to participate. Earlier, state General Funds supported most costs for services through WSTS and the State Contract program. The State Contract program provided funding for select community services for adults with mild developmental disabilities. The state was contracting with nine regional providers to provide these services. This program ended in 2001, when the state went solely with the Adult Waiver as a funding mechanism for adult services (see Chapter 2).

**Since 1991, federal funds have covered more than 50% of waiver costs.**

Since 1991, federal funds have supported more than half the cost of services for adults with developmental disabilities. For federal fiscal year '04 (October '04 through September '05), the Federal Financial Percentage (FFP), which varies according to state per capita income, will provide 57.9 percent of funding for the Adult Waiver, as well as for the Child and ABI Waivers.

#### **U.S. Supreme Court's Olmstead Decision**

Since 1999, the developmental disabilities world has been impacted by the U.S. Supreme Court's ruling in Olmstead v. L.C. (527 U.S. 581). The Court held that under Title II of the Americans with Disabilities Act, states are required to provide community-based treatment rather than placement in institutions to people with disabilities, where:

- the state's treatment professionals have determined that community placement is appropriate
- the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and
- the community placement can be *reasonably accommodated*, taking into account the resources available to the state and the needs of others with mental disabilities.

**Olmstead requirements have limits, allowing states some flexibility.**

Although the Court's ruling creates specific state requirements, it also sets limits. The Court said the state's responsibility, once it provides community-based treatment to qualified people with disabilities, is not boundless. States have some flexibility to take into account available state resources and the needs of other state citizens with mental disabilities. States need not make changes that would "fundamentally alter the nature of the service, program, or activity." Further, states may maintain a waiting list for community-based services, but the list must move at a reasonable pace. The decision thus left open many questions for states and lower courts to resolve.

#### **Many developmentally disabled people need services**

Most persons with developmental disabilities have mental retardation, but others have severe, chronic disability resulting from other life-long conditions that began before they were 22 years old. Adults with developmental disabilities can be highly dependent on public programs for meeting their needs for care. This population depends on long-term care services which can

include supervision and assistance with everyday activities such as help in dressing, using the bathroom, managing money, and keeping out of danger. Waiver programs offer a broad range of services in less restrictive settings than institutions, allowing the persons served to live in the community.

### Adult Waiver service providers

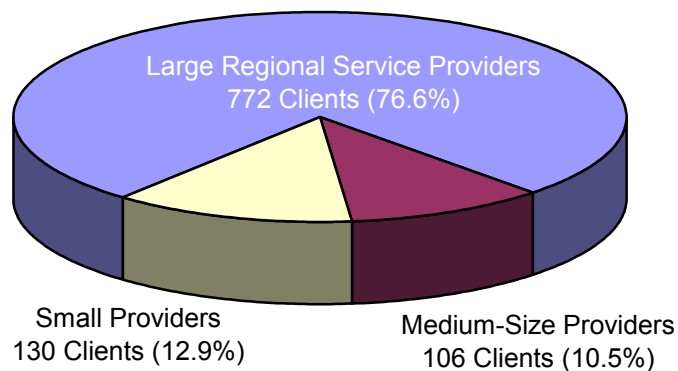
In the 1970's, regional service providers (RSPs) in Wyoming began to provide community-based care for people with developmental disabilities. By 1990, RSPs were the primary community providers, but after Weston, other providers began to emerge. Nevertheless, in 2003, nine RSPs still served more than three-quarters of all clients and received 78 percent of waiver funds.

***Nine providers serve more than 75% of clients and receive more than 75% of funds.***

Listed among all providers in FY '03 plans of care, nine RSPs served 50 clients or more; 18 medium-size providers served more than 10 clients but fewer than 50; and 321 small providers served ten or fewer clients (many of these provided home-based services to one or two clients). In addition, Figure 1.3 shows the number of clients served in terms of their main provider (usually a day and/or residential habilitation provider) by the provider's size.

**Figure 1.3**

**Client Participation by Size of Main Provider  
FY '03**



Source: LSO analysis of Division data

### **Applying for services**

To receive Adult Waiver services, persons must meet defined financial and clinical criteria for eligibility (see Chapter 2). The Department of Family Services determines financial eligibility, while the Division determines clinical eligibility through IQ testing, a needs assessment, and other criteria. The Division uses an assessment tool called the Inventory for Client and Agency Planning (ICAP). Administered by a private consulting firm, the ICAP produces individual scores that indicate a person's level of functioning as well as his or her limitations and need for assistance.

***Clients' FY '03 budgets for services ranged from \$3,680 to \$259,604.***

When a client is determined eligible, the Division uses a statistical model called DOORS (not an acronym) to determine an Individual Budget Amount (IBA) for that client's services (see Chapter 4). In FY '03, IBAs ranged from a low of \$3,680 to a high of \$259,604.

### **Eligible applicants may be put on a waiting list**

If no funding is available or if the program's participation cap has been reached, an eligible person may be put on a waiting list. According to Division officials, Wyoming has one of the smallest per capita waiting lists in the nation. As of August 2003, 68 persons were on the Adult Waiver waiting list. For the 62 of them for whom we have complete data, their range of time on the waiting list was 0 to 29 months, with an average of 11 months.

