



STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
LANSING

RICK SNYDER
GOVERNOR

NICK LYON
DIRECTOR

September 30, 2014

TO: Interested Party

RE: Consultation Summary
Habilitation Supports Waiver Amendment and Home and Community Based
Settings Transition Plan

Thank you for your comment(s) to the Medical Services Administration relative to Habilitation Supports Waiver Amendment and Home and Community Based Settings Transition Plan. Your comment(s) has been considered in the preparation of the final documents that were submitted to the Centers for Medicare and Medicaid Services (CMS) for consideration.

Responses to specific comments are addressed below.

A. Stakeholder Inputs

Comment:

- While I have been aware of and have read information pertaining to the HCBS Final Rule and changes that are anticipated, the Transition Plan, late yesterday was the first I learned of the public comment time frame that concludes today. I therefore am concerned that stakeholders and their families, too, may not have had the information necessary to provide input.
- In our opinion, the opportunity for public comment has been insufficient. Information regarding the opportunity for public comment was not made widely known. We would ask MDCH to make a better effort to gain real and meaningful input from those affected by the plan before submitting it to CMS. One area to improve is in better communicating to key stakeholders the opportunity for public comment.
- While HSW beneficiaries are listed as key stakeholders in developing the assessment tool, the plan is only for the tool to be vetted by key stakeholders. We recommend beneficiaries be a part of the tool development process. Beneficiaries represent a wide array of perspectives and that diversity will play an important role in creating an effective assessment tool. We recommend including a diverse panel of stakeholders representing beneficiaries of varying abilities and preferences in both the development and vetting process.
- Provider respectfully requests MDCH allow more time for stakeholder input in the transition plan. Further, we ask MDCH to seek diverse perspectives in formulating its plan to comply with the CMS Final Rule.
- Stakeholder input for this initial transition plan has been very limited. Our organization is concerned that the Michigan Department of Community Health (MDCH) has not considered or discussed with stakeholders all the issues associated with achieving compliance with the federal final rule for home and community based settings (HCBS rule). Future "stakeholder input processes" must be more robust in order for MALA to support submission of a revised plan in June 2015.

- Parent of adult with autism: with respect to the Habilitation Waiver, who was involved in developing this Waiver Amendment, who should have been getting information about it out to the public?

MDCH Response in no particular order:

- In August, MDCH posted public comment notices in all major newspapers in the State of Michigan and in on two social mediums, Facebook and Twitter. Public Comment letters were also sent out to every PIHP in the state. MDCH distributed the notice at a stakeholder meeting (Howell group) in September. A stakeholder meeting for the State of Michigan transition plan was held which included stakeholders for those enrolled in the HSW. The HSW transition Plan and the amendment were posted on the MDCH website and a dedicated HSW email account was created.
- Per the HSW transition plan, in all stages of the plan (assessment, remediation, and outreach and education) MDCH will utilize various stakeholder groups to regularly present and partner with to inform a comprehensive Transition Plan in preparation for Waiver Amendment/Renewal in 2015. MDCH will amend the transition plan to incorporate obtaining stakeholder input on the development of the survey tool.
- Per the HSW transition plan, providers will be involved in the process of identifying and assessing their settings through the provider assessment tool, as well as providing evidence of ongoing compliance with the HCBS requirements through their contract with the PIHP.

B. HSW Transition Plan Recommendations

Comment:

- I am hopeful that surveyors establish times to meet with administrators as well as those in the homes where people reside to assure that detailed information regarding inclusion and integration are provided when determining if services provided meet HCBS requirements and expectations.
- The plan seems to be more of a plan to plan, as opposed to the comprehensive plan that the Centers for Medicare and Medicaid Services (CMS) apparently is requesting. Provider organization recommends that a more comprehensive plan be submitted to CMS as part of this current process.
- The sampling process for assessment of residential settings and nonresidential services is clearly inadequate. Provider organization recommends that all the settings and services be assessed to ensure compliance with the federal final rule.
- The plan does not address specifically the requirements for rationale and monitoring of any request for individual deviation from the additional conditions.
- On page 2 of the plan, second row, the "end date" predates the "start date" of the activity. Did you mean a start date of 10.1.2014?
- What criteria will DCH use to assure an organization is truly independent?
- What criteria will DCH use to "assume" a given setting complies with requirements?

