

Response to ADAP's comments to Waiver Transition Plan of DMH's DD Division

ADAP (AL Disabilities Advocacy Program) provided comments to the DMH/DDD Transition Plan submitted along with the ID waiver on July 2nd 2014. Again, ADAP has categorized its comments and suggestions which will be responded to individually by DDD.

The Draft Plan is More Accurately Understood as a Work Plan, not a Plan for Compliance.

ADAP begins with quoting the new Federal law that requires each state to submit a Plan that “sets forth actions the state will take to bring the specific waiver into compliance” with the new regulations. ADAP interprets this to mean that a Plan must include the substance of how a state’s HCBS programs will change. ADAP notes that Alabama’s Plan focuses more on examining current programs and figuring out how to bring those programs into compliance. Additionally, Alabama’s Plan fails to describe how HCBS services will be provided in integrated settings and lacks specific target dates for compliance. ADAP concludes with the statement DMH must develop a legitimate transition plan.

In response to ADAP’s comments, DMH/DDD is in agreement that the Transition Plan is not yet fully developed and is the starting point in which to build a comprehensive Transition Plan. Given the timing of the Final Rule, the ID Waiver submission timeline and the public comment requirements, DDD intentionally did not yet set specific target dates. DDD understood from the beginning that more time would be needed to develop a Transition Plan that brings all the HCBS programs into compliance. To this end and possibly most critical to the Transition Plan is identifying programs that fail to meet the HCBS requirements. DDD intends to continue to elicit feedback from a wide range of stakeholders in order to add more details to the Plan. DDD believes that if the Transition Plan is implemented that changes to the waiver programs will be evident through a delivery of services that is tailored to an individual’s goals and desires. Once fully implemented and personalized, plans for individuals should encompass a great variety of activities that are integrated in the community.

A Person-Centered Plan (“PCP”) is the Cornerstone of the HCBS regulations.

ADAP states that the HCBS regulations emphasize true community integration and personal choice. And to achieve both goals, DMH must develop and implement a meaningful PCP process for each waiver recipient. ADAP states that although DMH has claimed to be doing PCP’s for several years, in practice PCPs are not done consistently throughout the state. ADAP believes that statewide consistency must be present to be able to report any meaningful results of the PCP process. Additionally, waiver recipients and their natural supports should know what services are available, what services are being provided, and any relevant expectation of the recipient and his/her natural supports to assist with care.

ADAP suggests there are two omissions from the Plan which are: 1) training appropriate personnel and 2) explicitly notifying waiver recipients and/or their caregivers of available services under the ID Waiver. ADAP notes that the Plan does mention training case managers on the Personal Outcome Measures (“POM”), but that the POM should not be considered the PCP. ADAP also notes that the Plan fails to identify who will conduct the PCP process, training regarding the conducting of PCP, and notification to waiver recipient and/or caregiver of the PCP process. Finally, ADAP suggests that historically the case manager would inquire as to the person’s needs rather than providing information to the applicant on the available services. And prior to or at minimum during the PCP meeting the recipients and their natural supports

should be provided with detailed information regarding the types of services offered under the ID waiver.

The DMH/DDD recognizes the fact that the PCP process differs around the state. The DDD has spent a considerable amount of time training on PCP development. The DDD developed a PCP format using the assistance of University of South FL nine years ago and that template has been posted on the departmental website. That said, the division understands the need for consistency throughout the state. In order for standardization to occur a requirement of the Transition Plan establishes one uniform format for all PCP. Additionally, the plan calls for a Personal Outcome Measures survey to be conducted with all participants. The PCP should be developed based on the information gained from the POM survey. This approach should ensure both individualized planning as well as consistency throughout the state.

In the Plan, DDD describes moving the POM interviews responsibility to the case manager, the entity responsible for plan development. Also, the POMs are described as a “perfect assessment of the person’s desires and whether there is support to help the person obtain goals,” and “once the POM interview has been conducted the person’s support team will be better equipped to develop a person centered plan that is truly individualized.” The intent of DDD is to use the POM as an assessment that will be the basis for the actual PCP. DDD believes it is through these two processes the waiver participant and family or caregiver will express their desires and waiver services will be provided to support goals/dreams.

- 1) Training for conducting a person centered planning meeting has been provided throughout the state. Each region of the DDD has a Quality Enhancement Specialist that is a PCP trainer and is capable of providing technical assistance upon request. That said, DDD understands ADAP’s concerns regarding appropriate training. The DDD plans to provide additional, statewide training for each case management agency on the PCP process. Additionally, the DDD is accepting and has identified volunteer agencies to “pilot” the process of developing PCP around the POM survey.
- 2) Waiver services and their availability should be something discussed with all participants during their annual re-determination or initial team meeting. The Plan identifies the standardization of the Choice process statewide. The purpose is to ensure all participants have been given the same opportunity to choose among waiver services and certified providers.

