



West Virginia Developmental Disabilities Council

110 Stockton Street
Charleston, WV 25387

MEMORANDUM
December 18, 2014

The WV Developmental Disabilities Council has submitted the attached comments to the Bureau for Medical Services (BMS) in response to the draft Transition Plan that is **out for comment until December 26, 2014**.

If you are not aware, the federal Centers for Medicare and Medicaid Services (CMS) issued a final rule for Home and Community Based Services (HCBS) provided with Medicaid Waiver funding. In West Virginia, the new rules apply to the three Waiver programs – the Intellectual and Developmental Disabilities Waiver (IDDW), the Aged and Disabled Waiver (ADW), and the Traumatic Brain Injury Waiver (TBIW). States have five years to transition into full compliance with the new rules. The Council commented specifically on the WV I/DD Waiver draft Transition Plan.

To help in understanding the new rule, here is a list of some of the new requirements:

- The setting is integrated in and supports full access of individuals who receive Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals who do not receive Medicaid HCBS.
- The setting is selected by the individual from among setting options, including non-disability specific settings, and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and for residential settings, resources available for room and board.
- Ensures an individual's rights of privacy, dignity, and respect, as well as freedom from coercion and restraint.
- Optimizes individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

- Facilitates individual choice regarding services and supports, and who provides them.

In a provider-owned or controlled residential setting there are additional conditions which must be met:

- The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services. The individual has the same responsibilities and protections from eviction that other tenants in the state have.
- Each individual has privacy in their sleeping or living unit; have keys to the entrance, with only appropriate staff also having keys; have a choice of roommate if sharing a unit; have the freedom to furnish and decorate their sleeping or living unit.
- Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
- Individuals are able to have visitors of their choosing at any time.
- The setting is physically accessible to the individual.

To see WV's draft Transition Plans for the three Waivers, and to find links with further information about the federal HCBS rule, you can go to the BMS webpage: <http://www.dhhr.wv.gov/bms/hcbs/HCBSSTP/Pages/default.aspx>



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WV Developmental Disabilities Council
comments on the
WV I/DD Waiver Transition Plan
December 18, 2014

The WV Developmental Disabilities Council offers the following comments on the draft Transition Plan for the I/DD Waiver:

Timeframes

- The stated timeframe does not appear to be as aggressive as it needs to be to assure State compliance with the Home and Community Based Settings rule.
- According to the CMS Statewide Transition Plan Toolkit, plans should include specific timeframes for identified actions and deliverables. Most of the time frames for the WV Plan are not specific, but encompass the entire five years.
- Other states' plans we have reviewed appear to have sequential action steps and timeframes. They also have completion dates well before the required date of compliance. How will compliance be monitored if most actions include an end date of June 30, 2020?

Assessment

- The Council is interested in seeing the results of the review of regulations and other documents reported to have been completed by the Lewin Group, along with the recommendations for changes to be made. Those documents should be made available to the public.
- No specificity is given regarding how the surveys for providers and/or individuals and families will be conducted.
- Other than surveys, what other methods will the State use to determine settings are or are not in compliance with the new standards?
- A survey, combined with actual visits to sites, can determine setting compliance, but how will the internal workings (person-centered planning, the choices an individual is entitled to make about a variety of things, etc.) of a setting be evaluated for compliance?

- It is good that a listing of settings with their level of compliance will eventually be available on the Bureau's website.

Remedial Actions

- Training for licensure/certification staff on new settings requirements is good, as is the strengthening of enrollment/re-enrollment procedures for providers.
- Various means of providing training for providers and enrollment staff is good.
- Of grave concern is the fact that no training is mentioned for individuals/families who use HCBS services. How will they become aware of the changes that will occur, why their services and the locations of their services may be changing, what services will and will not be allowable under Medicaid HCBS, etc.? Who will be responsible for providing them necessary information in an un-biased manner?
- Re #12. It is understandable that particular attention would need to be paid to regulations governing group homes to ensure community characteristics are reflected. The issues concerning day habilitation and related settings should be address in a separate action item. It seems self-evident that facility-based day habilitation settings will not meet the new rule requirement.
- How will monitoring for transition to compliance be carried out, and by whom? This will certainly be a large task. Will the DHHR/BMS be hiring additional staff whose responsibilities are solely to address this component of the Plan?
- Since the Bureau's Money Follows the Person initiative (MFP) does not specifically serve people with intellectual and other developmental disabilities, what "lessons learned" will be used regarding people served through the IDD Waiver? If this transition plan intends to build upon the MFP initiative, is the initiative being expanded to serve populations not previously included?
- From the wording in "Remedial Actions" #18 and other items in the Transition Plan, it appears the "stakeholder group" identified is only

providers. Individuals served, and their families, are certainly also stakeholders.

- Re #21. It would seem important to address the move away from segregated and congregated employment separately from the move away from segregated and congregated day habilitation and other services.

Public Input, Stakeholder Engagement and Oversight

- More thought should be given to find ways to solicit public input, as well as to keep stakeholders informed throughout the process. The announcement posted on the Bureau's website does not stand out in any way and is now buried halfway down the list of numerous items. How will people know to look for announcements on the website, and what other methods will be used to inform stakeholders, particularly people who use Waiver services and/or their families? While the internet is one platform to use to solicit input and to keep people informed, there must also be other means.
- Stakeholder engagement actions are concentrated on provider agencies. There are over 4500 individuals served by the IDD Waiver alone, along with family members, advocates, people on the waiting list, and others who may have an interest in the program in the future. Any intentions for any stakeholder engagement for these people are missing from this Plan. How does the Bureau intend to involve them in the transition process? How will they be informed of progress made? How will they be involved in training and other opportunities in order to have the information they need to make informed decisions about services?

General

- There is a concern that providers are currently being permitted to develop and open more service settings that clearly do not and will not meet the requirements of the HCBS rule, even after the Centers for Medicare and Medicaid Services (CMS) Rule that will not allow Waiver funds to be used in those settings was finalized. What is being done to prevent those settings from being approved by the State?
- The DD Division does not appear anywhere in this draft Transition Plan. Do they not have a role to play in this process?

- Moving from congregated and segregated settings and services is a monumental shift in service delivery in some cases. Significant thought and planning will need to transpire for this transition to be successful, both for the system as a whole, and for individuals who use Waiver services and their families in particular. There is no mention in this Plan of the steps that will be taken to assist in the development of true community based services, activities, etc., that will be needed to replace the time now being spent in segregated day settings.
- The Council wholeheartedly endorses this move from congregated, segregated, and isolating settings to truly integrated and inclusive settings and real opportunities for interactions with typical citizens in the community, but we do not endorse the dumping of people from their current programs with no plan for how to spend their time going forward. There are serious concerns about what impact the Bureau's stated plan to cut the Waiver budget by \$10 million in Fiscal Year 2015 will have on the success of this transition.

Thank you for considering these comments on the draft Transition Plan. The Developmental Disabilities Council will continue to advise and otherwise assist in the move to true home and community-based services for people with developmental disabilities who are served through the I/DD Waiver and otherwise in our State.