



State of Wisconsin
Department of Health Services

Scott Walker, Governor
Kitty Rhoades, Secretary

August 21, 2014

Honorable Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Tavenner:

On January 10, 2014, the Centers for Medicare & Medicaid Services (CMS) issued a Fact Sheet summarizing the key provisions of the Home and Community-Based Services (HCBS) Settings Final Rule (CMS 2249-F/2296-F). CMS stated in that Fact Sheet that, “CMS will be providing additional information about how states should apply the standards to non-residential settings, such as day program and pre-vocational training settings.”

Wisconsin’s Department of Health Services urges CMS to take into account our position stated in this letter when developing guidance for states around pre-vocational and day program settings.

We strongly believe that we need to preserve the full compendium of pre-vocational and day program services in **all** settings, both disability-specific and integrated in the community, in order to be consistent with the mandate for individual choice of service settings under the new HCBS rule. We urge CMS to keep in mind that a “one size fits all” approach is not consistent with a person-centered approach to delivering waiver services. Each individual should have a choice in the services they receive and where those services are delivered.

The new HCBS rule itself states that in addition to being led by the individual receiving services and supports, the person-centered planning process per 42 CFR § 441.301(c)(1)(ii), (vii) and (ix):

(ii) Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions.

(vii) Offers *informed choices to the individual* regarding the *services and supports they receive and from whom*.

(ix) Records the *alternative* home and community-based *settings that were considered by the individual*.

As stated in 42 CFR § 441.301(c)(2)(iv), the written [person-centered] plan must:

(iv) Include *individually identified goals and desired outcomes*.

Lastly, 42 CFR § 441.301(c)(4)(i), (ii) and (v) state:

(4) Home and Community-Based Settings. Home and community-based settings must have all of the following qualities ..., ***based on the needs of the individual*** as indicated in their person-centered service plan:

(i) The setting is integrated in and supports ***full access*** of individuals receiving Medicaid HCBS to the greater community, including ***opportunities*** to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, ***to the same degree of access*** as individuals not receiving Medicaid HCBS.

(ii) ***The setting is selected by the individual from among setting options*** including non-disability specific settings ...

(v) ***Facilitates individual choice regarding services and supports, and who provides them.***

Taken together, the provisions highlighted above mandate that states provide waiver services in at least some settings that give participants the same degree of access to the community as other individuals. More importantly, the individual waiver participant is entitled to make informed choices between those settings and others, based on the participant's needs, goals and desired outcomes. ***As long as services are also offered in more integrated settings, nothing in the new rule should be interpreted to prohibit covered HCBS services from being delivered in settings that historically have been regarded as "sheltered workshops," "facility based employment," "day centers," etc.***

To avoid any misunderstanding, we want to assure you that we believe that all people of working age should have access to and the choice to work in the community. We support both fully integrated and disability specific work settings based on the individual's needs, goals and desired outcomes.

As required by CMS, Wisconsin has put our draft Family Care transition plan out for public comment. Our transition plan must be submitted to CMS with our C Waiver renewal application on October 2, 2014. CMS has put our state in an untenable position with stakeholders by not providing guidance on how to assess prevocational, adult day care and habilitation (day center service/treatment) service settings for compliance with the new waiver rules. Our stakeholders are being asked to comment on a transition plan that does not and cannot indicate how we will assess these services for compliance.

Thank you for your consideration of the issues we have raised and we look forward to your response before the end of our comment period which is September 2, 2014.

Sincerely,


Kitty Rhoades