DMH Remains Ultimately Responsible for Compliance with HCBS Regulations and Olmstead.

ADAP references several initiatives in the Plan that involve other state agencies in DMH/DDD’s efforts to comply with the HCBS regulations. ADAP commends DMH for its attempts to seek assistance from other state agencies (such as State Department of Education and Vocational Rehabilitation), ADAP notes the Plan does not identify the responsibility of each agency. Using DMH’s efforts to expand integrated employment as an example, ADAP states that DMH does not describe adequately how other agencies will be engaged. Concluding, ADAP reiterates DMH is ultimately responsible for ensuring waiver recipients’ services comply with relevant HCBS regulations.

The DDD has received technical assistance (TA) through the US DOL Office of Disability Employment Policy to help improve employment opportunities in our state. One of the first activities was to create an Employment First Interagency Team, a multi-agency team focused on employment and transitioning from school activities to adult activities. The US DOL ODEP

provided additional TA through the more focused (by topic and states involved) Vision Quest as part of the Employment First State Mentoring Program. It is through these forms of TA that the DDD has begun the process of developing a comprehensive MOA/MOU that will include multiple state agencies responsible for providing resources, supports and services to people with disabilities as it relates to work preparation, trial work experiences, obtaining employment, and long term supports. It is through this MOA/MOU that each agency will identify its role and how services will be blended or braided with each other in order to maximize the funding needed to support a person throughout his/her life.

The Plan also specifies that DDD will develop a MOU with the Department of Rehabilitation Services. This MOU will actually be department-wide so the Plan will be edited to say DMH rather than DDD.

For DDDs' role, the division intends to develop a system wide assessment to determine our strengths and areas for improvement as it relates to HCB settings and the CMS Final Rule. Additionally, the DDD will develop a site specific assessment tool that will assist in determining if HCB setting requirements are being met. Finally, the DDD will develop remediation processes that will include technical assistance, individual remediation, as well as sanctions if necessary.

The DDD believes these steps will help ensure that waiver participants are not only receiving HCBS in a community setting, but that participants have fully engaged lives based on their desire.

Several Aspects of the Plan are Steps in the Right Direction.

ADAP notes the DMH focused efforts on improving access to employment opportunities and successful programs such as Project SEARCH must continue to be expanded. DMH must be open to any and all ideas focused on improving the quality of, and access to, services. ADAP also mentions making providers aware of expectations (i.e. new certification standards) and offering technical assistance (as outlined in the Plan) are essential for success.

Recommendations

- *Form a HCBS compliance workgroup tasked with developing the draft Plan into a more substantive transition plan. The DMH/DDD is in agreement with ADAP and that forming a workgroup to assist in defining Plan timelines and detail will logically be the next phase.*
- *Designate responsible persons for conducting compliant PCPs for every waiver recipient and provide appropriate training on PCP principles. The DDD intends to designate the case manager as the gatekeeper of the PCP. As such, the case manager will assist in the PCP development, will monitor actions that have or need to be taken, and will report on progress. The DDD understands the need for additional training, especially as it relates to PCP development and implementation, as well as case management requirements and expectations. Due to the fact this is so critical to true community based services, the DDD has developed and filled a lead position that is responsible for coordination of case management activities statewide.*
- *Develop information for waiver recipients and their caregivers that identifies PCP principles and available waiver services and can be understood readily by recipients as well as their family members and caregivers. The DDD agrees that a simple resource guide for participants and/or family/caregivers would be useful. The DDD will work with*

various stakeholders, self-advocates, and advocates on the development of such a guide.

- *Enter into agreements with other state agencies to assist DMH in implementing necessary regulations and policies to facilitate DMH's compliance with HCBS regulations. This is in the process of being facilitated.*
- *Provide information describing the progress of DMH's transition plan and HCBS compliance efforts on an ongoing, regular basis. Providing updates on the transition plan roll-out will be part of the Transition Plan process.*
- *Establish an additional public comment period that is broadly publicized as DMH moves closer to finalizing its transition plan. Eliciting additional public comment is part of the original Transition Plan. Please note the Public Comment section of the Plan. Here the DDD discusses public meetings regarding the Plan, posting revisions of the Plan, and public comment retention as part of the overall Transition Plan.*

Response to UCB of Birmingham's comments to Waiver Transition Plan of DMH's DD Division

