

Alabama Department of Mental Health/Division of Developmental Disabilities and the Alabama
Medicaid Agency's ID Waiver

Public Comment Summary and Response

The Public Comment period for the second posting of the Division of Developmental Disabilities' Alabama Home and Community-Based Waiver for Persons with Intellectual Disabilities (ID Waiver) Waiver and the waiver Transition Plan closed on December 5th 2014. The Division received public comments directly from our website posting, as well comments forwarded from the Alabama Medicaid Agency. The public comment period was announced on both the Department of Mental Health and the Alabama Medicaid Agency websites along with a notice in the Birmingham News newspaper (the largest circulated newspaper in Alabama) and its affiliate, AL.com that includes other newspaper sponsors such as the Huntsville Times, Mobile Press-Register, and Montgomery Independent. Based on a review of all the comments the following categories will be summarized and addressed for CMS (the division intends to respond to comment not addressed in this summary as time permits and make these responses public to stakeholders): 1) Financial Concerns; 2) Information Distribution; 3) Developmental Disabilities Eligibility; 4) Person Centered Planning/De-conflicting Case Management; 5) Choice; 6) Service Definitions; and 7) Other Statements regarding the waiver/transition plan/service delivery system as a whole.

1. Financial Concerns: One of the largest concerns regarding this waiver renewal and the transition plan centered on funding the program. Many comments were made about the lack of funding to meet the CMS HCB Setting Final Rule, an analysis of rates (changes, decreases, and increases) starting with the division's move to fee for services was provided, and some comparisons were made to other state agencies. For example, one comment brings into question the rate set for "direct personnel hourly wages" for individuals whose ICAP score falls into level three in the IRBI (Individualized Residential Budget Instrument). That current rate is \$10.25 compared to the \$11.00 per hour that has been identified as necessary to employ an individual at minimum wage. Items such as background checks, drug testing, and extensive training are listed as "unfunded mandates", additionally, various situations such as having "snow days", 1:1 staff during hospital stays, absentee calculations, staff turn-over, and holidays and staff overtime were also listed as additional costs that are not funded adequately through the waiver rate. Transportation cost was mentioned as either not being funded (i.e. employment support) or inadequately funded (day habilitation with transportation rate). Additionally, there is concern of the department's decision to change day services from "per diem" to hourly units. The question asked is that if hours are provided that exceeded the traditional "per diem" (5 hours including transportation) is there adequate funding for the additional units? Comments were made regarding rates and rate structures that appear to remain unchanged in this waiver renewal. For example, some caps imposed in this renewal were inadequate to meet the need of people (i.e. positive behavior support service). Finally, several comments were made about cost analysis being conducted by the department. For example, a cost analysis for training staff to meet requirements of service delivery and how that cost analysis was incorporated in the current fee for service model.

Response: The division has had a long standing rate setting committee that was established when the decision was made to move from cost reimbursement to fee for services. Stakeholders (contract providers) were intimately involved in the establishment of the rate methodology as well as the rates. Rates continue to be an area that the division looks at and periodically meets with stakeholders to discuss. Additionally, monthly sub-committee meetings provide a communication avenue to discuss current and future budgets, as well as rate increases.

In an effort to ensure contract providers are adequately funded during this shift toward employment and more inclusive community supports, the division is partnering with the U.S. Department of Labor's

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(USDOL's) Office of Disability Employment Policy (ODEP) to receive technical assistance through subject matter experts in their 2015 Vision Quest Policy Workgroup series. Our core group, which includes provider stakeholders, will be working on Rate/Reimbursement Restructuring. The application submitted to ODEP/EconSys specified a key policy objective, as well as a milestone (outcome):

Policy Objective: Employment becomes the first option for working age individuals receiving services from all state systems.

Milestone: Develop rate structure that provides adequate incentives and funding to attain employment outcomes.

Work with the subject matter experts will begin January 2015. It is the division's goal to conclude this series with significant rate methodology changes that will not only provide incentives for optimal community integration supports (to include employment supports), but also continue to provide a stream of funding that allows providers to maintain fiscal stability during this time of transition.