- How will DCH assist people with disabilities living in non-compliant settings to move to a setting of their choice?
- Given the current protocol and the staff of 2 that conduct site reviews, the inclusion of this element seems artificial. The current staffing level allows for many people/providers to slip through the cracks. In order for these changes to be genuine more site reviewers should be hired.
- How will DCH outreach to the people living in various residential settings to assure it hears their concerns and recommendations?
- There is a time period of education that end 6/30/15. What appears to be missing is expressed education of new or future HSW enrollees and the education they will receive.
- The timeline in the HSW plan seem much more realistic. The use of an independent organization to validate the results is also a positive. The MICHoice plan and the HSW plan differ in some areas where consistency would be preferred (i.e. Self-assessment vs. outside assessment).
- The HSW allows for continuous stakeholder input, which the MICHoice does not.
- The self-assessment to be done by providers is troubling. The rubric will need to be solid and leave no room for interpretation. Why are the MICHoice assessments being done by agencies and the HSW assessments are self-assessment?
- The transition plan is not written in a way that is accessible to the people who are most affected by the changes, HSW enrollees and their family members. The plan is full of acronyms and jargon that would be challenging to anyone outside "DCH-BHDDA", as the plan refers to it, to interpret. This is troubling. A guide written to explain the jargon to members of the public (since that is whose input is being requested) would be helpful.

MDCH Response in no particular order:

- MDCH submitted a draft HSW transition plan to CMS in August and amended the plan based on their recommendations. This amended plan was the plan posted for public comment.
- CMS guidance allows for the sampling process to occur in assessing compliance with the HCBS requirements.
- Per the transition plan, individual deviations from the rule with regard to settings that do not comply will be identified and a transition plan will need to be developed. With regard to individual "restrictions", it is the expectation that these restrictions will be assessed, documented, and regularly reevaluated through the PCP process.
- On page 2 of the HSW transition plan, second row, the start date was corrected to read 2014 instead of 2015.
- Per CMS guidance, the standards that apply generally to all types of HCBS settings are integration with the community, consumer choice, consumer rights are protected, and consumer independence is optimized. See CMS website for further information at <http://medicaid.gov/HCBS>.

- The criteria used to determine an independent organization will be an organization that is established as a learning institute which is conflict free of service provision or authorization of services.
- Per the HSW transition plan, an individualized transition plan will be developed by the Prepaid Inpatient Health Plan, for any individual accessing a setting which will not conform to the HCBS requirements.
- A HSW enrollee survey tool will be distributed to individuals living in residential settings (owned or operated by provider). MDCH is working with Adult Foster Care Licensing (BCAL) to determine these settings.
- The HSW transition plan was amended to explain all acronyms.
- The HSW transition plan was amended to include ongoing education for new HSW enrollees.
- An independent organization will be used to validate the results of the stakeholder survey by on site assessments conducted by trained reviewers.

C. HSW Amendment Recommendations

Comment:

- The amendment language excerpted on pages 92 and 93 is from the electronic waiver application form. It appears that the language used is from the previous waiver renewal application that was submitted on an electronic form required by CMS prior to publication of the final HCBS rule. As a result, the draft document under review retains requirements about large settings and the Keys Amendment. This language should be modified since the HCBS rule does not address size. MDCH should provide clarification as to how the language will be changed to address the HCBS rule.

MDCH Response:

- Page 92 to 93 will be amended as a part of the 2015 waiver renewal as guided by the CMS HCBS requirements regarding settings that isolate.

D. Policy & Procedure Recommendations

Comment:

- There appear to be incongruences between the Bureau of Children and Adult Licensing (BCAL) AFC licensing rules. Specialized treatment settings are required to work with individuals that are diagnosed with similar disabilities. HCBS rules define these settings as “segregated,” and also directly impacts the ability to offer best practice clinical care.
- Details regarding potential wavier for certain treatment settings, and how they will be determined by the Secretary of HHS. Allowing a waiver will save excess costs to the CMH system.

