January 21, 2016

Dear Transition Team Members,

We believe the engagement of stakeholders remains insufficient. From the perspective of participants or potential participants, merely commenting on the original or this amended Transition Plan is far from engagement. There were no opportunities for dialogue, no opportunities for discussion or clarification, nor opportunities for input prior to publication of this amended Plan.

The Arc Michigan fails to understand what clarification is needed, from CMS, regarding the application of the rule to the 1915(b) waiver. CMS sent guidance in 2013 that Managed Care waivers would be expected to be HCBS compliant. The services under 1915(b) are Home and Community-Based Services. CMS’s letter to the Medical Services Administration states specifically, “The settings addressed must include all settings in which home and community-based services are provided under the State’s 1915(b)(3) authority.” Seems very specific and clear.

This plan is sorely lacking in that respect because it does not address better than 75% of those with developmental disabilities receiving HCBS, more than 30,000 persons. It would be a travesty, if, in exercising their options presented in Row #s 32, 32.1, 32.2, 32.3 or 33, a person disenrolled from the 1915(c), only to be funded in a non-compliant setting, through another HCBS waiver. It is also a travesty, if a person funded through 1915(b), is not afforded the same right to live and spend their day in a HCBS rule compliant setting, as their counterpart funded through 1915(c).

We urge the Department to cease and desist in their effort to limit the assessments to only 1915(c) waiver recipients. It is unfair and discriminatory. To continue down this path at this date is ludicrous.

There is clearly a great discrepancy from the Provider Survey to the Survey of Participants in Habilitation waiver settings. We suspect the discrepancy would be even greater if the assistance provided to many of the participants to complete the survey hadn’t come from staff of the setting or from those responsible for the “placement” there. This is an indication that either the understanding of the provider or the participant is faulty or the self-interest of providers colors their response. We suspect the latter. It also calls into question, relying on only providers to assess compliance for the MI Choice 1915(c) waiver.
The type and quality of services people receive depend on where they live in Michigan. Discrepancies include the quality/authenticity of person-centered planning, the ability to direct one’s services, the types of residential settings available, and the services provided. This is unacceptable. The Plan does not address these issues and may exacerbate the problem by making the PIHPs responsible for ongoing compliance with the rules, as well as neglecting to provide education about the process and the rules for people receiving services and their families.

A more thorough review of licensing rules needs to be done. There are many areas in which the rules do not align with the HCBS rules. A few examples follow:

- Group home “house rules” (MAC R 400.1407(10)) are often in conflict with the HCBS requirements, especially the unwritten ones.
- People do not have a choice of providers if they live in a licensed setting. The license is given to one provider.
- Choice of roommate (p.42) may be limited by Michigan rules requiring assessment of compatibility with residents and household members (MAC R 400.1407(2)(c) and R 400.1407(2)(c)).
- Access to work pay (p.43) is not assured by Michigan law requiring a resident care agreement (MAC R 400.1407(5)) and an agreement specifying how funds are to be handled (MAC R 400.1407(5), R 400.14301(6)(k), and R 400.14315(3)). The above sections only specify that agreements be in place, without detailing what type of access or control is required.

Some of the Related Policy or Licensing Rules in the Systemic Assessment (pp. 34-54) are not on point and do not respond to the question.

Freedom of movement (p.36) may be limited by the broad supervision authority in Michigan law cited in the plan. MCLA 400.707(7) defines supervision broadly as “guidance of a resident in the activities of daily living.” MAC R 400.1707(2)(a) and R 400.14301(2)(a) require development of a resident assessment plan to determine the suitable level of supervision.

The heightened scrutiny criteria appear to focus only on geographic location, omitting facilities and programs that might otherwise tend to isolate people (pp. 83-84).

The transition timeline is very short, especially given the findings in the HSW participant survey. 70% of people receiving services live in specialized homes, 65% are subject to visitor rules; only 17% pick with whom they live, only 32% may come and go from their homes as they choose and only 11% are able to decide what to do with work earnings (pp.29-30, 64-67). We are concerned that all licensed settings will not be reviewed and compliance will be assumed for places that do not comply with the rules.

Particularly troubling is the lack of proactive development of new service and support models and providers and the lack of guidance on best practices for transforming or developing new services. Because the rules require a shift in traditional service provision, provider education is critical.

Non-residential service review must reference and align with federal WIOA requirements, including definitions.
In general, the amended Transition Plan still lacks detail, has unrealistic time frames, doesn’t consider educational efforts for people receiving services, their families or providers, and without the inclusion of 1915(b) waiver participants is incomplete. The lack of involvement/engagement of stakeholders by the Michigan Department of Health and Human Services in the development of the original plan and this amendment is inexcusable.

Sincerely,

Dohn Hoyle
Director of Public Policy

Sherri Boyd
Executive Director