

# CMS RULE DAY/EMPLOYMENT SERVICES

Where Are We, How Will it Move Forward and What Resources are Available?"

# ABBREVIATIONS

- ▶ **CMS**: Centers for Medicare and Medicaid Services
- ▶ **HCBS**: Home and Community Based Services

# ABBREVIATIONS

- ▶ **ADA**: Americans with Disabilities Act
- ▶ **DOJ**: U.S. Department of Justice

# LOOKING BACK:ADA

- ▶ Title II states that no public entity can discriminate by denying services to individuals based on disability: including developmental and physical disabilities or mental illness.
- ▶ Applies to Housing, Day Supports and Employment

# LOOKING BACK: DOJ

- ▶ Oregon Class Action Law Suit
  - ▶ Oregon's employment services found to segregate people
  - ▶ Sheltered Workshops are segregated settings
- ▶ Rhode Island Consent Decree
  - ▶ 2000 job placements over the next 10 years; average 20 hours per week
  - ▶ Goal of community integration for all individuals

# LOOKING BACK: CMS BULLETIN

- ▶ Three years ago, CMS issued guidance for employment and day services: Informational Bulletin: September 16, 2011
- ▶ Updated core service definitions
- ▶ Created new services to better reflect best practices
- ▶ Emphasized the importance of **employment** in the lives of people with disabilities

# LOOKING BACK: CMS BULLETIN

“Work is a **fundamental** life activity for adults with and without disabilities...it provides a **sense of purpose**, shaping who we are and how we fit into our **community**...”

# LOOKING BACK: CMS BULLETIN

- ▶ Emphasized the critical role of person centered planning in achieving employment outcomes
- ▶ Clarified that “pre-vocational services are not an end point, but a **time limited service** for the purpose of helping someone obtain **competitive employment.**”



# LOOKING BACK: CMS BULLETIN

- ▶ Created a new service definition for **career planning** that can be used for youth with disabilities, individuals seeking to transition from prevocational services who want a job that is better or more in line with their interests and talents.
- ▶ Split supported employment into two services: Individual and Small Group
  - ▶ Group supported employment is for **2-8 individuals**
  - ▶ Outcome is individualized competitive, integrated employment

# PRESENT DAY: HCBS SETTINGS RULE

- ▶ Released January 2014 and took effect March 17, 2014
- ▶ Rule was developed over five years with two public comment periods
- ▶ Intended to ensure individuals receiving HCBS services under a Medicaid Waiver “have full access to the benefits of community living and the opportunity to receive services in the most integrated setting appropriate.”
- ▶ Applies to all settings where HCBS are delivered, not just to residential settings.

# PRESENT DAY: HCBS SETTINGS RULE

- ▶ States have five years to come into compliance: clock is already ticking... deadline is **March 17, 2019**
- ▶ States have up to a year to develop a transition plan for compliance with broad stakeholder involvement;
- ▶ Ohio's transition plan is due **March 17, 2015** leaving four years to come into compliance

# PRESENT DAY: HCBS SETTINGS RULE

- ▶ Establishes new requirements for **person-centered planning**,
- ▶ Documentation of **informed choice**
- ▶ Provision of independent, **conflict of interest free** case management

# PRESENT DAY: HCBS SETTINGS RULE

- ▶ Person-centered planning:
  - ▶ Not part of the transition plan; already in effect
  - ▶ Includes individualized goals and preferences related to:
    - relationships,
    - community participation, **employment**,
    - **Income** and savings,
    - healthcare and wellness, education and others.

# PRESENT DAY: HCBS SETTINGS RULE

## ▶ Informed Choice

- ▶ Extends beyond simply asking a person if they would like to remain in a segregated setting
- ▶ Agencies must take affirmative steps to provide information about the **benefits of integrated settings**;
- ▶ Facilitating visits or other experiences in such settings;
- ▶ Offering opportunities to meet with other individuals with disabilities who are **living, working and receiving services** in integrated settings
- ▶ Identify and addresses any concerns or objections

# PRESENT DAY: HCBS SETTINGS RULE

- ▶ Conflict-free case management

- ▶ “Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the Person Centered Service Plan.....

- ▶ ...except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS.”

# PRESENT DAY: HCBS SETTINGS RULE

- ▶ HCBS must have all of the following qualities:
  - ✓ Is **integrated in and supports access** to the greater community
  - ✓ Provides opportunities to **seek employment** and **work in competitive integrated settings**, engage in community life, and control personal resources
  - ✓ Ensures the individual receives services in the community **to the same degree of access** as individuals not receiving Medicaid HCBS



# PRESENT DAY: HCBS SETTINGS RULE

- ▶ Aligns Medicaid funding with recent Department of Justice actions
- ▶ Compliments the Integration Mandate of the ADA

# PRESENT DAY: HCBS SETTINGS RULE

- ▶ “Optimizes, but does not regiment individual initiative, autonomy, and **independence** in making **life choices**, including, but not limited to, **daily activities**, physical environment, & with whom to **interact**.”

