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WV DEVELOPMENTAL DISABILITIES COUNCIL

Comments on proposed changes to Chapter 517 – Covered Services, Limitations, and Exclusions for Personal Care Services

August 12, 2013

The WV DD Council appreciates the opportunity to provide the following comments on the proposed changes to Chapter 517, regarding the provision of personal care services.

In general, the addition of various specifics in the Chapter, such as training requirements on abuse and neglect and instructions for filing grievances are positive changes and provide more clarity to this service.

The Council is concerned, however, about the restrictive nature of this program. When combined with the restrictive hours in WV's home and community based waiver programs it becomes clearer that much work must be done to make all of these programs and services true alternatives to institutional care. We strongly encourage the BMS, other units within DHHR, and BoSS to look at these programs together and take the steps necessary to make them a true alternative to institutional care in WV.

Several areas of the Chapter raise questions, including the hours now allowed for community activities. No mention is made of reimbursement for transportation. The Council is concerned about the likelihood of individuals being able to access a service for which transportation is not also addressed.

The sections dealing with the criteria used to determine eligibility and levels of service are confusing to the lay person. While there may be reasonable explanations for the issues raised in the following relevant sections, we ask that they be examined to determine if there is any validity to the concerns raised.

Specific questions and comments follow.

517.1 Definitions

Community Integration: The Council believes this definition should include language from the *Olmstead* mandate related to “most integrated setting.” The word “community,” when used alone, has many connotations that would not meet the *Olmstead* requirement.

517.2 Program Description

Although there will be more detailed comments in the appropriate sections, the Council must register its concern here regarding the maximum number of hours per month that are allowed. 210 hours/month, or 6.9 hours/day, even when used in conjunction with other waiver programs and their limitations, do not afford some members a true alternative to institutional care and continue the institutional bias in WV.

517.8 Direct Care Staff Training Requirements

The Council is pleased to see training on abuse, neglect, and exploitation and direct care ethics has been added to the requirements.

517.8.2 Training Documentation

Do all internet based training certificates include the date training was completed? If not, how will currency be determined?

517.16 Location of Services

Changes to this section are unclear. The current Manual allows up to forty (40) hours per month of services provided outside the home to assist the member in obtaining/retaining employment.

The proposed changes allow up to twenty (20) hours per month outside the home to assist the member with the completion of essential errands and to participate in community activities.

The proposed changes also continue to allow the provision of services outside the home to assist the member in obtaining/retaining employment, but no limitation in hours is indicated.

The Council is very pleased to see the allowance for assistance outside the home to participate in community life, but is concerned about the total number of hours available. **Are there no limits to the number of hours a member can be assisted outside the home for employment purposes, or have the hours outside the home been combined to include employment and the new allowance for community participation?** The Council would oppose the combination, and therefore drastic reduction, of these hours.

The exceptions to the exclusion of personal care services include I/DD Waiver Members' natural homes and Specialized Family Care Homes. **Should it not also include A/D Waiver Members' homes?**

517.19.2 Medical Eligibility Criteria for Personal Care Services

The Council has no particular opinion on the change in screening tools, but notes the increase in levels for one area of functional ability (bowel/bladder continence). The current qualification for a deficit noted in this area is Level 2 or 3 (occasionally incontinent or incontinent). This proposes dropping Level 2 and requiring Level 3 for qualification as a deficit. **Why is this tighter restriction being proposed?**

517.19.3 Service Level Criteria

The points used to determine the allowable service level are somewhat perplexing. An individual will be awarded one point in #25 if they are mentally or physically unable to vacate a building, or if they need supervision to do so. However, the need for supervision to vacate a building is not a countable deficit in the chart used in **517.19.2**. **How is it that it counts in one place but not the other?** #25 of the PAS-2000 does not appear to have alphabetic designations.

#26 counts points for the (lack of) functional abilities of an individual in the home, but references items **a-m**. Only items **a-j** are listed on the chart in **517.19.2** as those used to assess deficits on the PAS. **How can items l-m be assigned a point value for determining service level if they are not included as a potential deficit?**

Also in #26 – at Level 4, more points are assigned for deficits in the area of transferring, walking, wheeling than are assigned to deficits in the ability to eat. **Why?**

#27, professional and technical care needs, awards a point if continuous oxygen is needed, **but no points are awarded if an individual needs suctioning, or has a tracheostomy, or uses a ventilator. Why?**

#28, medication administration awards one point for either **b** or **c**, however the PAS-2000 does not appear to include these alphabetical designations. Does this refer to the inability to administer one's own medication or the need to be prompted to do so?

