STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: March 6, 2015

TO: Ms. Sharon L. Summers, DMMA
Planning & Policy Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: DMMA Proposed Statewide Transition Plan for Home and Community-Based Services (HCBS) Settings [18 DE Reg. 681 (3/1/15)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMAs) proposed Statewide Transition Plan (Plan) for Home and Community-Based Services (HCBS) Settings. The Plan was published for review and comment as 18 DE Reg. 681 in the March 1, 2015 issue of the Register of Regulations.

The Plan is required to comply with the Centers for Medicare and Medicaid Services (CMS) final rule related to Home and Community Based-Services (HCBS) for Medicaid-funded long term services and supports provided in residential and non-residential home and community-based settings. SCPD endorses the enclosed February 10th and February 23rd letters regarding the Plan submitted by the Disabilities Law Program and the attached comments provided by the SCPD Chairperson at the February 23rd Public Hearing. In addition, SCPD has the following additional observations and concerns.

First, the State has committed to strong and ongoing engagement of stakeholders. In addition to taking and incorporating public comment into the creation of the Statewide Transition Plan (p.39-42), the plan specifically incorporates stakeholder groups, the Governor's Advisory Council (for the 1915(c) Waiver) and the Governor's Commission on Building Access to Community Based Services, as a steering committee for the implementation of the rule. However, consistent with the DLP commentary, SCPD recommends that it be added to the list on p. 8 and p. 31 regarding the "oversight body". SCPD staff noted its willingness to collaborate with the Governor's Commission regarding this issue at the Commission's recent February 20th meeting. These stakeholder groups will help develop assessment instruments and protocols

(p.10, 25). The state will continue to seek stakeholder input throughout implementation (p.7). The plan recognizes that it provides only "high level" review and that "[m]oving forward, the specific approach and details surrounding each program will be further defined and will reflect the input and guidance of the particular program's stakeholders." (p. 7)

Second, the Plan uses multiple sources of information to assess compliance with the rule. In addition to using provider self-assessments (which will require documentation by providers, such as from written policies and training curricula), the state will also utilize NCI data (which includes participant interviews) as part of the analysis of settings in the DDDS 1915(c) Waiver and will incorporate feedback from participants receiving care. A sub-work group of the Governor's Advisory Council will conduct "look behind" review of a sample of provider self-assessments to validate for the DDDS 1915(c) Waiver (p.12). In addition, if a provider self-assessment is normal, but NCI data raises concerns, the DDDS 1915(c) setting will be selected for a "look behind review" even if it was not part of the selected sample (p.13).

Third, the time line the state has established seems very extended. The time line estimates that remediation strategies will not be implemented until February and May of 2017, leaving barely two years for the actual implementation, including the relocation of any individuals from settings that prove unable to come into compliance. SCPD urges Delaware to move more quickly and give the HCBS service system more time to reach compliance by 2019.

Fourth, the Plan does not discuss a relocation process for individuals who are being provided services in settings that cannot come into compliance with the regulations. This is an important process to establish early.

Fifth, the Plan does not appear to verify compliance through on-site visits. It is unclear from the Plan if the look-behind reviews of a 20 percent sample of settings will include on-site visits as part of the assessment process, for either the 1915(c) Waiver or DSHP (SCPD assumes that DSHP will follow the 1915(c) Waiver plan and conduct look-behinds of a 20 percent sample but the plan should clarify this). On-site visits are an important part aspect of any analysis of setting compliance, and SCPD encourages the State to include conducting on-site visits of settings in this look-behind review.

Sixth, there is no discussion of how Delaware will ensure that individuals have a choice of "non-disability specific" setting and private units. The HCBS Rule requires that individuals receiving HCBS services have the choice of a non-disability specific setting (i.e., settings that are not comprised only or primarily of people with disabilities) and of a private room in residential settings. The Plan does not discuss how Delaware will ensure that individuals have that choice. This is a fundamentally important part of the rule and people cannot be offered that choice if there is not capacity. Delaware must evaluate its current capacity of non-disability specific settings and develop a plan to increase capacity as needed to fulfill this requirement. The lack of capacity of non-disability specific settings is particularly acute for non-residential services, where the majority of the state's current settings are disability-specific.

Seventh, SCPD is unclear why the only stakeholder for the following action items at p. 32 is the Delaware Healthcare Facilities Association:

- Identify HUD Homes and any financial or other terms that impact compliance; and
- Conduct review of Delaware landlord/tenant code vis-a-vis the Rule.

At a minimum, the SCPD/Governor's Commission Housing Committee should be included as a stakeholder.

Ninth, there are multiple references to the "Governor's Commission on Community Based Alternatives for Individuals with Disabilities". The actual reference should be the "Governor's Commission on Building Access to Community Based Services".

Finally, as Delaware moves forward in its efforts to comply with the CMS Rule, SCPD encourages the State to strictly follow the Olmstead guidance on integrated v. segregated settings and the CMS guidance on settings that have the effect of isolating individuals receiving HCBS from the broader community (both attached). SCPD looks forward to collaborating with the State to implement the requirements of the CMS Rule, in which we believe the spirit is to create real community options for people with disabilities. In addition, during this time of transition, SCPD believes that the spirit of the Rule is not to "leave people on the streets", but to ensure smooth transitions for people with disabilities, families, providers and the State.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the Plan.

cc: Ms. Rita Landgraf
Mr. Stephen Groff
Ms. Jane Gallivan
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

P&L/18reg681 dmma-HCBS transition plan

HUD Olmstead Guidance

- **Integrated settings**
  - Provide individuals with disabilities opportunities to live, work and receive services in the greater community, like individuals without disabilities
  - Located in mainstream society
  - With housing, allow individuals with disabilities to live like individuals without disabilities without rules that limit activities or impede ability to interact with greater society
  - Examples: Scattered site apartments, tenant-based rental assistance in integrated developments
- **Segregated settings**
  - Occupied exclusively or primarily by individuals with disabilities
  - Sometimes have qualities of institutional care including lack of privacy, regimented activities, limiting visitors, etc.

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.

DISABILITIES LAW PROGRAM
COMMUNITY LEGAL AID SOCIETY, INC.

100 W. 10th Street, Suite 801
Wilmington, Delaware 19801
(302) 575-0660 TTY (302) 575-0696 Fax (302) 575-0840
www.declasi.org

February 10, 2015

Sharon Summers
Division of Medicaid & Medical Assistance
Planning, Policy & Quality Unit
1901 N. DuPont Hwy.
P.O. Box 906
New Castle, DE 19720-0906

Re: Commentary on HCBS Settings Transition Plan

Dear Sharon:

I am submitting the following commentary on the "Statewide Transition Plan for Compliance with Home and Community Based Setting Rule (February 6, 2015)" published on the DHSS Website. Given time constraints, my comments should be considered preliminary and non-exhaustive.

1. At the outset, the advertised time period for public comment does not meet the federal standard. The relevant CMS regulation requires "at least a 30-day public notice and comment period" [42 C.F.R. §441.710(a)(1); 79 Fed Reg. 3033 (January 16, 2014]. In contrast, the attached excerpt from the DHSS Website (downloaded on February9, 2015) recites that "(c)omments must be received by 4:30 p.m. on March 6, 2015." Since there are only 28 days in February, posting on February 6 would not result in a 30-day comment period if due by March 6. The Plan itself (p. 8) contemplates a comment "estimated end date" of March 9.

2. DMMA has opted to not include the Pathways and PROMISE programs within the scope of the Plan (p. 3) since the programs were previously approved by CMS after issuance of the January, 2014 CMS regulations. I question the compatibility of this approach with the general CMS view that the plan will detail "how the State will operate all section 1915(c) waivers and any section 1915(I) State plan benefit" [42 C.F.R. §441.710; 79 Fed Reg. 3034 (January 16, 2014)]. Even if not required, it may be conceptually preferable to have a single, integrated plan covering the waivers to promote a consistent approach rather than multiple plans.

3. The CMS regulations stress the importance of the "person-centered planning process" [42 C.F.R. §441.301]. The Plan contains some brief references to a "person-centered plan" (pp. 3, 12). The Plan would benefit from the incorporation of more specifics on revamping the current DDDS ELP plans and DSHP care plans to conform to the federal standards. At a minimum, the matrix on pp. 18-19 could specifically highlight the "person-centered planning process" as one of the core state policies meriting review.

4. On p. 3, the State recites that it is listing "the service definition from the approved waiver". This is not entirely accurate. For example, the "definitions" of "prevocational services", "day habilitation" and "residential habilitation" are partial excerpts from the attached (pp. 40-45) service definitions in the DDDS waiver. "Transportation" references included in the DDDS waiver service definitions have been uniformly omitted from definitions in the Plan. This suggests that transportation will not be addressed in the Plan. Waiver-funded transportation should be included in the Plan. For example, use of integrated transportation (taxi; bus; mileage reimbursement) may be preferable to use of paratransit or an identified van with only riders with disabilities.

5. The State identifies an "oversight body" comprised of representatives of five (5) DHSS divisions (p. 8). I recommend adding the State Council for Persons with Disabilities to the "team". It is a State agency charged with reviewing "all state policies, plans, programs ....concerning persons with disabilities...conducted or assisted...by state departments' and making "recommendations to ...all state departments...respecting ways to improve the administration of services for persons with disabilities and for facilitating the implementation of new or expanded programs." See attached 29 Del.C. §8210.

6. The Plan (p. 8) mentions that the "oversight body" will meet "regularly". This is unduly obtuse. It would be preferable to at least include a minimum schedule (e.g. quarterly; monthly).

7. On p. 10, the first "bullet" refers to "State laws, regulations, policies, etc. and provider policies". I recommend specifically including "budgets". If funds or incentives are disproportionately allocated to restrictive or non-integrated settings, the Plan is undermined. Elsewhere, the Plan acknowledges the prospect of budgetary changes:

> To the extent that remediation strategies have financial implications for the providers and for the State, budget strategies may need to be developed.

At p. 15.

> Review DSHP rates for adequacy to support the requirements of the Rule (especially related to smaller staffing ratios in day programs).
>
> Include a budget strategy related to any necessary changes to rates.

At p. 22.

8. The State(p. 10) recites as follows: "As available, NCI data will be analyzed by type of residence in order to identify non-compliance with HCB settings." The NCI data also addresses vocational and employment settings. See attachment.. Therefore, it would be preferable to also "mine" the NCI data for information on vocational and employment settings.

9. On p. 10, the Employment First Commission should be added as a source of information and analysis. Per 19 Del.C. §747, the Commission reviews and analyzes data on employment of persons with disabilities. Apart from the NCI data, the Commission may have supplemental information to assist with assessment of access to integrated, competitive employment.

10. The references to "Governor's Advisory Council" (p. 10) and "GAC" (seriatim) are not apt. The current statute (29 Del.C. §7910) refers to the "Advisory Council to the Division of Developmental Disabilities Services".

11. On p. 11, the following sections of the Delaware Code should be added to the review:

A. Employment First Act (codified at 19 Del.C. §§740-747), since it overlaps with CMS standards;

B. DDDS enabling law (codified at 29 Del.C. §7909A);

C. DDDS Advisory Council enabling law (codified at 29 Del.C. §7910) since it is given a central role in assessment;

D. Interagency Collaborative Team law (codified at 14 Del.C. §3124) since "review will include residential and non-residential settings out of state for which waiver funds are currently being used" (pp. 14 and 34);

E. Nurse Practice Act (codified at 24 Del.C. Ch. 19) since restrictions impact settings in which residents receive services; and

F. Community-based Attendant Services Act (codified at 16 Del.C. Ch. 94) since DDDS receives funds under Act and Plan mentions at p. 26.

12. On p. 11, the following "Administrative Code" provisions should be added:

A. IBSER regulations (16 DE Admin Code 3320) which cover AdvoServ; and

B. Family Care Home regulations (16 DE Admin Code 3315) which may cover shared living providers; and

C. PASRR regulations (16 DE Admin Code 20000).

13. On p. 12, policies to be reviewed should include PROBIS and HRC. The relevant CMS regulation (42 C.F.R. 441.530) addresses privacy and freedom from coercion and restraint. Both the PROBIS and HRC are the main DDDS components protecting such rights. See attached excerpt (pp. 100-101) from DDDS Waiver.

14. The Plan is inconsistent in sometimes referring to a single GAC work group (p. 12; p. 14) and sometimes referring to multiple GAC work groups (p. 10 at top; p. 20 at bottom). I believe the Plan contemplates the Council acting as a "steering committee" with the authority to establish multiple subcommittees.

15. The Plan should include standards for the composition of the Council subcommittees/work groups to promote objectivity and absence of conflicts. The Plan suggests (p. 42) that DDDS envisions including a single provider representative on the assessment subcommittee. However, there is nothing in the Plan which would preclude establishment of a subcommittee comprised of a high percentage of providers who may have a vested interest in adopting an anemic assessment instrument. The membership of the subcommittees would ostensibly not be limited to the small (7 member) Council membership. Perhaps the Council could vote to establish a protocol in which the Council chair and DDDS director would jointly appoint the members of the subcommittees. Alternatively, the Plan could include some explicit membership standards to ensure the objectively of the subcommittees. It would also be prudent to include one or more DDDS employees on the subcommittees.

16. On p. 13, first paragraph, and p. 19, top entry, the implication is that providers will submit a corrective action plan contemporaneously with their self-assessment results. However, the Plan (p. 22) gives them 90 days to prepare a corrective action plan which then must be reviewed and approved by the State. The 90-day period is ostensibly too long to simply develop a corrective action plan. I recommend a 30-day period.

