



## **West Virginia Developmental Disabilities Council**

### WV Developmental Disabilities Council Comments on Fifth Iteration of WV HCBS State Transition Plan March 29, 2021

The WV Developmental Disabilities Council offers the following comments on the fifth version of the state's home and community-based services (HCBS) transition plan.

Since the plan is not shared in a way that makes any changes or additions readily apparent, and since no information accompanies the plan to indicate which areas have been changed or added, the Council is working under the assumption that the changes/additions are those mentioned in the Summary of Public Comments where a description of the fifth 30-day comment period is mentioned (Specialized Family Care Homes).

In the area **State Transition Plan Data Analysis 2018**, dated January 31, 2019, data from Kepro reviews of provider residential and non-residential settings conducted in 2018 are summarized. One of the conclusions listed states "Settings still have some issues with community integration. There are two providers in particular whose settings may still be problematic." Have any reviews been conducted and analyzed since the 2018 reviews? Has it been determined whether all settings are in compliance at this time?

In the area **State Transition Plan Data Analysis 2019, Specialized Family Care Homes**, dated August 13, 2019, data from Family Based Care Specialists (or providers or guardians) on-site surveys/reviews are summarized. It is encouraging that 43% of homes were found to be in total compliance since some areas of non-compliance would seem to be beyond the control of the provider (such as public transportation and/or taxis in rural areas).

The Council is pleased to see one hundred percent of homes did not have cameras present in the home! This promotes the privacy and dignity of everyone.

The question of whether individuals are prohibited from engaging in legal activities did not have full compliance, but the reason given was some individuals had been adjudicated and had their otherwise legal activities restricted by a court. If these were the only cases of non-compliance, would providers not be in full compliance? If some activities have been legally restricted would they not no longer be legal activities for the individual in question?

It is encouraging to see training was to be provided to Family Based Care Specialists on Individual Rights and Integration since a lack of understanding was identified from comments given in the survey results. Presumably, this training will also then be provided to the Specialized Family Care Provider if they are to be issued a Statement of Deficiencies and required to complete a Plan of Compliance. What entity will be responsible for providing the training and when is it to be completed?

We notice the *West Virginia Specialized Family Care Agreement* (Appendix P) requires the provider to provide opportunities to live, work, and receive services in integrated, community settings as outlined in the Integrated Services Rule, which is cited. We assume this is a new addition to the *Agreement* since WV SFCHs were added to the list of providers covered by the Rule more recently. Are Specialized Family Care providers given a copy of the Rule, or a simplified version of the applicable requirements? While it may not be a specific STP requirement, it would be helpful in ensuring providers had access to the requirements and would therefore be more likely to meet them. We realize this might be a function of the agency managing the SFCH program, rather than that of the Department of Health and Human Resources (DHHR), but would encourage that, if it is not currently a requirement of them, it be made one.

The Council feels that the DHHR's responses to questions asked in previous iterations are insufficient and some of those concerns are reiterated here.

The Council has commented previously that the DHHR could have, and should have made better attempts at providing information about the STP – what it is, what states are required to do, what needs to change in order for WV to be in compliance, and what it all means for people with intellectual and other developmental disabilities and their families as well as for provider agencies. The Department's reply has been that it has met the CMS requirements for advertising forums. By its own admission, forums were not held to explain the third and fourth iteration of the plan due to low public response at the first two sessions, yet apparently no attempts were made to change methods in order to get a better response. Both forums were held in Charleston during a workday. No attempts have been made by the DHHR to travel around the State (even pre-pandemic) or to hold forums during evening hours which might be more conducive to working families. Tennessee, for instance, held seven separate meetings across the state for providers titled: *"New Federal Rules: Fair Labor Standards Act & Person-Centered Planning and Home and Community Based Settings: An Informational Session for HCBS Provider."* Consumer/family friendly materials were developed with input from provider and advocacy organizations; materials were posted on the TennCare website and distributed through provider and advocacy organizations; and TennCare hosted two open forum conference calls to educate consumers and families on the HCBS Settings Rule and the importance of their public input. Tennessee appears to have been granted initial and final approval by CMS at the same time.

