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Comments on Virginia's Draft Plan to Transition Services Under the Intellectual Disability Waiver Program

Introduction

The Virginia Department of Behavioral Health and Developmental Services (DBHDS) in collaboration with the Virginia Department of Medical Assistance Services (DMAS) has posted for public comments a draft plan to transition services under the state's Intellectual Disability Waiver program so that all services are in compliance with revised regulatory requirements published by the U.S. Centers for Medicare and Medicaid Services (CMS) on January 17, 2014. The overarching aim of CMS's home and community-based services rule is to ensure that all individuals receiving such services are afforded opportunities to live, learn and recreate in fully integrated community settings of their own choice by no later than March 2019. The deadline for receiving comments on the state's draft ID waiver transition plan is September 5, 2014.

Comments

1. The document filed by DBHDS is a work plan, not a transition plan, and should be labeled accordingly. It outlines the steps the department plans to take to prepare a transition plan without identifying the substantive barriers to full regulatory compliance and the steps to be taken and the methods to be employed in systemically eliminating those barriers. The latter actions can be delineated only after the department has completed a comprehensive assessment of existing provider practices and determined the remediation actions necessary to achieve compliance with the revised federal rules.

There is nothing wrong with offering the public an opportunity to comment on the basic planning approach the department intends to adopt. However, DBHDS needs to make clear to the public that it intends to offer interested citizens ample opportunities to submit comments on the substantive features of the actual transition plan once it is completed, as required under the provision of the final federal rule promulgated in January. The public notice, as published, makes no reference to additional opportunities for public input once the details of the proposed transition plan are available; nor does it address the methods to be

used in monitoring compliance and obtaining public feedback on an ongoing basis. It treats compliance as a time-limited undertaking rather than a continuing process.

2. The department's proposed strategy relies too heavily on provider self-assessments and routine licensing reviews to achieve compliance. Basing the transition plan on feedback from providers may be the most expeditious approach to obtaining specific data on compliant and non-compliant practices; but, it is important to keep in mind that service providers are not disinterested parties since generally they will benefit from a finding of compliance. Moreover, providers often are not in the best position to form judgments about whether and how a consumer gains access to desired services and is able to exercise of his or her rights without undue constraints. The department should employ other methods of obtaining un-conflicted information on the provider performance, including a robust approach to soliciting input from consumers, family members and their allies concerning the performance of specific community providers.

In addition, historically licensing reviews have focused on compliance with physical plant, health and safety requirements as opposed to the day-to-day life experiences of participants in day and residential service programs. Given the regulatory emphasis on examining the life experiences of HCB service participants, it is not clear that the department's licensing staff is well equipped to undertake the type of independent assessment of provider compliance that is needed. The department should consider alternative methods of obtaining un-conflicted feedback on provider performance, including the feasibility of forming cross-stakeholder teams comprised of departmental staff, CSB and provider staff members from other catchment areas, self-advocates and family members to conduct such provider assessments.

3. The department's plan fails to address the need to build the capacity necessary to support individuals with intellectual and developmental disabilities in more individualized, integrated community settings. In a state that continues to rely heavily on congregate living and segregated daytime activities to serve persons with I/DD, it is short-sighted to assume that the Commonwealth will be able to

achieve compliance with the letter and spirit of CMS's new HCBS rule through incremental adjustments in the programs and activities of existing community service providers. The new federal rule offers the state an opportunity to fundamentally restructure the delivery of I/DD services along more person-centered lines. But, significant new investments will be required to accomplish this objective, including helping existing providers to transition to radically different business and service delivery models and nurturing the development of new, person-centered providers across the state. DBHDS should seize the opportunity the federal rule provides by including a major capacity building component into its waiver transition plans.

4. The department fails to provide detail on efforts to eliminated conflicts of interest when a CSB both operates Medicaid-financed HCB services and also furnishes case management/service coordination services to individuals with intellectual and developmental disabilities who may be eligible to receive such services. The department's draft transition plan refers to ongoing efforts to improve the timeliness and relevance of information about individuals receiving HCB waiver services (see pp. 7-8). But, there is no indication that the department is planning to take steps to minimize conflicts of interest when a CSB plays the dual role of service provider and case manager. This omission of detail is concerning given the prominence this issue has received in discussions between the CSBs and the department.

5. DBHDS' approach to obtaining public input is inadequate. It consists of mechanistic, short-range approaches only, such as public presentations, webinars and opportunities for public comments on the department's plan. A far more promising approach would be to invite stakeholders to partner with the department in building the kind of person-centered service delivery system that the vast majority of providers, self-advocates, parents and local public officials would like to see developed in Virginia. Family members and self-advocates are concerned with the lack of information sharing from the department and their inadequate involvement throughout the process of redesigning Virginia's I/DD Waiver system to become in compliance with the new regulatory requirements. More emphasis must be placed on the insights and needs of the consumers and



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family members. The department must clearly define methods to disseminate information for all individuals and families impacted by this transition. In addition, the department must identify methods to creating meaningful partnerships with family organizations, families, and self-advocates that shows commitment to incorporating their feedback throughout the transition.