



COMMONWEALTH OF VIRGINIA  
*Virginia Board for People with Disabilities*

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February 27, 2015

TO: Ms. Teri Morgan, Program Supervisor  
Division of Long Term Care, Department of Medical Assistance Services (DMAS)

Cc: Connie Cochran, Assistant Commissioner  
Department of Behavioral Health and Developmental Services (DBHDS)

FROM: Heidi Lawyer 

RE: Proposed Virginia Statewide Transition Plan for Compliance with CMS Final  
Regulations on home and community-based (HCB) Settings (hereafter referred to as  
*draft HCB Transition Plan*)

Dear Ms. Morgan:

Thank you for the opportunity to provide public comment on the *draft* HCB Transition Plan on behalf of the Virginia Board for People with Disabilities (the Board), Virginia's Developmental Disabilities Council. With issuance of the Final Rule on home and community-based settings, the U.S. Centers for Medicare and Medicaid have provided much-needed criteria for HCB settings under Medicaid. The Final Rule emphasizes these characteristics as essential: personal choice; optimal independence and self-determination; individual dignity and respect; and community access and integration. These service characteristics have been, and still are, highly valued by disability advocates statewide. The Board strongly supports the redesign of services and supports for individuals with developmental and other disabilities (DD) which are person-centered and which promote full inclusion on all facets of community life.

The Board appreciates the work that has gone into development of the proposed transition plan which has some solid components. Among the critical components of systems change is strong, effective oversight. The Board recognizes that strengthening and revising regulation is a lengthy process and that increasing staff oversight positions can be challenging in this economic climate.

The draft Transition Plan acknowledges that significant regulatory changes must be enacted to strengthen licensure and other oversight activities. As noted in the Board's report, *2014 Assessment of the Disability Services System in Virginia*, the Board **recommends licensure changes** for settings and providers serving individuals with intellectual or other developmental disabilities (I/DD). Currently a single set of regulations for very diverse populations, DBHDS licensure regulations should be reorganized to have: 1.) a set of core standards truly applicable to all populations (I/DD, mental illness and substance abuse); and 2.) distinct sections specific to each population covered by the regulation. An example of this licensure model is used by Massachusetts.

Implementation of a Compliance and Monitoring Team (C&MT) is a valuable mechanism for ensuring achievement of integrated community living for individuals with DD. **The Board recommends** that selection of stakeholders for the C&MT include (but not be limited to): regional representation, especially from rural and under-served areas; self-advocates, especially those who successfully transitioned into the community from institutions; family members, and representatives from Centers for Independent Living (CILs), the Arc of Virginia and other disability advocacy organizations.

The Board offers a **cautionary note** to both DMAS and DBHDS on making broad assumptions about setting compliance with the Final Rule. Both the physical setting and the types of services and supports with respect to their impact on individuals' quality of life must be considered in determining compliance with the rule.

The Board is concerned that assessment of compliance with the HCB Final Rule, especially for settings and programs under the ID and DD Waivers, is over-reliant upon provider self-assessments. Providers have a vested interest in being compliant with the rule, and thus may not be objective in applying criteria to themselves. The Board expressed a similar concern in its September 5, 2014 comment to DBHDS on the ID waiver transition plan. The plan has no explicit requirement of providers who wish to remain licensed to develop and demonstrate progress on a formal plan of corrective action. A formal corrective action plan should be required for remediation of areas or conditions which are not compliant with the HCBS Setting rule. Evaluation of current Quality Management Reviews (DMAS) as well as licensing observations (VDSS, DBHDS) – including respective review tools – seems advisable to ensure that relevant needed information is gathered to make a compliance decision consistent with the CMS Final Rule on settings. These processes and tools were developed a number of years ago, and may not reflect current CMS values and priorities.

In several instances, the draft Transition Plan states that continued assessments of some settings and programs (e.g., ALFs, employment and prevocational services, group homes, sponsored homes, etc.) are needed to determine whether or not they meet the criteria for community-based services. A major obstacle to community integration is a "one size fits all approach" in design of settings and delivery of services. The **Board recommends** that:

- DMAS and DBHDS establish and implement a standard process to assess settings compliance with the Final setting Rule, to include on-site visits; and
- DMAS, in partnership with DBHDS, incorporate results of the National Core Indicators (NCI) survey as part of that assessment. NCI, a standardized evaluation tool, captures data on individuals' quality of life, including (but not limited to): exercise of choice and self-determination; participation in work and community activities; protection of and respect for individual rights.

The Overview section of the draft HCB Transition Plan (page 3) states that it "... does not and cannot reflect the significant work being undertaken to transform the system per the 122 provisions of the [DOJ] Settlement Agreement". While this draft Transition Plan may not be all-encompassing due to CMS requirements, it should complement the goals and direction set forth for the I/DD service system to be person-centered and integrated as stipulated in the Agreement. The draft plan additionally should consider compliance activities as an opportunity to enhance future system change and improved service quality. This draft plan could — and should — include a process of gathering information to identify systemic barriers (infrastructure, workforce, fiscal) to provider compliance from site visits, technical assistance and various reports. There should be a strong inter-relationship between rule implementation and Settlement agreement implementation, particularly in those areas pointed out as weaknesses or areas of non-compliance by the Independent Reviewer. The **Board recommends** that Transition Plan activities include a process for information gathering on barriers which can assist planning for service provider and workforce development. The combined agency efforts could significantly assist long-term planning for a comprehensive, person-centered service system across the lifespan.

Although beyond the intent of this public comment, the Board deems it important to emphasize the need for long-term interagency planning. As noted in the Board's *2014 Assessment* (Vol. I, page 10), the **Board recommends** that agencies under the Health and Human Services Secretariat develop a 10-year plan for transforming services administered, funded and licensed by the Commonwealth for Virginians with I/DD to ensure a system of care that is person-centered, efficient, effective, and accessible statewide. A blueprint for improving fiscal, programmatic and individual outcomes is needed.

Thank you for this opportunity for comment. If you have any questions, please contact me either by e-mail at [Heidi.Lawyer@vbpd.virginia.gov](mailto:Heidi.Lawyer@vbpd.virginia.gov) or by phone at (804) 786-7869.