

To: Kylee Hope, Director DDRS

From: Steve Cook, President/CEO, INARF  
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RE: Statewide Transition Plan for Compliance with Home and Community-Based Services Final Rule

Date: August 25, 2016

Thank you for the opportunity to comment on the amended Statewide Transition Plan (STP) for compliance with Home and Community-Based Services (HCBS) Final Rule. INARF applauds the state agency for the importance it places upon obtaining public input from a wide range of stakeholders in developing the Statewide Transition Plan, and is confident that the feedback received will be carefully considered in the final development of the plan. Please know that beyond our written comments, INARF is dedicated to assisting the state agency in any way appropriate to improve systems and services to individuals with disabilities.

INARF is the principal statewide trade association representing agencies that serve Hoosiers with intellectual and developmental disabilities. INARF Members often play a lifelong role in the lives of those they serve by providing a continuum of services that in many instances stretches from birth to death and across all facets of life in their chosen community. Further, INARF and its members are committed to ensuring Indiana's system of services and supports for individuals with intellectual and developmental disabilities offers maximum options, access, and choice. To that end, we appreciate the opportunity to provide our feedback on the draft State Plan. INARF has also encouraged its member agencies to submit comments in response to your request. We appreciate in advance your thorough review and consideration of their feedback.

Based on INARF's review of Centers for Medicare & Medicaid Services approved state plans, Indiana's modern approach to community integration over the last ten years brings the state close to compliance with the HCBS Final Rule. Unlike other states, Indiana has closed its state-run institutions and is focused on delivering conflict-free case management services. Additionally, our state has already been focused on improving the Person-Centered Planning process.

Overall, we are encouraged by the addition of information about the revisions needed to Indiana Code, Indiana Administrative Code, the Waivers, service definitions, policies, and procedures. We appreciate the updates concerning the Individual Experience Survey, site specific assessments, and the Residential and Non-Residential Settings self-surveys. The clarifications regarding heightened scrutiny are also helpful.

In addition to these general observations, INARF offers comments on some key areas that should be addressed to provide additional information about the transition process. Specifically, INARF recommends the following:

#### PURPOSE SECTION

- INARF recommends revising the language "receive services in the most integrated setting" to "receive services in the most integrated setting **consistent with individual needs.**"
- In the discussion of the HCBS Final Rule, INARF recommends revising the language from "full access to the greater community" to "access to the greater community." The CMS guidance did not include "full" and this term is difficult to define.

## DIVISION OF DISABILITY AND REHABILITATIVE SERVICES SECTION

### Section 1: Systemic Assessment

#### Systemic Settings Crosswalk

INARF is encouraged by the inclusion of additional information concerning the Systemic Settings Crosswalk, particularly the discussion of needed revisions to Indiana Administrative Code 460, the Waivers, and service definitions and projected timelines for the changes. INARF appreciates the process and the length of time required to change Indiana Code and Indiana Administrative Code. We recommend that DDRS should complete the code revisions prior to promulgating changes in policies, procedures, the Waivers, and service definitions. Completing revisions to the IC and IAC prior to the other changes will allow for greater continuity and consistency between these sources and avoid the development of conflicts between these sources which would cause confusion among providers, case managers, families, and individuals receiving services. Additionally, the proposed timeline for changes to IAC 460 was distributed during a recent Bureau of Quality Improvement Services (BQIS) Advisory Workgroup meeting. Based on this timeline, we understand that final edits and proposed changes to this section of Administrative Code will be complete by December, 2016. This timeline seems relatively short and significantly different than the timeline of May, 2018 referenced on pg. 60 of the STP. INARF requests clarification of the timeline for revisions to Administrative Code.

INARF also recommends that stakeholders such as providers, the Arc of Indiana, Case Management organizations, and individuals receiving services be included in the revision process for IAC, policies, procedures, the Waivers, and the service definitions. These stakeholders will provide good insight and perspective concerning how modifications would impact individuals served by the industry and their advocates. The inclusion of stakeholders in these processes could also decrease the number of comments received during the public comment period and subsequent modifications needed before these policies and processes could be finalized.