- *Increased need for medical services because of the age of waiver participants, included is additional physical therapy, occupational therapy, nursing, and specialized medical. The DMH/DDD understands the desire to increase funding for those on this waiver specific to changing needs in health care as the population continues to age. Currently, the waiver offers all of the services mentioned above. In order to access the services a medical need determined by a medical professional (i.e. physician, RN) must deem it necessary and write an order for the service. Additionally, the DDD has started a specialized certification process for medically fragile and specialized behavior support residential homes. The homes are intended to provide the extensive medical and behavior supports needed for an increasingly aging population.*
- *Due to the aging of the population, should there be less emphasis on employment? What should programs focus on? While the DDD views employment to be one of the most basic needs for improvement in service delivery, especially among young adults, there is a recognition that not all waiver participants will be joining the work force. In order to compensate for this, services have been added to assist in more community activities outside the segregated/congregated programs. A new service has been added to the waiver that is specific to non-work related community access services. A second service was added based on direct comments from a stakeholder. This service is for instillation and monthly service of a Personal Emergency Response system. This service would allow more people to remain in their own homes and less reliant on direct staff as they age and while they are not working or otherwise participating in day activities via the waiver. Once the ID Waiver is renewed, the DDD will begin training and informing stakeholders about the new services. Part of the process will be ensuring that outcomes identified in the POM survey feed into the development of goals and dreams identified in the person-centered-plan with action items and responsibilities identified for each goal/dream.*

- *What is included in the Transition Plan about aging caregivers?* Please see response above.
- *Rates need to be actuarially sound.* The division has had a long standing rate setting committee that was established when the decision was made to move from cost reimbursement to fee for services. Stakeholders (contract providers) were intimately involved in the establishment of the rate methodology as well as the rates. Rates continue to be an area that the division looks at and periodically meets with stakeholders to discuss. Additionally, monthly sub-committee meetings provide a communication avenue to discuss current and future budgets, as well as rate increases.

In an effort to ensure contract providers are adequately funded during this shift toward employment and more inclusive community supports, the division is partnering with the U.S. Department of Labor's (USDOL's) Office of Disability Employment Policy (ODEP) to receive technical assistance through subject matter experts in their 2015 Vision Quest Policy Workgroup series. Our core group, which includes provider stakeholders, will be working on Rate/Reimbursement Restructuring. The application submitted to ODEP/EconSys specified a key policy objective, as well as a milestone (outcome):

Policy Objective: Employment becomes the first option for working age individuals receiving services from all state systems.

Milestone: Develop rate structure that provides adequate incentives and funding to attain employment outcomes.

Work with the subject matter experts will begin January 2015. It is the division's goal to conclude this series with significant rate methodology changes that will not only provide incentives for optimal community integration supports (to include employment supports), but also continue to provide a stream of funding that allows providers to maintain fiscal stability during this time of transition.

- *Results of Assessment Tool Analysis should be presented to stakeholders.* The ID Waiver Self-Assessment tool for HCB settings data was collected and analyzed in a report submitted to CMS. The report can be provided to stakeholders.
- *When assessing sites that have qualities of an institution a financial impact statement be developed including a plan to assist the organization to transition that would reimburse the organization for any financial harm that occurs as part of the changes in CMS rule.* Please see previous response regarding rates.
- *The Transition Plan does not speak to service coordination with the RCO by the CM providers. Also, what will be the plan for transition when the RCO is responsible for all the HCBS Waivers?* Per CMS, case management and supported employment sections of the transition plan were removed. That said, the DDD is working with each case management agency on various tasks such as person-centered-planning as a case manager responsibility and how to create a meaningful day. That DMH is also involved with the RCO Long Term Care and Supports and Services study work group. This work group will identify issues as they relate to transitioning LTCSS to a managed care model.