- Homes where people with developmental disabilities reside are inundated with site reviews, thus I am hopeful that whatever type of site review is determined, that it will take the place of one that currently exists.
- We also have concerns as it relates to licensure of residential treatment programs serving adults with mental illness. Michigan's Adult Foster Care (AFC) licensure was designed to regulate congregate living environments for adults with a variety of disabilities, including settings for adults with mental illness. However, this licensure does not adequately describe a comprehensive residential treatment setting such as ours and others that provide an integrated program of residential care, therapeutic work activity, community integration, and robust clinical services and supports. We strongly believe that the state needs to consider a different type of licensure for these comprehensive programs, so as to differentiate them from those that are only residential care. This could help clarify some of the distinctions outlined in the HCBS Final Rule.
- Many of the guidelines in the Final Rule will be in direct conflict with current Adult Foster Care licensing rules.
- Requiring keyed locks on doors poses serious fire risks. There is also significant risk of lost keys, keys given to inappropriate people, challenges with patients who have PICA and will try to swallow their key.
- Moving people into their own home or apartment with 24 hour staffing puts them at extremely high risk of abuse, neglect or exploitation. These people cannot comprehend their circumstances or report a problem,

MDCH Response in no particular order:

- Per the transition plan, the site review protocols will be amended to address the HCBS requirements and will be incorporated into the current site review schedule.
- MDCH plans to work closely with BCAL (licensing) to align policies and procedures to comply with the HCBS requirements regarding residential settings including health and safety requirements.

E. Person Centered Planning

Comment:

- The HCBS Individual Plan of Service (IPOS) requirements indicate that Community Living Support service providers are not to be part of the process, and may represent a conflict of interest. Since Michigan CMH Boiler Plate contracts require providers to be involved with the IPOS and have timeliness expectations, we are looking to learn more about how to navigate this process.
- I was disappointed to learn in the detail of the HCBS Final Rule that providers will not be invited to PCP meeting regardless of the wishes of the person for whom the plan is held. I believe most administrative personnel employed with provider agencies are represented by people who care deeply about the well-being and happiness of those associated with their organization, thus a blanket rule that does not take into consideration who a person wishes to invite to a meeting is unfathomable. Similarly, the document speaks to congregate settings populated exclusively or primarily with individuals with disabilities living together, this too does not allow choice and preferences of those seeking housing and support.

- Barring providers from Person Centered Plans is going to result in incomplete plans, incompatible goals, and lesser services for the person. The person providing the daily care to the person knows them the best.
- I would encourage Michigan's plan strive to not eliminate resources available in our state that are valued by person's served and their families in the effort to meet the final HCBS waiver rule.
- I do not believe it is the intent of this rule to prohibit congregate settings from being considered home and community-based settings. I do know that with thoughtful changes to operational protocol, and perhaps changes to licensure requirements Michigan may be able to avoid "throwing the baby out with the bath water." I urge Michigan to utilize the full length of time allowed to create a thoughtful, non-biased approach to coming into compliance with this final rule.
- Separation of the housing provider from the provision of service should be left to informed choice of the program participant via a true person centered planning process, free of any coercion. I urge Michigan to not structure its service delivery system to promote this separation.
- Eliminating the provider from the person centered planning process can have and will have MANY negative effects on the person served.

MDCH Response:

- MDCH appreciated your comments and concerns however the public comment request is specific to the HCBS settings requirement of the HSW amendment and transition plan which does not include person centered planning.

F. Consumer Choice:

Comment:

- The plan provides no appeal process for an individual to dispute an assessment finding or request a variance. We recommend MDCH make a stronger effort to give the beneficiary a voice in decisions related to his/her services.
- While we certainly do, and always have, supported person centered planning and consumer choice in care setting, we have concerns with some aspects of the HCBS final rule. Sadly, some areas of this rule may actually restrict consumer choice of care settings.
- My sentiments regarding those doing the assessment speak to choice in housing and vocational options as well.
- Lastly, and perhaps most importantly, we have concerns that the restrictions on consumer choice of care setting in the HCBS final rule, and the likelihood of under-funding, will result in an amplification of the existing situation in our communities.

