LeadingAge Oregon

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October 3, 2014

DHS
HCBS Transition Plan Comments
500 Summer Street NE, E09
Salem, OR 97301

TO: DHS HCBS Settings Transition Plan Team

Thank you for the opportunity to comment on the Department's DRAFT Home and Community Based Setting transition plan to be submitted to the Centers for Medicare & Medicaid Services (CMS) by October 13, 2014. Our comments pertain to the facilities and programs requiring heightened scrutiny.

Page 4 of the transition plan indicates Oregon is seeking CMS approval for "facilities on the grounds of, or immediately adjacent to, inpatient facilities or public institutions" through the heightened scrutiny process. We support this. We do, however, want to make sure that "immediately adjacent to" includes settings within a retirement community where assisted living/residential care is "immediately adjacent" a nursing facility by being in the same building whether on a different floor of a high-rise or a different wing/unit.

To our knowledge "immediately adjacent to" is not currently defined and therefore could be inclusive of the settings just described. But, should CMS define "immediately adjacent to" as not including settings within the same building, then such settings could not be a part of the heightened scrutiny process because we did not ask for that in the transition plan.

Because of the lack of a definition for "immediately adjacent to" and the potential for one that omits settings within the same building we believe Oregon's transition plan should ensure such settings are included within the heightened scrutiny process. We recommend that the transition plan indicate that Oregon seeks a heightened scrutiny process for "facilities on the grounds of, within the same building or immediately adjacent to, inpatient facilities or public institutions."

Certainly within urban areas where land is increasingly scarce, a trend within retirement living is to build up where multiple levels of care, assisted living, residential care and nursing may be co-located with nursing within the same building.

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CMS's rule allows for heightened scrutiny for such settings and we believe Oregon's transition plan should seek it. The issue is whether such settings meet the characteristics of a home and community based setting.

Page 3 of CMS's "Guidance on Settings that have the Effect of Isolating Individuals from the Broader Community" (attached) acknowledges that "In CMS' experience, most Continuing Care Retirement Communities (CCRCs), which are designed to allow aging couples with different levels of need to remain together or close by, do not raise the same concerns around isolation…particularly since CCRCs typically include residents who live independently in addition to those who receive HCBS."

LeadingAge Oregon does not believe that retirement communities that have assisted living/residential care co-located with nursing on the same campus, immediately adjacent to or in the same building have the effect of isolating individuals receiving HCBS from the broader community. And, as the settings described in the transition plan, "they serve a critical function in meeting the needs of individuals receiving HCBS."

In conclusion, we request that Oregon's HCBS Settings Transition Plan seeks a heightened scrutiny process for "facilities on the grounds of, within the same building or immediately adjacent to, inpatient facilities or public institutions."

Thank you.

Ruth Gulyas
CEO

GUIDANCE ON SETTINGS THAT HAVE THE EFFECT OF ISOLATING INDIVIDUALS RECEIVING HCBS FROM THE BROADER COMMUNITY

The purpose of this guidance is to provide more information to states and other stakeholders about settings that have the effect of isolating individuals receiving HCBS from the broader community.

The final rule identifies settings that are presumed to have institutional qualities and do not meet the rule's requirements for home and community-based settings. These settings include those in a publicly or privately-owned facility that provide inpatient treatment; on the grounds of, or immediately adjacent to, a public institution; or that have the effect of isolating individuals receiving Medicaid-funded HCBS from the broader community of individuals not receiving Medicaid-funded HCBS. A state may only include such a setting in its Medicaid HCBS programs if CMS determines through a heightened scrutiny process, based on information presented by the state and input from the public that the state has demonstrated that the setting meets the qualities for being home and community-based and does not have the qualities of an institution. (For more information about the heightened scrutiny process, see Section 441.301(c)(5)(v)Home and Community-Based Setting).

Settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals:

- The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.

- The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.

Settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:

- The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities.

- People in the setting have limited, if any, interaction with the broader community.

- Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

The following is a non-exhaustive list of examples of residential settings that typically have the effect of isolating people receiving HCBS from the broader community. CMS will be issuing separate guidance regarding non-residential settings.

- Farmstead or disability-specific farm community: These settings are often in rural areas on large parcels of land, with little ability to access the broader community outside the farm. Individuals who live at the farm typically interact primarily with people with disabilities and staff who work with those individuals. Individuals typically live in homes only with other people with disabilities and/or staff. Their neighbors are other individuals with disabilities or staff who work with those individuals. Daily activities are typically designed to take place on-site so that an individual generally does not leave the farm to access HCB services or participate in community activities. For example, these settings will often provide on-site a place to receive clinical (medical and/or behavioral health) services, day services, places to shop and attend church services, as well as social activities where individuals on the farm engage with others on the farm, all of whom are receiving Medicaid HCBS. While sometimes people from the broader community may come on-site, people from the farm do not go out into the broader community as part of their daily life. Thus, the setting does not facilitate individuals integrating into the greater community and has characteristics that isolate individuals receiving Medicaid HCBS from individuals not receiving Medicaid HCBS.

- Gated/secured "community" for people with disabilities: Gated communities typically consist primarily of people with disabilities and the staff that work with them. Often, these locations will provide residential, behavioral health, day services, social and recreational activities, and long term services and supports all within the gated community. Individuals receiving HCBS in this type of setting often do not leave the grounds of the gated community in order to access activities or services in the broader community. Thus, the setting typically does not afford individuals the opportunity to fully engage in community life and choose activities, services and providers that will optimize integration into the broader community.

- Residential schools: These settings incorporate both the educational program and the residential program in the same building or in buildings in close proximity to each other (e.g. two buildings side by side). Individuals do not travel into the broader community to live or to attend school. Individuals served in these settings typically interact only with other residents of the home and the residential and educational staff. Additional individuals with disabilities from the community at large may attend the educational program. Activities such as religious services may be held on-site as opposed to facilitating individuals attending places of worship in the community. These settings may be in urban areas as well as suburban and rural areas. Individuals experience in the broader community may be limited to large group activities on "bus field trips." The setting therefore compromises the individual's access to experience in the greater community at a level that isolates individuals receiving Medicaid HCBS from individuals not receiving Medicaid HCBS.

- Multiple settings co-located and operationally related (i.e., operated and controlled by the same provider) that congregate a large number of people with disabilities together and provide for significant shared programming and staff, such that people's ability to interact with the broader community is limited. Depending on the program design, this could include, for example, group homes on the grounds of a private ICF or numerous group homes co-located on a single site or close proximity (multiple units on the same street or a court, for example). In CMS' experience, most Continuing Care Retirement Communities (CCRCs), which are designed to allow aging couples with different levels of need to remain together or close by, do not raise the same concerns around isolation as the examples above, particularly since CCRCs typically include residents who live independently in addition to those who receive HCBS.