# PRESENT DAY: HCBS SETTINGS RULE

- ▶ "The setting is selected by the individual from among setting options including....
  - ▶ **non-disability specific** settings & an option for a private unit in a residential setting.
  - ▶ The setting options are identified & 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."

# PRESENT DAY: HCBS SETTINGS RULE

Implications for Day and Employment Services:

- ▶ Expect facility-based day service settings and sheltered work centers will be considered "settings that isolate"
- ▶ If states wish to continue to allow HCBS to be delivered in these settings, they will need to show how the settings are integrated in and support full access to the community... to the same degree of access...

# PRESENT DAY: HCBS SETTINGS RULE

## What does Integration look like?

- ▶ Community-based recreational, wellness, social, educational, cultural, and athletic activities, including community volunteer activities and training activities.
  - Volunteering
  - Interning
  - Taking a class
  - Learning about careers and interests
  - Promotes interaction with community
  - Not a disability-specific *program*

# PRESENT DAY: TRANSITION PLAN

- ▶ Ohio's transition plan for CMS compliance is due March 17, 2015
- ▶ Transition plan only addresses settings compliance
  - ▶ Person-centered planning and conflict-free case management are already in effect
- ▶ This is a STATE plan, so involves other agencies in addition to DODD:
  - ▶ Ohio Department of Medicaid (ODM)
  - ▶ Ohio Department of Aging (ODA)
  - ▶ Office of Health Transformation (OHT)

# PRESENT DAY:TRANSITION PLAN

- ▶ Transition Plan Committee is currently evaluating Ohio's system
- ▶ Will make recommendations on:
  - ▶ State system issues
  - ▶ Opportunities and barriers to integration
  - ▶ Minimum standards of compliance within the Rule

# PRESENT DAY:TRANSITION PLAN

- ▶ Representations from stakeholders (County Boards, Providers, Advocates) who are expected to interact with the broader public & stakeholders and communicate.
- ▶ Recommendations will be submitted to both: OHT Long Term Care Strategy Committee and the DODD Strategic Planning Committee



# PRESENT DAY:TRANSITION PLAN

## Areas Under Evaluation:

- ▶ Service definitions
- ▶ Waiver rules
- ▶ Service planning
- ▶ Types of service settings
- ▶ Monitoring
- ▶ Provider qualifications
- ▶ Rate Methodologies

# PRESENT DAY:TRANSITION PLAN

## Some questions to consider:

- ▶ Are there ways in which we define waiver services or establish waiver rates which negatively impact individuals ability to integrate with the broader community?
- ▶ Is there a setting type or location where integration is less likely to occur?
- ▶ Is there a setting size where integration is less likely to occur?
- ▶ What are ways in which individuals engage in community life?

# PRESENT DAY: TRANSITION PLAN

## Some questions to consider:

- ▶ Are our service models integrated?
- ▶ What are the minimum standards for compliance with CMS Rule?
- ▶ What about conflict of interest?
- ▶ What about choice and person-centered planning?

# PRESENT DAY:TRANSITION PLAN

- ▶ Ohio is doing many things right, and we anticipate highlighting those areas in our plan
  - ▶ New SSA Rule
  - ▶ Funding System Re-design
- ▶ We anticipate having to develop timeframes by area of compliance (some issues may take a while to develop and implement, while others will not).

# PRESENT DAY: FUNDING RE-ALIGNMENT

- ▶ DODD has contracted with two policy and systems change experts, Allan I. Bergman and Lisa Mills, PhD to review current funding system for day and employment services
- ▶ This process dovetails with the CMS Transition Plan Work for HCBS Settings compliance
- ▶ Research multiple states with high performance in integrated employment and day services
- ▶ Six Community forum meetings held to seek input and feedback
- ▶ Workgroup to develop recommendations for service definitions, provider qualifications and rate methodologies

# PRESENT DAY: FUNDING RE-ALIGNMENT

## What did we learn from other states?

- ▶ Oklahoma: original outcome-based reimbursement system
- ▶ Oregon and Wisconsin: Built on Oklahoma with improvements
- ▶ Maryland: day rate for employment and day; service definitions directed at integration; strong relationship with Vocational Rehabilitation
- ▶ Iowa: in the midst of re-design; new rates and definitions will be released soon

# PRESENT DAY: FUNDING RE-ALIGNMENT

- ▶ **Determining Costs of Providing Services**
  - ▶ Historical Cost Approach
  - ▶ Prospective Cost Methodology
- ▶ **"Building a rate"**
  - ▶ Determining all cost elements to include
  - ▶ Adjustments for geographic variations

# PRESENT DAY: FUNDING RE-ALIGNMENT

## Paying for Individual Supported Employment

- ▶ Fee for service
  - ▶ 15 minute or hourly units
  - ▶ Monthly payments
- ▶ Outcome-based
  - ▶ Payment for milestones
  - ▶ Payment for hours worked
  - ▶ Payment based on wages earned
- ▶ Some combination of these options