17. The Plan (p. 13) contemplates a Council subcommittee conducting "look- behind" reviews of a sample of provider self-assessment results. The Plan also envisions the Council developing "dispute resolution processes for the findings". I recommend that DDDS develop and implement the dispute resolution processes. The Advisory Council should not be cast the role of arbiter of such disputes. Disputes and appeals should be handled by DDDS and DMMA. Cf. reference on p. 14: "An appeal process will be developed to dispute the State's findings of non-compliance." The DDDS Office of Quality Improvement is identified (p. 15) as the agency which monitors compliance with the Community Rule for providers with and without a corrective action plan.

18. On p. 13, second paragraph, fourth sentence, substitute "indicate" for "indicates".

19. On p. 13, in the first set of bullets, I recommend including IBSER group homes which are not neighborhood group homes. The IBSER regulations (§6.2.1) "grandfathered" residences with more than ten residents and the only agency regulated by the IBSER regulations operates its own PROBIS which reduces oversight.

20. On p. 13, final bullet, I recommend modifying the reference to read "(i)nformed consent of the individual or legal representative. See 42 C.F.R. §441.301(1).

21. On p. 17, last entry, the reference to "charter" is odd. Councils do not create "charters". The deadline (March 17, 2015) to develop the operational standards is also too short.

22. There are some inconsistencies in the time periods in the matrix. The following are examples.

A. On p. 18, development of the self-assessment instrument has a proposed end date of 4/24/15. On p. 20, development of the self-assessment instrument has an end date of 5/31/15. On p. 21, development of the self-assessment instrument has an end date of 5/31/15.

B. On p. 18, last entry, providers have a 7/31/15 end date to complete their self-assessment. In contrast, p. 21 indicates that only 3 providers will complete the assessment as a pilot to identify "bugs" in the survey instrument by 7/15/15 and a revised survey instrument will be developed by 8/15/15.

C. On p. 19, there is a 2/28/16 end date to complete a "look-behind" review of a 20% sample of the provider self-assessments. In contrast, on p. 21, final entry, there is an 8/31/16 end date to review a 20% sample of provider self-assessments.

23. On p. 20, there are references to changing policies but no references to changing statutes and regulations which will be reviewed per p. 11.

24. Pages 22-23 contemplate DDDS submission of waiver amendments to CMS. I believe DMMA, as the Delaware Medicaid agency, submits such amendments.

25. On pp. 25 and 34, the Plan recites that "DMMA will consider using its External Quality Review Organization (EQRO) to develop the surveys." This is a rather tentative feature to incorporate in a Plan and suggests that the State is unsure how it will develop the instruments.

26. On p. 25, the State identifies the Governor's Commission on Community-Based Alternatives for Individuals with Disabilities as the primary stakeholder group to inform the decision-making regarding assessments. My impression is that the Commission meets rather infrequently. Moreover, there is no "end date" for confirming the Commission's role as the advisory body for the assessment process (pp. 31-32).

27. On p. 27, I recommend adding the Nurse Practice Act, 24 Del.C. Ch. 19, to the list of Delaware Code provisions to review.

28. On p. 27, the Plan envisions MCOs distributing surveys to network providers. I question whether such providers will complete the surveys. Query what incentives exist for providers to complete the surveys? Medicaid MCO reimbursement rates are low and providers may want to be paid for their time. Concomitantly, the Plan has no benchmark for the percentage of providers who will complete the surveys. Will 30%, 50%, or 70% be sufficient?

29. On p. 27, the Plan contemplates providers participating in training to learn how to complete the surveys. Consistent with the preceding comment, what incentive exists for providers to participate in the training.

30. On p. 27, the Plan envisions participants completing surveys. No incentives are identified. Will a 30%, 50%, or 70% submission rate be sufficient. A benchmark should be identified and incentives considered.

31. On p. 28, second set of bullets, I recommend inserting a reference to revising "budgets".

32. On p. 29, "fair hearing results" could be added to the list of information related to MCO performance.

33. It is unclear how Logisticare, the Medicaid transportation broker, will be assessed for compliance with the HCBS Rule. Consistent with Comment #4 above, transportation can be integrated or segregated.

34. On p. 32, the reference to the Commission creation of a "charter" is odd. A Commission does not create a "charter".

35. The Plan (p. 33) contemplates providers competing remediation strategies if they determine, via a self-assessment, that they are not in compliance with the HCBS Rule. I question the use of the term "remediation strategy". The DDDS requirement of a "corrective action plan" (p. 13) is a more precise term and implies that a more formal document would be completed. Moreover, the Plan (p. 36) uses the term "corrective action plan". I recommend deletion of references to "remediation strategy" and substitution of "corrective action plan" for consistency.

36. There is no requirement (p. 33) that provider "remediation strategies" be shared with DMMA. It would obviously help DMMA assess MCO conformity with the Plan if the MCOs shared the "remediation strategies" submitted by providers with the State. The Plan (p. 36) otherwise envisions DMMA monitoring of provider "corrective action plans". Even this is a less strident standard than adopted for DDDS providers. DDDS must approve provider corrective action plans (p. 13) but there is no analogous requirement that DMMA approve provider corrective action plans (p. 36).

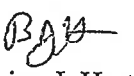
37. On p. 33, the Plan includes a proposed end date of "9/31/15". There are only 30 days in September.

38. On p. 34, first entry, there is a "disconnect" between the action item (changing policies and procedures) and the proposed end date (a vague "legislative timeframe"). There is no proposed end date for completion of State policy changes.

39. On p. 35, the Plan contemplates a 5-month period (10/1/15 to 2/29/16) for providers to conduct a self-assessment and participants to complete participant surveys. This period is unnecessarily long.

40. While DDDS conducts a pilot of its survey (p. 21), DMMA conducts no pilot. DMMA could reconsider this aspect of the Plan.

Sincerely,



Brian J. Hartman
Project Director

Attachments

E:legis/comments215hcbsplan
F:pub/bjh/leg/2015p&l/comments215hcbsplan

HOME
- About DMMA
- Sections & Programs
- FAQs
- Employment
- Related Links
- News & Media
- Contact Information
- Office Locations
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SERVICES
- A-Z of Services
- Apply Online
- Medical Assistance Programs
- Medicaid
- Healthy Children (CHIP)
- Money Follows the Person
- Prescription Assistance (DPAP)
- Long Term Care
- Children's Community Alternative Disability Program
- Home & Community Based Services
- Transportation
- Chronic Renal Disease

INFORMATION
- Eligibility
- Pharmaceutical and Therapeutics (P & T) Committee
- Drug Utilization Review Board
- Provider Manuals
- Regulations
- Reports & Statistics
- Publications & Forms
- Resources

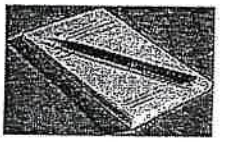
Division of Medicaid & Medical Assistance

The purpose of the Division of Medicaid and Medical Assistance is to provide health care coverage to individuals with low incomes and those with disabilities and to ensure access to high quality, cost effective and appropriate medical care and supportive services.

What's New

Photos

ChooseHealth DELAWARE
Your guide to health insurance



Draft of Proposed Statewide 1915 HCBS Settings Transition Plan

In January 2014, the Centers for Medicare & Medicaid Services (CMS) promulgated a rule which for the first time defines settings that would meet the standard of being "community based" in terms related to the quality of the experience for the consumer, as opposed to the physical characteristics of the settings in which services were received. The rule applies to both residential and non-residential settings. The intent of the rule, also referred to as the "Community Rule", is to ensure that people receiving federally funded home and community based services (HCBS) have opportunities to access community services in the most integrated settings. This includes opportunities to seek employment and work in competitive settings, engage in community life, control personal resources and participate in the community to the same extent as people who do not receive HCBS.

The final rule required that states submit to CMS a Statewide Transition Plan on or before March 17, 2015: 1) demonstrating the process the State will undertake to assess the HCBS provided to participants and the settings in which these services are provided and 2) describing the assessment process and timeframes to ensure full compliance with federal requirements by March 17, 2019.

Delaware's Division of Medicaid and Medical Assistance (DMMA) (within the Department of Health and Social Services (DHSS)) will submit the Delaware Statewide Transition Plan (the Plan) addressing the above requirements for all programs offering HCBS in the State.

The public is invited to review and comment on the State's proposed Transition Plan. Comments must be received by 4:30 p.m. on March 6, 2015. Comments and input regarding the draft transition plan may be submitted in the following ways:

In addition to the interpreter contracts maintained by DHSS for use by all DHSS divisions, the Division of Medicaid & Medical Assistance (DMMA) contracts for interpreter services for Spanish, Braille, and American Sign Language translation services for Medicaid enrollees as needed. DMMA also offers TTY service

DDDS also makes an effort to hire case managers who are bi-lingual and who sign ASL.

Appendix C: Participant Services

C-1: Summary of Services Covered (1 of 2)

a. **Waiver Services Summary.** *List the services that are furnished under the waiver in the following table. If case management is not a service under the waiver, complete items C-1-b and C-1-c:*

Service Type	Service	
Statutory Service	Day Habilitation	
Statutory Service	Prevocational Services	
Statutory Service	Residential Habilitation	
Statutory Service	Supported Employment - Individual	
Statutory Service	Supported Employment - Small Group	
Other Service	Clinical Consultation: Behavioral	
Other Service	Clinical Consultation: Nursing	
Other Service	Supported Living	

Appendix C: Participant Services

C-1/C-3: Service Specification

State laws, regulations and policies referenced in the specification are readily available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

Service Type:

Statutory Service

Service:

Day Habilitation

Alternate Service Title (if any):

Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one :

- (●) **Service is included in approved waiver. There is no change in service specifications.**
- ( ) **Service is included in approved waiver. The service specifications have been modified.**
- ( ) **Service is not included in the approved waiver.**

Service Definition *(Scope):*

Day Habilitation services are the provision of regularly scheduled activities in a non-residential setting, separate from the participant's private residence or other residential living arrangement, such as assistance with acquisition, retention, or improvement in self-help, socialization and adaptive skills that enhance social development and develop skills in performing activities of daily living and community living, physical development, basic communication, self-care skills, domestic skills, community skills and community-inclusion activities. Activities and environments are designed to foster the acquisition of skills, building positive social behavior and interpersonal competence, greater independence and personal choice. Services are furnished consistent with the participant's person-centered plan and are integrated into the community as often as possible.

Day habilitation services focus on enabling the participant to attain or maintain his or her maximum potential and

shall be coordinated with any needed therapies in the individual's person-centered services and supports plan, such as physical, occupational, or speech therapy.

Transportation to and from the program site is a component part of day habilitation and the cost of this transportation is included in the rate paid to providers of day habilitation services.

Specify applicable (if any) limits on the amount, frequency, or duration of this service:

Service Delivery Method *(check each that applies)*:

- ☐ **Participant-directed as specified in Appendix E**
- ☑ **Provider managed**

Specify whether the service may be provided by *(check each that applies)*:

- ☐ **Legally Responsible Person**
- ☐ **Relative**
- ☐ **Legal Guardian**

Provider Specifications:

Provider Category	Provider Type Title
Agency	Day Habilitation

Appendix C: Participant Services

C-1/C-3: Provider Specifications for Service

Service Type: Statutory Service
Service Name: Day Habilitation

Provider Category:
Agency
Provider Type:
Day Habilitation
Provider Qualifications
License *(specify):*

Certificate *(specify):*
Must be a Division of Developmental Disabilities Services Certified Provider.
Other Standard *(specify):*
Must adhere to all standards, policies, and guidelines in the State of Delaware DDDS Day Habilitation Standards, including:

The Contractor agrees to adhere to the requirements of DHSS Policy Memorandum # 46, and divisional procedures regarding the reporting and investigation of suspected abuse, neglect, mistreatment, misappropriation of property and significant injury of residents/clients receiving services, including providing testimony at any administrative proceedings arising from such investigations.

The Contractor, including its parent company and its subsidiaries, and any subcontractor, including its parent company and subsidiaries, agree to comply with the provisions of 29 Del. Code, Chapter 58: "Laws Regulating the Conduct of Officers and Employees of the State," and in particular with Section 5805 (d): "Post Employment Restrictions."

Contractor shall conduct child abuse and adult abuse registry checks and obtain service letters in accordance with 19 Del. Code Section 708; and 11 Del. Code, Sections 8563 and 8564. Contractor shall not employ individuals with adverse registry findings in the performance of contract.

The Contractor agrees that professional staff employed in the execution of this contract shall be state licensed, certified, or registered in their profession as required by state law. In the case of direct care personnel, certification shall be obtained through successful completion of a training program as required by the DDDS.

All DDDS waiver providers must agree to accept the terms and conditions under the Medicaid provider contract as a condition of enrollment to provide services under the waiver.

Verification of Provider Qualifications

Entity Responsible for Verification:

Division of Developmental Disabilities Services

Frequency of Verification:

The DDDS Office of Quality Improvement conducts provider compliance reviews on an annual basis or as needed based on service monitoring concerns.

Appendix C: Participant Services

C-1/C-3: Service Specification

State laws, regulations and policies referenced in the specification are readily available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

Service Type:

Statutory Service

Service:

Prevocational Services

Alternate Service Title (if any):

Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one :

- ○ **Service is included in approved waiver. There is no change in service specifications.**
- ◉ **Service is included in approved waiver. The service specifications have been modified.**
- ○ **Service is not included in the approved waiver.**

Service Definition *(Scope):*

Prevocational Services provide learning and work experiences, including volunteer work and/or internships, where the individual can develop general, non-job-task-specific strengths and skills that contribute to employability in paid employment in integrated community settings. Services are expected to produce specific outcomes to be achieved, as determined by the individual and his/her services and supports planning team through an ongoing person-centered planning process evaluated annually. Prevocational services may be furnished in fixed site locations or in community based settings.

Individuals receiving prevocational services must have employment-related goals in their person-centered services and supports plan; the general habilitation activities must be designed to support such employment goals. Competitive, integrated employment in the community for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities is considered to be the optimal outcome of prevocational services.