2. Information Distribution: Communication and information distribution continues to be a concern among all stakeholders. Several comments were made concerning data collection and distribution. For example, certification data was mentioned, how is it collected and analyzed, and why is it not shared among all stakeholders. Training, which falls under this category, was also mentioned several times (i.e. provider training, incident prevention and waiver services training). Concerns regarding the way information is distributed was also mentioned a number of times. For example, no public forum (with families) to review the waiver transition plan, having a select group of stakeholders participating in the development of the waiver transition plan, and no detailed plan to ensure family members and waiver participants are informed of the HCBS Final Rule regulation and how the department will go about enforcing compliance. It was mentioned that most families do not have internet access, posting the waiver and transition plan on two state agency websites was ineffective, and that 30 days is an insufficient amount of time to review all the material. A recommendation was made that the department help form a HCBS compliance workgroup tasked with ensuring compliance to the HCBS regulations. Members would include waiver participants, family/caregivers of participant, DHM/DDD staff, and other appropriate personnel from state agencies and advocates. Finally, develop and distribute information to every waiver participant and caregivers that describes the HCBS regulation, the departments plan to comply with said regulation, and any possible changes to current waiver services, provide updates to the progress of the transition plan, and have an established system by which waiver participants and caregivers can ask questions and receive information regarding changes to the waiver.

Response: The division is aware that communication, and the lack of communication getting to everyone concerned is problematic at times. The 30 day public comment period is the federal requirement and posting the waiver and transition plan on both the department and AL Medicaid's websites for review allowed for wide dissemination of the material. The division also ran an ad in the Birmingham News, the most widely distributed newspaper in Alabama. In the newspaper announcement, a contact number was listed for those that needed special help with obtaining the material. Additionally, monthly status reports are given regarding waiver updates, and updates to the transition plan, through the DD Sub-committee; a representative body of stakeholders of the DMH/DD Division that has existed by state regulation in AL for several decades to assist DMH in planning.

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The division is utilizing electronic avenues more and more to disburse training material and information. The department maintains an e-learning software tool that allows training curriculums to be posted for mass access. For example, at least part of the nurse delegation program training is now offered on-line. Additionally, the department utilizes webinars and posts them to the department website when appropriate to help ease the burden of travel. An example of this more recently is the HCBS Individual Site Assessment training provided.

The department is engaged in various social media outlets, though the extent this reaches families and waiver participants is not known. The division also looks to its partners to help distribute important and pertinent information as often times they have better access to individuals and their caregivers.

Finally, the division has regional office staff that provides ongoing technical assistance as it relates to quality enhancement, person-centered planning, provider standards and certification reviews, and waiver questions and concerns. Each region also has both a housing and employment point of contact. The division will continue to strive for better information distribution as policy continues to shift toward more inclusion.

3. Developmental Disabilities Eligibility: Several provider agencies, as well as Alabama Disabilities Advocacy Program (ADAP) and Autism Society of Alabama listed the department's waiver eligibility requirements as a concern with this waiver renewal. Most concerns are due to the intellectual disability diagnosis requirement with an IQ score under 70. Other eligibility factors are required but these in particular limit the ability for people diagnosed with a developmental disability, but without an intellectual disability, to not be eligible for either of the two waivers operated by the department. Commenters stated disappointment with the fact that this waiver "failed to expand Alabama's definition of DD to persons other than those with an ID diagnosis. Alabama remains one of a handful of states that fails to serve the true DD populations opposed to a small subset of said population." Additionally, a comment was made that Alabama utilizes an overly restrictive definition of ID, requiring an IQ score of below 70. A caregiver provided comments on her fear that the plan would impact access to daily activity services offered Monday through Friday thus hurting people on the waiver and that she is opposed to it. Finally, comments were provided regarding services to individuals with a diagnosis of autism. The main concern being there "is no state agency that has taken responsibility for the provision of services to this population, even though DMH has taken on the planning of a continuum of services for the ASD population." Services offered in the waivers (ABA type of services) will not be available to children or adults on the Autism Spectrum which over the course of a lifetime could cost taxpayers \$3-\$4 million per person. Requests to add a separate waiver for either people with developmental disabilities to include autism or create a unique waiver that offers services to the ASD population.