In addition to these comments, INARF would like clarification concerning the following questions:

- The Systemic Settings Crosswalk chart cites 460 IAC 6-20-2 concerning employment services and 460 IAC 6-3-58 concerning transportation as code that needs to be modified in order to meet HCBS standards. How does DDRS plan to modify these Administrative Codes to meet the requirement? Could INARF provide recommendations concerning code revisions that would meet the standards?
- The chart lists Individual Rights and Responsibilities (4600221014) as new policies. The next sentence states that this policy is “in the process of being updated to enhance support of CMS regulations.” Could DDRS clarify if this is a new policy that is being developed or an existing policy that is being updated?
- We have observed reverse integration in approved Statewide Transition Plans, for example, Tennessee. Are there any circumstances in which reverse integration would be an acceptable approach to community integration? Does DDRS have guidance for what practices will allow agencies to be compliant with the rule?
- CMS has stated that the implementation date for the HCBS Rule is March 2019. Why is Indiana’s stated implementation deadline July 2018?
- Does DDRS anticipate an increase in the amount of community habilitation services an individual receives in order to achieve compliance? If so, how it will provide appropriate funding for community habilitation / integration?

## SECTION 2: SITE SPECIFIC SETTING ASSESSMENT

## Opening Paragraphs

Could DDRS provide clarification concerning how the NCI data will be used to triangulate data as a way to validate ongoing compliance with the HCBS Final Rule?

### National Core Indicators (NCI) Data Review

NCI data was collected on approximately 740 individuals, which is approximately 4% of the population receiving Waiver services. Seventy percent of respondents lived with family, so significant statistical thresholds may be in doubt.

### 90-day Checklist Data Review

The plan states “The 90-day Checklist is an ongoing monitoring tool that will be used to ensure ongoing compliance after the March 2019 deadline.” Will the 90-day Checklist be the only means of ensuring compliance with the Rule following this deadline?

### Individual Experience Survey

The plan states “DDRS contracted with The Indiana Institute on Disability and Community (IIDC) to design, develop, and administer the survey to be completed by participants when able or the person who knows them best. This survey was administered by the participant’s waiver case manager to ensure all participants were reached.” These statements are confusing because they state that both IIDC and case managers administered the survey. INARF recommends revising this language to clarify that IIDC was contracted to “design, develop, and analyze” the survey while case managers administered it.

The plan states “DDRS determined the need for providers of identified residential and all non-residential settings to complete a self-assessment of their current policies and procedures to report compliance of HCBS Final Rule to the State. DDRS also concluded responses garnered from the IES will be used to validate the responses from the provider self-assessment to gain a global prospective of compliance.” Will the IES serve as the residential settings assessment, or will DDRS develop an additional self-survey assessment for residential settings?

Questions regarding the IES:

Will the Individual Experience Survey be administered and analyzed periodically to collect longitudinal data? If not, what other methods will be utilized to measure ongoing compliance?

### Site Specific Assessment

The plan states “DDRS has determined individualized supported employment and individualized community day activities (referred to as Extended Services and Community-Based Habilitation-Individual in our waivers) meet the HCBS requirements due to only providing Community-Based Habilitation Individual in the greater community and Extended Services providing supports to individuals who are in integrated competitive employment.” Could DDRS clarify why Community Habilitation services in general are not presumed compliant? Will providers be required to do a self-assessment on Community Habilitation settings?

Comments and questions regarding the Setting Assessment chart:

- Under IES data, the chart contains typos in the word “revealed.”
- Under the IES Data column, the plan states “Analysis of the IES data revealed less than 100% compliance.” Does DDRS expect that the settings will ever be 100% compliant?