***Clients on the waiting list have been waiting an average of 11 months.***

The Division has latitude to determine that a person on the waiting list or a new applicant is in an emergency situation. In such cases, the individual may be added to the waiver immediately.

### **Client's needs and preferences determine services**

At the outset of the application process, each client chooses a case manager from a list of Division-certified case managers to advocate for the preferences and choices of that client, review and monitor overall delivery of client services, and facilitate the client's independence and social integration. The case manager assembles and is a member of a planning team, which is responsible for annually creating the client's Individual Plan of Care (IPC).

***Client choice plays an important role in planning for services.***

The client is a member of and participates in the team's decision-making process. Clients' choices and preferences, provided for in both the Weston Settlement and Federal Medicaid "Freedom of Choice" law, should play an important role in a team's planning process. An IPC specifies the type and amount of services that will be provided to the waiver client. Teams may choose from any of 21 Adult Waiver services based on a client's needs and choices (see Figure 1.4).

IPCs most frequently include the following services:

- **Case Management** – Arranging and coordinating services and service delivery
- **Skilled Nursing** – Doctor-prescribed services provided by a registered nurse
- **Residential and/or Day Habilitation** – Training or assistance for skills such as daily living, mobility, and communications

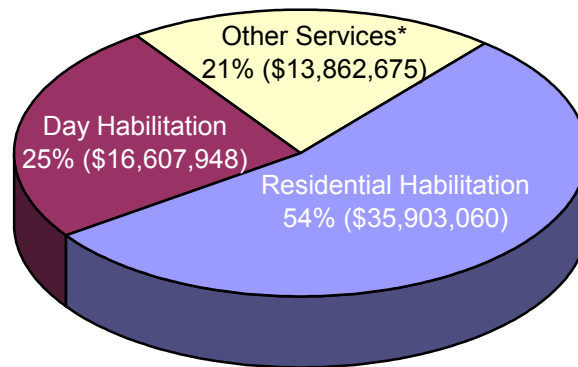
**Cost of services must stay within budget**

***Residential and day habilitation services account for the majority of service costs.***

The Division establishes fee schedules for some services, while other fees vary by provider. The total cost of all services must be less than or equal to the IBA produced by the DOORS model. Plans with estimated costs more than the amount of the IBA require special authorization through the Division's forced rate process (see Chapter 5). Once a team has approved a client's plan, it goes to the Division for review and approval by a waiver specialist, after which the client can begin to receive services.

Figure 1.4 shows that residential and day habilitation services accounted for 79 percent of the total amount budgeted for services in FY '03, thus dominating other service costs.

**Figure 1.4**  
**Waiver Services by Percent of Total Services Budgeted**  
**FY '03**



Note: "Other Services" in Figure 1.4 above include the following 19 services: Skilled Nursing (4.1%), Pre Vocational (3.2%), Case Management (2.8%), Respite (2.3%), Psychological Therapy (1.9%), Personal Care (1.4%), Supported Employment (1.4%), In-Home Support (1.1%), Speech, Hearing and Language Therapy (0.9%), Occupational Therapy (0.7%), Subsequent Assessment (0.4%), New & Previous Medical Equipment (0.3%), Physical Therapy (0.2%), Dietician (0.1%), Initial Assessment (0.1%), New & Previous Environmental Modifications (0.1%), Respiratory Therapy (Less than 0.1%).

Source: LSO analysis of Division data

### **2003 federal review of Adult Waiver**

***States must provide CMS with six "assurances" for operating their waiver programs.***

CMS (the federal Centers for Medicare and Medicaid Services, formerly HCFA) requires states to give the federal government six "assurances" that demonstrate they are meeting their responsibilities under the waiver. In late 2002, CMS conducted a scheduled review of Wyoming's Adult Waiver, during which its team interviewed Division staff, clients, guardians, and service providers. CMS also reviewed case files, IBAs, provider rates and total plan costs, forced rate letters, IPCs, and the standards and procedures used to justify higher rates. CMS issued its report in January 2003, focusing largely on the quality of the state's administrative authority over the Adult Waiver.

The report was critical of the way in which the waiver has been administered at the state level. Its findings and recommendations point to systemic problems in the state's administrative authority

that center largely around inadequate oversight and monitoring of the waiver. For example, the report commented that for certain clients, “the State may need to take a more integral role in team meetings and the decision-making process.”

***The federal review identified several issues, which this report examines more closely.***

The Division responded to the report by accepting some federal recommendations and entering a statement of non-concurrence with others. CMS concluded that Wyoming had implemented changes that were directed to the findings and recommendations of the report, and that it was satisfied with the State’s ability to operate the program. Over the next ten months, the Division made numerous procedural changes, issued a new provider manual, and established new requirements for requesting forced rates.

Since the federal review had identified serious questions that the Division was working to address, we focused more closely on the state’s administrative structure and financial oversight. Although much at the Division was changing as we conducted research for this report, and we were hampered by inconsistent and incomplete data which we were often unable to reconcile, several themes consistently appeared. They became the focus of the following chapters: waiver eligibility, rules and policy making, cost-effectiveness of client services, and the need for more state-level oversight.