



Survival Coalition

of Wisconsin Disability Organizations

Survival Coalition Recommendations regarding Implementation of the New HCBS Regulations Issued by CMS in Non-Residential Settings, including Vocational Settings

May 15, 2014

REGULATIONS GOVERNING PERSON-CENTERED PLANNING

- Consistent with the new regulations, we recommend that Wisconsin long-term care programs develop and issue clear and complete conflict of interest guidelines for all participants in person-centered service planning processes.¹ This should include service providers, care and case managers, parents, guardians and other service providers who may be involved in the planning process with an individual.
- We support Wisconsin long-term care programs maintaining existing policy which permits the exclusion of service providers from certain aspects of the person-centered service planning process in order to address situations where significant conflict of interest exists and to ensure an individual:
 - Always has free choice of provider and can choose to change providers at any time without undue influence from an existing provider;
 - Has a confidential opportunity to freely discuss issues and concerns regarding providers with his/her case manager, care manager, nurse, or broker (depending on the specific long-term care program); and
 - Can freely decide his/her goals and outcomes, without undue influence from one or more providers who could benefit if certain goals or outcomes are chosen.
- We support active implementation of specific policy “supporting employment in the community at minimum wage or higher as the first priority of publicly funded services for working age citizens with disabilities, regardless of level of disability.” [Source: BPDD Q&A Document on Employment First; February, 2013]

To clarify, making employment in the community at minimum wage or higher the first priority **does not** mean that no other options will be available. Policy should include specific definition of what a good faith effort has been toward developing community employment (e.g. at least two 3-month work trials, etc.)

With regard to other publicly funded service options, we support the following:

¹ Cite regulatory language specifically requiring this.

- Options that make use of the most integrated settings – those being natural, community settings where individuals have maximum opportunity to interact with, form relationships with and receive natural supports from other members of their communities who do not have disabilities and who are not paid disability service staff.
- Options that start with a presumption that the most integrated setting appropriate (i.e. the most integrated setting in which an individual can be effectively served) is a natural, community setting. There are many natural, community settings available, thus a variety of choices of settings for individuals to select from.
- Options that comply with existing federal statutes and regulations, thus ensuring the continued availability of critical federal match funding for Wisconsin to provide much needed community services to individuals with disabilities. (Please see next section for discussion regarding the new HCB settings regulations issued by CMS.)
- Options that are effective in meeting the intended goals and outcomes established for those services in the state of Wisconsin. For example, we support prevocational service options that demonstrate 1. an ability to effectively prepare individuals with disabilities for integrated community employment paid at a competitive wage, and 2. which demonstrate that effectiveness through the successful transitions of prevocational service participants into at least part-time participation in integrated employment at competitive wage after a reasonable and defined period of time in prevocational services. (e.g. 3-4 years maximum)
- Options that offer people personalized and customized supports, rather than options that involve relatively small numbers of staff supporting relatively large numbers of individuals with disabilities. As supports transition, public programs must prioritize the need for **personalized and customized supports (e.g. higher staffing ratios) when services are delivered in natural, community, with the acknowledgement that those costs can be offset by less reliance on maintaining separate buildings and facilities.**

REGULATIONS REGARDING CHARACTERISTICS OF HOME AND COMMUNITY BASED (HCB) SETTINGS

- We read the new regulations² as requiring participants to be given a choice of settings in which they can receive each service included in their person-centered service plan. While all of the setting options offered must meet the settings regulations, we read those regulations as requiring that at least one of the settings offered must always be a non-disability-specific setting. This is an excellent opportunity for Wisconsin to transition into ensuring that truly community-based prevocational and day services are

² From the regulations: “The setting is selected by the individual from among setting options including non-disability specific settings... 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.”

available statewide and through every long-term care program. This will also help Wisconsin ensure Olmstead compliance regarding day and employment services.

- We agree with service providers that no service type should be eliminated from the waiver as Wisconsin transitions to full compliance with the HCB settings regulations. However, we do not agree that all existing settings where HCB services are currently delivered can be considered in compliance with the HCB settings regulations.
- We fully support the development and codification of specific setting standards for every service offered through Wisconsin's long-term care programs to ensure that "individuals receiving long-term services and supports through HCBS programs in Wisconsin have full access to benefits of community living and the opportunity to receive services in the most integrated setting where their goals, outcomes and support needs can be effectively met."
- Each service should include specific standards for how providers demonstrate that their services are delivered in a setting(s) that **"is integrated in and supports full access of individuals receiving 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 not receiving Medicaid HCBS."** These standards should include examples of acceptable and unacceptable settings.
- **We do not recommend or support the development of service standards being delegated to MCOs, the IRIS agency and counties. This will result in inconsistent standards across the state which will not lead to statewide compliance with the new federal regulations.**
- **We support adding the settings requirement language (bolded text in d. above) to each of the service definitions upon renewal of the various waivers, and to the formal list of requirements for all licensed HCB service settings.**
- We agree with the position³ of ACCSES (national organization representing CRPs to which RFW belongs) that acceptable HCB settings will ensure that:
 - Community-integrated employment is discussed, ***encouraged, and promoted*** (emphasis added) at every review, and the person is directly involved in making an informed choice, as well as during the delivery of services. (We further recommend that standards for ensuring informed choice with regard to integrated employment be developed and implemented consistently across all of Wisconsin's long-term care programs.)
 - Competitive integrated employment is always included in the options presented to the individual as the priority/optimal outcome and the option is presented on an ongoing basis.
 - At each program review, the program documents describe the individual's and/or guardian's concerns regarding integrated employment and the learning and/or work experiences and other action steps the provider is taking to address the concerns.