MDCH Response in no particular order:

- State of Michigan with involvement from key stakeholders will develop an assessment tool, as guided by the CMS Exploratory Questions Tool and vetted by key stakeholders, for HSW

beneficiaries to evaluate conformity to and compliance with HCBS rules and to represent their experience of both residential and nonresidential settings.

- MDCH continues to support individuals living in the most integrated, person directed environment. The HCBS requirements are focused on the “the participants’ experience” and not solely based on a setting’s location, geography, or physical characteristics. Appeal rights remain per Medicaid rules.

G. Funding

Comment:

- We are concerned with the potential cost to the state, the Community Mental Health organizations and the providers with implementation of the HCBS Final Rule.
- Parent of adult with autism: As the CMH also is having their General Fund dollars cut, and because of the way the Medicaid expansion was done in Michigan, with the Healthy Michigan program not providing the Long Term Care and Supports needed by people with disabilities, how will people like my son, persons with developmental disabilities who have tried but failed at paid employment, be supported in the future under these waivers? If they’re not supported, what if anything, does the state have planned, or are they just left on their own? And if so, what makes Michigan believe that they can do so? Is this a policy choice by the state?
- Parent of adult with autism: Related to the above, if there is no intention at the state level to eliminate the spend down requirement for people so situated as my son and make them eligible based on their development disability and its related needs, what cost benefit analyses were done by the state to determine this was the most feasible option?

MDCH Response:

- MDCH appreciated your comments and concerns however the intent of the public comment for the HSW amendment and transition plan is specific to the HCBS settings rule and cannot address these topics.

H. Other

Comment:

- I would like to express that frequently is it very difficult to obtain assistance for individuals that have Brain Injuries and that this waiver so a better job with including those individuals. Frequently they have physical, cognitive and behavioral problems that are not covered with current CMH funding.
- Treatment settings that meet the needs of individuals on Alternative Leave Status (ALS) from the Center for Forensic Psychiatry have specific details about their ability to access community settings, and would be in conflict with HCBS rulings.
- It is segregation to tell people that they must live in a diverse environment. All over the world people choose to live with other people who are most like them: whether it be based on race, income, nationality, religion or some other common factor. Mandating that people with disabilities must live with other people without disabilities is against their rights.

- Parent of adult with autism: CMS, in a document dated March 16, 2012, entitled "Assuring Access to Affordable Coverage: Medicaid and the Children's Health Insurance Program Final Rule", page 2, states that the final rules "In response to public comment, clarifies that people with disabilities or in need of long-term services and supports may enroll in an existing Medicaid eligibility category to ensure that they are quickly enrolled in coverage that best meets their needs." Has Michigan done that elsewhere if neither of the two waivers referenced in these comments do not do that? If it has not been done anywhere, what are the plans for doing this?
- Parent of adult with autism: Does the state have flow charts available to show what happens when someone like my son comes in the door and asks for services and how they receive waiver services under the two subject documents?
- Parent of adult with autism: I would like to express my concerns about changes currently proposed that will affect how adults with developmental disabilities, adults like my son, will have access to services. It is imperative that any changes to the way in which adults with developmental disabilities are supported include options that allow for unique and innovative programs and residential options.

MDCH Response in no particular order:

- MDCH continues to support individuals living in the most integrated, person directed environment. The HCBS requirements are focused on the "the participants' experience" and not solely based on a setting's location, geography, or physical characteristics.
- Assistance with funding, Medicaid eligibility, and service eligibility for individuals is not a part of this request for public comment and therefore cannot be addressed.
- Treatment settings such as the Center for Forensic Psychiatry would be presumed not to meet the HCBS requirements.
- MDCH will assure that there are a sufficient number of site reviewers available to assess settings.

I trust your concerns have been addressed. If you wish to comment further, send your comments to:

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Sincerely,



Stephen Fitton, Director
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