Prevocational services should enable each individual to attain the highest level of work in the most integrated setting and with the job matched to the individual's interests, strengths, priorities, abilities, and capabilities, while following applicable federal wage guidelines. Services are intended to develop and teach general skills; Examples include, but are not limited to: ability to communicate effectively with supervisors, co-workers and customers; generally accepted community workplace conduct and dress; ability to follow directions; ability to attend to tasks; workplace problem solving skills and strategies; general workplace safety and mobility training.

Transportation to and from the service location is a component part of prevocational services and the cost of this transportation is included in the rate paid to providers of prevocational services.

Specify applicable (if any) limits on the amount, frequency, or duration of this service:

Service Delivery Method *(check each that applies)*:

- ☐ **Participant-directed as specified in Appendix E**
- ☑ **Provider managed**

Specify whether the service may be provided by *(check each that applies)*:

- ☐ **Legally Responsible Person**
- ☐ **Relative**
- ☐ **Legal Guardian**

Provider Specifications:

Provider Category	Provider Type Title
Agency	Prevocational Services

Appendix C: Participant Services

C-1/C-3: Provider Specifications for Service

Service Type: Statutory Service
Service Name: Prevocational Services

Provider Category:
Agency
Provider Type:
Prevocational Services
Provider Qualifications

License *(specify):*

Certificate *(specify):*
Must be a Division of Developmental Disabilities Services Certified Provider.

If clients are paid a sub-minimum wage during the provision of pre-vocational service, a service provider site must be certified by the U.S. Department of Labor as a Work Activity Center as defined in Section 14 © of the Fair Labor Standards Act.

Other Standard *(specify):*
Must adhere to all standards, policies, and guidelines in the State of Delaware Day Program Standards including:

The Contractor agrees to adhere to the requirements of DHSS Policy Memorandum # 46, and divisional procedures regarding the reporting and investigation of suspected abuse, neglect, mistreatment, misappropriation of property and significant injury of residents/clients receiving services, including providing testimony at any administrative proceedings arising from such investigations.

The Contractor, including its parent company and its subsidiaries, and any subcontractor, including its parent company and subsidiaries, agree to comply with the provisions of 29 Del. Code, Chapter 58: "Laws Regulating the Conduct of Officers and Employees of the State," and in particular with Section 5805 (d): "Post Employment Restrictions."

Contractor shall conduct child abuse and adult abuse registry checks and obtain service letters in accordance with 19 Del. Code Section 708; and 11 Del. Code, Sections 8563 and 8564. Contractor

shall not employ individuals with adverse registry findings in the performance of contract.
The Contractor agrees that professional staff employed in the execution of this contract shall be state licensed, certified, or registered in their profession as required by state law. In the case of direct care personnel, certification shall be obtained through successful completion of a training program as required by the DDDS.

All DDDS waiver providers must agree to accept the terms and conditions under the Medicaid provider contract as a condition of enrollment to provide services under the waiver.

Verification of Provider Qualifications

Entity Responsible for Verification:
Division of Developmental Disabilities Services

Frequency of Verification:
The DDDS Office of Quality Improvement conducts provider compliance reviews on an annual basis or as needed based on service monitoring concerns.

Appendix C: Participant Services

C-1/C-3: Service Specification

State laws, regulations and policies referenced in the specification are readily available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

Service Type:
Statutory Service

Service:
Residential Habilitation

Alternate Service Title (if any):

Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one :

- ○ **Service is included in approved waiver. There is no change in service specifications.**
- ◉ **Service is included in approved waiver. The service specifications have been modified.**
- ○ **Service is not included in the approved waiver.**

Service Definition *(Scope):*
Residential services can include assistance with acquisition, retention, or improvement in skills related to activities of daily living, such as personal grooming and cleanliness, bed making and household chores, eating and the preparation of food, and the social and adaptive skills necessary to enable the individual to reside in a non-institutional community-based setting. These services are individually planned and coordinated through the individual's (Essential Lifestyle Plan (ELP). The scope of these services are based on the individual's need and can be around-the-clock or blocks of hours.

Payments for residential habilitation are not made for room and board. Transportation is a component part of Residential Habilitation Services for Neighborhood Group Homes and Community Living Arrangements.

Payments for shared living arrangement services are not made for room and board, items of comfort or convenience, or the costs of facility maintenance, upkeep and improvement. The methodology by which the costs of room and board are excluded from payments for adult foster care is described in Appendix I.

The following activities may be performed under all Residential Habilitation:

Self-advocacy training that may include training to assist in expressing personal preferences, self-representation, individual rights and to make increasingly responsible choices.

Independent living training may include personal care, household services, child and infant care (for parents themselves who are developmentally disabled), and communication skills such as using the telephone.

Cognitive services may include training involving money management and personal finances, planning and decision making.

Implementation and follow-up counseling, behavioral or other therapeutic interventions by residential staff, under the direction of a professional, that are aimed at increasing the overall effective functioning of an individual.

Emergency Preparedness

Community access services inclusion that explore community services available to all people, natural supports available to the individual, and develop methods to access additional services/supports/activities desired by the individual.

Supervision services may include a person safeguarding an individual with developmental disabilities and/or utilizing technology for the same purpose.

Residential Habilitation Services may be provided in a neighborhood group home setting, a supervised or staffed apartment (community living arrangement), or a shared living arrangement (formerly titled adult foster care).

Services provided under a shared living arrangement include personal care and supportive services (e.g., homemaker, chore, attendant care, companion, medication oversight (to the extent permitted under State law)) provided in a DDDS-certified private home by a principal care provider who lives in the home. A Shared Living arrangement is furnished to adults who receive these services in conjunction with residing in the home. The Division, although committed to one-person Shared Living homes, does allow for exceptions to the one-person rule. An individual (or their team on behalf of the individual) may request an exception to increase the maximum number up to 3. The exception request will be scrutinized to ensure it is consumer-driven and in the best interest of the individual already residing in the home. Exceptions to allow for up to 3 adult siblings who want to remain together or where 2 individuals are very close and want to live together are examples of exception requests that are very likely to be approved. Separate payment is not made for homemaker or chore services furnished to a participant receiving shared living arrangement services, since these services are integral to and inherent in the provision of shared living arrangement services.

Specify applicable (if any) limits on the amount, frequency, or duration of this service:

The amount, frequency and duration, and of these services are determined by the individual's care plan. There are no specified limits.

Service Delivery Method *(check each that applies)*:

- ☐ **Participant-directed as specified in Appendix E**
- ☑ **Provider managed**

Specify whether the service may be provided by *(check each that applies)*:

- ☐ **Legally Responsible Person**
- ☑ **Relative**
- ☐ **Legal Guardian**

Provider Specifications:

Provider Category	Provider Type Title
Agency	Residential Habilitation Agency
Individual	Shared Living Arrangement Provider

Appendix C: Participant Services

C-1/C-3: Provider Specifications for Service

Service Type: Statutory Service
Service Name: Residential Habilitation

§ 8210 State Council for Persons with Disabilities.

(a) There is hereby established a State Council for Persons with Disabilities.

(b) This Council shall have the following duties and responsibilities:

(1) Promote coordination among all state programs, services and plans established for or related to persons with disabilities.

(2) Review, on a continuing basis, all state policies, plans, programs and activities concerning persons with disabilities which are conducted or assisted, in whole or part, by state departments, agencies or funds in order to determine whether such policies, programs, plans and activities effectively meet the needs of persons with disabilities.

(3) Make recommendations to the Governor, the General Assembly and all state departments and agencies respecting ways to improve the administration of services for persons with disabilities and for facilitating the implementation of new or expanded programs.

(4) Provide the Governor, the General Assembly, all interested agencies and the general public with review and comment on all state legislative proposals affecting people with disabilities.

(5) Provide policymakers and the general public with analyses and recommendations on federal and local governmental legislation, regulations and policies affecting state programs and persons with disabilities.

(6) Propose and promote legislation, regulations and policies to improve the well-being of persons with disabilities.

(7) Serve as a central state clearinghouse for information and data regarding:

a. The current numbers of persons with disabilities and their needs;

b. The location, provision and availability of services and programs for persons with disabilities;

c. Any other relevant information and data about persons with disabilities which the council deems appropriate.

(8) Prepare and submit to the Governor and the General Assembly an annual report of the activities of the Council and the status of services and programs for persons with disabilities.

(9) Serve as advisory council for the Community-Based Attendant Services program established by Chapter 94 of Title 16.

(10) Serve as the primary brain injury council for the State. In furtherance of this role, the Council shall:

a. Fulfill the duties and responsibilities set forth in paragraphs (b)(1) through (8) of this section with respect to persons with brain injuries;

b. Maintain a standing brain injury committee to facilitate prevention and centralized interdisciplinary planning, assessment and an improved service delivery system for individuals with brain injury comprised of the following members, or designees of such members:

1. Director of the Division of Public Health;
2. Director of the Division of Developmental Disabilities Services;
3. Director of the Division of Substance Abuse and Mental Health;
4. Director of the Division of Aging and Adults with Physical Disabilities;
5. Director of the Division of Prevention and Behavioral Health Services;
6. Director of Division of Vocational Rehabilitation;
7. Exceptional Children Director of Department of Education;
8. Chair of Governor's Advisory Council for Exceptional Citizens;
9. Chair of Developmental Disabilities Council;
10. Minimum of 3 survivors of brain injury or family members of such individuals; and
11. Representatives of prevention, planning, veterans and service delivery organizations appointed by the Council, including a representative of the state chapter of the Brain Injury Association of America and a representative of the "protection and advocacy agency" defined in § 1102 of Title 16.

(11) Serve as administrative agency for the Employment First Oversight Commission as established in § 745 of Title 19.

(c) For administrative purposes, this Council is placed within the Department of Safety and Homeland Security.

(d) This Council shall consist of the following members:

(1) The Secretary of Health and Social Services, or a designee of the Secretary;

(2) The Secretary of Labor, or a designee of the Secretary;

(3) The Secretary of Education, or a designee of the Secretary;

(4) The Secretary of Services to Children, Youth and Their Families, or a designee of the Secretary;

(5) The following councils, committees, agencies and organizations shall elect 1 of their members to serve as a member of the Council:

a. The Governor's Advisory Council for Exceptional Citizens;

b. Developmental Disabilities Council;

c. Governor's Committee on Employment of Persons with Disabilities;

d. Advisory Council to the Division of Developmental Disabilities Services;

e. Advisory Council to the Division of Substance Abuse and Mental Health;

f. Architectural Accessibility Board;

g. Delaware Transit Corporation;

h. Council on Services for Aging and Adults with Physical Disabilities;

i. Advisory Council on Public Health [repealed];

j. Council on Deaf and Hard of Hearing Equality;

k. Criminal Justice Council;

l. State Rehabilitation Advisory Council; and

m. Other councils, committees, agencies and organizations as approved by both the State Council for Persons with Disabilities and the affected council, committee, agency or organization;

(6) Individuals appointed by Council to ensure that at least 50% of the total membership are individuals with disabilities or family members with disabilities. At least 33% of the total membership shall be composed of individuals with disabilities.

(e) Any vacancy of a representative position under paragraphs (d)(1)-(5) of this section shall be filled by the respective council, committee, agency or organization within 1 month.

(f) Any member who misses either 3 consecutive meetings or 4 out of any 12 consecutive meetings shall be presumed to have resigned from the Council.

(g) Members of the Council shall serve without compensation, except that they may be reimbursed by the Department of Safety and Homeland Security for reasonable and necessary expenses incident to their duties as members of the Council to the extent funds are available therefore and in accordance with state law.

(h) The Council shall elect its own Chairperson.

(i) The Council shall determine its meeting schedule, but there shall not be less than 4 meetings each calendar year, open to the public, held in an accessible place and with reasonable accommodations as requested.

(j) A simple majority of the total membership shall constitute a quorum which shall be necessary to vote on any issue.

(k) As used in this section, "persons with disabilities" means any person who has a physical or mental impairment which substantially limits 1 or more major life activities, has a record of such impairment.

(l) For purposes of this section, the operations and activities of the Division for the Visually Impaired and the Governor's Advisory Council on the Blind shall be exempt from the purview of the State Council for Persons with Disabilities.

76 Del. Laws, c. 391, § 11; 78 Del. Laws, c. 60, § 1; 78 Del. Laws, c. 331, § 2.;

National Core Indicators™

NCI™ is a voluntary effort by public developmental disabilities agencies to measure and track their own performance.

The core indicators are standard measures used across states to assess the outcomes of services provided to individuals and families. Indicators address key areas of concern including employment, rights, service planning, community inclusion, choice, and health and safety.

NCI™ is a collaboration of participating states, HSRI, and NASDDDS.

Featured Core Indicators

Feels Lonely

The proportion of people who feel lonely

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Person has Paid Job in the Community

The proportion of people who have a job in the community

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Allowed to Use Phone or Internet at Any Time

The proportion of people whose basic rights are respected by others

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Guest Blog: Calling All Voices – Survey Is for EVERYONE

by Dorothy Hiersteiner

NCI is proud to announce a guest blogger for the NCI blog!

This post was prepared by Beth Aura Miller and Jossie Torres from from CT DDS .

Beth Aura Miller has been a Self Determination Director for the State of Connecticut, Department of Developmental Services for...

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NCI News

February - 2015
Val Bradley in an AAIDD "TED Talk" style videos

The American Association on Intellectual and Developmental Disabilities (AAIDD) has produced a series of "TED Talk" style videos that highlight issues of interest. Val Bradley stars in a video on NCI Findings. We encourage you to take a look! Val's video is the first one under the...

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Permitted planned personal restraints are limited to the one and two person side body hug and the one and two arm supporting technique as described in the Mandt Training protocol.

