

ATTACHMENT D to Non-Residential Services Addendum to Massachusetts Statewide HCBS Transition Plan

Responses to Comments Received on the Non-Residential Services Addendum to Massachusetts Statewide HCBS Transition Plan

Comment: One comment indicated agreement with and support of the “Blueprint for Success: Employing Individuals with Intellectual Disabilities in Massachusetts” (Blueprint for Success) goal of eliminating sheltered workshops and emphasizing community employment. This commenter applauded the goal to eliminate sub-minimum wage for people with disabilities by 2018. However, the comment went on to urge the State to push the goal date to an earlier date “if there is no compelling logistical reason” not to do so.

Response: The Blueprint for Success goal and priority continues to emphasize movement into individual integrated employment opportunities from sheltered workshops, including moving people from group employment where they may be earning sub-minimum wages. Specifically, the workgroup that created and is implementing the Blueprint for Success is committed to ensuring enough time for providers and individuals to transition to community employment for all, necessitating the 2018 date. For a number of years, the DDS RFP for group employment has stated the expectation that the development of any new group employment sites would include payment of minimum wage or higher.

Comment: Several comments referred to the public input process for this Non-Residential Transition Plan Addendum or made recommendations to include specific groups in ongoing public input opportunities, including self-advocates and organizations run by self-advocates as opposed to organizations run on behalf of self-advocates. A commenter expressed concern that Massachusetts Advocates Standing Strong (M.A.S.S.), the state DD Council, Disability Law Center (D.L.C.) or any other advocacy organization was not involved.

Response: The state encourages public participation from all interested parties. The public input process implemented by the state involved and included input from a variety of stakeholders including self-advocates, families and providers. As noted in the Non-Residential Transition Plan Addendum, the public input process included:

- initial introduction of the HCBS rule and the process the state was going to use, with agency staff, providers, advocacy groups, individuals, and families;
- Specific to DDS, ten regional meetings with providers and DDS staff to provide more details;
- stakeholder review and input into the draft transition plan, which included representation from several advocacy groups including the Arc of Massachusetts, Massachusetts Advocates Standing Strong, Massachusetts Families Organizing for Change, Massachusetts Developmental Disabilities Council, the Disability Law Center, the Down Syndrome Congress, Advocates for Autism in Massachusetts (AFAM), the Federation for Children with Special Needs, the Brain Injury Association of Massachusetts, and the Association of Developmental Disability Providers; and
- the 30 day publication and notice of the plan and public forum.

In addition, as part of the state's commitment to complying with the HCBS Community Rule, a number of initiatives are currently underway, which involve a wide variety of stakeholders including self-advocates, families and providers as well as advocacy organizations. For example, many of DDS' initiatives are particularly relevant to the spirit and substance of the Community Rule, including:

- "Creating Our Common Wealth" is a leadership training initiated in 2015 to develop the future leaders in Massachusetts focused on regional and group activities designed to support individuals with disabilities to be actively engaged with community life. Following the initial meeting of this group, DDS initiated discussions to bring a small group of self-advocates, families, providers and DDS staff together to work on this important complement to provide additional guidance and policy regarding social inclusion.
- The "Widen the Circle" initiative consists of a group of self-advocates, families and organizations working to help individuals with disabilities establish more friendships with people of all abilities. This initiative is planning workshops, toolkit presentations and outreach along with working with the Creating Our Common Wealth initiative.
- DDS' extensive work on the "Real Lives" law has already borne fruit: a self-determination advisory board comprised of advocates, families, providers, state agency staff and individuals has been created and is meeting regularly; regional self-determination specialists have been hired to help Area Offices with setting up self-direction models; and a training has been implemented for DDS staff to further explain self-determination and the importance of choice and flexibility for DDS' consumers.
- A workgroup formed to enhance the DDS licensing and certification tool includes families and self-advocates and the enhanced tool will be distributed to several stakeholder groups for public review and comment prior to finalizing.

