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November 13, 2014

The Honorable Bernard A. Simons, Deputy Secretary
Developmental Disabilities Administration
201 West Preston Street
Baltimore, Maryland 21201

Re: DDA Community Pathways Waiver &
Maryland's CMS Final Rule Transition Plan

Dear Mr. Simons,

On behalf of the Maryland Association of Community Services, thank you for the opportunity to provide feedback on the recently approved DDA Community Pathways Waiver as well as Maryland's process for developing a Transition Plan for the CMS Home & Community Based Settings Final Rule. Both sets of MACS' initial feedback are attached to this letter.

We are in the process of forming a committee of MACS members to review the approved waiver application in more detail, and we may have additional comments and questions regarding the waiver once that group has met. We have also recently convened a MACS Workgroup regarding the CMS Final Rule Transition Plan, and that group's initial feedback is reflected in the attached document.

We look forward to assisting the Developmental Disabilities Administration with making improvements to the Community Pathways Waiver while addressing the CMS Home and Community Based Settings Final Rule.

We share your goal of working to ensure that the DDA system is best suited to support people with developmental disabilities in their own communities. Please do not hesitate to contact me with questions.

Sincerely,



Laura Howell
Executive Director

MACS Initial Feedback
DDA Community Pathways Waiver
November, 2014

Overall Feedback

- The Waiver defines a day as comprised of one unit of service and indicates that payment may be made for one unit of service per day. This limitation prevents people from receiving multiple service types in one day. The Waiver and DDA payment system should allow two service types in the same day. This would help agencies provide more flexible and customized services.
- MACS believes that the Waiver should include nursing services. Many people are at risk of institutionalization because DDA has generally stopped providing private duty nursing as a waiver service.
- In light of new pre-authorization requirements, DDA should analyze whether pre-authorizations can be conducted in a timely manner for all applicable services across each region.

Personal Supports (Formerly CSLA- Community Supported Living Arrangements)

- The Waiver requires that personal supports over 82 hours per week be cost neutral, and must be authorized by DDA. The 82-hour limit will have a significant impact on people who live independently in their own homes and who need more than 82 hours of support in order to do so. The CMS HCBS Final Rule requires that individuals have the opportunity to live in the most integrated setting possible. Even though the waiver indicates that DDA can approve more than 82 hours of Personal Supports, MACS is concerned that this requirement will negatively impact people receiving supports.
- DDA should allow approval of essential state-only funded supports, such as a rent subsidy while a person waits for a permanent housing voucher. In many cases, providing limited state-only funded support would cost less than the person transitioning to a more costly service that is not as integrated.

Assistive Technology & Adaptive Equipment

- The Waiver added a DDA preauthorization requirement for assistive technology services. This new requirement adds bureaucracy to these services because the documentation of need for assistive technology and adaptive equipment is listed in the Individual Plan (IP). Additionally, agencies that provide these services are already required to be certified. Allowable assistive technology supports should not require a higher level of authorization than other Waiver services.

Transportation

- Transportation is a critical issue across the state with all services, particularly Supported Employment. A person's ability to access and experience the greater community depends on effective transportation, and there are significant cost variations to providers across the state. MACS recommends that the transportation rate be unbundled from the administrative rates for all other services, and instead include it in the separate transportation waiver service category in the Waiver. Transportation should be a separate service that is paid directly to the transportation provider. This would not only help level the playing field across the State, but help Maryland transition to compliance with the new CMS HCBS Final Rule.
- MACS is also concerned that there is a \$1400 annual cap for transportation. Such a low cap on transportation costs will have a negative impact on people and should be reexamined.

Employment Discovery & Customization

- There is no definition of internships in the Waiver, and there is no clear manner in which to bill for internships under any employment category. Many individuals would like to do internships to help gain skills that could lead to employment. MACS recommends adding internships to the Employment Discovery & Customization service category.

Environmental Accessibility Adaptations

- DDA should assess utilization data and survey resource coordination regarding unmet needs, to determine whether the cap of \$17,500 is appropriate. If the data justifies a larger cap, it could lead to less reliance on more expensive services for some people.

Residential Habilitation Services

- The Waiver mandates that residential providers provide mobility training, which has historically been provided by the day or supported employment provider. This creates a new mandate without discussion with stakeholders, or funding for the new service.

Community Learning Services

- Community Learning Services were developed as an alternative to traditional day habilitation services, and were intended to provide opportunities to take advantage of community-based activities in small groups. While employment is one goal for people using CLS, it was never intended to be the only goal. The Waiver focuses solely on employment with respect to Community Learning Services. MACS has recommended that language be adopted that allows CLS to be used by people seeking employment, as well as people seeking meaningful activities during the day in non-facility based settings.

MACS Initial Feedback & Recommendations
CMS HCBS Final Rule Transition Plan- Maryland
November 2014

Overall Recommendations

Community-based developmental disability supports in Maryland are undergoing significant systems change, and the success and outcomes of the many areas of systems change will have a major impact on the success of the State in reaching compliance with the CMS HCBS Final Rule.

