Weigh in on Your State’s Plan for Home and Community-Based Services

Help Ensure Your State Is Compliant with Federal Regulations

In January 2014, the Centers for Medicare and Medicaid Services (CMS) published a rule designed to improve the delivery of home and community-based services (HCBS). According to CMS, the new regulations governing HCBS provided under Medicaid’s 1915(c) waiver program are intended to guarantee that individuals receiving these services have full access to the benefits of community living. (n4a provided comments on the draft rule in July 2012; link: http://www.n4a.org/pdf/n4a_Comments_to_HCBS_Definition_Prop_Rule_070212_FINAL.pdf.)

States are now in the process of drafting and submitting to CMS required transition plans detailing how each state will become compliant with the regulations. Advocates and individuals receiving HCBS have an important opportunity to weigh in on these plans during mandatory public comment periods before each state’s plan is finalized and approved. Sixty percent of AAAs administers Medicaid HCBS waiver programs, and we believe these plans, once in place, will effect HCBS systems and rules beyond Medicaid, so AAA engagement during this time will be critical to ensuring that necessary system improvements are reflected in state plans.

It is imperative that AAAs engage with your states on this issue to ensure that critical voices of Aging Network partners are heard and the essential role of AAAs in delivering HCBS is considered during the planning and implementation process. Read on for resources to find out more about the final rule and where your state stands in the implementation process.

Background on the HCBS Settings Rule

Section 2402(a) of the Affordable Care Act (ACA), enacted in March 2010, required the Health and Human Services (HHS) Secretary to administer regulations mandating that states develop person-centered community-based services and supports systems to maximize independence and self-direction and to be responsive to the needs and care decisions of older adults and people with disabilities. The final regulations were published last January, and the rule goes into effect in March 2015. During the public comment period, n4a sent a letter to CMS supporting the intent of the rule to strengthen HCBS delivery.

The implementation process for these regulations is also intended to enhance consistency and coordination and to streamline policies and procedures across the maze of programs, services and bureaucracies that can impede individual and caregiver access to services. The final rule defines the kind of settings that CMS will recognize as “home and community-based” and, therefore, eligible services under Medicaid. Provisions in the final rule establish a more outcome-oriented definition of home and community-based settings, rather than one based solely on a setting’s location, geography or physical characteristics. The rule will also affect service delivery across communities and successful implementation will require interagency collaboration. For example, staff at the Administration for
Community Living (ACL) is currently working with CMS on guidance related to non-residential settings such as adult day centers.

According to a CMS fact sheet, the rule would allow states:

- Greater flexibility to offer expanded HCBS and to target services to specific populations;
- Flexibility to combine coverage for multiple target populations into one waiver; and
- Up to five years to align waivers and state plan amendments that serve dually eligible populations.

The rule also:

- Defines and describes the requirements for settings appropriate for the provision of HCBS;
- Defines person-centered planning and requirements; and
- Provides CMS with additional compliance options beyond waiver termination for HCBS waiver programs.

**State Assessments and Transition Plans**

Federal law requires that each state submit a transition plan that “sets forth the actions that the State will take to bring the specific waiver into compliance with” the new regulations. The final HCBS rule requires that the transition plan must include substantive information about changes to the state’s HCBS programs in order to reach compliance. Additionally, the rule dictates that states must engage publically and preferably early in an assessment of their existing HCBS service array and determine which settings are not compliant with the rule.

Once this assessment is complete, the state must develop and publically vet a transition plan to be approved by CMS. States have up to five years to transition into compliance, but the due dates of state transition plans are dependent upon dates for HCBS waiver application, renewal or amendment to existing state plans. New waiver applications must be compliant with the rule as of January 1, 2015.

**Opportunities for Advocacy and Additional Stakeholder Resources**

It is critical that advocates and stakeholders weigh in during the transition plan drafting and review process to evaluate these plans and identify and request improvements. A collaboration of Developmental Disabilities Network Partners created a website (www.hcbsadvocacy.org) for stakeholders and advocates to learn about the regulations and individual state progress toward compliance.

The website includes a state-by-state section with resources, dates and deadlines, state documents, news and other information from each state. Additionally, advocates can find national resources to provide further background, context and analysis of the HCBS settings rule including tips for consumer advocates, a worksheet for stakeholders to assess HCBS setting compliance, and a template letter to assist with commenting on transition plans. Additional information from CMS is also available on the site.

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If you have questions or concerns about this Advocacy Alert or n4a’s policy positions, please contact Autumn Campbell at acampbell@n4a.org and Amy Gotwals at agotwals@n4a.org.