



December 15, 2014

Commissioner Clyde Reese
Georgia Department of Community Health
2 Peachtree Street, S.W.
40th Floor
Atlanta, Georgia 30303

RE: Georgia's Statewide HCBS Transition Plan

Dear Commissioner Reese:

We write to provide feedback on Georgia's Statewide Transition Plan ("the Transition Plan"). The Plan indicated that public comment on the Plan would be accepted through December 15, 2014. We are submitting this feedback as the designated Protection and Advocacy System for the State of Georgia and on behalf of our partners in the Developmental Disabilities Network mandated by the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§15001 *et seq.* They include the Georgia Council on Developmental Disabilities, the Institute on Human Development and Disability at the University of Georgia, and the Center for Leadership in Disability at Georgia State University.

We acknowledge the State's (particularly DCH's) tremendous effort in preparing the Transition Plan. The Plan provides a framework for implementing necessary changes for compliance with the CMS HCBS Settings Rule ("the Settings Rule"). We hope the State's efforts will be a significant step forward in implementing the Rule and in enabling people with disabilities in Georgia to live fully integrated lives in their communities.

Successful implementation of a Plan requires clear articulation of the goals of the Plan. Apart from the implicit goal of compliance with the Settings Rule, the Plan does not contain explicit goals nor does it articulate values or principles that will underlie the implementation of the Plan. It is largely concerned with the process and tasks of assessment, reporting and monitoring. While these may be important ends in themselves, they are not the purpose of the Settings Rule which is for the State over the next five years to identify and divest from segregating and isolating services and instead invest in services that enable people with disabilities to live lives of full integration. We fear that without a clear articulation of goals, values and principles, Georgia's effort toward the implementation of the Plan could be undermined.

We applaud the effort the State has made to host public forums and raise awareness of the development of the HCBS Transition Plan. These forums were a good starting point for individuals, families and providers to learn about the Settings Rule and the State's initial plan to implement the Rule. Much more education needs to be done. Georgia, like other states, has long invested its HCBS Waiver dollars into congregate and segregate settings that have the effect of isolating the individuals receiving support under these Waivers. The concept of "community services" has encompassed these isolating and congregating settings and services as part of the

accepted mode of providing services. Under the Settings Rule, many of these long-standing practices will have to change. All of the people impacted by the changes contemplated by the HCBS Settings Rule -- individuals receiving services, their families and other natural supports, the providers providing these services, and the state systems providing funding and oversight -- will need a variety of learning opportunities to become familiar with the Rule. The providers, in particular, will need meaningful opportunities to learn and understand how the Rule will be implemented in the provision of services. The Plan is largely silent as to training or the content of any training or technical assistance to be provided.

The Plan identifies isolating settings (pg. 6) but does not give examples of what successful integration looks like. In order for people affected by the Plan to understand it, they should have an idea of what the goal is in real, concrete terms. The Plan should articulate examples of settings and services that demonstrate integration in residential and day services.

The State should publicly disclose which settings are presumptively non-HCBS settings and get "heightened scrutiny" along with a determination of what happens to each setting. The Plan should acknowledge that there will be settings that do not qualify as HCBS settings and articulate what happens to these settings.

The Plan does not detail how individuals who are being provided services in settings that cannot come into compliance with the regulations will be offered a choice of, and transitioned to, an alternate setting that complies with the rules. This process must be developed -- and there must be an opportunity for public input -- before the final Transition Plan is submitted to CMS. For individuals currently served in these settings, the State must create an individualized transition plan that articulates how these individuals will be supported to choose among a variety of options for integrated day and residential services consistent with the Settings Rule.

Georgia should be applauded for providing many opportunities for input from individuals receiving HCBS services ("members"), their families and disability advocates. In addition to the individual survey that is part of the assessment of settings, there will be public comment on any revised regulations (p.15) and on any changes to state policy (p.22). However, there are many opportunities where members, families, and disabilities advocates are not currently afforded an opportunity to provide input and should be:

- Members, families and disabilities advocates should have an opportunity to provide input on the results of the provider self-assessment (p.20). While random sampling and on-site visits to verify the results of the provider self-assessment are helpful, the categorization of settings should not be done without input from members, their families, or disability advocacy organizations. The specific settings that fall in each category should be made public, and public input should be sought before the categorization of settings is finalized.
- Disability advocacy organizations have experience with a range of settings and members' experiences in those settings. They are an important source of information for evaluating

settings' compliance with the rules, and we believe the plan should be amended to include information from these stakeholders as part of the settings assessment process.

- While providers are afforded the opportunity to challenge a determination that a setting does not comply with the rule, there is no such grievance process for members and their families to file complaints about non-compliant settings. The appeals process Georgia is creating for providers (p.9) could serve both providers and members.
- Members, families, and disability advocates should also have the opportunity to comment on any corrective action plans initiated for non-compliant providers, prior to their approval by the State (p.24). The plan does not appear to provide these opportunities

Georgia mentions that the rule's specific requirements to ensure that individuals are provided a choice of a private room and choice of roommate (p.7). However, the rule not only requires a choice of setting and roommate, but also that individuals are given a choice of non-disability specific settings and, in residential settings, a choice of a private unit. The Plan is not detailed about how it will ensure individuals are offered choices of non-disability specific settings; people cannot be offered that choice if there is not capacity. In fact, the provider assessment tool does not ask for any details that would assist in determining what capacity currently exists. Georgia must evaluate its current capacity of non-disability specific settings and develop a plan to increase capacity as needed to fulfill this requirement. The lack of capacity is particularly acute for non-residential services, where the vast majority of settings (like Adult Day Health and sheltered workshops) are disability specific. With respect to the option of a private unit, there are a number of waiver programs that only offer participants congregate residential options. The Plan does not describe how this will be addressed.

We are looking forward to hearing what you learn from assessment pilot that the State is currently engaged in, and look forward to working with you in bringing HCBS supports and services in Georgia into compliance with the Settings Rule and the Americans with Disabilities Act.

Sincerely,



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