Use of Alternative methods before Instituting Restraints

If the member's Behavior and/or Mental Health Support Plan (BMHSP), developed by a qualified Behavior Consultant, includes an approved restraint, it must describe less intrusive techniques and resources used prior to the implementation of the restraint. Every attempt must be made to anticipate and de-escalate the behavior. It is only after these have been tried, and failed, the restraint may be implemented. An approved restraint may not be used as retribution, for the convenience of staff, as a substitute for program or in a way that interferes with the member's development.

Protocol for When Restraints can be employed

Restraints are always a last resort to protect a member's health and/or safety. The member is to be immediately released from the restraint per instructions in the BMHSP, is no longer a risk to themselves or others, or shows signs of distress.

For each restraint procedure developed by a qualified Behavior Consultant, the BMHSP must include the following:

1) Specific behavior to be addressed and a description of conditions for which the restraint procedure is used

2) Single behavioral outcome desired stated in observable or measurable terms,

3) Functional assessment to identify suspected antecedents and functions of the behavior,

4) Description of less intrusive techniques which must be used prior to the use of the restraint,

5) Methods and target dates for modifying or eliminating the behavior,

6) Methods and target dates for replacement behaviors,

7) Description of the procedure to be used,

8) Risk benefit analysis,

9) Medical clearance,

10) Consents from relevant parties, and

11) Name of the person responsible for monitoring and documenting progress with the plan.

Each BMHSP is reviewed by the Peer Review of Behavior Intervention Strategies committee (PROBIS) for completeness and compliance with best accepted practices consistent with DDDS policies and procedures.

The PROBIS committee is a DDDS committee appointed by the Division Director to review and approve BMHSPs. The BMHSP is reviewed by the Human Rights Committee to the protection of the rights of individuals served by DDDS. This committee is appointed by the Division Director and is made up of non-DDDS employees.

Methods for Detecting Unauthorized use of Restraints

Each provider has access to the electronic case record database. Every use of a restraint, whether it is planned or emergency, is electronically submitted by the involved parties within 24 hours using the General Event Reports (GER) and the Medical/Behavioral Intervention Strategies (MBIS) report.

These reports describe:

- The incident
- Description of the events leading up to the restraint
- Duration of the restraint, and
- Follow-up to assure the health and safety of the individual.

Additionally, provider residential support staff enters individual electronic Inter-Disciplinary Team notes (ID notes) in the electronic record database on a daily basis.

Case managers and clinical consultants review this information several times a week. The appropriate DDDS Regional Program Director receives electronic notification of the use of a restraint and reviews the report. The Regional Program Director ensures the member's health and welfare. Improper or unauthorized use of a restraint is considered abuse and investigated through the PM #46 procedures.

Aggregate individual restraint information is reviewed by the member's ID team at least bi-monthly or more frequently as indicated in the BMHSP. The Inter-Disciplinary Team (ID team) is comprised of the individual, parent/guardian, case manager, residential provider support staff as relevant, and clinical consultants as relevant. Additional members participate as appropriate or invited. It is charged with the development, oversight and modification of the Individual's Essential Lifestyle Plan and the Behavior and/or Mental Health Support Plan if needed.

Restraint information is reviewed monthly by the PROBIS committee. Restraint information is aggregated bi-annually by type, frequency, agency and geographic region by the Division's Performance Review Committee (PAC) and submitted to the DDDS Risk Management Committee for review and action.

The Office of Quality Improvement conducts Individual Focused Certification Reviews that include record reviews and consumer interviews. Where indicators are identified, individuals are asked about the use of restraints. Any undocumented use of a restraint is reported as a potential case of abuse and investigated through the PM#46 processes. The DDDS submits quarterly reports to the Delaware DMMA which includes the use of restraints.

Education and Training Requirements for Personnel who Administer Restraints

As articulated in the DDDS Training Policy, all state staff and waiver providers have required trainings and timelines which must be completed. Providers submit training compliance information through the electronic case record database. The Office of Quality Improvement monitors training compliance as a part of provider monitoring.

These training requirements are considered to be viewed as minimal expectations to help support the individual and create a structure that prevents restraint. All providers have procedures in place to address how people are supported in emergency situations where an individual's health and welfare may be at risk.

All waiver providers are required to have specific trainings within established timelines prior to working alone with individuals. These training requirements include DDDS policies relevant to the use of restraints.

All waiver providers are required to participate in the Mandt System crisis intervention training or a DDDS approved equivalent. Contracted providers must be certified in a specific restraint prior to its use with an individual.

The Mandt System includes the following topics:

1) Environmental factors and triggers,

2) Positive behavioral support,

3) Person-centered alternatives to the use of restraint, training in body mechanics that illustrates how to avoid hyperextensions and other positions that may endanger individual safety,

4) Awareness of the impact of the individual's health history on the application of a restraint,

DISABILITIES LAW PROGRAM

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100 W. 10th Street, Suite 801
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February 23, 2015

Sharon Summers
Division of Medicaid & Medical Assistance
Planning, Policy & Quality Unit
1901 N. DuPont Hwy.
P.O. Box 906
New Castle, DE 19720-0906

Re: Commentary on HCBS Settings Transition Plan

Dear Sharon:

I am submitting the following commentary on the "Statewide Transition Plan for Compliance with Home and Community Based Setting Rule (February 6, 2015)". This commentary should be considered a supplement to my February 10 correspondence.

1. At the outset, I anticipate that some groups may prefer a restrained plan designed to either maintain the status quo or authorize Medicaid funding of questionable settings. I encourage the State to incorporate robust assessment standards which do not merely pay "lip service" to the CMS guidance but demonstrate that the State wholeheartedly embraces the underlying values reflected in the guidance. In other states U.S. Department of Justice intervention has been the catalyst prompting a paradigm shift in attitudes towards vintage settings followed by state government commitment to systemic change. See Attachment "A". Delaware's Governor, Legislature, and administrative agencies have already established that the public policy in this State, particularly in the context of employment, is fully compatible with the CMS goals and perspective. See Title 19 Del.C. §743, Title 16 Del.C. Ch. 55, and the Governor's remarks in his January 22, 2015 State of the State address published at http://governor.delaware.gov/speeches/2015StateOfTheState/index.shtml:

> Everyone can contribute to our state when given the chance, but efforts to expand our workforce have traditionally excluded people with disabilities. They miss out on the fulfillment of gainful employment, and employers miss out on the talents of so many. As you may remember, I made this issue the central plank in my role as chair of the National Governors Association. I'm thrilled that governors across the country are making this a priority.

Here in Delaware, we are building on progress we have made since the General Assembly passed the Employment First Act with Representative Heffernan's leadership. More than 20,000 Delawareans are contributing, are engaged in their communities, and have purpose like never before. One of our biggest IT companies, CAI, has committed to hiring people with autism because they excel in roles like software testing and programming. And there are many other stories to remind us of the abilities of these Delawareans – people like Lucinda Williams, executive director of the Brain Injury Association of Delaware – and Alaric Good, who unloads supply trucks and manages the front desk at Walgreens.

Here is what people like Lucinda and Alaric have taught us: when we focus on the ability, rather than the disability, we are able to do amazing things, together. Please recognize them.

This year, DHSS will launch two programs to give Delawareans with disabilities a fair shot at employment. One will help young people plan their career while supporting them with transportation, personal care, and assistive technology. Another will provide specialized employment supports for adults with mental health needs and substance use disorders.

Preparing Delawareans to seize the opportunities of the future starts long before they enter job-specific training. All of our children deserve a world-class education from day one.

2. The Plan contemplates both provider and State development of "remediation strategies" to address identified shortcomings. At p. 33. This "targeted" approach to "fixing" specific instances of non-conformity with CMS standards is a logical component of the Plan. However, the Plan could be strengthened through identification of systemic initiatives designed to increase the State's capacity to offer an array of conforming settings. This would be particularly informative in the context of employment. The DHSS Secretary outlined a number of existing and planned initiatives designed to promote integrated employment opportunities for persons with disabilities in her November 20, 2014 budget presentation. See Attachment "B". In 6 pages, the Secretary highlighted the following programs and initiatives: Pathways to Employment, Promise, Employment Resources Rebalancing, Capacity Building in Effective Practices, HR Training, and Selective Placement.

Rather than waiting to "react" to identification of shortcomings identified through self-evaluation, other states are increasing the capacity of integrated employment opportunities NOW. For example, last month New York began implementation of a tax credit program for employers who hire individuals with developmental disabilities who are either unemployed or working in sheltered workshops. See Attachment "C". Such a tax credit program is a "win-win" for both providers and workers since it will expand the pool of employers interested in hiring persons with developmental disabilities based on marketplace incentives. I shared a similar Delaware tax credit bill with the Joint Finance Committee and DHSS Secretary 2 years ago. See Attachment "D".

3. The Plan envisions the Department engaging in a "look-behind" review of a 20% sample of provider self-assessments of policies and procedures. At pp. 6 and 13. The Plan contemplates completion of these reviews by a single "sub-working group of the GAC". At p. 6. Realistically, even if the 7-member DDDS Advisory Council assembles a "working group" with some additional members, it may be hard-pressed to conduct a meaningful "look-behind" of numerous providers which operate multiple programs. Moreover, the Plan could be strengthened by clarifying that the "look-behind" is not comprised solely of a marginally effective "paper" review. The "look-behind" should include on-site observation and interviews with program staff, participants, and their representatives (including family members).

4. The Plan contemplates use of participant surveys to gather information (p. 27) as well as survey-based NCI data (p. 3). As a supplement to this planned assessment process, the State could consider establishing an on-line survey tool (e.g. through SurveyMonkey) to allow individuals the opportunity to comment on specific programs. Some individuals may be more comfortable with the ease and anonymity of completing an on-line survey and the questions could be more targeted to CMS standards than the NCI survey.

Thank you for your consideration of this supplemental commentary.

Attachments

F:pub/bjh/legis/2015p&l/hcbsPlan22315comments

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REMARKS AS PREPARED FOR DELIVERY BY THE SENIOR COUNSELOR TO THE ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION EVE HILL ON THE AMERICANS WITH DISABILITIES ACT

PROVIDENCE, R.I.

Good morning. Thank you for joining us today as we announce a landmark settlement agreement between the United States, the State of Rhode Island, and the City of Providence, vindicating the civil rights of approximately 200 individuals with intellectual or developmental disabilities (I/DD).

Today's agreement is about opportunity. It's about growth. And it's about human dignity. That's because today's agreement centers on integrating people with disabilities into the engine of the economic mainstream: the workplace.

Work is a fundamental part of adult life for people with and without disabilities. It provides a sense of purpose, shaping who we are and how we fit into our community. Meaningful work – becoming a contributing part of society – is essential to people's economic self-sufficiency, as well as self-esteem and well-being. Participation in the mainstream of American life was the goal of the Americans with Disabilities Act since its passage over 20 years ago. The ADA prohibits state and local governments from segregating people with disabilities just because of their disabilities.

For many people with disabilities, however, the tyranny of low – or no – expectations has cut off the opportunity to work alongside those without disabilities, in real jobs that pay a regular wage. Even 23 years after the ADA though, the State of Rhode Island and the City of Providence have allowed their low expectations to create a system that left people with disabilities no choice but to be separated from society in the sheltered workshops at Training Thru Placement (TTP) and the Harold A. Birch Vocational Program at Mount Pleasant High School (Birch).

What does it mean, to have "no choice?" For Steven Porcelli it means that a young man who worked in a real job after high school at a hardware store, could not – for the next 30 years – escape a sheltered workshop setting where he earned less than $2.00 an hour doing work he disliked. Because the State only offered services for people with I/DD in segregated places like TTP, he could not return to integrated employment, even though he asked to leave over and over. Steven was trapped at Training Thru Placement for no reason other than the State's choices.

ATTACHMENT "A"

TTP and the State made no effort to help Steven find a job that matched his strengths and interests. TTP had no incentive to do so. The company was a licensed provider of employment services. It got paid to have Steven there. It also got paid by outside businesses for his work. Meanwhile, TTP reported paying its workers with disabilities an average hourly wage of $1.57 per hour, with one individual making as little as 14 cents an hour.

As a result of its profits and the State's support, TTP became one of the largest segregated employment and day providers in the state for individuals with I/DD.

Speaking of day services: when Rhode Islanders with disabilities aren't working, state law provides that they should get supports to participate in day activities that promote socialization and skill building. But the extent of the state-funded day services at TTP consisted mostly of playing cards, coloring and talking to other workers with disabilities at the facility.

Steven's story is one that Rhode Islanders should feel sad about. But they should also feel angry because these people were robbed of years of productivity, learning, and contributing to their communities.

And this story also played out over decades for many area high schoolers with disabilities. That is because the Birch Vocational Program was essentially a feeder for TTP – a direct pipeline.

Most high schoolers spend four years in school. However, students typically enter Birch at age 14 and do not leave until they are 21 years old. During this time, with few exceptions, the only work experience they have gotten is in an on-campus sheltered workshop. For seven years, these young people have spent 1-2 hours during each school day – and sometimes longer hours, as well as Saturdays – working on contract piecework, just like at TTP.

Students at the Birch sheltered workshop were paid between 50¢ and $2 per hour, no matter what job function they performed or how productive they were. Some students were paid no wages at all. Such students spent hours a week placing buttons in plastic bags, only to have their work dumped back into a pile at the end of the day.

Because of this training – indeed, cultivation – for life in a sheltered workshop, it is not surprising that in 26 years of operation, less than a handful of individuals transitioned into individual supported employment after leaving Birch. Instead, many ended up at TTP, where they often stayed for decades.

One mother of a Birch student who graduated this week observed that at Birch, her daughter "learned to fixate on what she can't do, rather than what she can." But, this mother continued, there is a lot out there that her daughter can do: "She is not a failure; she should have opportunities."

The ADA requires government services for people with disabilities to be provided in the most integrated setting appropriate for them. The Supreme Court decision making this

requirement clear, Olmstead v. LC, has been called the Brown v. Board of Education of the disability rights movement. And nowhere is that more true than here. TTP and Birch demonstrate in every way that separate is not equal.