- *POM: Should the case manager take the lead on this? There appears to be high turnover. Recommend a certificate process similar to job-coach to improve validity and reliability.* It is the intent of the DDD to move the person-centered planning process over to the case manager. This will help with the de-conflicting process. Training will be ongoing as the Division has a Director of Case Management Services dedicated to case management as a function. Rater reliability is built into the Personal Outcome Measures survey instrument. DDD continues to work through some of the case management concerns including creating a career path within the system.
- *Cost reimbursement for pilot projects.* The DDD has started 2015 with several initiatives and is continuing the Project Search initiative adding new sites along the way. Where and when possible the DDD will utilize waiver dollars to cover the cost of pilot projects (i.e. GATE). Project Search should be fully funded by braiding VR and DMH dollars. Long term supports are available through the waiver for those that qualify. On rare occasions the DMH will allocate state only dollars but this is rare and has to be accompanied with an approved business model.
- *Remediation activities should be accompanied with an analysis of the financial impact to service provider that were asked to developing these new services. Providers should not be penalized for developing services that were not there (i.e. HUD homes) and now may be non-compliant. Please see above comment regarding rates. Additionally, the DDD is making every effort to assist providers that may be either non-compliant or want to make a shift in their current structure. Currently the DDD has several pilot projects under way to assist in the HCBS Final Rule. In combination the DDD has been accepted as a core state for ODEP's Community of Practice that brings with it technical advice for Provider Transformation and Rate Restructuring. All these efforts are intended to support providers as policy shifts toward even more inclusion.*
- *Department must improve its communication about the Transition Plan effort in an accessible and easily understood method for all stakeholders. The ID Waiver Transition Plan was developed internally and presented externally to stakeholders for comment and suggestions. Updates regarding the transition plan will be made to stakeholders as changes happen.*
- *A commenter stated concern with the transition plan as it relates to "transition of residents from current choice and appropriate environment of extended families and community access to an unfamiliar environment." This commenter felt little attention is given to family or guardians' input and choice as part of the decision making partner related to services. The DDD believes in the participant's freedom to choose the most appropriate setting based on his/her needs and desires. However, CMS was clear that if a site does not meet the HCB settings Final Rule benchmarks then waiver dollars cannot be used to support the service provider. So, choice is among providers that fully meet the CMS HCBS Final Rule.*

Waiver Transition Plan Comments not Adopted and Why:

The DMH/DDD believes that most all of the Public Comments regarding the ID Waiver Transition Plan either have been or are in the process of being addressed. Some items already exist in the ID Waiver Renewal and some items are in the process of being studied or implemented.

- *Form a HCBS compliance workgroup tasked with developing the draft Plan into a more substantive transition plan.* The DDD believes this task force is a good idea. However, at this time the focus is on implementing the current Transition Plan and ensuring that the ID Waiver is renewed. Strategic Planning sessions can be picked up to develop a plan that is more detailed and extends to other areas (i.e. person-centered-planning).
- *Why was Person-Centered Planning and De-conflicted Case Management removed from the waiver transition plan?* The reason for removing Person-Centered Planning and De-conflicting Case Management from the transition plan was not discussed with CMS, but based on our understanding, these two items should be already in effect (and PCP is already an established practice).
- *What is included in the Transition Plan about aging caregivers?* Aging waiver participants and care givers is already addressed in the waiver and through the DDD's criticality assessment process.
- *When assessing sites that have qualities of an institution a financial impact statement be developed including a plan to assist the organization to transition that would reimburse the organization for any financial harm that occurs as part of the changes in CMS rule.* Financial impact studies can be provided to the DMH as part of a larger study of the overall rate methodology process. Currently DDD is working with ODEP/EconSys to evaluate the rate structure and restructure where possible. Once a rate methodology has been developed and approved through the DDD Sub-committee process then the ID Waiver will be renewed.
- *Remediation activities should be accompanied with an analysis of the financial impact to service provider that were asked to developing these new services. Providers should not be penalized for developing services that were not there (i.e. HUD homes) and now may be non-compliant.* Financial impact studies can be provided to the DMH as part of a larger study of the overall rate methodology process. Currently DDD is working with ODEP/EconSys to evaluate the rate structure and restructure where possible. Additionally, per date there has been no limit in the number of participants living in a group home outside the ID Waiver which limits new homes to no greater than 6.
- *A commenter stated concern with the transition plan as it relates to "transition of residents from current choice and appropriate environment of extended families and community access to an unfamiliar environment."* Based on comments from CMS, AL DMH/DDD will not fund sites that are not in compliance with the HCB settings Final Rule. So, while a participant exercises a good bit of choice, choosing a provider that is not compliant will ultimately mean the waiver dollars to support the participant will not go to this particular provider and the participant will need to find other means by which to pay for services rendered.

Modifications Made to the Transition Plan Based on Public Comments:

The major modification to the waiver transition plan was the removal of the case management, person-centered-plan, and supported employment sections. Based on discussions with CMS, these sections were eliminated in order to focus solely on site based compliance. Additionally, it

is assumed that effective March 2014 both de-conflicted case management and person-centered planning would be fully implemented and in compliance with the rule. There were many public comments questioning the removal of the sections especially as it pertains to case management and person-centered planning.

Two major suggestion from the transition plan public comment were incorporated in the transition plan. First, it was suggested (and later developed) that the DDD use a simplified crosswalk similar to the SNF Interpretive Guidelines so that there is no confusion regarding the CMS Final Rule and exactly where in the DMH/DDD regulations an item can be found.

Second, through a two stakeholder forums the DDD was able to glean start and end dates for full compliance which was another area that needed to be finalized.