# PRESENT DAY: GUIDING PRINCIPLES

## Presumption of Employability for All

- ▶ The system should be based upon a presumption of competency, employability and “zero reject” for each person with a disability, regardless of complexity
- ▶ The system should mitigate, to the maximum extent possible, any disincentives to serving individuals with more significant barriers to employment or support needs

# PRESENT DAY: GUIDING PRINCIPLES

## Continuous Improvement

- ▶ The system should be primarily focused on producing and maximizing individualized, integrated, employment outcomes at competitive wages
- ▶ The system should encourage and incentivize providers to support new individuals to enter Individual Supported Employment

# PRESENT DAY: GUIDING PRINCIPLES

## Continuous Improvement

- ▶ The system should encourage and incentivize providers to ensure individuals already employed in Individual Supported Employment maintain their jobs, increase their hours and advance in their careers at appropriate times
- ▶ The system should not create a financial incentive to provide alternative day and employment services in lieu of Individual Supported Employment

# PRESENT DAY: GUIDING PRINCIPLES

## Provider Competencies

- ▶ The system should reward providers for best practice implementation of Individual Supported Employment
- ▶ The system should require provider standards and staff training/certification to assure equal statewide access to and opportunity for Individual Supported Employment.

# PRESENT DAY: GUIDING PRINCIPLES

## Flexibility

- ▶ The system should allow unanticipated changes in support needs of Individual Supported Employment participants to be quickly and effectively addressed by providers
- ▶ The system should recognize and financially support individual differences in intensity of supports over time as well as state documented geographic cost differentials in order to promote Individual Supported Employment for all persons living in the state

# PRESENT DAY: GUIDING PRINCIPLES

## Flexibility

- ▶ The system should allow for exceptions with clear and appropriate requirements for granting exceptions and reviewing the exception status over time
- ▶ The system should include transparent and easy-to-understand rationale for reimbursement rates and payment methodologies.

# PRESENT DAY: COMMUNITY INPUT

- ▶ The funding redesign effort is part of a larger systems change effort
  - ▶ The need to ensure informed choice for individuals by consistently and effectively promoting the benefits of receiving services in integrated settings
  - ▶ Increasing funding available through maximum leveraging of federal dollars available to Ohio for home and community-based services
  - ▶ Ensuring accountability for outcomes and quality of service in provider network
  - ▶ The need to engage legal guardians as supportive partners

# PRESENT DAY: COMMUNITY INPUT

- ▶ A reasonable plan for phasing in changes
- ▶ Alignment and collaboration on Supported Employment policy, process, practice and funding strategies is needed between DODD and OOD
- ▶ Transportation options and funding must be addressed
- ▶ Public schools must be full partners; embracing the values and principles of seamless transition.



# PRESENT DAY: COMMUNITY INPUT

- ▶ Continuity in Transition to Integrated Employment and Day Services: Commitment to no less service for each individual unless there is a documented change in need.
- ▶ Employment First is not employment-only: wraparound supports will be available.
- ▶ Easy, affordable and timely access to benefits information and assistance
- ▶ Certifications or other types of qualifications for service delivery professionals should be portable.

# PRESENT DAY: COMMUNITY INPUT

- ▶ Program Integrity must be ensured through:
  - ▶ Incentive payments made based on valid outcomes
  - ▶ An adequate service provider network in all areas of the state
  - ▶ Accountability for employment outcomes shared by all providers of HCB services
- ▶ Alignment between Self-Determination and Employment First policy is necessary and must ensure that self-directed support options
- ▶ Rate adjustments over time are essential for long-term viability and effectiveness of funding redesign.

# PRESENT DAY: COMMUNITY INPUT

- ▶ Local and regional unemployment rates should be taken into account in determining geographic differences in service costs as part of the funding redesign model.
- ▶ Support for paid internships as best practice path to securing integrated employment
- ▶ Business and industry engagement and involvement is critical part of Employment First effort.
- ▶ Ensure people with developmental disabilities not enrolled on an HCBS waiver have support and source of public funding to obtain and maintain integrated community employment.

# LOOKING AHEAD: WORKGROUP

- ▶ Allan and Lisa will work with stakeholder workgroup for a minimum of six in-person all-day meetings to develop service definitions, provider qualifications, and rate methodologies
- ▶ Workgroup:
  - ▶ Representatives from county boards, private providers, advocacy, OACB, OPRA, OAAS, DD Council, OOD
  - ▶ Team of 20, including internal DODD staff

# LOOKING AHEAD: WORKGROUP

- ▶ Allan and Lisa will work with DODD and Workgroup to review and revise employment service definitions and billable activities to clearly define expectations.

# LOOKING AHEAD: WAIVER CHANGES

- ▶ Work with DODD staff to revise Ohio's Medicaid HCBS Waiver application, as needed
- ▶ Expect to have preliminary service definitions available for public comment in December
- ▶ Expect to file waiver amendment with CMS by September 2015 with changes to take effect in 2016.

# QUESTIONS?

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