



August 5, 2016

EOHHS
HCBS Waiver Unit
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The Massachusetts Chapter of the **Association for Persons Supporting EmploymentFirst** (Massachusetts APSE) is the state chapter of a 3,000+ member national advocacy organization focused exclusively on increasing the number of people with disabilities fully integrated within the general workforce, in real jobs at real wages. MA-APSE is pleased to offer the following comments on the July 2015 revised draft of *The Massachusetts Statewide Transition Plan for Compliance with the CMS Home and Community Based Services Community Rule*. Given our organization's mission, we are focusing our comments on day and employment services.

We have been very pleased with the efforts by the Massachusetts Department of Developmental Services (DDS) via commitments made in the November 2013 *Blueprint for Success: Employing Individuals with Intellectual Disabilities in Massachusetts*, to ending sheltered work (which occurred on July 1, 2016) and to ongoing capacity building to expand integrated employment. This commitment aligns with the CMS settings rule, and is well ahead of many other states in terms of their commitment to ending of segregated day settings. At the same time, there are a number of issues we would like to raise in terms of ongoing systems transformation.

Lack of Fiscal Support for Transformation: While we commend Massachusetts for its commitment to transformation of its day and employment services in the transition plan, we are extremely concerned about the significant underfunding of the *Blueprint for Success* commitment to this transformation. This lack of funding makes compliance with the CMS settings rule problematic in terms of Day and Employment Services. There continues to be a significant lack of funding to provide the necessary assistance for individuals to become successfully employed. In addition, the underfunding of Community Based Day-Supports (CBDS) services is resulting in high ratios of individuals to staff, and a lack of overall quality that is not reflective of the CMS settings rules. The state has never fully funded the commitment made within the *Blueprint for Success*, and the FY 2017 Massachusetts State budget underfunded DDS Day and Employment services by over \$10 million. As a result, all DDS Day and Employment programs have been forced to cut their budgets by 5% for the current fiscal year. These trends undermine the written commitments that the Commonwealth of Massachusetts has made to

CMS. It is critical that Massachusetts demonstrate leadership and necessary commitment of the required resources to make the transition plan a reality.

Group Employment: We are pleased to see that the Transition Plan specifies steps that will be undertaken so that group employment aligns with the CMS settings rules. The plan indicates that “that all 106 group employment settings require minor modification to come into full compliance with the Community Rule.” (p. 32) In our view, while the review may have indicated that compliance with the settings rule required only “minor” modifications to the group employment settings, we need to express our concern that group settings as a concept are challenged with meeting with the requirement under the settings rule *that the setting must be integrated in and support full access of individuals to the greater community, including opportunities to seek employment and work in competitive integrated settings, to the same degree of access as individuals not receiving Medicaid HCBS*. In group settings, individuals are often on the payroll of the service provider, and not well integrated into the overall workplace – and the design is not typical of the way that individuals not receiving Medicaid HCBS access employment. While we recognize that the definition of integration under the Workforce Innovation and Opportunity Act (WIOA) does not necessarily apply to settings supported by Medicaid HCBS, we would suggest that DDS, with the support of CMS, move toward a similar standard (a work location typically found in the community, in which the employee with a disability interacts with employees and other persons, as appropriate to the position, to the same extent that employees without disabilities interact with these persons – and the interaction that takes place between the employee with disabilities and other persons take place for the purpose of performing job duties, not just casual and social interactions). The WIOA final regulations were also very clear that mobile work crews and similar arrangements would not meet the WIOA definition of competitive integrated employment. It is important to note that the Massachusetts Employment First policy, implemented in August 2010, states that individual integrated employment that is employer-paid at minimum wage or higher is a clearly preferred outcome over group employment, and we feel the Transition Plan should indicate as such. Also given that, we feel the Transition Plan should specifically state how DDS intends to ensure that individual integrated employment is the preferred outcome and on how reliance on group employment will decrease over time. In addition, in terms of the criteria that will be developed for group settings by December 2016 (p. xxi), in our view, such language should recognize group employment as the less preferred option, and if group employment is to be used, it should meet the following criteria:

- Settings that are typical workplaces in the community.
- Earning above minimum wage, with a preference for being on the employer’s payroll, not the service provider’s.
- Individuals dispersed throughout the workplace, interacting with other employees and other persons, as appropriate to the position, to the same extent that employees without disabilities interact with these persons.
- Maximizing efforts for similar work routines as employees without disabilities, such as same work arrival and departure times.

- Individuals fully participating in the social culture of the workplace in an integrated fashion (breaks, lunch, orientation, training, work-related social activities, uniforms, lockers, etc.).
- Ensuring that the participation of individual's in group employment is a result of truly informed choice, aligned with USDOJ Olmstead Guidance.

CBDS: We are pleased to see that the plan indicates plans for DDS to create quality indicators for Community Based Day-Supports (CBDS) regarding what constitutes meaningful day activities. However, we feel this language needs to be much stronger, going beyond "meaningful day" and explicitly state that these standards will be created in order to fully align with the CMS settings rule. The ending of sheltered work has resulted in significant expansion of CBDS, and we are concerned about the inconsistent quality in CBDS. Too often, CBDS operates in a way that is not deliberate in terms of supporting individual goals, consists of activities that are not reflective of informed choice by the individual, and reinforce stereotypes and stigma. In addition, CBDS activities too often occur in segregated settings, rather than in the community. We also would like to call attention to the language on pp. 9-10 "While some individuals in CBDS may be on a pathway to employment, many individuals served are of retirement age or are otherwise not participating in employment-focused activities." There are large number of individuals in CBDS of working age, and in our view, every effort should be made to ensure those individuals have a pathway to employment, and that the language in the Transition Plan and standards that will be developed reflect that. Without such an effort, we are concerned that the end result of the end of sheltered work in Massachusetts will not be increased integrated employment, but rather individuals spending their days in non-work activities, which is not typical of the roles of most adults of working age in our society.

In summary, we would like to applaud the Commonwealth and specifically the efforts of DDS to align its services with the CMS Settings Rule, with the goal of supporting individuals with intellectual and developmental disabilities in lives fully integrated within mainstream society, in good jobs at good wages. At the same, in order to make this vision a reality, requires a commitment of the necessary resources, in combination with ensuring that the services and supports are of consistent high quality, and truly support individuals in roles and activities that are typical of those not receiving Medicaid HCBS.

Thank you for the opportunity to provide this feedback.

Sincerely,

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