Oregon HCBS Transition Plan Comments and Responses

Access to the Community

We received a few comments that access to the greater community will be beneficial to individuals receiving services. Others asked if some providers are preventing individuals from accessing the greater community.

> We agree that these new requirements will have a positive impact on individual's experience. Oregon administrative rules do not allow provides to restrict individuals from participating in the community unless there is an assessed need. However, the provider self-assessment should help determine the level of each provider's compliance with this requirement.

Additional Requirements

We received quite a few comments from providers who were concerned about the impact of the additional requirements on individuals living in congregate settings, such as visitors, ability to come and go as they please and etc. Some mentioned their responsibility to ensure the health and safety of each individual for whom they provide care.

> We understand these concerns but believe that there are ways to mediate some of the concerns. CMS defined it this way; "We acknowledge that in certain living situations the preferences of others must also be respected. We expect that there will need to be communication and coordination between all parties affected."

There were a few providers who were concerned that the individuals they serve would be at risk is they were able to have full access to all of the items in the additional requirements section.

> CMS has been very clear that these expectations should be broadly applied to all individuals unless the individual has a specific and defined need that prevents them from fully accessing these new rights. We agree with that premise.
>
> Through the planning process we will define criteria and process that can be used in limited instances to restrict individual's access to these new protections.

Some commenters asked for very specific details and definitions of each of the new requirements.

> Oregon will be developing factsheets and other materials that will be helpful in this process.

Some commenters asked why there is a need to accommodate employment for older individuals.

> The requirements apply to all individuals receiving Medicaid funded services and supports including younger individuals with disabilities. Employment should be an option for all individuals regardless of age.

A few providers commented that they have concerns about access to food 24/7. Some of the concerns were around healthy eating, controlling diabetes and other health related issues.

> While we agree that providers have a responsibility to protect individual's health, safety and well-being, we do not think that allowing the vast majority of individuals to make choices about the food they eat endangers them.

There were a few comments around concerns that individuals having locked units will be dangerous due to conditions like dementia, emotional disorders or physical disabilities. Additionally there were concerns about timely evacuations or ability to get to people who are in distress.

> If the individual is at risk, based on an individualized assessment, there can be some limitations or modifications. But the vast majority of individuals should be able to have locked units with appropriate staff having keys.

One commenter highlighted the fact that APD AFH settings have house rules that state, people can have visitors at any time, "unless visiting hours are limited as disclosed in house policies." The commenter states this caveat is not allowed under HCBS Setting rules.

> We will be reviewing this issue during the provider assessment process. When the State's reviews the OARs, we will review this issue in more detail and make necessary changes to OARs.

Appeal Process

There were several comments that providers should be able to appeal determinations or decisions made by the state.

> We agree. We have revised the Transition Plan to include an administrative review process.

Choice

There were several comments that choice is limited by the providers' willingness to serve a specific individual and that some individuals must move away from their family and support systems. Others mentioned that in some circumstances, individuals are not provided all of the options available. Lastly, there was a

recommendation that Oregon diversify the options that are available and presented to individuals.

> Oregon continues to work with providers to increase the available options statewide. APD and AMH have invested significant resources into expanding access to skilled providers. We also continue to expand in-home services and supports to make that a viable option for more individuals. We agree that there is more to do.
>
> Through the individual experience assessment we will gain more insight in how individuals feel about their available choices and if they had the opportunity to choose from all available options.

One commenter mentioned that services are limited and that can force individuals into segregated employment programs. Additionally, the commenter expressed concerns about the state's continued funding of sheltered workshops and day services.

> Oregon is incorporating non-residential settings into its transition plan. Oregon's Transition Plan recognizes that there are a number of employment and day service settings that will be required to make adaptations in order to come into compliance with the HCBS setting requirements. Oregon is dedicated to making these changes and in addition to Oregon's Transition Plan, Oregon has issued an Executive Order (EO 13-04) as well as revised current Oregon Administrative Rules in order to begin this transition even prior to implementation of the HCBS setting requirements.
>
> Oregon is committed to providing services in the most integrated setting possible for the individual and is changing the Transition Plan to be more explicit.
>
> Additional information and guidance from CMS regarding how the HCBS setting requirements apply to non-residential settings remains forthcoming and will be incorporated into this Transition Plan and Oregon's guidance as it becomes available.
>
> We have also revised the Transition Plan to clarify that "available" includes in-home services and supports. We have also stressed that the choice is the individual's.

There was a suggestion that we amend, "the survey will ask if the individual felt that they were able to select their services…" to read, "the survey will ask if the

individual felt that they were able to make an informed choice in selecting their services…"

> We are worried that the suggested language could unintentionally limit the expectation that individuals have the ability to choose from all available options that can meet their needs.

Compliance

One group suggested, "We also believe that the primary result of the two-year assessment will be to identify specific areas leading to modification of the requirements, rather than the need for achieving over-all provider compliance."

