

Advocacy Center comments on OCDD transition plans
December 17, 2014

The Advocacy Center is submitting these comments regarding the State of Louisiana's "transition plans" for complying with the home- and community-based settings requirements for services under existing § 1915(c) waivers administered by the Office for Citizens with Developmental Disabilities. The State has failed to submit transition plans in compliance with the regulations promulgated by the Secretary 79 Fed. Reg. 3028-39 (January 16, 2014).

The State has posted four documents on its website regarding transition plans for services to individuals with developmental disabilities (<http://new.dhh.louisiana.gov/index.cfm/page/1991>).

Three of the four documents are referred to as "transition plans":
[OCDD Home and Community-Based Services Setting Transition Summary/Description](#);
[OCDD Home and Community-Based Services Setting Transition Plan](#);
[OCDD Supports Waiver Transition Plan](#).

The fourth document is a draft amendment to one of Louisiana's existing waivers, the Supports Waiver. There is no explanation on the website, or in any of the documents that are denominated "transition plans," of how this draft amendment relates to bringing the Supports Waiver into compliance with the home- and community-based settings requirement. A review of the draft amendment did not reveal any changes that relate to the requirements of the January 2014 regulations.

The website indicates that public comments or input must be provided by December 17, 2014. These documents provide no substantive information as to whether or not the State deems its waivers to be in compliance with the January 2014 regulations, or any detail as to how the State proposes to bring them into compliance. None of these plans contains the required elements of a transition plan.

It is not clear which of these documents, if any, the State intends to use as transition plans under 42 C.F.R. §441.301(c)(6). This may be because OCDD intends to apply for approval of a § 1115 Demonstration Project in preparation for a move toward managed long-term services and supports. Apparently, the State believes that this fact excuses it from complying with the requirement that it bring services under its existing waivers into compliance with the rule. We would simply note that the January 2014 Rule does not contain an exception for States that intend to apply for § 1115 Demonstration waivers. It requires all States with existing waivers to submit plans that contain an assessment of current compliance and timetables for addressing noncompliance by January 16, 2015.¹

¹ One of Louisiana's waivers that offers services in settings that do not comply with the January 2014 regulation is the Supports Waiver 0453-R0200. This waiver was submitted

The first step in any transition plan is for the State to determine its current level of compliance with the settings requirements in each waiver. The “Toolkit” published by CMS states that the State should provide a written description to CMS, including in this written description its assessment of the extent to which its standards, rules, regulations, and other requirements comply with the Federal HCBS settings requirements.

This description is a required part of the transition plan, and should be available for public comment.

The OCDD Supports Waiver Transition Plan states that by November 30, 2014,

OCDD will assess all HCBS rules/regulations, related licensing, and policies/procedures to determine degree of compliance with HCBS rule for the Supports Waiver.

The OCDD Home and Community-Based Services Setting Transition Plan states that by October 31, 2014:

Louisiana will assess all HCBS rules/regulations and policies/procedures to determine degree of compliance with HCBS rule.
Louisiana will identify HCBS settings as they potentially conform to the HCBS setting rule and ability to comply in the future.

However, no results of any such assessments have been published, so the public has been given no opportunity to review or comment on this aspect of the plan.

The OCDD Home and Community-Based Services Setting Transition Plan also states that by November 1, 2014,

Louisiana will draft and finalize informational letters describing proposed transition, appropriate HCBS settings, deadlines for compliance, and technical assistance availability. Louisiana will also offer a public stakeholder meeting and invite participants and their families, advocacy groups, service providers, support coordination, local governing entities, etc.

There was a stakeholder meeting on November 17, 2014, but it did not involve a discussion of proposed transition, appropriate HCBS settings, deadlines for compliance, and technical assistance availability.

Other than these deadlines, which have already passed without the State’s having presented any of the information for public comment, the plans simply set forth some desired steps, not to attain compliance with the regulations, but to assess current compliance. The only actions the “plans” describe is that the State will require HCBS

for a five-year renewal on June 3, 2014, making the transition plan due, according to the January 2014 regulation, on October 1, 2014.

providers to submit “corrective action plans.” But the plans do not provide any detail at all about what sorts of corrective action will be necessary.

These regulations were promulgated almost a year ago. Instead of evaluating its existing services so that it could present a transition plan for public comment, the State has apparently done nothing.

It is extremely obvious that some of the State’s services under existing waivers fail to comply with the home and community-based settings requirements. For example, day habilitation and prevocational services under the NOW, the Supports Waiver, and the ROW are often provided in completely segregated settings, and more appropriate integrated services are not offered, or are extremely limited. It should not have taken the State a year to figure out how to figure this out. Yet the “transition plans” do not even propose to have data as to whether or not different services comply with the regulation available to the public until December 31, 2015.

If these documents satisfy the requirement that the States submit transition plans within a year of the effective date of the January 2014 regulations, to bring existing waivers into compliance with the regulations, after first making the transition plans available for meaningful public input, then that requirement is meaningless.