

Dec. 11, 2015

PUBLIC SUMMARY

Summary of the Public Meetings and Comments for the Renewal of the Medicaid Intellectually Disabled and Related Disabilities Waiver Program and the Intellectually Disabled and Related Disabilities Waiver Transition Plan

The South Carolina Department of Health and Human Services (SCDHHS) held four public meetings in the following areas:

- Columbia, SC (Aug., 12, 2014)
- Charleston, SC (Aug. 14, 2014)
- Florence, SC (Aug. 19, 2014)
- Greenville, SC (Aug. 21, 2014)

The meetings provided information about the Agency's intent to request a five-year renewal of the Intellectually Disabled and Related Disabilities (ID/RD) home and community-based waiver program, the ID/RD Waiver Transition plan and allowed an opportunity for the public to comment. The public was provided the proposed information prior to the meetings, and the proposed ID/RD Waiver Transition Plan was posted online for public viewing and comment. Copies of the proposed waiver renewal document, including the ID/RD waiver transition plan, were made available for public review at the following locations and websites:

- SCDHHS front lobby at 1801 Main Street, Columbia, S.C.
- All Healthy Connections [Medicaid County Offices](#)
- SCDHHS website: <https://www.scdhhs.gov/public-notice>
- South Carolina Department of Disabilities and Special Needs website: www.ddsn.sc.gov
- Family Connections SC website: www.familyconnectionsc.org
- South Carolina Developmental Disabilities Council website: www.scddc.state.sc.us

The public was also provided the opportunity to submit comments through the mail and e-mail.

ID/RD Waiver Renewal Proposal

The State proposes renewing the program for an additional five-year period (2015-2019) with the following changes:

- Revise the Medicaid Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) level of care criteria to clarify the developmental period for intellectual disability is prior to age 22;
- Address the Centers for Medicare and Medicaid Services (CMS) Home and Community-Based Services (HCBS) Final Rule requirements;

- Revise performance measures for quality improvement as needed to comply with HCB settings requirements and other new regulatory components for waiver actions;
- Clarify the entrance enrollment requirements;
- Upon implementation of waiver case management, waiver participants would be required to have at least two waiver services monthly;
- Add pest control as a new service that will include home treatment and bed bug treatment, based on assessed need;
- Psychological services will be available to eligible-Medicaid members through the Medicaid State Plan. Psychological services will no longer be offered in the ID/RD waiver as a service;
- Revise respite service provider qualifications to expand provider availability for unskilled respite services by using qualified personal care provider agencies;
- Update appendices as needed related to the HCBS Final Rule and changes indicated above.

Summary of all comments and clarifications from the August 2014-September 2015 public input period

I. ID/RD Waiver Renewal

A. Revise the Medicaid ICF/IID Level of Care (LOC) Criteria

- Comments:
 - There was support for changing the age for determining the onset of a developmental period to age 22 for intellectual disabilities and not 18.
 - It was suggested individuals who applied for the waiver program after 2011 who were denied eligibility because of age of onset should be reevaluated.
 - It was suggested that DDSN change their criteria to match for consistency between agencies.
 - A commenter asked if consideration has been given to adding developmental disabilities to the ID/RD definition and/or expanding the related disabilities definition.
 - What would happen if DDSN did not change their criteria?
- *SCDHHS Response: Upon CMS approval, the State will proceed with revising the Medicaid ICF/IID LOC criteria as indicated and require this Medicaid policy to be implemented.*

B. Revise Respite Service Provider Qualifications

- Comments:
 - Commenters noted the need for more service providers and asked about strategies to bring them into the state or the Medicaid system.
 - One commenter expressed concern about a certain DSN Board “phasing out the companion and respite providers currently on staff and shifting the responsibility to the parents to hire caregivers.”
 - Commenters suggested it is challenging to find good care/available nurses and aides.
 - Please make sure the agencies and the service providers are more accountable and staff is better trained.
 - Does this mean the qualifications for respite providers are increasing which might reduce the amount of qualified providers?
 - Does this affect participant choice in respite providers? And will the system be centralized or does a participant have to go through their local DSN boards to find providers?

