

Public Comments
On Michigan's Plan to implement the new rules adopted by the Center for Medicare and Medicaid Services (CMS) on Home and Community Based Services (HCBS).

Presented To:
The Michigan Department of Community Health

By:
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MPAS is the private non-profit agency designated by the Governor to advocate and protect the legal rights of people with disabilities.

Thank you for this opportunity to comment on Michigan's plan to transition and implement the new rules from CMS related to HCBS. Let me begin by stating that we are in full support of the CMS rules in creating opportunities for people with disabilities to be fully included in the fabric of American society. Our interest in providing comment on Michigan's plan for transition to the new CMS Rules reflects our interest in assisting the State in the difficult tasks of correctly managing important change.

To better understand the new HCBS Medicaid rules and the impact these rules will have on Michigan's licensed Adult Foster Care (AFC's) facilities, MPAS studied the structural designs of medium, large and congregate licensed AFC's, in contrast to the new CMS rules.

In short, our analysis identified and *very conservatively* estimates that 4,701 Michiganders with disabilities are living in licensed AFCs that do not meet the standards of the new CMS rules.

Our analysis focused on two institutional qualities that alone isolate individuals with disabilities from the broader community, and in our opinion will disallow the use of HCBS Medicaid funding:

1. Settings that are intended specifically for people with disabilities.
2. Settings that offer limited or no interaction with the broader community.

Other characteristics of the new CMS rules will undoubtedly disqualify many more current AFC homes from HCBS Medicaid funding eligibility.

MPAS RECOMMENDATIONS on Transition Plan Pillars:

1. Michigan's implementation plan for the new CMS rules related to HCBS Medicaid funds must fully recognize that federal funding can not be used to segregate people because of their disability.

2. Michigan's Transition Plan must hold true to the values of full community inclusion as outlined in the new CMS rules.

3. Michigan must retain the clear CMS definition of "Community", assuring that the same definition of "community" is used by people with disabilities as is used by the general population. The clarity of the definition of "Community Integration" is essential to protect against a compromised definition of "Community" being used for people with disabilities.

4. The Michigan Plan must recognize that community housing DOES NOT include:

- Nursing facilities.
- Institutions for mental diseases (sic).
- Intermediate care facilities for individuals with intellectual disabilities.
- Hospitals.

5. The true test of the Michigan's commitment to implementing the intent of the new CMS rules will be inextricably linked to the integrity with which the Person Centered Plans (PCP's) are written and implemented.

PCPs must be done independently of the service providing agencies. This will provide greater assurances that the plan of service (PCP) is NOT written to only include those services offered by the service provider, but will reflect the true needs and desires of the person served.

6. Michigan's Transition and Implementation plan must recognize that the new CMS rules apply to housing, employment and daily activities for people with disabilities when Medicaid Home and Community Based Service dollars are used. It is therefore imperative that Michigan's plan is coordinated with the State's plan to comply with the new Workforce Innovation and Opportunities Act (WIOA).

WIOA follows a parallel definition of "Community" and limits the use of federal funding that perpetuates the isolation or segregation of people with disability in the workplace.

MPAS encourages the State of Michigan to move quickly and decisively to implement the new CMS rules and the Workforce Innovation and Opportunities Act for people with disabilities in Michigan.

Specific Issues Related to Currently Proposed Plan:

1. There appears to be a lack of opportunity for input from the numerous disability agencies and organizations that comprise the disability advocacy community. Under the column which indicates which "key stakeholders" are to be involved in the various "action items", there is not a single mention of participation from the disability advocacy community. These organizations represent a vast number of the individuals who will inevitably be affected by these changes. As an example, there is no mention of disability advocacy organizations being involved in the vetting process for the statewide assessment tool. It mentions the tool being vetted by "key stakeholders" but does not include the disability advocacy community under that column, this

goes for the action item related to the formal presentation of the results of the assessments as well. It is our recommendation that participation from disability advocacy agencies and organizations be explicitly included through out the various stages of this process.

2. There should be more detail given as to what types of information will be presented, and posted on relevant websites, related to the results of the assessment data. Ex) The report, comprised of the results and analysis of the assessments, will include the follow...

3. We have a growing concern with the decision to make the waiver agents the entities responsibly for performing the assessments. The responsibility of performing the assessments should be given to a third party objective entity, due to the inherently close relationship of the provider agents with the providers, we do not feel that they are the most appropriate bodies to be held responsible with this task. In addition, it is our opinion that the waiver agents (typical an area agency for the aging) are far more familiar with the philosophies surrounding the aged population than that of the promotions for self determination and independence of individuals with disabilities, particularly those with intellectual and developmental disabilities. For this reason we are concerned that they may not fully understand the intent and direction of the new rules to promote a greater level of independence and thus this might influence their assessments.

4. What happens if there is conflicting thoughts about a particular assessment or about the findings as a whole? Is there going to be a process for requesting additional assessments or to have access to the paperwork related to specific assessments?

5. By in large we are disappointed in the relatively non-specific nature of the plan. We would like to see a much greater level of detail and more specific tasks. We believe the greater the detail and transparency, the more accountability will be ingrained in the process.