MACS makes the following over-arching recommendations regarding the State's transition plan:

- DDA should define its vision for community supports with regard to the Final Rule before any assessment occurs. Although the Final Rule impacts all HCBS Waivers, it must be consistent with the vision and values of people with developmental disabilities.
- DDA should align waiver changes, regulations, and rate setting with the transition plan to comply with the Final Rule.
- Coordination of systems change work with the transition plan is critical. DDA should identify a skilled, knowledgeable entity to actively track and coordinate all systems change activities, including rate setting, the Individual Plan, Policy on Reportable Incidents and Investigations (PORII), regulatory changes, Request for Service Change (RFSC), database changes, Waiver changes, Targeted Case Management (TCM), and Employment First.
- DDA should engage a skilled, knowledgeable entity to engage stakeholders, including people with developmental disabilities, their families, and agencies providing supports, on an ongoing basis throughout the transition timeframe.
- The State should set guidelines that allow an individual receiving supports and their team to assess and determine fair levels of risk. All stakeholders, including DDA and OHCQ, should receive training in risk vs. opportunity in DD supports. The individual's team and person-centered plan should drive the level of risk deemed appropriate in order to meet the standards embodied in the Final Rule.
- DDA should develop fiscal incentives for best practices and ensure that the vision is consistent with DDA values.
- There should be a comprehensive and coordinated review of the roles of DDA and OHCQ, including clear definitions of roles and responsibilities. Clarity regarding the roles and responsibilities of DDA Headquarters, DDA Regional Offices, and OHCQ

should be clearly outlined and communicated. There should be a comprehensive and coordinated approach to quality assessment, measures and oversight.

- There should be public reporting by the State, no less than annually during the transition period, on the progress of rate setting, regulatory compliance, and technical assistance.

Assessment and Remediation

- It is critically important that DHMH conduct a new baseline assessment that is specific to the DDA system. The survey that was sent to DD providers in October 2014 will not provide the Department with accurate data. The initial survey includes data from providers and participants providing or receiving supports in the Assisted Living, Developmental Disabilities, Autism, and Traumatic Brain Injury waivers. The initial survey results have no way of matching provider responses and participant responses within specific waivers. In order to have a valid baseline assessment, DHMH must look at each specific system individually and match provider and participant responses. MACS recommends considering a tool that has been tested and validated, to measure the level of community integration of a setting. DDA staff or anyone administering the test should be trained to administer any tool that is used for this purpose, and training should be provided for recipients of the test as well.
- DDA should outline exactly what is being measured by the tool and communicate with stakeholders prior to and after any evaluation period.
- Data collection for the assessment of compliance should cover three levels:
 - Global- DHMH/DDA Systemic Compliance
 - Provider self-assessments/site visits
 - Individual assessments (via the Individual Plan)
- DDA should work with stakeholders to define settings as soon as possible, and the definitions should be communicated to all stakeholders through a number of modes. As part of this process, the workgroup and DDA should identify potential settings that are presumed to meet the standard of the Final Rule, such as, but not limited to, CSLA, integrated competitive employment, and community learning services.
- When settings are determined to not be compliant with the Final Rule, as part of the remediation process, DDA should work collaboratively with the provider to help identify the barriers to compliance, and to create a plan to successfully transition into compliance. Reasonable and specific timelines need to be determined and communicated on an individual provider/site basis.
- DDA regional office staff should be the primary personnel who conduct site visits. Any DDA staff conducting site visits should be trained and should communicate with people receiving supports.

Technical Assistance

- DDA should identify and invest in high-quality experienced technical assistance that is knowledgeable of CMS requirements. Technical assistance should be proactive and reactive (when appropriate), and should be available to both come into compliance, as well as to enhance quality and the overall goal of the Final Rule. DDA should consider a variety of sources for technical assistance, including funding to coordinate technical assistance through MACS.
- Providers should be able to request technical assistance from DDA without it *triggering a punitive response from DDA*, so providers are encouraged to have an open and honest dialogue with DDA regarding compliance with the Final Rule.

Timeframes

- DDA should align timeframes for compliance with timeframes for rate-setting, regulatory changes, database and systems change, as well as any waiver amendments. DDA should allow providers ample time to successfully transition into compliance with the Final Rule.
- Providers need an initial timeframe that is strictly an assessment period. For settings that require remediation, a strategic plan of remediation should be developed with reasonable timeframes for compliance.

Public Input

- DDA and Maryland Medicaid should work closely with MACS and other stakeholders when making decisions regarding the Final Rule. An open, collaborative relationship between all entities will help us achieve our collective goal of not only complying with the Final Rule, but improving DD supports in Maryland.
- Public meetings should be in various formats and locations to meet the needs of individuals and families. The State must create an effective way to communicate with people with all levels of disabilities in a plain and understandable manner. DDA must also have an effective way of communicating with all stakeholders, including families, across the state.

Questions

- Does CMS intend for the assessment process to be on the setting level or individual level?
- With regard to the lease agreement requirement for residential settings under the Final Rule, what happens if an individual receiving residential supports is incapable of signing a lease and does not have a guardian to do so on their behalf? Will providers be required to find guardians for individuals? Will there be landlord protections for providers? How will these agreements affect potential discharges?
- What falls into the heightened scrutiny category?
- Will National Core Indicators be used as part of the assessment, and in what capacity?
- What is DDA's plan for ensuring ongoing compliance? Could the Final Rule requirements be an opportunity to reevaluate OHCQ's role?
- How will DDA be assessed to ensure compliance?