IDENTIFYING INSTITUTIONAL SETTINGS

Next Steps for P&A HCBS Transition Plan

Advocacy
• Overview of Webinar

• Elizabeth Priaulx (NDRN): Stages of State HCBS transition planning and necessary P&A advocacy

• David Machledt (NHeLP): State responsibilities to identify settings with institutional qualities, and trends in CMS letters to states regarding state plans and assessment of settings

• Mercedes Restucha-Klem and Mary Sampson (Disability Rights North Carolina): P&A tool for collecting information on settings and potential uses

• Hillary Dunn (Disability Law Center): MA P&A tool for collecting information on settings and protection of privacy

• Elizabeth Edwards (NHeLP): P&A advocacy opportunities related to identification of settings & resources available from advocates and CMS.

• Participants: Questions? Ideas to share?
• Four Stages for State HCBS Transition Plans (broadly speaking & unofficial)

• Stage 1: Obtain public/provider/resident input on settings; review statutes; develop draft plan; obtain public comment, submit to CMS.

• Stage 2: Respond to CMS letter requiring plan improvements; categorize settings; seek public comment; submit to CMS.

• Stage 3: Respond to CMS letter requiring plan improvements; obtain public comment; obtain CMS decisions on heightened scrutiny.

• Stage 4: Implement plan and develop new HCBS options to ensure HCBS participants do not lose services.
Quick Review: Community Settings

• All home & community-based (HCB) settings must:
  • be integrated in and support full access to the greater community
  • optimize autonomy and independence in making life choices;
  • be selected by the individual from among setting options;
  • ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint; &
  • facilitate choice regarding services and who provides them

• Provider owned or controlled settings have additional obligations
Institutional Settings

- These settings cannot qualify as home and community-based:
  - Nursing Facility
  - Institution for Mental Disease (IMD)
  - Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IID)
  - Hospitals
Settings Presumed to be Institutional

• Certain other settings are likely to exhibit institutional characteristics, and will require **heightened scrutiny** to qualify as home & community-based:
  • In a building that also provides inpatient treatment;
  • Settings on the grounds of, or immediately adjacent to, a public institution;
  • Settings that have the effect of isolating individuals receiving HCBS from the broader community of individuals not receiving HCBS
CMS Guidance

- Residential and non-residential exploratory questions
- Settings that isolate
- Transition plan toolkit
- Q&A on HCBS Settings
- Statewide transition plan basic elements review
- Q&A on HCBS Setting Requirements
  - Heightened scrutiny, respite, tenancy, visitors, (b)(3), tiering
- CMS Response letters to states on submitted plans (CMIA letters)
Settings That (May) Isolate

• CMS identified several examples of potentially isolating settings:
  • Disability-specific congregate settings;
  • Farmsteads in rural areas;
  • Residential schools;
  • Gated or secured communities for people with disabilities;
  • Clustered settings that are operationally interrelated.

• Advocate’s FAQ on Heightened Scrutiny
Defining “Isolated,” “Integrated,” and other terms

• State responsibilities:
  • Translating broader language into concrete standards
  • Identify and evaluate HS settings
  • Collect and submit evidence of community nature of HS settings

• CMS ultimately approves settings, including HS settings
Settings assessment

• Many states lack process for finding “settings that isolate”

• Ideally multi-pronged approach
  • Provider self-assessments in most states
  • Validation using beneficiary surveys, on-site assessments, or other mechanism

• Other approaches
  • GIS mapping for clusters, proximity to institutions
To follow Mercedes Restucha-Klem’s presentation please go to:
https://www.google.com/maps/d/edit?mid=z9e3zQt2huhc.kzc2xdutCkk&usp=sharing
Sources of Information to Identify Settings

- ID/DD
- Monitoring
- Obtained locations of community residences/group homes
- Locations of current and former institutions
- Geographic Information Systems (GIS)

Hillary Dunn, Staff Attorney
Mary Samson, Intern
Disability Law Center
How DLC Utilized this Information

• Identified residences on or adjacent to current and former institutions
• Mapping using GIS
• Incorporated discussion and maps into our comments submitted to CMS on the MA Residential Services Transition Plan

Hillary Dunn, Staff Attorney
Mary Samson, Intern
Disability Law Center
Other Considerations

• Providing specific information vs. protecting the privacy of individuals in these residences

• Redact information

• See HHS FOIA regulations (45 CFR 5.67(c)): “…addresses of individual beneficiaries of our programs” would frequently be a “clearly unwarranted invasion of personal privacy”

Hillary Dunn, Staff Attorney
Mary Samson, Intern
Disability Law Center
Description of Map Seen in Next Slide
Appendix A. State School, Anytown Massachusetts

Figure A.1 – This aerial map shows the significant distance between the DDS group homes (Residences A, B, C, D, E and F) and Anytown’s residential areas, which indicates significant isolation and lack of meaningful integration into the community. The grounds of the unidentified State School are outlined in red, whereas the group homes are marked by orange circles. The institution and proximate group homes sit well outside the heavily populated areas of Anytown and are not meaningfully integrated into the nearby suburban communities. Original image was taken from Anytown Online Geographic Information System (GIS) Viewer.
Appendix A