I am happy to say, however, that all of the foregoing now definitively belongs in the past. It is a new day in Rhode Island, and especially in Providence, for people with I/DD. The people with disabilities at TTP and Birch are capable of holding regular jobs – individual jobs in typical work settings that pay minimum wage or higher. And they want to.

Under today's agreement, the State will help every person at TTP to find, get, keep, and succeed in real jobs with real wages. They will accomplish that by providing "supported employment" services.

Over the next year the State and City of Providence will also provide integrated transition services at Birch to prepare them to do the same: find, retain and succeed in real jobs when they leave school. Instead of sheltered workshop experience, students with I/DD will now get exposure to real-world internships, trial work experiences, and other services to ensure that after graduation, they can successfully move into community-based jobs, rather than to segregated settings like TTP. For young people like the ones who held their graduation ceremony at Birch this past Monday, this means the difference between "being dropped off a cliff," as one parent described it to us, and having the kind of meaningful workweek or career to which we all aspire.

I am proud to say that through this agreement, the State of Rhode Island and City of Providence have truly embraced integrated employment for people with disabilities. Under this agreement, individuals will work, on average, in supported employment for at least 20 hours per week.

And when individuals are not working, they will have access to integrated day services to be able to enjoy doing the things the rest of America does when not working – recreational, social, educational, cultural, and athletic activities, out in the community, right alongside people without disabilities.

Under this agreement those supported employment and integrated day services will support a 40-hour work week. So – for the entire time individuals are not working – they will be offered the opportunity to participate in community-based, integrated activities. This is the first agreement reached by a public entity with the Justice Department to articulate and embrace this "full-time integration" standard.

We are happy to acknowledge that, at this moment, Rhode Island has stopped providing services or funding for new participants at TTP's sheltered workshop and facility-based day program, and the City of Providence has stopped providing services or funding to Birch's in-school sheltered workshop. The State and the City of Providence are to be commended for swiftly tackling this problem, and I thank them for their cooperation as the Department of Justice continues its investigation of the remainder of the State's employment and day activity service system.

I would also like to extend thanks to the U.S. Department of Labor (DOL), whose Wage and Hour Division, as part of new strategic enforcement effort between the agencies, first alerted the Civil Rights Division to problems at TTP. Throughout our investigation, DOJ has worked closely with our counterpart to enforce the related provisions of the ADA and the Fair Labor Standards Act. DOJ and DOL share the common goal of ensuring that workers with disabilities receive meaningful employment opportunities and are equitably compensated for their work, according to the law. We are grateful for DOL's assistance and look forward to continuing this important and productive partnership.

For far too long, people with disabilities who can and want to work and engage in all aspects of community life have been underestimated by public service systems that have had limited or no expectations for them. Under this agreement, things are now changing.

Steven Porcelli is especially excited about now having the chance to achieve his 30-year goal of returning to work in the community, where he will have – I quote – "the opportunity to be with different people, to talk to different people, and to feel independent." When asked what it would mean for him to work in supported employment, Steve responded, "it makes me feel good; it's something that I've wanted to achieve for a long time . . . I just never thought things would change."

We believe that under this agreement, things will change for the better. At the same time, we recognize that unnecessarily segregated employment and day services are the norm in far too many states. Unfortunately, the exploitation and tyranny of low expectations we found at these two providers are an all-too-common result of the segregation of people with disabilities. That is why we at the Department of Justice will continue to work hard to fight this type of discrimination.

###

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Stenning's goal: Close all 'sheltered workshops' for adults with disabilities within three years

January 16, 2014 11:20 PM

BY LYNN ARDITI
Journal Staff Writer
larditi@providencejournal.com

CRANSTON — The head of the state agency that serves adults with disabilities has set a goal of closing all "sheltered" workshops in Rhode Island within the next three years.

Related

CRAIG STENNING

Craig S. Stenning, director of the state Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH), on Thursday outlined an aggressive effort under way to move disabled adults out of what federal civil-rights officials say are segregated work settings and day programs and into jobs and activities in the community.

The effort, he said, represents a "major transformation of the system" akin to the movement to deinstitutionalize the disabled in residential settings with the closing of The Ladd School in the mid-1980s.

The U.S. Department of Justice earlier this month released the findings of an investigation launched a year ago by its civil-rights division that charges the state with operating segregated employment, vocational and day programs for about 3,600 adults with intellectual and developmental disabilities.

The report describes the problem of segregation as beginning when disabled students leave school and continuing throughout their lives. (The state Department of Education and the state Office of Rehabilitative Services also were named in the report.)

In an interview Thursday at his Cranston office, joined by five other staff members, Stenning spoke about some of the challenges his department has had in integrating disabled adults into the wider community, including a lackluster job market and the fear of change among some of the programs' clients and their families.

The department's (BHDDH's) budget for "services to the developmentally disabled" has declined by about $29 million, or 11 percent, since 2009, when Stenning took over as director, state budget figures show.

But budget cuts, he said, have not been a major impediment to change.

"At one time the budget for the State of Rhode Island for developmental disability services came to $109,000 per person per year — that was the highest in the country," Stenning said. "So I don't think the argument that budget cuts are the reason why it [integrated employment] didn't happen is a valid argument."

Stenning said that he and other department staff have begun reaching out to mayors in Cranston, Pawtucket and Warwick as part of the department's new "Employment First" program aimed at ensuring equal employment opportunities for adults with disabilities.

The BHDDH also has sought bids for proposals to create a "center for excellence and advocacy" that would include providing job assistance and outreach to disabled adults and their families.

The department also is reaching out to private businesses, he said. Some companies, such as CVS and Automated Business Solutions, recently hired several adults with disabilities who were formerly in sheltered workshops.

The department has so far placed 40 adults with disabilities who formerly worked at a sheltered workshop run by Training Thru Placement in jobs in the community since the state signed an "interim settlement agreement" with the Justice Department last June. The agreement was to settle violations Justice Department officials found at the sheltered workshop and a vocational program at The Birch School in Providence.

To meet the goals of that interim settlement agreement — which covers about 200 adults at TTP and The Birch School — will take eight years, Stenning said Justice officials told him.

Now, the task has expanded to include thousands of adults with disabilities in 24 day programs, including six sheltered workshops.

"My goal is much shorter ... closing [sheltered] workshops in three years," Stenning said, adding, "I'd love if we could fulfill our goal in five."

Even as he stressed his commitment to the goal of moving more adults with disabilities into jobs in the community, he defended the agencies that operate the sheltered workshops, saying they were "state of the art" at the time they were created.

Except for Training Thru Placement, which federal labor officials cited for wage hour violations, he said, the six other sheltered workshops have been operating in accordance with the state labor rules.

Justice officials said in their report that many of the adults with disabilities participating in these sheltered workshops have the ability and desire to work in the community for jobs that pay at least minimum wage.

"The Department of Justice's definition [of segregation]," Stenning said, "is different from the Department of Labor's definition."

He said that many of the recommendations made by Justice officials are "totally complementary" with efforts the department has had in the works for the last five years, such as improving how the department assess the needs and abilities of disabled adults and improving communication with their families.

Stenning, who joined the BHDDH in 2000, was appointed director in 2008 by former Gov. Donald L. Carcieri and reappointed by Governor Chafee in 2011.

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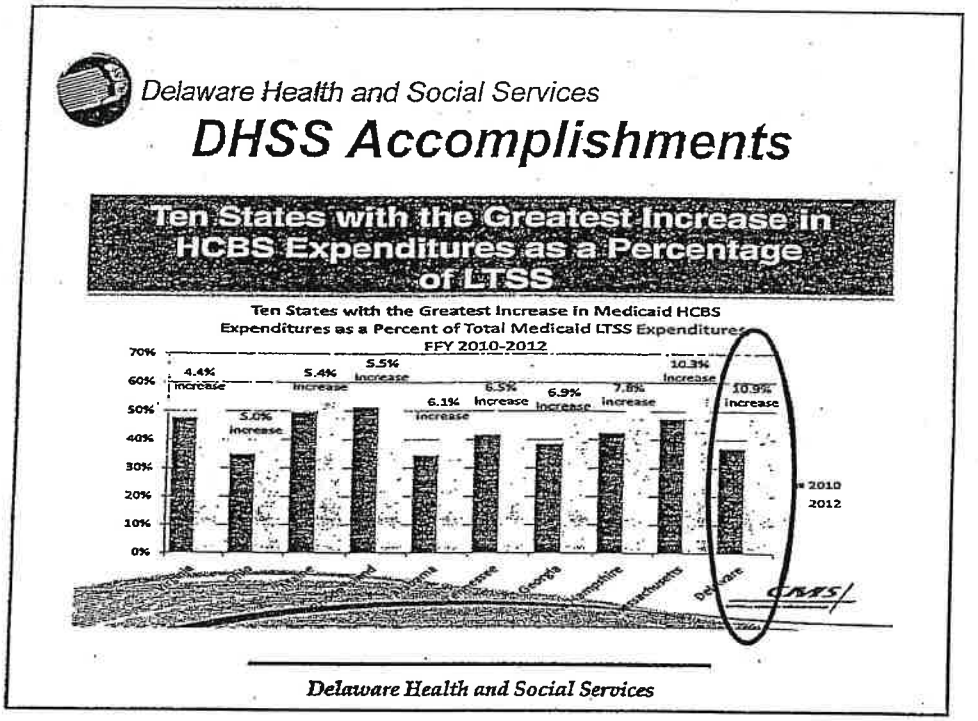
EXCERPT: PRESENTATION BY RITA LANDFRAF, CABINET SECRETARY, AT FY16 BUDGET HEARING (NOVEMBER 20, 2014)



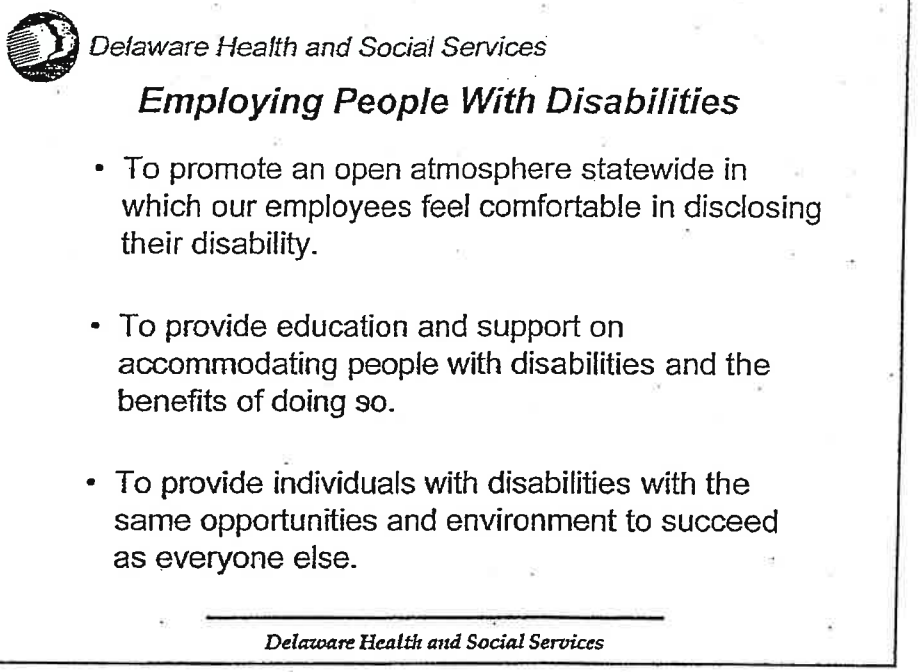
First let me share with you how DHSS is leveraging the fiscal resources to embrace and develop this community based opportunity.

The chart above highlights our success in reducing reliance on facility based care, with enhanced capacity in the community. This enhanced community capacity allows for more individual choice and for services to be delivered in the most natural setting.

As the chart demonstrates above, Delaware was recognized by CMS as the number one state from federal fiscal years 2010 through 2012 with the greatest increase in Medicaid Home and Community Based Services expenditures as a percent of overall total Medicaid Long Term Support Services Expenditures. Delaware demonstrated a 10.9% increase that has been devoted towards enhancements in community based supports, offering those who are aging and those with disabilities enhanced options and supports to remain in their communities.

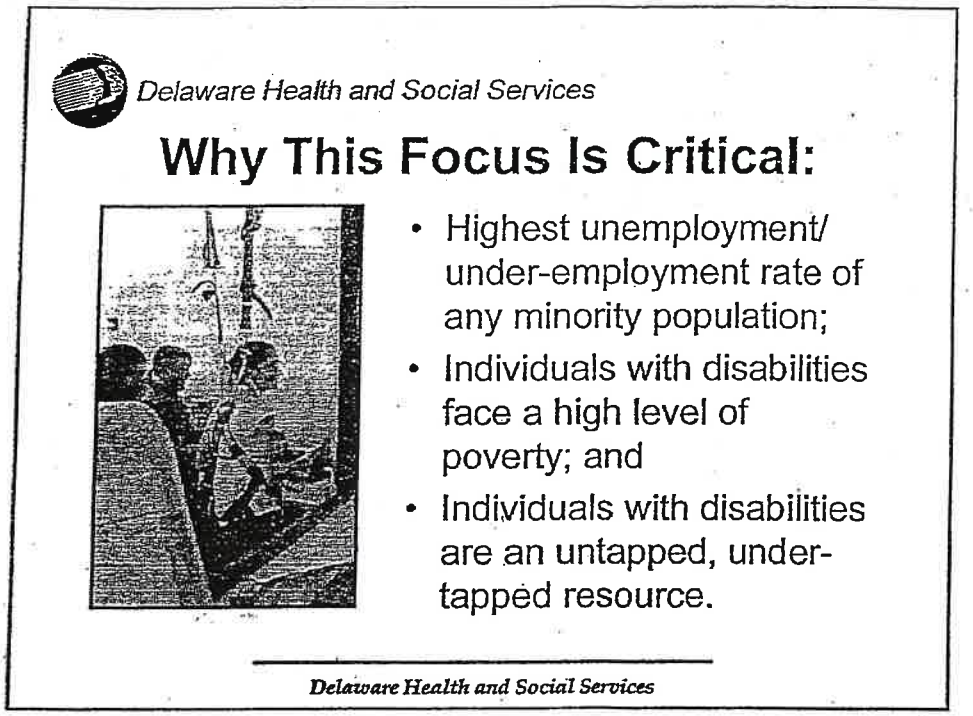
We could not make these options a reality without the assistance of our stakeholders, inclusive of individuals and their families; advocates; professionals in long-term care and the acute care hospitals; and housing and community organizations.