Response: The division has a long standing comprehensive waiver that provides services to those with Intellectual Disabilities. A newer supports waiver has been in existence since 2003 known as the Living at Home waiver. The intent of this waiver is to provide supports in the family home to prevent more restrictive living arrangements. This waiver also requires a diagnosis of Intellectual Disabilities. The request to open up the waivers, or design a new waiver, to address the needs of individuals with developmental disabilities, including ASD, is long standing. In fact, there was a work group created to look at moving the department into this direction. One of the largest barriers to expanding eligibility requirements is funding. As the operating agency for both waivers, the division must ensure adequate funding for all waiver slots.

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As previously mentioned, the division is working with ODEP's Community of Practice Vision Quest Policy Workgroup series on rate/reimbursement restructuring. It is the hope that as people moved into more integrated settings, are employed via competitive work, and become less reliant on waiver services then money can be shifted to add additional waiver slots to the Living at Home Waiver.

AL Medicaid has recently received a Money Follows the Person Grant that is focused on a DD population to transition from and avoid facility-based care. The division is also partnering with AL Medicaid on developing a new waiver for the Money Follows the Person grant that will focus on individuals with Developmental Disabilities and Mental Illness. It will be the first waiver to serve these two groups of individuals through the same funding mechanism. We believe this is the first step to opening the door to expanded eligibility requirements to cover more people with a DD diagnosis.

Lastly, the AL Medicaid Agency and two other operating agencies operate five other HCBS waiver programs that meet needs of some other people within the broader range of developmental disabilities (see attached document).

Person-Centered Planning/De-conflicting Case Management: Many comments were made regarding the person centered planning process. One provider commenting that "little attention is given to family and/or guardian input and choice" relating to the person-centered service plan. The state protection and advocacy program states that "DMH claims to have been doing PCP for all ID waiver recipients for several years. In practice however, PCP is not done consistently throughout the state." A comment was made that, as a caregiver and participant of Service Plan Development, the personal PATH was neither mentioned nor used. The recommendation was made to provide waiver recipients and their caregiver's detailed information regarding the type of services offered under the ID Waiver prior to, or during, the person-centered planning meeting. Additionally, it was recommended that the department develop information on Person-Centered Planning principles that is readily available and easy to read for waiver participants and caregivers.

Case Management and its functionality was also a concern for some stakeholders. The removal of person-centered planning and de-conflicting case management from the original version of the ID Waiver Transition plan caused some concern. Questions were posed as to why these sections were removed and the final transition plan didn't include case management or planning. One provider, noting that Public Corporations established in each county under the Ala. Code § 22-51-1 et seq., provide case management and are the single point of entry into services for individuals with intellectual disabilities. The question asked is whether case management services will continue to operate within their county or will individuals be given a choice to select a case management provider outside their county. If so, when does the department plan to implement such policies and what planning has been done for implementing such a change. Additionally, does the department consider agencies to be conflicted if they provide management, plan development, and waiver services if the agency meets the conflict free case management guidelines and/or Medicaid's "Balance of Incentive Act" and has any consideration been made for the close working relationship that that has been developed but may not result in conflict free case management? On the other hand, a question was posed as to why the department is continuing to "allow entities and/or individuals that have responsibility for service plan development to provide other direct waiver services to the participant?" Finally, a commenter asked who would provide oversight to de-conflicting case management and how would the department handle complaints regarding conflict of interest?

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Response: Two years ago, following many years of offering training and tools to exercise person-centered planning, the DMH/DDD promulgated regulations that require of its waiver service providers a more person-centered approach using most of The Council on Quality Leadership (CQL) Basic Assurances ©. The Division of Developmental Disabilities Services had developed an Alabama format for person-centered planning in consultation with the University of South Florida which was finalized in 2006. Since then, revisions have been made, Word and PowerPoint versions have been developed and made available on the department's website as well as instructions for both the Path and Profile. Most recently, the formats were updated to include references to and integration of CQL's personal outcomes with associated frames within the Profile section of the person centered plan.