Comment: One commenter believed that a lack of non-provider involvement led to an unbalanced perspective and was compounded by the public hearing process at which no members of the public testified. It was noted that the public input forum was sparsely attended and that was attributed that to the fact that the forum was in the central part of the state during the middle of the day.

Response: The state engaged in a robust public input process for the Non-Residential Transition Plan Addendum that was similar to the process it used to develop the Statewide HCBS Transition Plan that more directly focused on residential services. The draft plan was sent out to a multitude of stakeholder groups prior to posting on the website. The draft Non-Residential Transition plan was published and public comments were solicited for 30 days with the opportunity for comments to be submitted by email or regular mail and one public forum was held in the central part of the state during the day. We publicized the different public input mechanisms to all of the same groups as we did for the Statewide HCBS Transition Plan. The holding of one public forum instead of two was the main difference between the processes. We do not believe this difference was a hindrance to gathering public input for several reasons. For the Statewide HCBS Transition Plan, we received comments in writing (email and mail) from 323 individuals or agencies. At each of the Residential Plan public forums (one held in Metro Boston at night and one held in the western part of the state during the day), we had 256 and 88 people sign in respectively and 55 and 39 people spoke. We decided to provide a public forum for the Non-Residential Transition Plan Addendum in the central part of the state as a geographically convenient location and believe that the time and location were appropriate.

Comment: One comment urged the state to revise the Non-Residential Transition Plan Addendum so that it is consistent with the Statewide HCBS Transition Plan. Specifically, the commenter asked DDS to include a “waiver compliance package” that contains a budget request to account for the incremental costs of compliance”, as an outcome of the compliance review.

Response: The Non-Residential Transition Plan Addendum provides that changes related to compliance may include a “(r)evue of contracting provisions to ensure appropriate incentives toward outcomes required by the Community Rule”. In addition, budget allocations in both fiscal years 2015 and 2016 included funding to assist providers to convert their sheltered workshop settings.

Comment: A commenter requested that the Non-Residential Transition Plan Addendum allow for an extension of time compliance past March 2019, in the event that

financial, real estate, programmatic or other issues prevent the timely implementation of specific providers' transition plans.

Response: CMS created the five year transition period, which ends in March 2019, for compliance with the Community Rule, providing "sufficient transition time for states to comply." The state is committed to achieving full compliance with CMS' Community Rule by March 2019 and believes that it has a head start with such initiatives as DDS' Blueprint for Success. The state believes it will be able to assist providers to implement any necessary transition plans and come into compliance in a timely manner.

Comment: One comment recommended that DDS change the language in Attachment A from indicating that integration, choice and quality of life is something "to which the HCBS rule aspires" to language that notes that these are outcomes that the Community Rule requires.

Response: The state agrees with this comment and has revised the language in the Non-Residential Transition Plan Addendum, Attachment A from "to which the HCBS rule aspires" to "to which the HCBS rule requires".

Comment: One comment suggested that the Non-Residential Transition Plan highlight the more stringent requirements under ADA Title II, even as the commenter noted that this is not strictly required by CMS.

Response: The transition plan was developed in response to a specific CMS requirement. The state agrees that the ADA Title II is the backdrop against which other policies and practices, which are referenced in the Plan, may be developed by the state.

Comment: One commenter indicated that the review process for determining compliance of waiver program service definitions only involved asking vendors/providers a specific set of questions and was inadequate to determine compliance.

Response: The state engaged in a thorough review of waiver service definitions for compliance with the Community Rule. State agency operations and quality management staff in conjunction with MassHealth staff conducted the review which involved consideration of the five questions listed in the plan to determine compliance. Vendors/providers were not involved in that process.

Comment: One commenter argued that language in the State Plan Amendment (2010), with respect to the day habilitation supplement waiver service, was noncompliant with the Community Rule.

Response: Day Habilitation services are highly clinical in nature. Individuals choosing to receive Day Habilitation and the Day Habilitation Supplement are receiving this service as a result of an assessed need for clinical supports which are not otherwise available in the different array of day and employment services available through a Waiver Program.