ATTACHMENT "B"



Employment is a critical element of financial security. In July 2012, Governor Markell signed the Employment First Act, requiring state agencies to consider, as their first option, competitive employment for persons with disabilities. As Governor Markell has stated, "Advancing employment opportunities for individuals with disabilities is the right thing to do as a society, it's the smart thing for government to do and it makes good business sense." Governor Markell made this a priority with the National Governors Association (NGA) and this initiative continues nationwide. As Cabinet Secretary for DHSS - the largest state agency employer and provider of services for people with disabilities - and a long time advocate for people with disabilities, I have a three-prong vision:

- To promote an open atmosphere statewide in which our employees feel comfortable in disclosing their disability.
- To provide education and support on accommodating people with disabilities and the benefits of doing so.
- To provide individuals with disabilities with the same opportunities and environment to succeed as everyone else. [One thing that separates people with disabilities from the rest of society is financial security, and the only thing that can reduce that gap is providing individuals with disabilities with the same opportunities and environment to succeed as everyone else.]

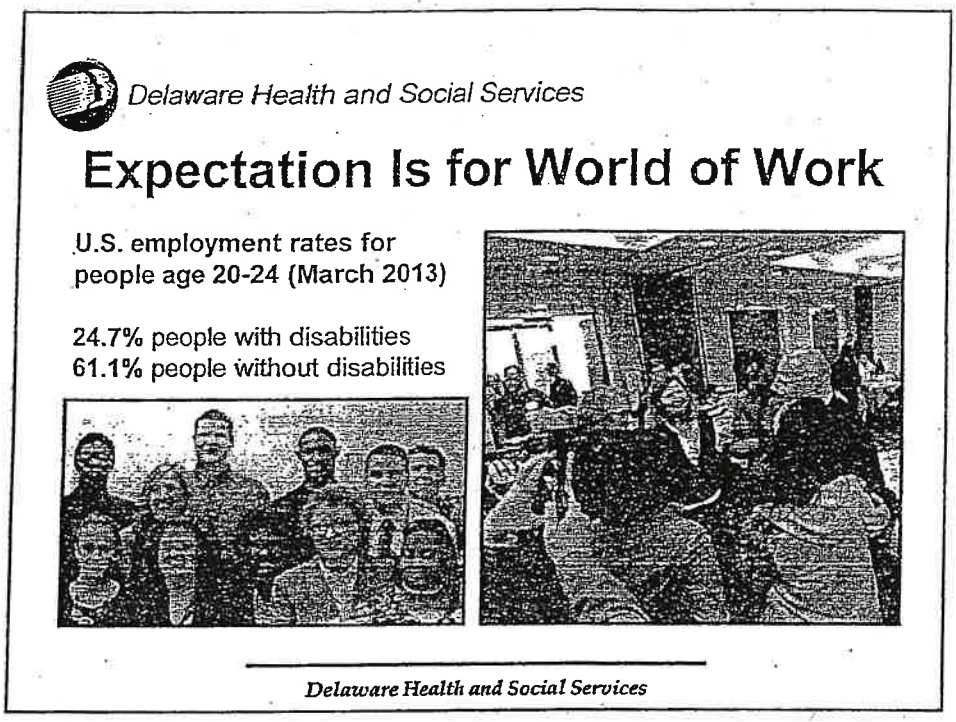


As a key component of the State's overall workforce strategy, Delaware is building innovative programs to increase the options available in the State, bringing together numerous state agencies around the common goal of ensuring the Delawareans with disabilities have the options and supports they need to work. Utilizing options available through the Medicaid program to expand community resources and services to eligible persons, Delaware's Pathways to Employment program will:

- Serve individuals age 14 to 25, across disabilities who have a desire to work in a competitive work environment.
- Provide individually tailored services to assist individuals to explore and plan career paths.
- Include services, such as on the job supports, transportation, personal care, orientation and mobility training, assistive technology, and other supports to support individuals to maintain employment based on their specific needs.

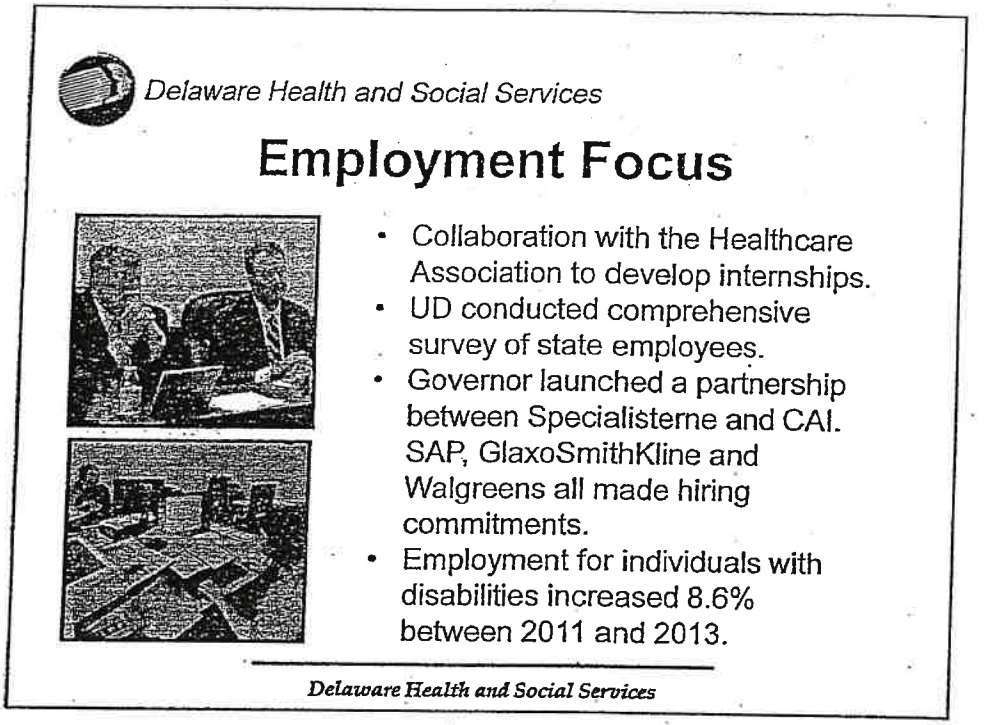
Our ability to leverage Medicaid dollars in the provision of these services, not only creates career based opportunities for adolescents and young adults with disabilities but also strengthens the workforce pipeline.

A similar program, Promise, with comprehensive community based services, has also been designed to support individuals with mental health and substance abuse needs age 18 and older, providing an array of employment supports. These programs are slated to begin early in 2015.



Delaware has been working with the US Department of Labor's Office of Disability Employment Policy (ODEP) where the state is benefiting from technical assistance and best practice expertise. The initial engagement invited the State of Delaware to participate as one of the six states in the Employment Resources Rebalancing Initiative (ERRI), and an evaluation was conducted relative to our current systems, policies, and practices in order to determine if they are in alignment with the employment first priority. The workgroup learned that much needs to be accomplished on a variety of levels to fulfill the employment first transformation.

We are currently working on a communication plan focused on the employment first transformation to be directed towards consumers and students with disabilities, parents and families of individuals with disabilities and the workforce inclusive of those who work in early intervention programs, schools and the adult service delivery system. Delaware was recently awarded another technical assistance grant from ODEP that will focus on "Capacity Building in Effective Practices" to ensure that the state's training protocols and workforce skillsets support the Employment First model.

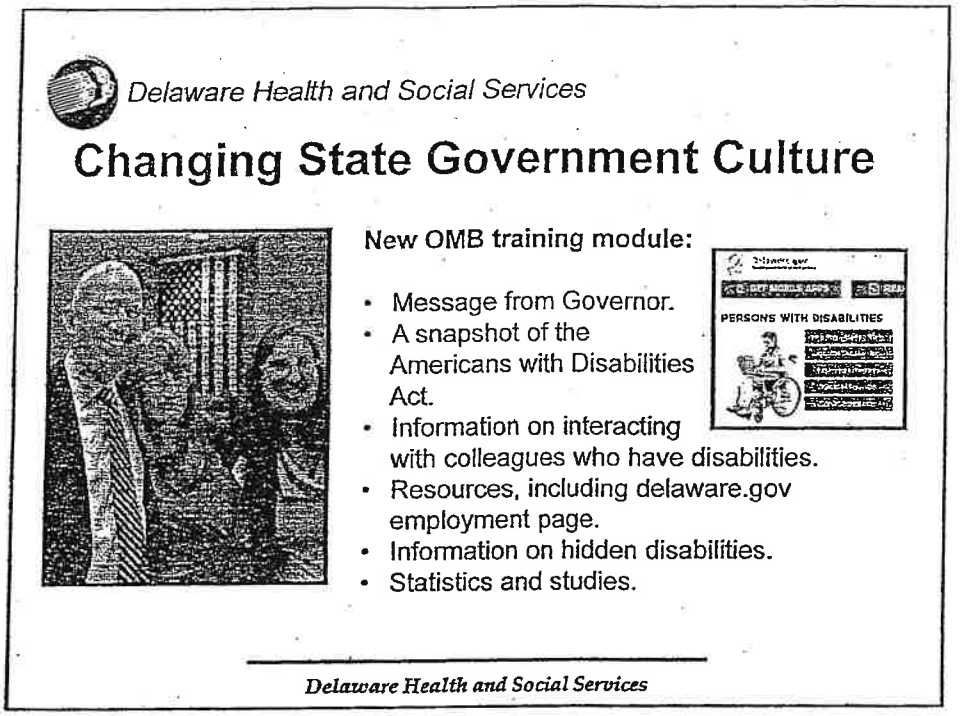


Governor Markell has focused like a laser beam on finding win-win solutions for employers and potential employees with disabilities. He launched a partnership that illustrates the potential for putting more people with disabilities to work. The state helped bring together the IT firm CAI and an international organization Specialisterne, which is dedicated to employment of individuals with autism. CAI, a company that employs thousands of people across the country, is committed to hiring people who have autism for more than 3% of its workforce by 2015, recognizing that these individuals are especially qualified for technology roles like software testing, data quality assurance, programming, data mining and data entry. The Governor has advanced the Specialisterne model within his administration and several departments have hired or are actively recruiting through Specialisterne.

Governor Markell's initiative created a major spark in Delaware's Department of Labor with an increase of 8.6% of individuals with disabilities becoming actively employed from 2011 to 2013. Delaware has seen an increase in the number of employers engaged and in the number of individuals with disabilities actively seeking employment.

The Healthcare Association, made up of Delaware's hospitals, has signed on to the Governor's initiative and is developing internships, expanding internships and building recruitment from these efforts into employment.

The University of Delaware, in collaboration with the State of Delaware, conducted a comprehensive survey of state employees to determine the needs of the State, as an employer, with respect to evaluating the attitudes of and hiring practices toward state employees with disabilities. The two key areas that were identified as a need in response to this survey were: HR training initiatives related to disability awareness, and refinement of state hiring practices/systems for recruiting qualified applicants with disabilities.



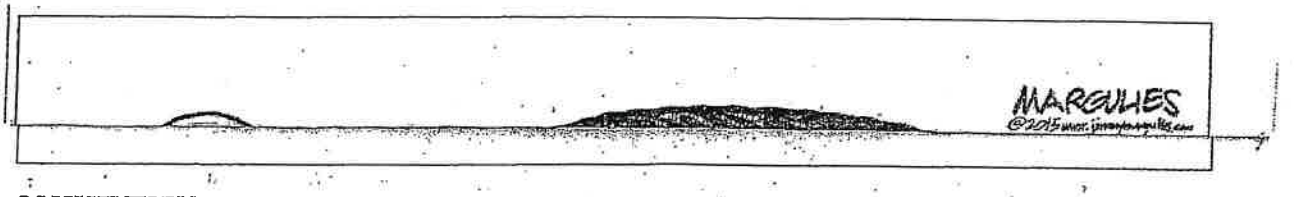
HR Training Initiatives

The State of Delaware has created an online class available to all State employees, which is required for all hiring managers as a prerequisite for additional classroom training. The State of Delaware piloted the online training, with the classroom training beginning in October 2014.

State of Delaware Hiring Practices - Selective Placement

The State Office of Management and Budget in collaboration with the Division of Vocational Rehabilitation and the Division for the Visually Impaired has worked to ensure that the Selective Placement program is one hiring option for individuals with disabilities who seek employment in state government. Governor Markell's initiative to employ people with disabilities has brought heightened awareness to the Selective Placement program, which allows a qualified individual with a disability to apply, be screened and matched for a state job.

In addition, non-profit organizations that work closely with DVR and DVI received training on the Selective Placement Program in order to assist in qualifying eligible applicants. Resources include a publicly-available training video on the OMB website ("Untapped Talent Ready to Work") that provides information about including people with disabilities in the workforce and the accomplishments that can be gained from utilizing this resource. OMB has also developed a webpage (Selective Placement for Job Seekers), which provides information about how to become certified, meet the requirements, the application process, and contact information.



