



West Virginia Developmental Disabilities Council

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WV Developmental Disabilities Council
Comments on third iteration of WV HCBS State Transition Plan
July 26, 2018

The WV Developmental Disabilities Council offers the following comments and questions for consideration as the Department of Health and Human Resources (DHHR) works toward final approval of the State Transition Plan (STP) for Home and Community Based Services (HCBS).

We noticed the announcement on the Bureau for Medical Services' (BMS) webpage indicates comments on this Plan are due by July 26th. However, the STP indicates the comment period goes through July 30th. Will the BMS accept comments through July 30th?

We began by reviewing the October 26, 2016 letter from the Centers for Medicare & Medicaid Services (CMS), in which initial approval of the STP was granted and feedback was offered to the BMS identifying issues that would need to be addressed to receive final approval.

We share CMS' concerns about public and stakeholder engagement throughout the transition plan process. As we have indicated in two previous sets of comments submitted, engagement with families and service recipients has been minimal. The two previous public forums were not well attended because they were not well advertised, they were held in only one location, on one date, and during daytime work hours.

While public forums were recently held in several locations around the State, information about the STP was not discussed.

As a result, we believe it is safe to assume most Waiver recipients and family members are not aware the State is in the midst of a transition plan. If they are aware, they likely know very little about what it means, whether they will be affected, and if so, how.

We understand the minimum CMS requirements were met. Doing so is not enough. We believe most people are not reading public notices in the *Gazette-Mail* newspaper, most people are not checking the BMS webpage on a regular basis, and most people are not having information passed on to them through the provider network.

The return rate of approximately 13% for the *Individuals and Family Members Survey* across all waivers is indicative of the lack of knowledge on the part of Waiver recipients and family members. We noticed the closure date for survey completion was 12/31/15. Were surveys sent during the holiday season? What has been, or will be, done to gather more information from families and Waiver recipients regarding settings and services? If pre-vocational and job development services are sub-sets of facility-based day habilitation services, but were not specifically identified in the survey, how is it possible to know if more people wish to receive those services?

It is stated the State code for the IDDW providers' licensed behavioral health sites does not conflict with the Integrated Services Rule. Does it support or encourage the rule? We do not believe the HCBS rule addresses bedroom size and furnishings, rather it focuses on the individual's experiences there. What part of the licensure rule addresses this aspect of the HCBS rule?

We presume the State code referred to here is Title 64-11, which is currently being re-written. The version the Council just commented on seems to propose removing the Human Rights Committee spoken about here as providing a firm foundation to the overall protection of basic rights and any necessary restrictions. Have the proposed changes to this rule been reviewed for areas that may or may not support the HCBS rule?

The Council is unclear on how all settings went from being noncompliant to all settings being compliant, and we do not see any specific information explaining what occurred that caused this to happen. Where are the specific steps listed that caused those settings to become compliant listed in the STP?

We especially do not understand how facility-based day habilitation programs across the state became compliant. Our experiences cause us to believe these settings likely are not in compliance, and as currently operated, will never meet the compliance criteria. We believe these are settings that would need heightened scrutiny. Questions and comments at the most recent QIA meeting

reinforce our belief they likely are not in compliance. (Questions such as whether coloring worksheets would be acceptable if they didn't have "preschool" written on them, and statements about individuals now watching movies in these settings.) Since the CMS letter makes clear "reverse integration" strategies are not sufficient to come into compliance; What specific things have occurred in these settings to cause them to meet the mandate? Where are people going, and how are they being supported to go out into the community after arriving at the facility-based day habilitation program? What are folks doing in the community? Are they going into the community in groups? Or, are people being supported individually to practice the skills allowed under day habilitation program services at locations in the community where the general public is located, and to take advantage of occasions to interact with the general public in the community?

CMS raised questions about how the State assures beneficiary access to non-disability specific settings in the provision of residential and non-residential services. The State is specifically asked: What investments is the State making to create or expand non-disability specific settings and/or helping develop the competencies of providers to offer services in non-disability specific settings? What has the State done to help in this regard?

The State had indicated to CMS in the past that the WV Office of Health Facility Licensure and Certification conducts provider reviews, including site visits for all licensed sites every two years. Is BMS aware the aforementioned proposed changes to Rule 64 remove this requirement? Will the only reviews conducted to ensure compliance in the future be those conducted by the ASO?