Recently underway is phase 1 of a person-centered pilot project which requires the (person's) Team to listen to requests and needs, words, and actions of the person seeking services. If the person chooses, his support network would speak on his behalf. This listening tool, the Person Outcome Measures®, was developed by the international accreditation organization, The Council on Quality and Leadership. It is purposefully designed to be a tool to collect how the person, from his perspective, feels about the extent to which his personal outcomes are being met. The information from this listening tool and the diversity of the discussion will then drive better implementation of the person-centered planning process. The pilot will mandate the use of the newly revised person centered planning process. Information gathered from the Personal Outcome Measures® in combination with the Personal Profiles completed during the planning meeting by the person will generate the new format for a single person centered plan document. This process will be facilitated by the individual's case manager with assistance from Division of DD Regional QE staff. Case managers involved will be required to complete a four day training in Personal Outcome Measures prior to facilitating person centered planning meetings. Phase 2 of the pilot will continue in 2015 to further fine tune the process. It is projected that by the end of 2017, all people who receive waiver services will have had the benefit of this new personal outcome driven person centered planning process.

Prior to each person's involvement in the new person centered process, their case manager will explain the principles of person-centered thinking/planning as well as share the current waiver service menu of services to individuals and families. Evidence of such disclosure will be documented annually.

The reason for removing Person-Centered Planning and De-conflicting Case Management from the transition plan was not discussed with CMS, but our take away is that these two items are not directly addressing appropriate settings under the HCBS Settings Final Rule and that they basically should already be addressed. Obligations to de-conflict and to make effective use of person centered planning continue to remain in association with the CMS Final Rule. Choice of case management agencies has existed within the State dependent upon the bylaws of the 310 Regional Community Mental Health or ID Board in a geographic area of the state. Regardless, in all locations, choice exists within the case management entity from amongst case managers as well as delivered from the DD Division's Regional Office if the person chooses not to select the case management agency within their county of residence. The interpretation put forth by CMS as to conflicted case management is to ensure that the person has case management oversight which allows objectivity. In short, CMS has communicated that the same organization may not provide objective case management which also provides services. Accelerated movement toward this de-confliction will occur in 2015 as coordinated through the DD Division's Case Management Office.

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5. Choice: Choice among providers and waiver services was also a topic of concern. Oversight of conflicted case management to ensure people's choice of services and prevent exploitation was mentioned as a concern regarding the Case Management annual certification survey. A commenter asked the question "what is the accountability to ensure people with greater support needs have an "advocate" speak on their behalf when they can't sign the Plan of Care and a responsible party cannot be located?" Another commenter wrote that some choices are limited by family members, as primary caretakers their choice needs to be part of the consideration. Finally, a commenter stated concern with the transition plan as it relates to "transition of residents from current choice and appropriate environment of extended families and community access to an unfamiliar environment." This commenter felt little attention is given to family or guardians' input and choice as part of the decision making partner related to services.

Response: The upgrade of the Free Choice of Provider (FCOP) process is underway. Examples of such upgrade will be the requirement for a universally used format which can be individualized for the person to include all waiver service providers and waiver services available to the person in their home locale. This would include case management provider options. Inclusion of family input, as allowed by the person, has consistently been a part of the Choice of provider process. This is evident from the signatures on the current FCOP form reflective of mostly family and certainly of legally authorized representatives (aka guardians).

6. Service Definitions: Many comments were made around waiver services, their definitions, and the intent of the services. First, services related to employment were identified, some comments praising the department's efforts and others questioning whether the service definitions are meeting the need of individuals and their caregivers.

