

REPORT OF RESULTS

OAH-SDS MEDIATION PILOT

December 2015 – January 2016

The accelerated mediation program: The mediation pilot was modeled on the Medicaid mediation program run by the Mediation Network of North Carolina (MNNC), which has attracted national attention for the savings it has generated. The main features of the pilot were the following:

- Immediately upon referral to OAH, parties were simultaneously sent a notice of mediation and a notice of initial hearing (IH). The IH followed the mediation session by a few days.
- The mediation was scheduled between 7 and 14 days hence.
- The mediation session was set as a single hour block, conducted solely by telephone.
- The mediation notice gave parties an option to opt out. In addition, a no-show at the mediation was not treated as a default; the case would move directly to IH even if a party skipped the mediation.
- If an entry of appearance was filed before the mediation, OAH would remove that case from the pilot and substitute another case. The attorneys in the removed case were offered a mediation to be scheduled at their convenience.
- All pilot mediations were conducted by Erik Helland, using training received from the MNNC and from a formal mediation course.
- DHSS participation was provided by the usual hearing reps. In general, nurse assessors did not participate.
- When settlements were reached, the terms were immediately taken on the record by Helland. An ALJ later listened to the recording and issued a dismissal order reciting the terms.
- At first, we ran seven mediations a day, but based on the perception that the mediator and hearing reps were exhausted by the last session, this was reduced to six (three in the morning, three in the afternoon).

The study: 30 cases were selected essentially at random from the case intake during December. The only MDS categories we excluded from the test group were General Relief Home cases (because of unresolved broad policy issues), cases in which attorneys had already appeared (because these were to be offered a more individualized mediation track), and timeliness cases (usually resolved through a very short expedited hearing).

Despite the random selection, it turns out that the study group was fairly typical of our case intake in most important respects. Most significantly, the study group consisted of 50% “Maintenance of Service” or “MOS” cases—cases in which the decision on appeal seeks to

terminate, reduce, or reconfigure services in a way that would reduce cost. Because the prior benefits are maintained until the appeal is resolved, MOS cases present an opportunity for savings if the time to resolution can be reduced. This is, by far, the largest component of the many millions in savings that have been attributed to North Carolina's early mediation program. The 50% MOS percentage in our study group mirrors our overall MDS case mix, which was approximately 47% MOS during calendar 2015.

As a control group to generate data to compare with the test group, we assembled a second group of 30 cases that had been handled during the fall of 2015 by our traditional methods. This group was also randomly generated in the sense that the cases were selected by number, with the selector having no knowledge of their procedural history or outcome. However, we did use our case referral codes to ensure that the mix of case types (MOS versus non-MOS, PCA reduction, PCA initial hours, Waiver initial denial, Waiver termination, IDD plan of care, etc.) matched up to those in the study group. Thus, the study group and the control group were two randomly generated sets of cases with parallel makeup.

For some comparisons, only 29 cases were used because of one atypical case in the study group (involving an interpreter) that was handled—and settled—by slightly different methods.

Rate of settlement achieved: For the 29 cases using the main study group method, there were three no-shows¹ and 26 mediations. Twenty (77%) of the mediated cases settled in mediation. The high rate of settlement seemed to be consistent across all case types.

Nonmonetary benefits reported in the study group: The OAH and DHSS participants in the study reported these benefits:

- High recipient satisfaction. A large number of recipients were effusive in their thanks for being offered the chance to mediate and for the state working with them toward a resolution. The thanks were expressed during mediation and outside of it, to OAH staff.
- Better DHSS employee satisfaction. Hearing reps preferred the informal, problem-solving atmosphere of mediation to adversarial hearings or adversarial negotiation. DHSS believes this will help with employee retention, which had been a matter of concern under the existing system.
- Better recipient understanding of the process. Among the cases that did not settle in mediation, the mediation served to educate the recipient and any associated care providers, so that subsequent proceedings went more smoothly. The mediations were especially helpful in identifying and solving documentation gaps.
- Better OAH-SDS relationship. The process of working to together to design a better model was a positive experience for both organizations.