³ ACCSES February 19, 2014 letter to CMS outlining Recommendations Regarding HCBS Sub-Regulatory Guidance Applicable to Non-Residential Settings

- Individuals are taught what types of integrated employment are available in the community and how to access opportunities.
- Participants are provided education on the use of and how to access public transportation.
- Prevocational activities include opportunities to gain greater exposure to the greater community and to teach individuals how to access the greater community, including volunteering in various integrated community settings, trial work experiences and internships, recreational outings, educational outings, and tours of local businesses. (Note: We believe that with the exception of trial work experiences and internships, day services should also include these opportunities as part of compliance with the HCB settings regulations.)
- Day services provide exposure to the full community and teach individuals how to access the full community, including providing individualized connections to the community. Day service programs should include opportunities to participate in cultural activities throughout the days, evenings, and weekends and should include soft skills training (for employment).
- Ensuring the setting standards, and accompanying expectations, are met by every HCB service provider should be made part of required Quality Assurance monitoring done by the state or its designated proxy, and should be a required component in each service provider's Quality Assurance plan and Quality Improvement processes.
- With regard to prevocational and day service settings in particular:
 - We believe that sheltered workshops (work centers) and provider-owned and/or controlled day service settings, as currently operated, should be presumed to be settings that isolate individuals receiving HCBS from the broader community. This is true because most of these settings have many of the qualities which CMS has indicated contribute to being presumed settings that isolate, including:
 - The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.
 - The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.
 - The setting is designed to provide people with disabilities multiple types of services and activities on-site, including day services, medical, behavioral and therapeutic services, prevocational and/or social and recreational activities.
 - People attending the setting have limited interaction with the broader community while attending the setting.
 - "Outings" to the community are pre-planned rather than spontaneously chosen by individuals, typically involve large groups and the use of special buses for transportation. Time spent at community venues may typically be times reserved for disabled people (e.g. at the bowling alley or pool).
 - People attending the service are transported to and from the service in special vehicles that transport only people with disabilities.

- The service delivered typically involves remaining in the setting rather than routinely participating in community activities that take place in integrated, community settings.
 - People take breaks and eat lunch on site, alongside of other individuals with disabilities and staff supervises during these times.
- We believe that prevocational and day service settings that are located in industrial parks or similarly situated on the outskirts of towns, on relatively large lots that are located a distance from most other typical community venues open to the public (e.g. community centers, libraries, YMCAs/YWCAs, schools, colleges, shopping areas, etc.) are settings that isolate by virtue of their location and should not be approved settings for HCB services. (We expect that not all prevocational and day service settings will fall into this category; but those that do should not be settings where HCB services can be delivered after the transition period for compliance has been completed.)
- We do not believe that reverse integration (bringing people without disabilities into the setting) should be an acceptable strategy for meeting the new HCB settings regulations as such an approach does not provide people with opportunities to seek employment and work in competitive integrated settings, nor does it provide opportunities for people to engage in community life, nor does it allow people to receive specific types of services (e.g. employment services, therapies, recreation opportunities, etc.) in the places where people not receiving HCBS typically go to get those services

WE FURTHER RECOMMEND THAT DHS:

- Issue guidance to providers that indicate expectations and define benchmarks for incremental improvement toward increased numbers of individuals in acceptable HCB employment and day service settings each year of the state's transition plan.
- Create a no-new-entrant policy to facility-based day and prevocational settings within the first year after the federal sub-regulatory guidance on non-residential HCBS settings is released by CMS to ensure transitions directly to non-facility-based, fully compliant HCB settings for youth entering adult long-term care.
- Provide guidance (preferably developed collaboratively with Department of Education) to school districts that define and provide specific examples of settings that meet the new CMS regulatory standards to inform the development and implementation of IDEA transition plans, goals and services that can be subsequently be supported by the adult long-term care system. Guidance should address the necessity of schools providing complete and accurate information to families about future Medicaid Home and Community-Based funded service options and settings available in Wisconsin and how the state's HCBS transition plan is expected to change future options for HCBS-eligible youth.

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