> If the comment is intended to say that the requirements and expectations from CMS will change, we do not agree. Each provider must be in compliance with the new regulations by March 2019.

Delivery System Education

There were a few comments about the importance of the Delivery System Education.

> We agree. Additional details will be developed and shared with the stakeholder committee prior to release of the training.

General Comments

One organization stated that the plan lacks significant details and suggested that the final transition plan should break down how the state will implement these important principles in the proposed transition plan. Another organization commented that the plan was comprehensive and detailed.

> Additional details will be developed and shared with the stakeholder committee and posted on the web. However, this will occur after the transition plan has been approved.

One organization suggested that Oregon do more to modify the state's Medicaid waivers and state plan options that continue to shift HCBS funding to services in settings that are home and community based in nature.

> We are not sure what, "more" means. Oregon is a leader in serving individuals in home and community based settings.

One organization stated that the plan is both inaccurate and inadequate to its purpose.

> We respectfully disagree. The Transition Plan is intended to move Oregon forward. It lays out specific steps and specific work we will engage in to bring about the changes that are envisioned in the HCBS regulations

Global Scorecard

One commenter requested that Oregon provide more detail to clarify how we determined that we are, "in general," in compliance with the HCBS regulations,

> The Global Scorecard and the section in the transition plan are intended to clarify what areas we think need to be addressed. We will make that more explicit in the Transition Plan.

There was one suggestion that the word scorecard is an inappropriate to be used in the Transition Plan.

> Scorecard is common term used for assessing, compliance and activities. We do not think that it has the negative connotation mentioned.

Another comment suggested that the Global Scorecard language does not comply with the federal language. Specifically, they said, "Item number 15 reads "is the setting selected by the individual from among all available alternatives and is identified in the person-centered service plan." This language does not comply with the HCBS Setting rules. The HCBS Setting rule actually says "the setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board." 42 CFR 441.301(c)(4)(ii)."

> We understand the concern but think this is a different interpretation of the phrase "all available alternatives. Our intent is to capture in-home services as well as residential settings. We have further defined this in the transition plan.

Heightened Scrutiny

A provide association was concerned about the impact of the new regulations on retirement communities that have assisted living/residential care co-located with nursing facilities or that have them on the same campus

> Oregon will be asking for heightened scrutiny for those programs that are on the ground of, or adjacent to an institutions if the facilities can demonstrate all of the other characteristics of HCBS settings and does not have the effect of isolating or segregating individuals from the broader community..

It was recommended that Oregon specifically name individual settings rather than categories of settings that require heightened scrutiny.

> Through the Heightened Scrutiny process, each program, setting and facility will be identified. The public will have the ability to comment on the state's HCBS determination. We have provided additional details about the process in the Transition Plan.

One commenter suggested that Oregon define "immediately adjacent to" to include settings within retirement communities where assisted living/residential care is in the same building.

> Oregon will include this category of provider in the Heightened Scrutiny review.

Another commenter was concerned that the section entitled "Facilities and Programs Requiting Heightened Scrutiny" means Oregon supports segregation and institutionalization.

> We respectfully disagree. The Heightened Scrutiny process is intended to determine if the identified settings or programs meet the HCBS criteria or not.

A concerned was raised that the Draft Transition Plan does not include any evidence of site visits and does not provide enough information to collect specific input from stakeholders.

> The Transition Plan defines a process by which we will determine if HCBS programs, settings and facilities meet the new requirements. The plan includes site visits and expectations of licensing and case management staff.

Individual Experience Assessments

One commenter recommended that the individual assessments be accessible and include a statistically significant number of face-to-face conversations between assessors and individuals and families. Another comment expressed concerns about the Individual Experience Assessments ending 2019.

> We intend to make the individual experience as accessible as possible. The specific process and number for individual experience assessments will be developed and vetted with the stakeholder group. The transition plan ends in 2019 but the individual experience surveys will continue after that date as required in the State Plan and Waivers. We did not define that in the plan since it was outside the transition time.

Integrated in the Community

Could someone define what is meant by "settings that are integrated in and support full access to the greater community?" Will a home in the country (10-15 miles outside of town) qualify for an AFH with these new rules?

> Choice is the driver in these situations. If an individual wants to live in a rural setting, then it should be okay. However, the provider must ensure that individuals can interact with others and not be segregated or isolated.

Scope of the Transition Plan

One organization suggested that the Transition plan does not address services provided under the 1915(k) wavier (K Plan).

> The Transition Plan does not specifically include the 1915(k) services based on instructions from CMS. However, since most of the services, programs and settings are funded with the K are provided to individuals receive 1915c services, the K funded settings, services and programs are included in the transition plan.

Landlord Tenant

One organization commented that the current state of the OARs, an practice, providing protections from evictions do not meet CMS' definition of landlord tenant standards..

