



## **Public Comment**

### **Statewide Transition Plan for Compliance with the HCBS Settings Rule**

Thank you for the opportunity to provide comments on the most recent draft of the statewide transition plan (STP) required by the Center for Medicare and Medicaid Services (CMS) to bring Texas into compliance with the Home and Community Based Services (HCBS) Settings Rule. TCDD is established by federal law and is governed by 27 board members, appointed by the Governor, 60% of whom are individuals with developmental disabilities or family members of individuals with disabilities. TCDD's purpose in law is to encourage policy change so that people with disabilities have opportunities to be fully included in their communities and exercise control over their own lives.

With the exception of Assisted Living Facilities and day habilitation settings, which require substantial remediation, we continue to support the assertion that the Texas home and community based services waiver system, by rule, largely complies with the HCBS Settings Rule. We do not, however, believe that the implementation of those rules, policies and procedures at the individual and provider level comply with the HCBS Settings Rule. We also do not believe that the surveys that are about to be implemented will allow Texas to avail itself of the most significant opportunity to understand the current status of the HCBS system and improve it. The attached survey comments we submitted in December describe specific concerns and potential impact on the data sets to be collected. We continue to appreciate their consideration.

#### **Day Habilitation Programs**

Developing the state's ability to provide for a meaningful day that is not predicated on segregated day habilitation programs should be prioritized. The STP identifies that day habilitation programs will likely require remediation. There is no question that day habilitation is segregated and facility-based. For too many people day habilitation programs are a de facto waiver requirement. Providers clearly state that their business model is based on a residential daily rate that was built on the assumption that program participants would be out of the home at least six hours a day, five days a week. If surveyed, program participants would report that they are not informed that day habilitation is not required to be included in their plans. It is not clear why providers and participants were not more directly surveyed on these points.

We know that most people with disabilities report that they would like to work. Although assistance to get a job and support to keep a job, employment assistance and supported employment, are available to all HCBS waiver participants, Fiscal Year 15 billing data suggests that less than 3% of the more than 30,000 people in the HCS and CLASS waiver programs had either of these services authorized on their individual plans of care.<sup>1</sup>

National Core Indicators further suggests that Texas respondents are less involved in community employment than respondents in other states:

- Only 9% of Texas respondents reported being in a community paid job, which is lower than the average of all NCI states (15%);
- Only 16% of Texas respondents reported having community employment as a goal in their service plan, which is much lower than the average of all NCI states (24%).<sup>2</sup>

At this point in the process, stakeholders should have more clarity with regard to how the state intends to remediate day habilitation and more meaningfully implement the state's Employment First Policy.

### **Personal Spending**

The STP provides, what we believe to be, the false assertion that HCBS waiver participants have access to personal spending. Program participants in residential settings have no expectation of access to minimal personal spending in rule, policy or practice. Although program participants pay their room and board and have lease agreements, they are not aware that they may negotiate a set-aside for personal spending. Program participants do not receive training or skill development regarding how to self-advocate for a minimum set-aside. Advocates have repeatedly identified personal spending as an issue that should be addressed in the STP, yet the STP continues to assert that Texas complies with this part of the rule.

Further, there is no expectation that the surveys will confirm or refute assertions of access to personal spending because of the surveys' poor design. In 2012, advocates entered into lengthy negotiations with providers and state agency staff to secure a set-aside for personal spending. After an agreed upon amount was reached, providers objected because they said it constituted a provider rate reduction. State agency staff sided with providers, but committed to continuing to work on the issue. To date, that commitment has not been met. We recommend that the state re-engage stakeholders to reach an agreement on a minimum personal spending amount in order to comply with this deeply important aspect of the STP and the Rule.

### **Linking Participant Experience and Provider Practices**

It appears that the STP defines settings more broadly than CMS. Clarity with regard to the extent to which individual group homes are required to be evaluated based on their program participants' survey responses would provide stakeholders with a better understanding of improvement opportunities. Early residential provider survey drafts included language that seemed to indicate that participant survey responses would not be matched to the individual's provider. More information regarding whether settings refers to the universe of setting types (HCS group homes and Assisted Living Facilities) as a whole or the hundreds of discrete homes individually would help the state to more appropriately plan for compliance. While the STP elaborates on "linking" the entities and data, it remains unclear how provider and participant surveys will be compared and used for improvements. Further, there is no information regarding how providers will reach compliance upon identification of noncompliance via the survey process.

## **Strategic Coordination**

Texas is in the process of testing one or more service delivery models involving a managed care strategy based on capitation to deliver long-term services and supports under the Medicaid program to individuals with intellectual and developmental disabilities. Although Enterprise projects are typically planned in isolation, it would be more strategic for the two projects to be coordinated to test HCBS Settings Rule compliance strategies in concert with managed care schemes. The managed care pilot represents a significant opportunity to test truly person-centered approaches to providing services that meaningfully include people with developmental disabilities in the design and implementation of their services. More specific recommendations regarding the design of pilot strategies specific to improving meaningful community based nonwork will be submitted to the IDD Managed Care Pilot team and forwarded accordingly.

Thank you for your work to expand the statewide transition plan required by CMS to bring Texas into compliance with the HCBS Settings Rule. The direct linkage between the HCBS Settings Rule and the state's waiver program rules provided substantially more clarity regarding compliance goals. We look forward to further engagement, particularly in the areas of personal spending and day habilitation.

Submitted by,

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Attachment: Participant Experience Survey Comments Submitted Dec. 7, 2015

<sup>1</sup> Waiver Employment Services - By State Fiscal Year, Department of Aging and Disability Services.

<sup>2</sup> National Core Indicators Adult Consumer Survey 2012-2013, National Association of State Directors of Developmental Disability Services and Human Service Research Institute, June 2014.