The document indicates that another method of ensuring continued compliance will be through monthly home visits by Service Coordinators and refers to Appendix O as proof these visits ensure member rights and compliance with the Integrated Services Rule. Upon reviewing Appendix O, we see no indication of how that assurance is met. Have Service Coordinators received training on the Rule? Has a section been added to the form that is not shown here that assists them in making those determinations?

Many of the documents mentioned in the STP as being on the BMS' webpage either are no longer there or cannot be located. In the interests of transparency throughout the process, all documents should be available on the webpage. This would also help people understand the process the State is involved in towards meeting the requirements of the transition.

In the STP Action Items, the State has indicated a report on the review of WV regulations and supporting documents of all three waiver programs would be posted on the BMS' website with an end date of 8/21/15. We are unable to locate the report on the website. Where is the report located?

Similarly, findings of the aggregate survey results of residential and non-residential services were to be posted to the website by 12/30/15. We only recently became aware of a tab "Setting Status Updates" being added. It shows results as of 5/23/18 but does not include any previous listings.

Remedial actions in the STP under the Compliance Area of Outreach and Education indicates training on new settings requirements would be provided to individuals and families by 2/28/17. We are unaware of this training. Can you direct us to information regarding the training events that were provided to them?

The same section also indicates a webinar series to highlight the settings requirements and principles of person-centered planning would be conducted and the webinar archives posted to the BMS website by 3/31/17. We are unable to locate the webinar archive on the website. Can you please direct us to the location of this?

Have the Member Handbooks been updated to strengthen person centered HCBS requirements?

Several items listed in this section, with a variety of completion dates that have passed, indicate action items for which the IDDW QIA Council has been responsible. DD Council staff are members and regular attendees of the QIA Council. We are unaware of many of these items being dealt with by this group. We readily admit we may have missed something, so please clarify for us how we were involved in the following:

- the modification of regulations;
- development of a transition plan approval process;
- the preparation of a formal letter, guidance, and templates for providers in developing a transition plan for EACH setting;
- development of a plan to manage non-compliance;
- development of a process for helping individuals to transition using lessons learned from the State's MFP program;
- development of a housing strategic plan;

- development of a toolkit for provider use that includes housing resources and person-centered planning resources;
- development of template leases, written agreements, or addendums to support providers comparable to those provided under WV landlord/tenant laws;
- and the development of strategies for moving away from more congregate employment to naturally occurring learning environments and access to community activities and events.

The DD Council is specifically listed as a Responsible Party on the last area mentioned pertaining to employment, including building upon the supported employment model. The DD Council has certainly made suggestions to the BMS regarding employment, including in the last set of public comments on the IDD Waiver renewal, but these suggestions have not been included in the program. In our December 2017 comments we objected to the planned removal of community settings as a site of service for pre-vocational services, but the change was made anyway to only allow such services to be provided in a facility-based setting. This change seems to run counter to the intent of the Home and Community Based Service Settings rule.

In the same set of comments, the Council reiterated its concern about the lack of and types of training required for staff who provide employment-related services. We have also suggested on many occasions that, along with specialized training for staff, an enhanced reimbursement rate should be established in recognition that these employment-related services require a higher level of expertise than those for the provision of personal assistance services. Although these suggestions have been made by the DD Council and others before, they were not included in the last renewal of the IDDW.

The Council will continue to offer its advice in this area but want to be sure CMS and others recognize we have not endorsed the program in its current form.

Appendix N, Data Analysis is not provided in a manner that would be understandable to most people who try to review and give input to the STP. A plainly written narrative that details the information would be helpful to those who are not statisticians. We are making the assumption that the settings labeled in the Notes section as “Not Sample” are due to the bed size of three. There is no guarantee that such staffed settings of three or less beds meet the criteria in the Rule. Staffed residential settings of three or less beds should be included. Will such settings ever be reviewed for compliance? Why will those indicated as a

“Cluster” not be more closely monitored? What does “Private Owner” mean? And, does that mean that a setting housing eight people will not be examined because of that label? What does “being grandfathered into the Transition Plan” mean? Was the setting, which included six people reviewed for compliance?

In conclusion, the Council finds the State’s Transition Plan very hard to read, understand, and review. We are not certain the individuals (and/or their families) who receive services that might be affected by the Plan can make sense of it to make comments on it. We believe part of the reason very little response has been received by them is due to the complicated way in which the Plan is presented, as well as the lack of training and information provided to them by the State. We believe the State has an obligation to make every effort to ensure Waiver recipients and their families are better informed.