- The plan lists 1,044 sites as Settings identified that could meet the HCBS rule with Modifications; Provider owned or controlled residential settings. INARF recommends noting that there may be provider owned homes that require no modifications to meet the settings rule.
- The plan lists approximately 10 sites as Settings identified that could meet the HCBS rule with Modifications; Homes with more than 4 individuals residing together. Are these former group homes that were converted, and if so, will they need to be reduced to 4 clients?
- Regarding Settings that have the effect of isolating individuals; Residential settings where respondents to the IES indicated few social interactions outside of their home: The IES data may be problematic as providers have reported that IES survey outreach to provider personnel may be lower than reported on the individual surveys.
- Regarding Day Service Settings, Approximately 182 sites\*: In the Department of Aging section on page 8 under Adult Day Services, providers are assumed to have a high level of compliance to the HCBS rule based on a list of criteria which are also quite frequently present in Day Service settings regulated by DDRS. Will the criteria used by DA on page 8 of the STP for Adult Day Service settings also be used by DDRS to assess compliance of facility habilitation settings since these Adult Day Service settings and Facility Habilitation Service settings have much in common in their approach to services?
- If a part of an individual's Facility Habilitation includes time in the community, will there be a threshold for the amount of community based services the individual needs to receive?
- Regarding Congregate Settings of 4 or more homes located close together, Approximately 50 sites\*\*: What constitutes close proximity with regard to compliance with the rule? Is the density on a neighborhood street or in an apartment required to be 51% non-disabled or 51% non-IDD? HUD 811 programs and HUD 211 programs require serving people with disabilities in settings that may be categorically non-compliant with the settings rule. Has DDRS reviewed the HUD rules to determine whether or not these service settings are compliant or can achieve compliance? Other housing programs and funding sources such as Section 42, HOME, and Federal Home Loan Bank (AHP) reward and value maximizing housing opportunities for persons with disabilities. We suggest DDRS speak with the Indiana Housing and Community Development Authority (IHCDA) regarding funding for housing for persons with disabilities. State and Federal regulations already recognize settings funded through IHCDA as integrated settings.
- The Division of Aging section of the plan discusses concerns regarding the Adult Foster Care program not complying with the HCBS Rule. The DDRS section of the plan does not discuss Structured Family Caregiving, a similar program. Does DDRS anticipate that the Structured Family Caregiving program will comply with the HCBS rule?
- Could DDRS provide clarification around the issue of what the state is looking for in regard to day services?

### SECTION 3: VALIDATION OF PRELIMINARY SETTINGS INVENTORY

#### Residential and Non-Residential Settings

INARF appreciates the inclusion of additional information about the Residential and Non-Residential Settings self-surveys. We have identified the following questions concerning this process:

- Will providers receive their individual data collected in the IES?
- Could DDRS provide additional clarification concerning the development of the self-surveys for residential and non-residential settings?
- What types of policies, procedures, and documentation will providers need to submit to prove compliance?
- Could DDRS provide additional information concerning the desk review/validation process?
- Does DDRS have a projected timeline for completion of the desk review/validation process?

- Does DDRS have a projected timeline for completion of the site visits?
- Will the reviewers completing the site visits be DDRS or BDDS personnel, or does DDRS anticipate contracting this service out?

## SECTION 4: PROPOSED REMEDIATION STRATEGIES

### Heightened Scrutiny

INARF also appreciates the additional information provided concerning heightened scrutiny. INARF recommends clarifying what specific criteria DDRS has identified to determine if a setting isolates the individual from the broader community.

Comments regarding the Proposed Remediation Strategies chart:

- Regarding the Site Specific Assessments, have providers who are subject to further review been notified in order for them to begin remediation processes?
- Will the Comprehensive Settings Result Document be posted for public review and comment?
- Will revisions to the DDRS Provider Policy and Procedure Manual be able to be completed in 12/2017 without creating inconsistencies with IAC if the IAC revisions are not complete until 05/2018?
- Will all of the necessary IAC revisions be able to be finalized and promulgated in this timeframe?
- Does the timeline for completion of the IAC revisions match the timeline for completion of 460 revisions previously communicated in other DDRS communications?
- Regarding the Transition Taskforce, have members of this transition task force been identified? Has taskforce size been determined? How will DDRS insure against potential conflicts of interest with taskforce members? How will this relate to the existing HCBS workgroup?
- The plan states that DDRS will develop a process for provider sanctions and disenrollment for providers who have gone through remediation and continue to demonstrate non-compliance; however, there is already a process for provider sanctions and disenrollment. Could DDRS clarify the need to develop a new process and how this process will differ from the current process?

Thank you very much for your consideration of our comments on the Statewide Transition Plan. We hope you find that they are constructive and will assist you in planning and implementing a quality services for Hoosiers with disabilities.