- The rate for respite is very low, which also impacts provider availability.
- If nursing agencies are being able to provide respite, does this mean nurses could then provide skilled respite, or if that would be in place of nursing? When will this expansion take place?
- Commenters expressed concerns that parents are required to become the employer of record to receive respite services in which negatively impacts the family because the parents of adults are likely to place their adult children in more expensive congregate facilities to avoid liability.
- There is a lack of choice of providers geographically around the state especially in rural areas.
- DDSN Qualified Provider List contains providers not currently providing the services in specific geographical areas.
- *SCDHHS Response: Upon CMS approval, the State will revise provider qualifications to allow for unskilled respite services to be provided, increase the number of qualified providers, continue to allow choice and revise the reimbursement rate.*

C. Clarified Entrance Enrollment Requirements

- Comments:
 - Many commenters were glad the waiting list was going to be addressed and potentially eliminated in the next few years.
 - Some commenters expressed concerns about the requirement to be Medicaid eligible to be on a waiver waiting list. Commenters sought clarity on what funding stream is being used to reduce the waiting list and if it is one-time dollars.
 - Commenters were concerned about the changes impacting current individuals on the waiting list.
- *SCDHHS Response: Upon CMS approval, the State will implement a process requiring new waiver applicants to be Medicaid eligible to be on the waiver waiting list to help expedite waiver enrollment. The new process will make accommodations for those currently on the waiting list who are not Medicaid eligible.*

D. Add Pest Control as a New Waiver Service

- Comments:
 - It was noted that this was a needed new waiver service.
- *SCDHHS Response: Upon CMS approval, the State will add a pest control service.*

E. Revise Performance Measures for Quality Improvement

- Comments:
 - A commenter suggests review of the National Core Indicators Data on choice of home, work and the development of community-based employment and day activities.
 - Will the revised performance measures have any impact on waiver services?
 - SCDHHS is ultimately responsible for Medicaid and should have a system in place to ensure that DDSN is adequately fulfilling its responsibility.
- *SCDHHS Response: Upon CMS approval, the State will revise the waiver quality performance measures as needed to comply with the HCBS Final Rule requirements for Home and Community Based settings, such as residential and day programs.*

F. Upon Implementation of Waiver Case Management, Waiver Participants Would Be Required

to Have at Least Two Waiver Services Monthly

- Comments:
 - Case managers are vitally important in rolling out waiver slots. It is important to make sure they are compliant. There must be adequate funding and manageable caseloads.
 - This additional requirement could be a burden on the case managers given caseloads, or families given family schedules.
 - A commenter stated there are many areas of our state where it is hard to find qualified Medicaid providers; therefore, families should not be penalized by the threat of a family member losing their waiver slot if they only receive case management while seeking a qualified provider.
 - A commenter stated CMS should require SCDHHS to “count” Targeted Case Management (TCM) as a waiver service and not increase the number of services required to remain eligible for the waiver.
 - A commenter stated that requiring two services further increases dependence on congregate day programs and residential programs that may violate the Americans with Disabilities Act (ADA).
 - Case coordination should be a waiver service so the focus remains on the individual need.
 - Make service coordination a waiver service.
 - The waiver programs are very confusing.
- *SCDHHS Response: Upon CMS approval, the State will implement a two-service monthly minimum that will require waiver participants to have service needs beyond case management and not take up a waiver slot with only case management as a needed service. If these individuals do not need a waiver service beyond case management they can be served through the state plan using the Medicaid Targeted Case Management (TCM) service.*

G. Removal of the Waiver Psychological Service

- Comments:
 - What is covered under psychological services and how is that different from the state plan.
 - Is applied behavior analysis (ABA) covered under psychological services? How are licensed independent practitioner (LIP) services accessed?
 - A commenter expressed concerns of the provider qualifications who perform state plan psychological services stating they are not as specialized as those providers who currently serve the ID/RD population.
 - A commenter expressed concerns about the removal of psychological services.
- *SCDHHS Response: The state plan psychological service is similar to the waiver psychological service and offers face-to-face interventions intended to help the beneficiary achieve and maintain stability. The State Plan psychological service is not based on applied behavioral analysis, which is available through the behavioral supports waiver service. Waiver participants currently receiving this service will be notified and advised it may be received through the State Plan.*

H. Miscellaneous

- Comments:

- A commenter suggested eliminating the flat caps on the personal care and nursing services. The waiver should be designed to allow the flexibility to have a meaningful person-centered plan. A commenter believes that procedures to protect individuals in the community are an essential part of person-centered planning and SCDHHS quality control.
- A commenter request SCDHHS to require SCDDSN to restore all services that were cut in 2010.
- Commenters stated they want “improvement services” not just “maintenance services.”
- A commenter suggested there is no training for personal care attendants (PCAs) working with children.
- Parents expressed concern about background checks and that the scope is limited to South Carolina, not the entire country.
- Commenters asked about the use of technology to support families/beneficiaries in the waiver and providing this as a service.
- Commenters expressed concerns about the capitation of services that were proposed in the waiver renewals and the current capitation levels.
- The State should consider making the guardianship and special needs trusts a waiver service even though it is expensive, but sometimes necessary thing to do.
- One commenter stated the use of aversive stimuli has long been discredited as a treatment modality and treatment decisions are made by the appropriate treatment teams, HRC and through the person-centered plan. The State Director has no role in the making individual treatment decisions regardless of state law.
- One commenter stated hearing aids are only available through the ID/RD waiver, and not the Community Supports Waiver.

- Is there a way for Medicaid to pay for the services directly rather than paying the providers to pay the people providing the actual services?
 - *SCDHHS Response: Yes, if providers directly enroll with SCDHHS.*

- There was not adequate notification given regarding the comment period of the proposed renewal of the ID/RD waiver.
 - *SCDHHS Response: Yes, adequate time was given to the public according to the CMS guidelines.*

- SCDDSN Commission never announced the comment period for the proposed renewal of the ID/RD waiver.
 - *SCDHHS Response: The ID/RD Waiver renewal was mentioned at the Aug. 21, 2014, Nov. 20, 2014 and June 15, 2015, Commission Meetings. The ID/RD HCBS Proposal was posted to the SCDHHS website Aug. 12, 2015, and the information emailed to providers Aug. 13, 2015.*

I. ID/RD Waiver Transition Plan Facilities Assessments

- Comments:
 - Assessor of facilities needs to have a high-level understanding of the HCBS rule and that needs to be specifically focused on during training and part of the transition plan.

- While providers can conduct a self-assessment of their compliance with the Final Rule, SCDHHS must ensure an external review is part of the assessment process.
 - *SCDHHS Response: SCDHHS clarified in the plan that SCDHHS, or an external agency it will employ, will review all assessments and conduct site visits as a means of validation for compliance.*

- The deadlines proposed seem unrealistic and too tight of a timeframe. Brick and mortar contracts are going to take time and that has to be taken into account.
- The site survey is not very clear and should include when sites should expect to hear back from SCDHHS and that there will be follow up by DHHS.
 - *SCDHHS Response: This information was reviewed and amended and/or added in the transition plan and timeline as appropriate.*

- Development of a full array of residential and day services requires a statewide, coordinated approach. For example, it might be necessary for local Disability and Special Needs (DSN) Boards to work together to create new types of housing.
- Efforts should continue to attract new private providers with experience in different models of housing, particularly one and two bedroom units.
- SCDHHS must develop a plan to provide meaningful choice of settings. Current residents of Community Training Home (CTH) IIs may not have been offered a choice of another, smaller setting. Waiver participants should be able to choose from a variety of settings.
 - *SCDHHS Response: This should be part of the person-centered planning process.*

- For all providers who will have to meet the new requirements, will guidelines be provided for what we have to do?
- Is budgetary impact happening along the way? The assessment tool might want to include some sort attestation/statement as to what the provider thinks this will cost them to come into compliance.
- Are there plans for specific counties about facilities? What is to be done about current facilities that need attention?
- The plan should clearly indicate responsibility for development of appropriate language to comply with the requirement for a legally-enforceable tenancy agreement.
 - *SCDHHS Response: The self-assessment will provide guidelines for the requirements. Providers may also look at the CMS website or the www.scdhhs.gov/hcbs website under the provider tab. Budgetary impact may be included in a provider's corrective action plan. The assessment should also address facilities needing attention as well as policy review for a tenancy agreement.*

- Are education facilities considered institutional?
 - *SCDHHS Response: They are not subject to the new rule as they are not enrolled HCBS providers.*

- DDSN continues to fund day programs in direct conflict with the CMS Final Rule Requirements.
 - *SCDHHS Response: The HCBS rule does not prohibit day programs, but rather sets parameters for how they should look and how they should meet individual's needs through their person-centered plans.*