Day Habilitation Supplement, which is a waiver service, is provided to individuals who require the additional individualized supports to enable them to fully benefit from day habilitation services in addition to the clinical supports they require. With the choice of the Day Habilitation Supplement, individuals with clinical needs for support are able to more fully take part in Day Habilitation activities outside of their home as well as in the larger community, which they would not be able to do in without the support of the Day Habilitation Supplement waiver service. Day Habilitation Supplement thus promotes and ensures that the individual can access the community and participate in meaningful integrated activities. The state will consider the comments pertaining to the language describing the service.

Comment: One comment questioned whether the DDS Request for Response (RFR) process demonstrated that all existing providers met all requirements and ensured community integration.

Response: The RFR reflects the expectations for qualifying providers and specifically addresses community integration requirements. The RFR is a tool by which DDS ensures that providers meet the Community Rule, as part of the initial qualification process.

Comment: One commenter asked how the state's licensing and certification tool would change in response to the Community Rule and what, if any, changes would be needed to regulations, specifically, Chapter 8.00 of DDS regulations. This comment noted that DDS should use the CMS exploratory questions when revising the tool.

Response: The state recognized that while its licensing and certification processes are robust and address community integration in their present form, there is room for improvement to ensure that all critical elements of the Community Rule are addressed. As a result, for example, DDS has convened a Licensing and Certification workgroup,

composed of DDS quality and operations staff, self-advocates, family members, advocates, providers, and University of Massachusetts staff to review its licensing and certification tool and process to develop and recommend changes needed to strengthen and enhance the ability to determine compliance with the Community Rule. Changes may include but not be limited to additions of new indicators, revisions to existing indicators, the drafting of stronger guidelines for indicators and changes to the timing and outcome of the process. In initial sessions, the workgroup received copies of the exploratory questions from CMS along with other resource material as well as feedback received from external stakeholders during several focus groups to discuss the Community Rule. At the time of submission of the transition plan, the workgroup had just begun its analysis of needed changes. Recommendations from this group will be broadly distributed for review and comment by both internal and external groups.

Comment: One commenter noted that the plan does not indicate if the site feasibility review includes an assessment of the site's capacity to facilitate meaningful community engagement. This initial comment led to a broad comment about the state developing criteria for meaningful integrated day and employment programs, with the assistance of people with disabilities, their families and advocates. This commenter also believed that providers must have staff trained to foster community living and integration.

Response: Currently, the site feasibility for day and employment supports contains one requirement specifically related to the site's capacity to facilitate meaningful community engagement: The work/community support must be located in a business district whose general design features do not emphasize the services separateness or difference from the broader community. Individuals must have access to the same community services and resources used by other people (e.g., cafeteria, restaurants, banks) ((DDS) 7.07(5)(b)). The state will also consider this comment from the perspective of Licensing and Certification, and will utilize a Licensing and Certification Workgroup that is revising and strengthening the licensing and certification process to determine if additional requirements should be added to the Licensing and Certification tool and/or the site feasibility tool.

Comment: One comment asked that the Non-Residential Transition Plan Addendum include specific steps to address any non-compliance among day and employment providers. Similarly, another comment noted that the Non-Residential Transition Plan Addendum did not address the heightened scrutiny process.

Response: The state has added language indicating what will happen for individuals in settings that are determined to be non-compliant: "If settings are determined to be

non-compliant, then individuals in settings that cannot meet requirements will be notified by [the state] that they will no longer be receiving services in HCBS Waiver settings. Individuals will be informed of their right to request to receive services in another setting and of implications if they choose to stay in their current setting.”

Additionally, we have added language about what would necessitate a revision in the transition plan with accompanying public input processes. Specifically, if the state determines that a setting needs “heightened scrutiny”, then the state will follow CMS guidance for the submission and conduct of heightened scrutiny, including the requirement that it update its Statewide HCBS Transition Plan and provide the opportunity for public review and comment.

Comment: Referring to DDS, a commenter noted that the Non-Residential Transition Plan Addendum does not specifically identify which DDS staff will be conducting monitoring activities.