XXXXXX State School, Anytown MA

Figure A.1 – This aerial map shows the significant distance between the DDS group homes (Residences A, B, C, D, E and F) and Anytown’s residential areas, which indicates significant isolation and lack of meaningful integration into the community. The grounds of the XXXX State School are outlined in red, whereas the group homes are marked by orange circles. The institution and proximate group homes sit well outside the heavily populated areas of Anytown and are not meaningfully integrated into the nearby suburban communities. Original image was taken from Anytown Online Geographic Information System (GIS) Viewer.
Figure A.2 — This aerial map shows the significant distance between the DDS group homes (Residences A, B, C, D, E and F) and Anytown’s residential areas, which indicates significant isolation and lack of meaningful integration into the community. This map is overlaid with district zoning, for which the legend is included in the image. The grounds of the XXXXXX State School are outlined in red, whereas the group homes are marked by orange circles. These group homes directly about the Industrial District in which the institution is located and are not meaningfully integrated into a residential zone. Original image was taken from Anytown Online GIS Viewer.
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Description of Appendix A Next Map Showing Anytown, MA

- Figure A.3 – This aerial map shows the immediate proximity between the DDS group homes (Residences A, B, C, D, E and F) and the XXXX State School. The XXXX State School grounds are outlined in red, whereas the yellow circles delineate the group homes. Residence F may seem farther removed than the other group homes, but its plot of land has the same lot number as the facility, and is therefore residing on institutional grounds. The plots of Residences A, C, D, and E directly abut the institutional grounds. Street names have been redacted. Original image was taken from Anytown Online GIS Viewer.
Figure A.3 - This aerial map shows the immediate proximity between the DDS group homes (Residences A, B, C, D, E, and F) and the XXXX State School. The XXXX State School grounds are outlined in red, whereas the yellow circles delineate the group homes. Residence F may seem farther removed than the other group homes, but its plot of land has the same lot number as the facility, and is therefore residing on institutional grounds. The plots of Residences A, C, D, and E directly abut the institutional grounds. Street names have been redacted. Original image was taken from Anytown Online GIS Viewer.
Description of Appendix A Next Map Showing Anytown, MA

- Figure A.4 – This aerial map shows the immediate proximity between the DDS group homes (Residences A, B, C, D, E and F) and the XXXX State School. This map is overlaid with district zoning, for which the legend is included in the image. The grounds of the XXXX State School are outlined in red, whereas the group homes are marked by orange circles. These group homes directly about the Industrial District in which the institution is located. The XXX Street addresses are not meaningfully integrated into the Suburban Residential zone and the XXX Street addresses sit on ‘Open Space/Conservation’ land. Original image was taken from Anytown Online GIS Viewer.
Figure A.4 – This aerial map shows the immediate proximity between the DDS group homes (Residences A, B, C, D, E and F) and the XXXX State School. This map is overlaid with district zoning, for which the legend is included in the image. The grounds of the XXXX State School are outlined in red, whereas the group homes are marked by orange circles. These group homes directly border the Industrial District in which the institution is located. The XXX Street addresses are not meaningfully integrated into the Suburban Residential zone and the XXXX Street addresses sit on ‘Open Space/Conservation’ land. Original image was taken from Anytown Online GIS Viewer.
Next Steps for Advocates

• State assessment process—where are they?
  • Influence assessment process
  • More info on process for settings that isolate

• Prepare for commenting on settings
  • Gathering info from sources
  • Types of information
  • Organization
  • Don’t delay
CMS Considerations

• Did the state demonstrate:
  • Every one of the qualities of home and community-based setting is met
  • Participants are not isolated from the greater community of individuals not receiving Medicaid HCBS
  • There is strong evidence the setting does not meet the criteria for a setting that has qualities of an institution

• Must be true for all participants in that setting
Demonstrating Community

- Community members consider the setting part of the community
  - Not associated with the provision of services to people with disabilities

- Individual participation in the community
  - Reverse integration only is insufficient
  - Does not only include activities organized by the provider agency
    - E.g., group activities or activities that only involve paid staff
  - Activities should foster community relationships
    - Not affiliated with the setting

- Services are engaged with the broader community
Understand the Evidence

- Focuses on the qualities of the setting
- Not about the types or severity of disability of the participants
- Public input
- Info by other parties
  - Role of stakeholders in site visits
- Exploratory questions
Examples of Evidence

- Policies and Procedures
- Proximity to and scope of interactions with community settings
- Availability of transportation
- Pictures
- Participant interviews
- Interconnectedness with institutional setting
Heightened Scrutiny Approvals

• Specific to individual settings, not types
• Ongoing monitoring and oversight
• No material changes to the settings
  • Capacity
  • Disability-specific settings nearby
  • Changes in community integration
Effective Comments

• Include detailed evidence of the setting’s characteristics
• Describe how the setting violates the rule
• Focus on the experience of the individual
• Use coalitions to submit multiple comments

• Comments work!
  • CMS guidance reflects advocates’ input
  • CMS needs stakeholders to comment and provide information on settings
THANK YOU

Washington DC Office
1444 I Street NW, Suite 1105
Washington, DC 20005
ph: (202) 289-7661
fx: (202) 289-7724
nhelpdc@healthlaw.org

Los Angeles Office
3701 Wilshire Blvd, Suite #750
Los Angeles, CA 90010
ph: (310) 204-6010
fx: (213) 368-0774
nhelp@healthlaw.org

North Carolina Office
101 East Weaver Street, Suite G-7
Carrboro, NC 27510
ph: (919) 968-6308
fx: (919) 968-8855
nhelpnc@healthlaw.org

www.healthlaw.org