J. Person-centered Planning/Conflict-Free Case Management

- Comments
 - SCDHHS should provide extensive training to all participants in the person-centered planning process.
 - SCDHHS should develop a comprehensive oversight process to ensure compliance with the Final Rule through measures like unannounced visits to the person-center planning meetings; regularly reviewing a sample of plans; and interviewing participants who have been through the planning process.
 - SCDHHS should use the Final Rule as an opportunity to clarify the appeals process for applicants and recipients of DDSN services and members of Health Maintenance Organizations (HMOs).
 - SCDHHS should establish criteria for professionals providing assessment of individual needs in developing the person-centered plan. Service providers should take a fresh look at each individual receiving services to consider how their access to the community could be expanded.
 - How will SCDHHS get meaningful recipient participation in ongoing planning?
 - *SCDHHS Response: Per the SC HCBS Statewide Transition Plan – Revised (<https://msp.scdhhs.gov/hcbs/site-page/statewide-transition-plan>), a survey is currently being developed that will seek meaningful input from beneficiaries.*
 - We currently provide person centered planning, will it be different than what we are doing now or are we good?
 - *SCDHHS Response: It may be what you are doing now, but that should be outlined in the self-assessment.*
 - For conflict-free case management, can the person who provides case management still work for the service provider?
 - *SCDHHS Response: Per CMS requirements, if you would like to pick a provider that also made your service plan, it would have to be well documented.*
 - As parents we all want our children to be independent, but the truth is that they cannot make educated decisions for themselves without the guidance of a parent.
 - *SCDHHS Response: SCDHHS recognizes that some individuals won't be able to make decisions by themselves. The Agency wants to make sure that individuals have the choices that will make them as independent as possible.*

K. Other

• **Comments:**

- The ID/RD Transition plan seemed much focused on the way the system looks now; nothing is included about analyzing what we are missing.
- SCDHHS should increase coordination with the Vocational Rehabilitation Department to increase training and employment opportunities outside the DSN Board framework. SCDHHS should work with the Governor's office to implement the National Governor's Association employment initiative.
- SCDHHS needs to do a system assessment, looking at the regulations, policies, directives, etc. that bore the programs out there now. We want it to be flexible to allow things to look different if that is what is needed.
 - *SCDHHS Response: A systems policy review as it pertains to HCBS settings has been added to the transition plan.*
- Does SCDHHS plan to conduct a survey of all community day programs, such as those run by Area Agencies on Aging, county recreation commissions and church groups to see what opportunities are available for participation by Medicaid recipients?
- Given that choice is mentioned in the HCBS rule, what if only one provider provides services? Where is the choice?
 - *SCDHHS Response: If community day providers wish to provide HCBS services, they can participate in the assessment and review process. The system needs to be examined to explore why there are not enough providers, and how it can be restructured to increase provider capacity.*
- Can Medicaid transportation be used to get people to community activities other than medical, if activities are part of plan?
 - *SCDHHS Response: Not at this time.*
- Would the HCBS Rule allow someone to use a restrictive environment to prepare for a less restrictive environment?
- If we ask a provider what can they do (for services), and we want to use them, can we? Or does the HCBS Rule prevent that?
- For parents who do not want integration for their child, can they opt out?
- Parents expressed concern about beneficiaries making choices they aren't equipped to make (like through the person-centered planning process) and that parents would be excluded from the process altogether.
 - *SCDHHS Response: Each individual should have a person-centered plan that addresses his/her needs and a restrictive environment or lack of integration might be something addressed in that plan. The HCBS Rule does not prohibit individuals from choosing providers. It was not the intent of the HCBS Rule to exclude parents but rather empower individuals to their maximum ability.*
- P&A strongly supports implementation of the ADA as interpreted by Supreme Court in *Olmstead v. L.C.* and AFCA changes Medicaid regulations referred to as Final Rule. The

initial submission of the plan for compliance with the Final Rule lacks much necessary information about actual implementation. The waiver application should address the issues raised.

- *SCDHHS Response: SCDHHS is addressing comments from CMS on its Statewide Transition Plan as instructed by CMS- through revisions to its Statewide Transition Plan. The waiver renewal document, which includes the ID/RD waiver transition plan will be modified accordingly.*