Response: Ongoing monitoring is a shared responsibility, led by regional Licensing and Certification staff, with the assistance of Central Office Quality Enhancement staff, regional program monitors, area operations staff and area service coordinators.

Comment: One comment urged DDS to provide more guidance regarding how stakeholders can provide input to DDS including reporting suspected noncompliance.

Response: The Non-Residential Transition Plan Addendum provides guidance regarding a variety of public input processes and avenues. In addition, the state’s regulatory process will afford opportunities for input through public hearings and comment periods when regulatory changes are put forward to further ensure compliance with the Community Rule. As indicated above, there are additional mechanisms for public input outside of the transition plan. For example, ongoing input will be gathered through periodic meetings with stakeholder groups. Additionally, as noted above, if the state determines that a setting needs “heightened scrutiny”, then the state will follow CMS guidance for the submission and conduct of heightened scrutiny, including the requirement that it update its Statewide HCBS Transition Plan and provide the opportunity for public review and comment.

Comment: One comment recommended that in the Non-Residential Transition Plan and the Blueprint for Success, “individual integrated employment” should be replaced by “individual competitive integrated employment.”

Response: The Blueprint for Success is a published document and as such, has been agreed upon and shared by many stakeholders including providers and individuals, who are responsible for implementing it. Changing language now may lead to needless confusion. We agree that the goal of the plan pertaining to “individual integrated employment” is to have individuals hired by businesses, earn the same wages and benefits and work side by side with coworkers with and without disabilities.

Comment: One comment suggested that the Non-Residential Transition Plan include information about person-centered planning.

Response: While CMS specifically stated that the person-centered planning process should not be included in the transition plan, the state, and DDS, MRC and EOE in particular, assure that the ISP process contains all the required elements of a person-centered planning process.

Comment: One commenter noted that choice, control and informed decision-making are assured through DDS’ human rights system. This commenter was concerned that DDS has not specified any limits on providers/employers participating on Human Rights Committees and that DDS has current plans to change some requirements related to membership on the Human Rights Committees.

Response: The state agrees with the commenter that it is important to have a strong human rights system. To that end, DDS has created the “Advocacy for All” initiative with the goal of creating a more robust human rights training for all staff, not just human rights officers, creating the expectation that all staff should be human rights advocates. While some simplification of human rights committee membership has been discussed, no changes will be made at this time. Any proposed changes in the regulations will be subject to public hearings with the opportunity to comment to the specific changes at that point in time.

Comment: One commenter expressed the position that the state should “avoid further expansion of existing facility-based, congregate day and employment services”, which would increase the number of settings that may require modification and make the State’s transition more difficult. The comment further indicated that congregate settings often lack opportunities for community participation because of scheduling, staff ratios, and limited transportation. Similarly, another commenter argued that people with significant disabilities and complex medical needs are not receiving the full benefit of

community integration because they are in segregated settings. This commenter noted that activities are often limited and involve little interaction with the broader community because of limited transportation, the necessity of group activities and challenges in staffing levels. Additionally, in employment programs, one commenter remarked upon a lack of community integration, in spite of provider claims.

Response: Under the Blueprint for Success, the state is implementing the elimination of sheltered workshops, facility-based employment for individuals. In furtherance of this objective, in January 2014, the state closed new admissions and identified June 2016 as a target date to complete the phase-out of sheltered workshops. The state is continuing to work towards assuring that all settings, regardless of the level of disability of individuals served, provide opportunities for integration, involvement in and access to community activities as is indicated in the Statewide HCBS Transition Plan and addendum. The Blueprint for Success' goal over the four year plan is to provide individuals with opportunities to obtain employment in the community, supplemented by community-based day programs, as determined by individuals' specific choices and needs. In addition, the Transition Plan identifies the state's clear intent to make community-based day programs fully inclusive and integrated in the community.