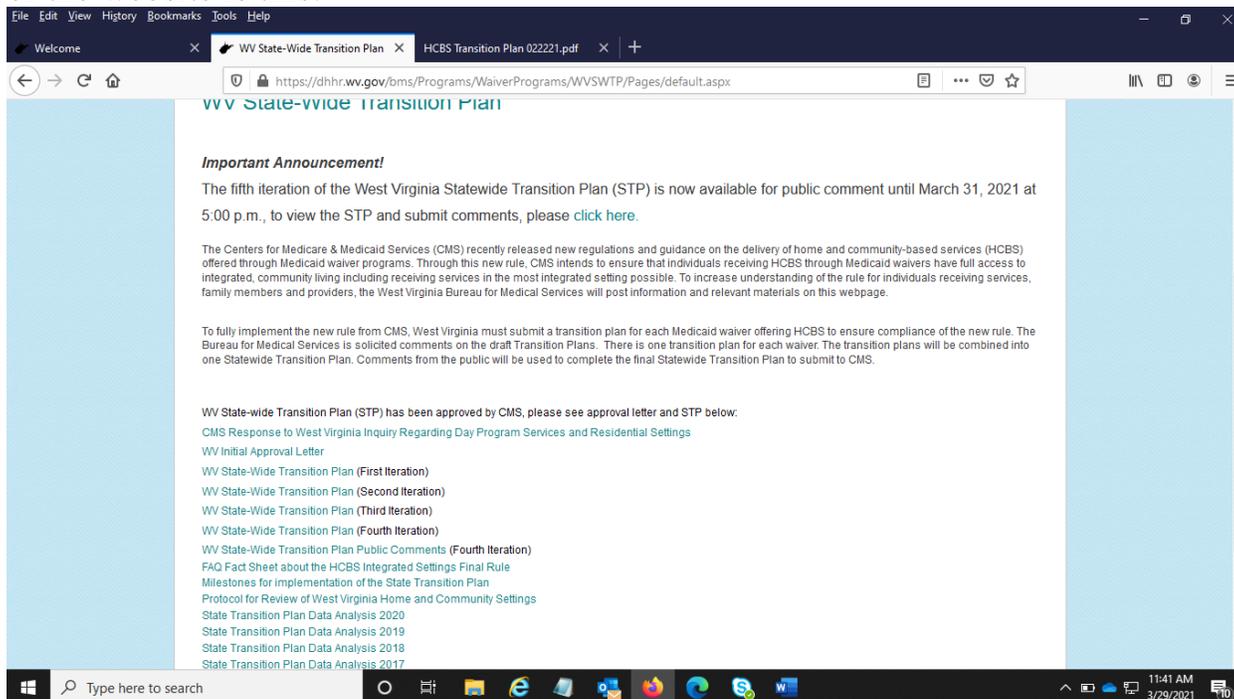
Kentucky held public forums to discuss both rounds of their changes and offered several types of technical assistance to providers, including webinars with detailed guidance on the HCBS final rules; examples of positive practices providers were implementing to meet the final rules requirement; and one-on-one technical assistance for providers for whom that was needed. CMS' approval letter to Kentucky seems to indicate the state received final approval following its second submission.

After having reviewed the plans of some other states who have received final approval (according to information found on the CMS website, 19 states and the District of Columbia have received final approval), WV's plan seems unique in that there is very little narrative (36 pages) and more than 280 pages of Appendices. The plan is not easy to read or understand. **For instance, there is no narrative to explain how 51 of 51 facility-based day habilitation programs were non-compliant per provider self-assessments in 2016, 55 of 55 were non-compliant per on-site visits in 2016-2017, but follow-up on-site visits in 2016-2018 indicate all 55 are compliant.** The past response has been the process is spelled out in Appendix M, data is shown in Appendix N, and further data analysis could be provided. If the DHHR is interested in developing a plan that is understandable by most people who might read it, more narrative would be helpful.

Tennessee hosted a facility-based day workgroup focused on achieving compliance through conversion strategies during the 2015 waiver year. National subject matter experts were asked to present methods for converting day programs from congregated and segregated to full integration into the community. It is unknown if West Virginia offered technical assistance such as this since it cannot be determined by looking at data, but the Council sees that as something from which providers and service recipients could greatly benefit.

The Council and others commented in the last iteration about the need to address staffing recruitment and retention to assist with the implementation of home and community-based services. We take exception to the response that CMS guidance only addresses "appropriate staffing," and that recruitment and retention are the purview of providers. The response goes on to mention waiver rates. Appropriate staffing cannot be attained without addressing recruitment and retention, and it is odd that the DHHR sees this solely as an issue for providers to manage. If DHHR sees wages as the only issue involved in the recruitment and retention of staff it could work with the Legislature to address that with wage pass-through legislation or add language to their contracts with providers. However, recruitment and retention has been a national issue for several years that many states have been trying to address. Another issue, besides wages, that impacts retention is the lack of a career ladder for direct support workers. One method to address this is using the College of Direct Support, which could best be addressed at the State level.

We have also commented we have not been able to find several items mentioned in the plan as being available on the BMS website, including the review of WV regulations and supporting documents; the list of settings that do not meet the residential and non-residential requirements, may meet with changes, and settings that may be submitted to CMS for heightened scrutiny; the list of Specialized Family Care homes that do or do not meet the requirements; and the webinar series archives that highlights the settings requirements and the principles of person-centered planning. What is available on the State Transition Plan portion of the website is this:



Thank you for the opportunity to once again comment on the *State Transition Plan for Home and Community-Based Services*.