COMMENTARY

New Laws For 2015

A Column of News and Comment
By Senator James L. Seward

With the start of a new year comes new hope, new ambitions, and yes, new laws. New measures taking effect in New York State on January 1, 2015 will: help veterans find employment and housing; reduce taxes for businesses; provide tax credits to employers that hire people with developmental disabilities; allow banks to freeze credit records of minors to prevent identity theft; protect people in adult care facilities; encourage music and theatrical productions in upstate New York; and expand opportunities to finance end-of-life care.

Hire a Veteran Tax Credit – Starting next year, businesses can receive a tax credit for hiring and employing a qualified veteran. The credit is equal to 10 percent of the total amount of wages paid to the qualified veteran during their first full year of employment.

If the veteran is disabled, the credit amount is increased to 15 percent. The credit is capped at $5,000 per veteran or $15,000 per disabled veteran. Any unused credit may be carried forward to the following three years.

Homeless Veteran Assistance Fund – This bill creates a fund to assist homeless veterans with housing and housing-related expenses. A new dedicated tax check-off will enable New Yorkers to make contributions in any dollar amount when filing their personal income taxes

Corporate Tax Reform – In 2015, tax reform measures included in the 2014-15 state budget will save businesses $205 million this year and $501 million annually by 2018-19, when the reforms are fully phased in. These new tax reforms will help stem job creation be creating an environment more favorable to business growth. The reforms provide meaningful savings to existing businesses as well as new ventures.

Workers with Disabilities Tax Credit Program – Beginning January 1st, a tax incentive will be available to business owners who employ individuals with developmental disabilities. The credit equals 15 percent of the wages for qualified full-time employees who work at least 30 hours per week, and 10 percent for qualified part-time employees who work at least eight hours per week; each employee must have worked at least six months.

Protecting Minors From Identity Theft – In 2015, credit agencies will be required to place a credit record freeze on the account of a minor when requested by a parent or guardian. This will protect children from identity theft and stop thieves from being able to use stolen information to apply for government benefits, open bank and credit cards, apply for loans or rent a place to live.

Protecting People in Adult Homes – This new law requires adult care facilities and assisted living residences to perform criminal background checks on prospective direct care staff for nursing homes and home care agencies. More than 300,000 elderly living in adult care facilities around the state will be better protected thanks to this change.

Music and Theatrical Production Tax Credit – As of January 1, 2015, a new tax credit will encourage touring musical and theatrical productions in upstate New York theaters, enhancing investment in upstate cities, creating jobs, and stimulating the economy. Eligible production companies can claim a tax credit equal to 25 percent of certain costs, up to $4 million per year. This tax credit was included in the 2014-15 state budget.

Long Term Health Care Insurance – In 2010, the Legislature enacted a law that allows end-of-life care for people in nursing homes to be financed using accelerated payments from life insurance. Starting January 1, 2015, the measure will be expanded to allow for this type of financing to be used for people receiving end-of-life care in hospice, adult day care services, palliative care or by a long-term home health care provider.

In addition, the law establishes a public awareness program to encourage individuals to purchase life insurance and/or long-term care insurance. Encouraging more people to finance their own long-term care will reduce future Medicaid expenditures, as well as provide greater peace-of-mind for families dealing with end-of-life care for loved ones.

*****

Senator Seward's office web site is www.senatorjimseward.com.

Like Senator Seward at www.facebook.com/senatorjimseward.

Tax credits offered for hiring developmentally disabled

Cara Matthews 10:50 p.m. EST November 20, 2014

All businesses with unemployment insurance accounts on Nov. 30 will be eligible to apply for a tax credit program for hiring workers with disabilities. They have to file applications with the state.

(Photo: Peter Carr/The Journal News)

To make it easier to take advantage of a new tax credit for hiring people with developmental disabilities, the state has scrapped the Nov. 30 deadline for the initial application.

Instead, all businesses with active unemployment insurance accounts as of that date will be eligible to apply for the Workers with Developmental Disabilities Tax Credit Program (http://www.lohud.com/story/money/personal-finance/taxes/tax-watch/2014/06/12/tax-credit-developmentally-disabled-jobs-rockland-arc-westchester-business-council/10398001/), which takes effect Jan. 1.

Interested employers must submit a request for certification application to the state Department of Labor. The agency expects to post the application on its website soon, spokesman Brian Keegan said.

The new program will provide a tax credit of up to $5,000 for hiring someone full time (30 or more hours per week) and up to $2,500 for part time (at least eight hours per week). The duration has to be at least six months. The nonrefundable credit is 15 percent of wages for full-timers and 10 percent for part-timers.

The business incentive will help integrate more people with developmental disabilities into the workforce as New York works to close sheltered workshops. States are required by the U.S. Supreme Court's Olmstead decision and the federal Centers for Medicare and Medicaid Services to place people with disabilities in the most integrated work and housing settings possible.

"We have over 8,000 people currently in sheltered workshops across New York state and for so many people, this has really been such an important part of their life," said Sen. David Carlucci, D-New City, chairman of the Senate's Mental Health and Developmental Disabilities Committee.

"So to go through these changes is a very big shift in the way people live. We've got to make sure that nobody is left out, nobody is left behind," he added.

To participate in the tax-credit program, a person with a developmental disability must be working at a sheltered workshop or have been unemployed prior to Oct. 1.

In 2013, the state Office for People with Developmental Disabilities ended new admissions to sheltered workshops (/story/news/nation/2014/07/28/sheltered-workshops-disabled-phased-out/13302139/), where people with developmental disabilities do piece work. It created a pre-employment service called Pathway to Employment to help people transition into integrated workplaces.

The state has set aside $6 million a year through 2019 for the Workers with Developmental Disabilities Tax Credit Program. Unused credits can be carried forward for three years.

Putnam ARC Executive Director Susan Limongello said her group hopes the tax credit will increase the number of jobs for people with disabilities in the county.

"We see the tax credit as win-win: a credit for businesses who seek a more diverse workforce and new employment opportunities for our vocational program participants, many of whom have already been enjoying community-based employment for a number of years," she said in a statement.

Carlucci said it's important to educate as many employers as possible about the program.

"A lot of people don't know about it, are not aware of it," he said.

How to apply

All businesses with unemployment insurance accounts as of Nov. 30 will be eligible to apply for a tax credit program for hiring workers with disabilities. Businesses interested in the new program will have to file an application for certification with the state Labor Department. For more information, visit http://on.ny.gov/1ujl2Zp (http://on.ny.gov/1ujl2Zp) or contact the agency at WWDDTC@labor.ny.gov (mailto:WWDDTC@labor.ny.gov) or by phone at 877-226-5724.

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Feb. 17, 2015, 8:30 p.m.

Sheltered workshops for disabled to be phased out

Cara Matthews, The (Westchester County, N.Y.) Journal News, White Plains, N.Y. 9:33 p.m. EDT July 28, 2014

(Photo: Seth Harrison/The Journal News)

WHITE PLAINS, N.Y. — Janet Sugar's daughter, Rachel, used to work part time (http://www.lohud.com/story/news/local/westchester/2014/07/28/sheltered-workshops-end-new-york/13301583/) in a dress store, hanging up clothing.

"No one paid any attention to her. Sometimes she might eat, sometimes she didn't," said Janet Sugar, who lives in Mount Vernon. "My daughter is autistic so she can sit for hours staring into space."

Since October 2009, Rachel Sugar has been in a sheltered workshop at the nonprofit C.A.R.C. Inc.-Keon Center in Peekskill, where she does piece work with other developmentally disabled adults and gets more help and nurturing, her mom said. She does tasks like packaging powder, assembling trophies, tagging clothes and helping in the cafe.

"I just get to do work. I don't have to worry about anything," said Rachel Sugar, 50, who lives in a Pleasantville group home.

But the workshops that have been around for decades won't be an option much longer. New York is phasing them out to comply with the U.S. Supreme Court's 1999 Olmstead ruling that people with disabilities work, live and receive services in the most integrated setting possible. For work, they should earn at least minimum wage and receive coaching and support as needed.

USA TODAY

Disabled groups press Obama on minimum wage order

(http://www.usatoday.com/story/news/politics/2014/02/08/obama-minimum-wage-disabled-workers/5312205/)

Lower Hudson Valley nonprofits are figuring out how to make the transition and help those who may not be capable of integrated employment. Some parents want to know why the government is dismantling a system they believe works well and question whether enough businesses are willing to accept developmentally disabled workers. They worry about the emotional stress of changes, transportation and not having a safety net if people aren't successful.

"There are many things she (Rachel) would like to do, but I don't know that she would find the kindness and the support that she has at Keon," Janet Sugar said.

Staff members at Keon recently met with parents about the changes, and the general reaction was, "Who are they to tell us that our children don't belong here?" said William Melville, executive director.

"Taking the choice away is not what the government asked us to do. They asked us to be more creative in getting people into the community," Melville said.

The center provides day programs and other services in addition to the sheltered workshop. It has 15 to 20 clients working independently at local businesses, such as supermarkets. It has nine vans that take people into the community for internships, volunteer work and excursions.

A year ago, the state Office for People with Developmental Disabilities eliminated funding for any new workshop admissions. The agency estimated in March that half of the 8,020 adults in New York's 113 workshops could move into competitive jobs over six years. Some segregated work centers will convert to businesses and social enterprises with disabled and non-disabled employees. Other clients will get day supports and services and volunteer or take part in community activities if possible.

Office for People with Developmental Disabilities spokeswoman Jennifer O'Sullivan said in an email the agency is working aggressively to help people identify "fully integrated community opportunities" and realize their goals for employment or other meaningful activities. It has created a pre-employment service called Pathway to Employment to help with the transition.

"Ending reliance on sheltered workshops is consistent with national trends and recent federal Department of Justice activity," she said.

The U.S. Justice Department website states it began to aggressively enforce the Olmstead ruling five years ago. In New York, an Olmstead panel formed in late 2012 created a plan to better integrate people with developmental and mental-health disabilities through housing, jobs in a setting with non-disabled people, community services and other measures.

Rockland ARC in Congers will convert its electronics recycling workshop into one that employs disabled and non-disabled people. The group is seeking a state economic-development grant and partnering with Rockland Community College to expand the nonprofit eWorks Electronics Services Inc., said Steve Rubinsky, deputy executive director.

In fact, integration has already started, he said. The volume of electronic recyclables coming in has grown, making a night shift necessary. Disabled and non-disabled people work together.

Rockland ARC has 90 people in supported employment positions in the community, earning minimum wage and above, and 122 in its sheltered workshop, where wages range from prevailing rates to less than $1 per hour.

"We see that through electronics recycling, people could achieve dignity, their self-esteem goes up, they could really produce a product that is a double win because they're achieving that success and the needs of business and industry are being met at the same time," Rubinsky said.

Akeem Gayle, 24, of New City, said he rides in delivery trucks sometimes to pick up computers, old televisions and cable boxes. He also separates cable box and computer components in the workshop and cleans grounds at Bear Mountain State Park. "I enjoy it," he said of his workshop job. "Money counts, so I enjoy it."

Putnam ARC Executive Director Susan Limongello said in an email the group's goal has always been getting people jobs in the community. Nearly 50 clients currently have such employment. PARC partners with Putnam County to staff its litter patrol and has longstanding business partnerships with Visa Labs and Brewster Plastics, she said.

The sheltered workshop has 20 full-time employees. The remaining 200 people in PARC's vocational department split their days among sheltered employment, supported community employment and pre-vocational work, she said.

"This upcoming transition will force many people into a job that they may not want. Their current situation affords them real work and successful employment," Limongello said.

The Self-Advocacy Association of New York State believes all developmental disabled people should be able to earn a living and make at least minimum wage, said Steve Holmes, administrative director. But there aren't enough jobs and employment support available, he said.

"If we close workshops without generally increasing the actual employment, which is the transition that has to occur, then people are going to day services where they aren't working at all or not doing something that's important to them," he said.

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Feb. 17, 2015, 10:15 p.m.

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State hopes tax credit will help disabled get jobs

Cara Matthews, *5:43 p.m. EDT June 13, 2014*

As of Jan. 1, employers can receive up to $5,000 in tax credits for hiring a developmentally disabled person who is unemployed or working in a sheltered workshop. The workshops are being phased out.

(Photo: Peter Carr/The Journal News)

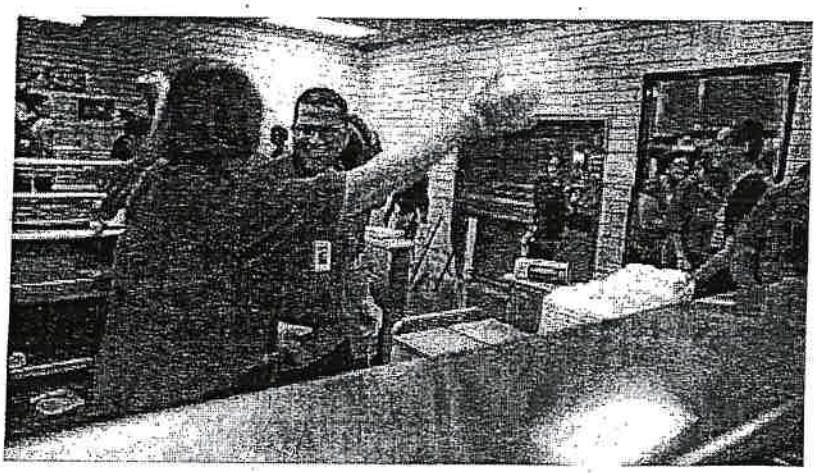
HAVERSTRAW – Thirty-year-old Justin Morales has made lots of friends in the six years he has worked in the North Rockland High School cafeteria, from co-workers to teachers and students.

