

December 10, 2014

Long Term Care and Behavioral Health
ATTN: Kelly Eifert, Ph.D.
South Carolina Department Health and Human Services
P. O. Box 8206
Columbia, South Carolina 29202-8206

Dear Dr. Eifert:

Protection and Advocacy for People with Disabilities, Inc. (P&A) advocates for the legal and human rights of South Carolinians with disabilities. P&A is submitting these comments in response to the transition plan for compliance with the CMS Home and Community Based Services (HCBS) Final Rule (79 Fed. Reg. 2947, Jan. 17, 2014).

P&A strongly supports the Final Rule's goal of ensuring that individuals who receive HCBS services and supports have full access to the benefits of community living and the opportunity to receive services in the most integrated setting appropriate.

P&A appreciates DHHS's openness in the development of this transition plan. We realize that at this stage a plan cannot provide specific timelines and steps to reach the goals of the Final Rule, but we wish to emphasize some principles that should govern the entire process.

1. In addition to DHHS assessments of existing facilities and services, DHHS should contract for trained external reviewers who can assess the opportunities for interaction outside the facility or program. While self-assessment is a valuable first step in prioritizing assessments, all programs and facilities should be reviewed by an independent assessor.
2. The transition plan should include development of protocols for the person-centered plan and criteria for individuals who provide the assessments used in developing the plan. It should include a timeline for training individuals receiving services and providers about the goals of the Final Rule and the person-centered planning process.
3. The transition plan should include a strategy to gather information about the availability of community programs which could be modified to include waiver participants. These might include community day programs, such as those run by Area Agencies on Aging, country recreation commissions, and church groups. The transition plan should also include a timeline to investigate whether Medicaid transportation can be used to get people to community activities other than medical, if activities are part of individual's plan.
4. The transition plan should address the need for DHHS to work with DHEC and other members of the Adult Protection Coordinating Council to assess the need for changes in the system for investigating abuse/neglect/exploitation of vulnerable adults. SLED data show that many cases occur in CTH IIs. As individuals move into smaller facilities there will be a need to determine the best way to protect individuals. P&A believes that procedures to protect individuals in the community are an essential part of person-centered planning and DHHS

quality control. The transition plan should also consider development of an adult abuse registry as a means of protecting waiver participants.

5. DHHS should increase coordination with the Vocational Rehabilitation Department to increase training and employment opportunities outside the DSN Board framework. DHHS should work with the Governor's office to implement the National Governors' Association employment initiative.¹

6. As part of the transition plan to improve meaningful choice for participants, P&A suggests review of the National Core Indicators Data on choice of home and work.² Graphs 15 and 16 show that only about half of those surveyed indicated they had a choice of where to live and who their staff are. Even fewer could choose their own roommate (Graph 17). Only 43% could choose their own day activity (Graph 20). South Carolina offers very few individually-supported or competitively-paid jobs (Graph 27); 64% want a job in the community (Graph 35). These and additional graphs throughout the report should help establish priorities for the development of community-based employment and day activities.

7. The transition plan should include a process to clarify the appeals process for applicants and recipients of DDSN services and members of HMOs. New section 42 CFR § 441.745(a)(1)(iii) (State plan HCBS administration: State responsibilities and quality improvement) states, "A state must provide individuals with advance notice of and the right to appeal terminations, suspensions or reductions of Medicaid covered services as described in part 431, subpart E." DHHS should have one path of appeal for all stages of Medicaid—application, contents of person-centered plan, and changes to the plan. The current process of separate review through DDSN, and internal processes for HMO appeals, causes confusion and delay for recipients. DHHS should amend its fair hearing regulation to clarify what it covers and provide an adequate cadre of professional hearing officers to ensure thorough, fair and expeditious review of all decisions affecting Medicaid recipients.

8. The transition plan should have a timeline to develop smaller scale settings than the four bedroom group home that has been the model for many years. Possibilities might include townhouses or large apartments or houses that include some residents without disabilities.

9. The transition plan should have a short deadline for development of appropriate language to comply with the requirement for a legally-enforceable tenancy agreement.

10. The transition plan should include a timeline for DHHS to develop a comprehensive oversight process to ensure compliance with the Final Rule. Such oversight might include unannounced visits to person-center planning meetings to determine whether the process is truly individualized, regularly reviewing a sample of plans to determine what kinds of choices were offered to participants, and interviewing recipients.

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http://www.nga.org/files/live/sites/NGA/files/pdf/2013/NGA_2013BetterBottomLineWeb.pdf?utm_source=What+Counts+Publicaster+Edition&utm_medium=email&utm_campaign=Governors++Working+to+Enable+People+with+Disabilities+to+Get+Jobs&utm_content=A+Better+Bottom+Line:+Employing+People+with+Disabilities

² <http://www.nationalcoreindicators.org/states/SC/>

11. Many recipients of waiver services reside with their families. South Carolina has the second-highest percentage of individuals with development disabilities who still reside in their family home, sometimes until the death of their parents or other family members³. Integration in the community should mean that these individuals have meaningful choice of other housing at the same age as other young adults. Most young adults prefer to establish their own homes. Individuals receiving waiver services should be provided the opportunity to learn skills well before they are forced into a new living situation through the death or incapacity of their family member. The transition plan does not include consideration of this issue.

The Final Rule offers South Carolina the opportunity to develop a long-overdue comprehensive plan to comply with *Olmstead* for all Medicaid participants, not just those receiving waiver services. It also offers the chance to reduce fragmentation of services by addressing the needs of the individual across settings. The transition plan should require a statewide, coordinated approach so that public and private providers work together across existing organizational structures; for example, many DSN Boards are too small to develop a full array of residential and day services. We urge DHHS to take a comprehensive and far-reaching view of the services and supports needed to make people with disabilities part of the community. We also urge DDSN to offer meaningful participation in the development and implementation of all aspects of Final Rule implementation.

Thank you for involving P&A in the development of the Final Rule in South Carolina. Please contact Gloria Prevost, 803 217-6713, prevost@pandasc.org, or Nancy McCormick, 803 217-6703, mccormick@pandasc.org, if you have any questions about these comments.

Very truly yours,

Gloria M. Prevost
Executive Director

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Senior Attorney

³ Larson, S.A., Hallas-Muchow, L., Aiken, F., Pettingell, S., Anderson, L.L., Moseley, C., Sowers, M., Fay, M.L., Smith, D., & Kardell. (2014). *In-Home and Residential Long-Term Supports and Services for Persons with Intellectual or Developmental Disabilities: Status and trends through 2012*. The FISP report is available online in an interactive format at <http://goo.gl/50wQag>. The RISP report is available online in an interactive format at <http://rtc.umn.edu/risp>