Comment: Recommendations were offered for allowing for the development of flexible innovative approaches, funding pilot programs and offering program development assistance such as provider training and resources. Additionally, it was recommended that the state should revise service definitions, standards and monitoring from both DDS and MRC perspectives to allow for more flexibility and provide data to providers, funders and stakeholders so informed decisions can be made. Specialized services including OT, PT, Speech and other therapies and consultations should be included and expanded for Day and Employment services as important components to ensure community integration.

Response: The state agrees with the comment. The existing Blueprint for Success workgroup is actively involved in researching and exploring how day programs, in addition to employment programs can provide meaningful day activities, particularly for individuals for whom work is not a goal. The group will explore different innovative models as well as consider the type of training and education that will support provider efforts to enhance their services and supports. The licensure and certification tool is currently undergoing revisions to assure that it reflects the standards necessary to assure integration, access, choice and control. As has been the case for many years, results of all licensing and certification reviews are publicly displayed on the DDS website and available to assist individuals and families to make an informed choice about service options.

Comment: One commenter wanted to ensure that the State ensures meaningful consumer choice with expanded access to waiver services including transportation, integrated employment (especially for the ABI/MFP waivers), and Individual Supports and Community Habilitation (for ABI-Residential Habilitation and MFP-Residential Supports waivers).

Response: Future amendments and renewals to the ABI/MFP waivers will consider the inclusion of additional waiver services to benefit participants in these waivers.

Comment: A few commenters provided recommendations related to additional ongoing public input. One comment focused on the survey DDS has distributed to providers to collect data on day supports and what constitutes a meaningful day. This commenter requested that additional data collection with people with disabilities, their families and advocates be conducted to ensure a holistic view of meaningful day. Another comment recommended that the state provide additional opportunities for public input to ensure that individuals who are most directly impacted by this plan can provide further feedback on services.

Response: As noted in other responses, the state is committed to providing opportunities for additional public input. In addition to receiving feedback from providers via the survey, there are initiatives underway to ensure that multiple perspectives are considered regarding meaningful day. For example, a topic of the Licensing and Certification Workgroup, comprised of self-advocates, families, providers and DDS staff, has been what access and integration, choice and control and rights and dignity mean for participants within both residential and day supports. These efforts are aimed at enhancing the Licensing and Certification Tool for residential, day and employment services. Ongoing input will also be encouraged through a variety of current and new initiatives and workgroups including, but not limited to, DDS Quality Council, the Employment Workgroup, workgroups developed through “Creating Our Common Wealth”, the Self Determination Advisory Board, the “Widen the Circle” project team, and the forming “Social inclusion” policy development team, as well as the Arc of Massachusetts, Massachusetts Advocates Standing Strong, Massachusetts Families Organizing for Change, Massachusetts Developmental Disabilities Council, the Disability Law Center, the Down Syndrome Congress, AFAM, the Federation for Children with Special Needs, the Brain Injury Association of Massachusetts, and the Association of Developmental Disability Providers.

Comment: One commenter spoke to the importance of data and using data to help identify, modify and improve existing models as well as inform, develop and publicize new models including day habilitation programs that are integrated with community participation opportunities. Specifically, data from the National Core Indicators survey were noted as particularly useful.

Response: The state agrees that data are important and can help to drive policy and the creation of models. We will continue to use data, from a variety of sources, including the National Core Indicators survey and Licensing and Certification, together with information from the many workgroups implementing activities and projects relevant to the Community Rule both locally and nationally.

Comment: One comment questioned whether and to what extent proposed training and staff development activities will be mandatory and part of licensing and certification.

Response: This comment echoes some of the discussions that the state has had as part of the DDS Licensing and Certification Workgroup. While no decision has been made regarding what, if any, trainings are considered mandatory, the group has acknowledged how critical well-trained and knowledgeable staff is in supporting the goals of the Community Rule. The state is forwarding this recommendation to the Licensing and Certification Workgroup for additional discussion, review and decision-making.

Comment: One recommendation was to require designated DDS staff to review every waiver participants' services and supports to determine compliance with the Community Rule.