He works from 9 a.m. to 1 p.m., washing dishes, helping out in the walk-in refrigerator and serving some lunches. Job coach Yessenia Santana of Rockland ARC, which serves people with intellectual and other developmental disabilities, checks in on him a few times a month. Fellow employees, some of whom call him Papi, said they enjoy working with Morales, who has a positive attitude and a ready smile.

"He's a great worker," said Lori Moser, senior food service supervisor. "He's always willing to help out wherever I need him. He gets along with everybody. Everybody loves him."

Morales, who lives in New City, said he'd like to work at the school until he retires. "I love this job and I'll never quit," he said.

State officials are hoping that a new tax credit will convince more businesses and organizations to hire people with intellectual and other developmental disabilities.



Justin Morales of New City works in the cafeteria at North Rockland High School in Theills. ARC of Rockland placed him in the job and provides coaching and support. (Video by Peter Carr/The Journal News) Video by Peter Carr/The Journal News

Starting Jan. 1, employers that do so will be eligible for tax credits of up to $5,000 for a full-time employee (30 or more hours per week) and up to $2,500 for a part-time worker. The Workers with Disabilities Tax Credit program, also called Inspire New York, will cost the state up to $6 million a year for the five years the law is in effect, a spokesman for Gov. Andrew Cuomo's Division of the Budget said.

While many companies (/story/news/2014/03/25/companies-hiring-disabled/6897247/) already have people with developmental disabilities on staff, the new credit could convince a business that is on the fence to start the practice. Having the tax credit "hopefully is another piece of the puzzle that makes it easier to do," said John Ravitz, executive vice president of the Business Council of Westchester.

The council works closely with organizations like Westchester Arc and the Center for Autism and the Developing Brain to help place people with developmental disabilities in mainstream workplace venues, said Marsha Gordon, president and CEO of the Business Council of Westchester. Regeneron Pharmaceuticals in Tarrytown is one of the companies, she said.

"We find that businesses tell us that once they hire people with developmental disabilities, it is really productive, makes economic sense and adds a lot of heart to the workplace," she said.

Senate Mental Health and Developmental Disabilities Committee Chairman David Carlucci, D-New City, said the U.S. Supreme Court's Olmstead decision and the federal Centers for Medicare and Medicaid Services are requiring states to have people with disabilities living and working in the most integrated settings possible. As a result, New York is phasing out sheltered workshops, he said.

"They want to move people into integrated employment settings. The problem is in New York, (sheltered workshops have) been a way of life for tens of thousands of individuals with disabilities for decades," the senator said.

There are more than 8,000 people with disabilities in sheltered workshops, Carlucci said. Many adults in this population are unemployed, he said.

The Inspire New York tax credit is one way of encouraging more organizations and businesses to hire people with intellectual and developmental disabilities, Carlucci said. An employer will receive a credit of up to 15 percent of a full-time employee's pay, he said.

Employers will be eligible for the credit if they hire someone who was unemployed for three months or more or who is an employee of a sheltered workshop. The length of employment has to be at least six months for a company to take advantage of the benefit.

The New York Office for People with Developmental Disabilities ended new admissions to sheltered workshops as of July 1, 2013. The agency set up a pre-employment service called Pathway to Employment, which helps sheltered workshop employees transition into integrated employment settings.

CAREERS for People with Disabilities, which has offices in Valhalla and Carmel, tailors job searches to the needs of the individuals, said Tina Cornish-Lauria, executive director. The number of clients fluctuates, but there are probably about 180 to 200 people working or trying to get placed at any time.

There have been different tax credits at different times over the years to encourage businesses to hire people with developmental and other disabilities, Cornish-Lauria said. The Inspire New York tax credit will be a good way to get "in the door" with an employer and start a conversation, she said.

The organization, which is in its 27th year, has always promoted the credits in working with employers, but businesses often are motivated by other factors, she said.

"I'm happy to say that many times employers are just trying to do the right thing and hire people with a disability," she said.

Twitter: @LohudTaxWatch (https://twitter.com/lohudtaxwatch)

Update:

On Wednesday, Senate Republicans filibustered to defeat a vote on the Bank on Students Act, which would allow former college students to refinance outstanding loans at a 3.86 percent rate, without any fees. Last year, Congress cut the student loan interest rate to 3.86 percent for new borrowers in the 2013-14 school year, but people with existing loans may be paying more than double that rate. The legislation would be financed by levying a minimum effective tax rate of 30 percent on people who earn more than $1 million a year, which the GOP strongly opposes. Total student-loan debt nationwide is $1.2 trillion, according to the Federal Reserve Bank of New York. Average debt in New York is more than $27,000. Forty-four million Americans are paying off college loans.

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Feb. 18, 2015, 10:06 a.m.

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DRAFT DDDS CLIENT EMPLOYER TAX CREDIT BILL
(BJH 2/17/13 DRAFT)

SPONSOR:

HOUSE OF REPRESENTATIVES/SENATE

147th GENERAL ASSEMBLY

HOUSE/SENATE BILL NO. -

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO DELAWARE TAX CREDITS.

BE IN ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 30 of the Delaware Code by making insertions as shown by underlining as follows:

Chapter 20B. Employer Tax Credit for Hiring Individuals with Developmental Disabilities.

§20B-100. Declaration of Purpose.

The purpose of this Act is to provide Delaware's employers an incentive to hire clients of the Division of Developmental Disabilities Services. Provision of a hiring incentive is intended to implement public policy established by §5503 of Title 16, §§740-747 of Title 7, and 7909A of Title 29 which promote meaningful employment in integrated work settings for individuals with developmental disabilities.

§20B-101. Definitions.

For purposes of this chapter:

(1) "Gross wages" means that part of the sum reported on Form W-2, or equivalent form of the United States Department of Treasury, Internal Revenue Service as "Medicare wages and tips" that is attributable to Delaware sources.

(2) "Qualified employee" means a client of the Division of Developmental Disabilities Services established by §7909A of Title 29 employed in an integrated setting as defined in §742(3) of Title 19.

(3) "Qualified employer" means an employer located in Delaware which hires and employs one or more qualified employees.

(4) "Secretary" means the Secretary of the Department of Finance as described in §8302 of Title 29.

(5) "Sustained employment" means a period of employment that is not less than 185 days during the taxable year.

ATTACHMENT "D"

§20B-102 Credit for wages paid to qualified employee.

(a) Subject to the limitations contained in §20B-103 of this title and to such return requirements as may be imposed by the State Bank Commissioner, the Insurance Commissioner, or the Secretary, qualified employers shall be eligible during the year in which a qualified employee is hired and for the 2 taxable years thereafter for credits against the taxes imposed by the following statutory provisions:

(1) Chapter 11 of Title 5;

(2) Chapter 19 of this title;

(3) Chapter 11 of this title;

(4) Sections 702 and 703 of Title 18.

(b) The amount of the credit against the tax shall equal 10%, but in no event exceed $1,500, of the gross wages paid by the qualified employer to a qualified employee in the course of that employee's sustained employment during the taxable year.

(c) To the extent a qualified employer's credits exceed the amounts otherwise due for the taxes and fees listed under §20B-102(a) of this title, such unused credits shall be paid to it in the nature of tax refunds.

§20A-104. Rules and Regulations.

The Director of Revenue is authorized to promulgate rules and regulations not inconsistent with this chapter and require such facts and information to be reported as the Director deems necessary for administration and enforcement of this chapter. No rule or regulation adopted pursuant to the authority granted in this section shall extend, modify or conflict with any law of this State or the reasonable implication thereof.

Section 2. This Act shall be effective for qualified employees hired on or after January 1, 2014.

SYNOPSIS

In 2012, enactment of H.B. No. 319 established the "Employment First Act" which promotes access to meaningful employment opportunities in integrated settings for individuals with disabilities. The percentage of clients of the Division of Developmental Disabilities employed in integrated settings has declined in recent years. This legislation is designed to offer an initial tax credit to employers as an incentive to hire Division clients. It is patterned on legislation enacted in 2012 (H.B. No. 275) which authorized a similar tax credit for employers hiring qualified veterans.

STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: February 23, 2015

TO: DHSS/DMMA Public Hearing

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: Proposed Statewide Transition Plan for Home and Community-Based Services (HCBS) Settings

For years, many people with disabilities, predominantly, intellectual and developmental disabilities have been stuck in places where other people control every aspect of their lives. Now, the State of Delaware will submit a Transition plan to deliver home and community based services more integrated in to the community and require those providing housing supports to respect the rights of people with disabilities to make their own decisions. The rule also prevents providers from warehousing people with disabilities in segregated homes and other facilities just for residents with disabilities.

According to CMS, the rule advances HCBS quality, adds protections for individuals receiving services, and provides additional flexibility to states participating in the various Medicaid programs authorized under section 1915 of the Social Security Act. The regulation, known as the "HCBS settings rule", has at its core the assurance that states receiving Medicaid funds meet the needs of individuals who choose to receive their long term services and supports in their home or community, rather than in institutions or institutional like settings. Its intent is to enhance the quality of HCBS and to provide protections to participants. Service planning must be developed though a person-centered planning process: one that addresses health and long-term services and support needs in a manner that reflects individual preferences and goals.

As individuals who care about the rights of Delawareans with disabilities, we are writing to express support for the Statewide Transition Plan proposed by the Department of Health & Social Services, Division of Medicaid & Medical Assistance. People with disabilities should be integrated into their own homes and communities rather than warehoused into segregated housing, workplaces and day centers. In particular, we support:

Requiring providers to respect the right of people with disabilities to choose who they live with and be able to have visitors in their own homes. *Under current state regulations, people with disabilities may not be given the opportunity to choose who they live with or whether or not they are able to receive visitors in their own home* or have meals at other than provider determined times, *restricted based on the policies of their provider. The state's final plan should revise regulations, ensuring that people with disabilities have a choice of roommates and are allowed to invite visitors into their own homes. The plan will also guarantee all people with disabilities receiving residential services get the same rights under tenant/landlord law as those without disabilities.*

Helping people with disabilities get out of non-compliant group homes and institutions and into real community living: *Delaware's developmental disability service-provision has in the past been predominantly oriented towards the most segregated forms of housing, with rates of, both institutionalization and group home placement above the national average. The state's final plan should help address this by limiting setting size to no more than 4 people for new congregate settings, and prohibiting gated, simulated communities or "Villages" and other intentional campus based housing projects. Rental assistance subsidies and developer incentives, including Low Income Housing Tax Credits, should be directed to buildings where no more than 25 percent of the units are set aside for people with disabilities and are disbursed within the units or housing developments. In order to ensure real community integration, the State should not ask the federal government for special allowances to fund campus based housing projects. These projects are presumed to be institutional under the new rule and its residents cannot be funded without such a setting being subject to high scrutiny by the federal government.*

Requiring Day and Employment Services to be delivered in integrated settings. *Delaware should continue and expand its commitment to the* ***Employment First movement*** *and help people with disabilities get real jobs in the community, not spend their lives in sheltered workshops and segregated day centers. We support a requirement for day services to be delivered with at least 75 percent of a person's time spent in the community, rather than in a day activity center.*

CMS will be approving transition plans with a period of up to 4 more years to come into full compliance, by March, 2019. Medicaid reimbursement for HCBS settings that isolate will still continue from the federal government until 2019 **so that no individuals are left without services during the transition period,** as Delaware moves towards full compliance.
We support providers doing a preliminary self-evaluation. Provider and DMMA/DDDS Staff should be asked to think not only about the facility/setting itself when a self-evaluation is being completed, but whether or not compliance with the rule is **applied to each individual served.**

We support a Completed State Plan that requires, DMMA/DDDS to provide its best estimate of the number of settings that: 1) fully comply with the federal requirements; 2) cannot meet the federal requirements and will require removal from the program and/or the relocation of individuals; 3) do not meet the federal requirements but will require and complete modifications to remain as a program , and 4) Those that are presumptively non-home and community-based,

but for which the state will be responsible to provide justification/evidence/documentation that would be subject to heightened scrutiny by the Federal Government. Those settings following heightened scrutiny, would have to be approved by the Federal Government as not having the characteristics of an institution, and do have the qualities of HCBS settings.

In addition, we support, DMMA /DDDS regulation modification in regard to settings that isolate individuals receiving HCBS services from the broader community of individuals who do not receive those services, to **require remediation or corrective action**—to maximize the community integration that individuals experience.

We support a plan that ensures that recipients of HCBS services may choose from among a spectrum of **settings that provide the maximum opportunity for community integration**.

We support a premise that **all new congregate residential settings, specifically for people with intellectual and/or developmental disabilities, or specific to any disability, will have the requirement** for HCBS funded services, of no more than four individuals with disabilities. Policies should cover both licensed settings and unlicensed independent housing settings where individuals receive HCBS services through, 1915(c), 1915(i), 1915(k) services, or 1115, DSHP plus services or through any other Medicaid funded HCBS Supports Programs.

We support DMMA/DDDS revisiting requirements regarding provider-owned and operated housing or other facilities, to assure compliance with the CMS guidance for integration with the community. Policy change may be necessary to ensure that the **settings prevent the isolation of individuals receiving HCBS** from those individuals not receiving those services in the broader community, as well as ensuring that individuals do not live or work apart from those not receiving those services. We support policy requiring settings to be located among other private residences and retail businesses. We support policy regarding placement to formally assure individuals' participation in roommate selection in those settings where bedrooms are shared.

We support, unannounced surveys of provider-owned or controlled residential and non-residential settings to be conducted to validate provider self-assessments.

We support, including milestones as necessary for achieving compliance by March 17, 2019 and specific remedial or corrective action, which may be required to maintain compliance.

We see the CMS Rule for Home and Community Based Services as a positive move toward achieving full integration in the community for all people with disabilities.

The "most integrated setting according to the needs of the individual with a disability" is a civil right guaranteed by the 1990, Americans with Disabilities Act.

This year, 2015, we celebrate 25 years of the ADA. Segregation is still not a good idea.