> We will make necessary changes to OARs if, after a legal review, it is determined the OARs are not substantially similar to the requirements.

Conversely, some comments focused around the need to be able to evict individuals who are causing damage, endangering individuals etc. There was a strong sense that further clarification was needed around this component of the transition plan.

> While we understand the concern, we strongly support individuals have landlord/tenant rights and responsibilities. We do not intend to make changes to the plan but will be issuing guidance as necessary.
>
> We will provide additional guidance in the near future. Oregon will be working with our legal counsel and stakeholders to further define this process and expectation.

Medicaid or all

One organization asked if the new regulations would apply to private-pay non-Medicaid settings.

> The State has not determined the scope at this point in time.

Modifications or Limitations on the Requirements

A question came up regarding programs that might need to make physical modifications to homes or sites to comply with the transition plan, will the state fund these modification or will this be an unfunded mandate?

We are not sure at this point in time.

Oregon Administrative Rules (OARs)

Two commenters pointed out that the Transition Plan did not define when the State will make final decisions on changes to administrative rules. Another recommended that stakeholders be involved in the analysis of administrative rule compliance with HCBS rules.

This was an oversight in the plan. We are adding it in the final version. We have also added language to include stakeholders in the analysis process.

Physically Accessibility

One organization suggested that we change, "The setting is physically accessible to the individual," to replaces "physically" to "appropriately" because some settings are deemed physically accessible, but are not appropriate for the individual.

This language is a direct requirement in the new CFRs so we are not comfortable changing it in the plan.

Provider Self-Assessment

One commenter suggested that the State describe the support OHA and DHS to will give to providers to increase participation by consumers in their self-assessment is a key to a person-centered emphasis for provider self-assessment.

Thank you for your comment. We have amended the plan to make this clearer.

It was recommended that Oregon conduct provider assessments at regular intervals rather than the single round specified in the transition plan.

The state will be monitoring compliance and changes through on site visits, individual experience assessments.

Provider types

One organization recommended that the State delete language about unlicensed settings from the Transition Plan.

Oregon has a variety of programs that are unlicensed providing Home and Community Based Services including; Adult Day Services, Employment, Specialized Living and Supported Living programs. These programs are required to be in the Transition Plan

Quality Assurance

Comments were made that Oregon must define a quality assurance (QA) and compliance plan to complete the transition plan.

> The plan specifies a process for developing QA activities and expectations. We will work collaboratively with stakeholders to develop a robust quality assurance and compliance process.

Stakeholder Involvement

One organization suggested that the state be more specific about the role of the stakeholder group in evaluation, review and oversight for this transition process should be defined more clearly.

> The State agrees. We have made changes to the plan

One organization recommended that DHS and OHA ensure that there are more self advocate and family members on the stakeholder group.

> Oregon agrees that consumers, self-advocates, and family members should be well represented. Additionally, the transition plan commits the state to working with individuals and family members prior to and during the assessment process.

Timeline

One organization suggested that the timeline is overly generous if the State's assessment has determined that we generally in compliance with the new regulations.

> A review of the OARs did not specifically highlight areas of concern or need for immediate changes. However, there will need to be changes. The intent of requesting the 5 year time period is to allow providers that must change their business model or modify building structures. Additionally, the delivery systems (i.e., case management providers through AMH, APD and DD) will need time to adapt to new expectations.

Training

One organization requested that Oregon adequately educate individuals and families about the values of community integration, choice, and person centered planning that represents the foundation of the HCBS Settings rules.

> We agree this is a vital component. Training individuals, family members, providers and the delivery system is a critical component of the plan.

One organization made the following specific suggestions:

The second paragraph, under “Compliance Review and Quality Assurance”, begins with, “Licensing and Program staff…” We recommend adding “Appropriately trained” to the beginning of that sentence.

The very last full sentence on this page speaks about training curricula which will be used, in part, to “identify areas of provider non-compliance”. We are of the opinion that “provider non-compliance” sounds like an indictment, and recommend changing the phrase to “identify areas of need for provider adaptation”.

Under the heading, “Delivery System Education”, we recommend changing the period to a comma, at the end of the first sentence, and adding the following specifics, “including the empowerment of the individual to fully understand the full range of options available to them, and their rights in making individual choices.”

The plan has been amended to include revised language in these areas.

Transportation

Two organizations suggested that the State add specifics around assessing access to transportation to ensure appropriate integration and access to the community.

The Transition Plan does not address specific ancillary services or provider rates, however, through both the provider and individual assessment, we expect to learn more about access to the broader community and how transportation is accessed.

Rates

At the Stakeholder Workgroup additional comments were provided about the impact of these changes on the costs of providing services and supports under these new requirements. Some members also highlighted the costs associated with serving complex individuals and the need to develop more specialty providers. APD providers also discussed the significant difference between APD provider rates and the other program rates.

The State agrees to monitor the impact on providers and rates.