- Pre-vocation as a service has been defined as time limited and the department chose to apply a 2 year limit on the service with a review at the department level to extend the service. ADAP is pleased to see this limit. Conversely, some service providers question this time limit and the centralized determination to extend the service with no appeal process. For example, what other services will be offered to those that do not secure employment after two years?
- Benefits counseling was identified as a positive addition to the waiver as family members and waiver participants are often "fearful of losing benefits due to employment." A commenter questioned the process of contracting for benefit counselors and who would be liable for incorrect information provided to the person or caregiver.
- Individual Supported Employment services were identified by a commenter as needing expansion in the definition so that activities may be billed by the provider. These activities include: intake, discovery, assessment, job prep, marketing, job coaching, follow along, and other related tasks. Additionally, these services were identified as having low users for Appendix J cost forecasting.

Day supports was another group of waiver services identified in public comment. Comments and concerns include the following:

- Day Habilitation as a service is seen as a necessary service that allows families/caregivers to have respite and/or provides ability to remain employed during the day.
- Moving Day Habilitation to community based services is commendable, however the funding is not adequate to accommodate this structure.

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- Clarifying directions need to be provided for the Day Habilitation unit change from a per diem to a 15 minute structure. For example, is there a limit to the number of units in the day and how will arrival and departure be documented. Also, when the unit is changed will the department be willing and able to pay for additional hours that the program operates.

Finally, comments were made regarding the new service codes added to the waiver renewal. Comments regarding new services codes are include the following:

- Housing Coordination as a new service, what is the role of the coordinator, is this a duplicative service, and where is the data to support adding this service to the waiver?
- Likewise, Individual Goods and Services and Personal Emergency Response System (PERS) as a new services, how was this identified as a need, will people needing this service alone go on the waiting list, and if they receive this service are they then entitled to all other services under the waiver.
- Community Experience as a new service has been applauded. However, there are questions about transportation costs (costs for people with significant physical disabilities has not been factored in) and training is needed for staff and family members.
- Expansion of self-directed services is also being applauded. However, concerns were raised regarding the rate set for self-direction. Additionally, questions regarding whether these services are being measured with the same HCB setting criteria as other providers, if not then why the exclusion?

Response: For this waiver renewal there were updates to services that align with the CMS core definitions. Pre-vocation was a service that needed to be updated. Based on the core definition and CMS guidance, pre-vocation as a service should be time limited with the optimal outcome being integrated, competitive pay employment. There is no guidance as to how long or short the time period should be. The division elected to place a 2 year time limit on this service with the ability to extend this time through a review by the Employment Coordinator in Central Office. The review process will be simple, most likely reviewing the person-centered plan for employment related goals and activities conducted to help reach stated goals. The goal is not to limit access to this service, but to ensure that people have a clear path toward employment and other opportunities that increase their access to the community.

Benefits and Career Counseling as a service is new to this waiver. The department felt that in order to move our system forward it had to provide benefits and career planning specific to the people we support on the waiver. The state already has a highly competent team of benefits counselors that fall under, and are supervised, by the AL VR agency. The department is working with VR on the possible expansion of this service by hiring additional staff to be trained, just as the VR counselors are trained, and work alongside of VR in assisting waiver participants with planning for their needs. Additionally, it was proposed that an inter-agency agreement could be put into place that would give other state agencies access to these benefits planners. The funding would be both state only dollars and when appropriate the waiver will pay for this service.

Supported Employment services was another group of services that needed to be revised for this waiver renewal to ensure compliance with CMS guidelines and core definitions. Supported Employment as a service has been changed to Employment Small Group. This service is intended to cover small work crews that are community based and that pay at least minimum wage. The optimal intent of this service, based

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on CMS guidance, is to lead to individual employment in the community. The Individual Job Coach and Job Developer are not new services but have been modified. The definitions are aligned with the CMS core definition of individual supported employment. Additionally, the scope of responsibility and job requirements have been updated. These updates were at the request of the Employment workgroup, which is made up of stakeholders, and recommendations are reviewed in the monthly DD Sub-committee meetings. There is detailed information under "Other Standards" in Appendix C that specifies both the duties as well as the scope of these services. Between these two sections the division believes there is adequate guidance on what can and cannot be billed under these services. Historically utilization of new services starts off low. This is the reason for the low projection in Appendix J. This does not indicate a limit to how many people may receive this service under the waiver.