¹ Two failed to answer when called. The third was counted as a no-show because the mediation was canceled following entry of appearance by an attorney.

Cost comparison between study group and control group: We compared two types of costs: direct OAH billable hours attributable to the case in the two groups; and MOS savings achieved by shorter resolution times in the study group. The cost analysis showed that more than \$35,000 was saved in the control group.

It should be noted that this does not encompass all costs, and in excluding some of the other types of costs that are more difficult to quantify, it unquestionably understates the cost reductions in the study group. At SDS, the mediation model resulted in lower hearing rep time per case, and lower demands on the time of nurse assessors. SDS did not have an easy way to track this variable, and so it was not attempted. At OAH, the mediation model resulted in a much lower number of cases in the next week's IH sessions. This would certainly have reduced the hours recorded by the case management officer, whose time is reimbursed by DHSS through an RSA. However, the study happened to occur at a time when the regular case management officer was on leave, and hours could not be compared in a reliable way.

Billable ALJ time: For the control group, billable time was \$21,021.52. For the study group, it was \$3,804.80. This is primarily because there were fewer hearings and decisions in the study group. We believe the billable time in the study group could have been reduced slightly more by making one improvement to the model that was identified after the experiment was complete.²

MOS Savings: Average duration in the study group (referral to closing order) was 24.8 days. Average duration in the control group was 65.3 days. This disparity produced savings in the portion of the study group cases that involved benefit reductions or terminations. Actual MOS cost while the cases remained active during the study was \$8,859.74.³ Had the average closing time been 65.3 days, MOS cost would have been \$27,395.94.

Projected savings from broad implementation: If these results are carried over to a 750-case MDS intake, of which 47% are MOS cases, we project annual MOS savings of about \$684,000 and annual savings in OAH billings of about \$172,000.⁴ In making this projection, a cost has been assigned to the mediation service that was not present during the pilot. Instead of the zero cost of the volunteer mediator in the pilot, we have projected a mediation cost of \$150 per mediation. That figure was chosen because that is what the North Carolina OAH pays MNNC to

² OAH issued dismissal orders in all settled cases that recited the settlement terms in detail. It took some time (perhaps an extra 0.2 hours per case) to generate these detailed orders. At an after-action meeting between OAH and SDS, it was decided that the detailed orders are of no benefit and should be abandoned in favor of standard form dismissal orders.

³ These calculations, which are complex, can be seen in the "Study Group MOS" tab of the attached spreadsheet. Some assumptions are made in the calculation. For example, annual Waiver costs have been recalculated as a daily figure and "assumed" to accrue at an equal rate every day. We believe these are valid assumptions to use in a broad comparison, but they should not be regarded as precise with respect to any given case.

⁴ The calculation is in the Cost Comparison tab of the spreadsheet. Two calculations were run using different methods; the figures given represent the average.

conduct its mediations, and it is a figure we believe we could match with a contractor in Alaska, at least in the short run.

Unexpected findings: OAH and SDS were surprised by some of the results. The surprises included:

- The low incidence of confusion among recipients. The mediation notice appeared to work very well, and only one recipient called in confused.
- The low incidence of cancelations and reschedules. Only one recipient called in to reschedule.
- The readiness with which Waiver termination cases were settled. These had been thought to be more intractable than they proved to be.
- The almost universal recipient satisfaction with the process.
- The speed with which most cases settled. Average time to mediate was 48.7 minutes. Although this parallels the North Carolina experience, some had theorized that Alaska recipients' demographics differ in ways that would have produced a slower process. This did not occur.
- The ability to accommodate interpreter cases in the model. Only one interpreter case was attempted, but it settled very successfully, although a total of about 100 minutes was required. A special two-session technique was invented through this mediation that we feel will be useful in future interpreter situations.⁵

⁵ Outside of the formal pilot group, two other interpreter cases were settled. There have been no failures so far.