Response: While the state agrees that the review of participants' services and supports is important to determine compliance, there are already several oversight mechanisms by which this review occurs on an ongoing basis. The person centered planning process is the primary way in which staff, specifically service coordinators and case managers, assure that services are individualized, support access and integration and reflect an individual's goals and aspirations. In addition, contract reviewers and quality staff all review services and supports.

Comment: There were several comments and recommendations made about the Non-Residential Transition Plan Addendum, the Blueprint for Success and its progress report. One noted that these documents do not describe how the goal to maintain

stability during the transition will occur in terms of guidance in line with the Community Rule. Another comment asked for clarity about whether day programs are required to include employment-oriented activities or prioritize these activities over non-work activities.

Response: The Employment Workgroup has been working to ensure stability for participants as well as to enhance and encourage community-based day programs in line with the HCBS Community Rule. To that end, technical assistance and training has been offered to providers to share best practices and program design characteristics. Community-based day program compliance with the HCBS Community Rule will be assessed through the enhanced Licensing and Certification Tool and will be monitored, in part, through the ISP process.

An essential component of these community-based day programs is career exploration and discovery activities. This expectation is a part of the RFR for Community-based Day programs and is assessed as part of the Licensing and Certification process. These activities are available to all individuals, with a focus on individuals of working age.

Comment: One commenter noted that DDS will be distributing guidance on the development of social enterprises, but doesn't specify anything about the guidance, how it will be distributed, to whom and what the benchmarks will be. Another area where a commenter asked for more specificity is around next steps to strengthen transitions from school to employment.

Response: The guidance on social enterprises is expected to be distributed by September 2015 to all qualified DDS employment and day service providers and DDS staff and sets forth criteria and elements of a social enterprise (i.e., agency developed and operated businesses). This guidance will ensure that any DDS-funded social enterprise is designed in such a way that the Community Rule is met.

The Employment Workgroup will continue to work with schools and encourage transitions to integrated employment opportunities, in line with the Workforce Innovation and Opportunity Act (WIOA). DDS has an established memorandum of agreement with MRC to work cooperatively in joint planning and cost sharing for employment services for transitioning youth, who are dually eligible for services. In addition, DDS will continue to provide information, resources and promising practices related to school-age transition through its collaboration with ICI- UMass Boston (see <http://employmentfirstma.org/pp.html>).

Comment: One commenter argued that Group Supported Employment programs should be more closely scrutinized and monitored as these programs are slated for closure in July 2018 and some providers seem unaware of that target date. Additionally, subminimum wage positions, also slated for elimination, should be also scrutinized.

Response: The state thanks the commenter for the information. We will be sharing this comment with the DDS Employment Workgroup to fully address the concern and ensure that all providers slated to close by July 2018 are aware of this date and have begun transition activities. Similarly, the Workgroup will follow up on the recommendation related to subminimum wage positions.

Comment: One commenter noted that this Non-Residential Transition Plan Addendum was to be commended for making important strides towards compliance with the Community Rule. In particular, this comment notes the Blueprint for Success is an important component in the transition plan, scheduling the end of new participation in sheltered workshops and then the elimination of sheltered workshops and subminimum wage.

Response: The state concurs that we are making important and necessary strides toward compliance with the Community Rule. As noted, the Blueprint for Success represents one of these initiatives and is a cornerstone of our Non-Residential Transition Plan Addendum.

Comment: Commendation was given to DDS for its policy on Home and Community-Based Settings released in September 2014. It was noted that the policy presents DDS' clear commitment to community integration for all residential and day service settings.

Response: We appreciate the support and agree that the Home and Community-based Settings Policy clearly defines DDS' commitment to community access and integration in residential and day service settings. The state has an overarching and cross-agency commitment to meeting the requirements of the community rule.

Comment: One comment noted appreciation for the State's primary focus on outcomes as it relates to the definition of home and community-based settings.

Response: The state agrees that compliance with the Community Rule requires a primary focus on outcomes related to community access and integration; choice and control; and rights and dignity and has taken that approach with both residential and

non-residential services. While there is a focus on outcomes, the state is encouraging providers to consider modifications to their physical setting that may enhance integration and access to the community.