Day Habilitation is a service that is widely used throughout the state. This service encompasses a variety of activities that have not been tracked due to being captured under the umbrella day habilitation service definition. This is at least one of the reasons that the division chose to develop a unique service, Community Experience that will focus on non-segregated, non-employment related services. Additionally, at the request of stakeholders, the service has been changed to a 15 minute unit as opposed to a per diem. Training on waiver services will be provided once the waiver renewal has been approved. This should alleviate some of the concerns regarding the changes to this service.

Comments and concerns related to new services will also be addressed in the waiver services training that will be provided. This training will be recorded and available on the department's website. The newly added services were discussed and vetted through the DD Sub-committee meeting. The recommendations came from either this advisory sub-committee or other workgroups that are made up of stakeholders that include members of the DD Sub-committee.

Self-directed (SD) services rates and Individual Goods and Services (specific to SD services) have been discussed in the DD Sub-committee meetings. There is a slight rate difference due to the fact that the SD employer on record does not have administrative overhead and required fiscal intermediary costs are offset with the differences. That said, most families will see savings that will allow them to utilize Individual Goods and Services. Self-Directed Services provision will be measured by the Case Manager solicited from the person who is at the point of service outcome and who is the best determinant of service sufficiency.

7. Other Statements: Many of the comments were editorial and/or not entirely related to the waiver renewal or the transition plan itself. More so, the comments were related to policy, procedures, and overall implementation of the CMS HCBS setting Final Rule. Some of these comments will be summarized in this section but the remaining will be addressed in a separate document and posted on the department's website.

A commenter expressed concern with the implied intent to close facilities which are considered cluster group homes and/or more than 6 beds. Additionally, this commenter expressed concern about closing a vocational program that is certified by the Department of Labor that provides real work experience. This particular commenter requested a grandfathering in of programs and technical assistance from the department.

Comments and questions were raised regarding the state's upcoming implementation of a managed care structure for medical services to be paid for under a RCO (Regional Care Organizations) model. The Real

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Choices Systems Change Grant (RCSCG) was mentioned. Questions regarding RCSCG requirements of the grant (i.e. housing coordinator), how will continuation of the program be funded, what part of the grant is the department pursuing, and what were the dollars allocated through the grant?

HUD housing and homes with 6 people or more was mentioned multiple times. Some comments applauded the department for no longer certifying anything larger than 6 person homes, other are concerned about HUD housing and leasing agreements. Several comments were made about grandfathering such homes into the system due to long standing agreements with HUD, as well as the need for such housing at a time when housing was needed and/or in areas that have very little services available.

One commenter felt little consideration has been made for the aging waiver participant population. With the emphasis on employment, this segment of the population and their aging caregivers appear to be left out.

Finally, comments were made correcting some of the language in the waiver renewal.

Response: The division is working very hard with providers that may not be in full compliance with the CMS HCBS Final Rule. Meetings are continuous and as an EFSLMP FY 15 Core State, the department will be working with provider transformation subject matter experts in an effort to provide technical assistance in reshaping their service delivery model. Cluster homes or living arrangements that have the appearance of institutional settings must be addressed per CMS guidelines. The department cannot circumvent these regulations. To date there has been no guidance from CMS regarding grandfathering in of programs. This is the reason the division is focusing its energy on strong technical assistance for provider transformation. The waiver has restricted new homes to 6 persons or less since the state's Wyatt case came to an end and the department began to close ICFs. That said, CMS regulations will dictate to states limits on the number of resident in a home. So far CMS has provided no guidance on this but to focus on the person's experience.

In response to the aging waiver population, as well as the aging caregiver population, individualization of services/supports will continue to be the approach. In this way, it is the person's desires/wishes/needs which are paramount in crafting their service plan. It is at the point of the delivery of the service that a person's unique characteristics are considered. Adults of all ages choose to work. For those who do not, other services remain to provide meaningful, integrated experiences such as Community Experience day habilitation.

Lastly, in regards to language needing to be updated or revised, the division will make all necessary corrections.