It is unclear how items that do not receive a point assignment for the purpose of a qualifying deficit are then assigned points for service level criteria. It is also unclear how the determination of points based on Functional Level was arrived at. An individual who is tube-fed and has a catheter or colostomy (Level 4) is awarded the same points for level of service as an individual who needs physical assistance with eating and is occasionally incontinent (Level 2), and this is less than the points awarded for level of service to an individual who must be fed and is incontinent (Level 3). **How is it possible that an individual with less functional ability qualifies for less service? What difference in functional ability exists between a person who needs someone to sit beside them and feed them and someone who needs someone to prepare and administer a tube feeding for them? Likewise, what difference in functional ability exists between an individual who is incontinent and one who uses a catheter because of incontinence?**

517.20 Results of PAS Evaluation

- A. Approval** - Currently only requests for services of more than 60 hours per month require prior authorization (with the exception of services for ADW members). This revision requires all hours (0-120/month) to receive prior authorization. This has the potential to cost the program more money (by paying the Utilization Management Contractor [UMC] to review and authorize all requests) and to delay the initiation of services to the individual (since the UMC has 30 days to render a decision).

517.21.3 Personal Care Services (Direct Care Services)

Earlier in this document (**517.16**), it is stated that up to 20 hours/month may be used to assist the member with completion of essential errands and to participate in community activities. Here, these direct care services are listed separately and no limit of hours is mentioned for the completion of errands (C). A limitation of 20 hours/month is given for community activities (D). Again, no limit of hours is mentioned for employment support (E), whereas in the current manual the limit is 40 hours/month. **The DD Council is not advocating for a limitation on the hours for any of these services**, but requests a clarification of what limits, if any, apply to each of the three services.

The list of exclusions for services which cannot be performed by the direct care staff includes services which can be performed by AMAPs in the I/DD Waiver program. **Why is there a prohibition of using AMAP staff in this program? In the cases of children served through the I/DD Waiver who require more hours of service than the Waiver currently allows and who receive additional supports through the Personal Care option, might there be circumstances in which the direct care staff is AMAP certified and providing services through both programs? Would it not be prudent to allow those services to be provided in both?**

517.22.1 Dual Service Provision for ADW Members

The Council questions the restriction for receiving Personal Care services for individuals who are on the Aged and Disabled Waiver (ADW). The eligibility requirements for the ADW are already more restrictive than the requirements for Personal Care services (requiring 5 deficits in ADLs v 3 deficits). In fact, one is eligible to receive services 24/7 in a nursing home if one qualifies for ADW services, but rather than 24 hours/day of service, the maximum one can receive on the ADW averages 5.17 hours/day. Since qualifying for even 1 hour of service in the ADW program would qualify one to live in a nursing home, how would it be reasonable to restrict Personal Care services to those who qualify for the highest level of ADW services (5.17 hr/day)? The maximum allowable hours of Personal Care services is being set at 6.9 hr/day, meaning that an individual at the highest level of ADW services (who is eligible for 24 hr/day care in a nursing facility) could potentially receive services for a total of 12.07 hr/day. **Restricting this program to those ADW members who receive the highest level (Level D) of**

services does not meet the *Olmstead* mandate of providing services in the most integrated setting and illustrates the institutional bias that still exists in WV.

517.22.1 and 517.22.3 Dual Service Provision for ADW and TBIW Members

There appears to be a discrepancy in determining medical eligibility for these two groups of people as opposed to other individuals applying for Personal Care services. **517.19.1, Medical Eligibility Determination** plainly states the PAS is valid for 60 days, and if services have not begun within that 60 day period a new PAS must be completed. For ADW and TBIW members, **B.** is written that the Personal Care RN must use the PAS used to determine eligibility for either the A/D Waiver or TBI Waiver program. Is it not conceivable that the PAS in these instances may be older than 60 days? While the Council is not advocating that people should be evaluated more frequently it does believe individuals seeking to use Personal Care services should be treated similarly. Since in order to qualify to receive even an hour of Personal Care service requires serious functional deficits, it does not seem likely that an individual's ability would change drastically (for the better) within the 60 day period, which calls to question the restriction placed on all individuals with the exception of those served through the A/D or TBI Waiver programs.

Section 517

The expansion of **517.1, Definitions**, the addition of a system for **Incident Management, 517.14, 514.14.1, and 517.14.2**, and the addition of **517.23, Member Rights and Responsibilities, 517.24, Transfer to a Different Agency, 517.25, Discontinuation of Services, and 517.26, Member Grievance Process** help to provide clarity and are welcome additions to the Manual.