



To: Kylee Hope, Director DDRS

From: Steve Cook, President/CEO, INARF  
Katy Stafford-Cunningham, Vice President—Public Policy, INARF  
Sarah Chestnut, Public Policy Analyst, INARF

RE: Statewide Transition Plan for Compliance with Home and Community-Based Services Final Rule

Date: February 17, 2017

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.

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 90-Day Checklist Data Review and the Individual Experience Survey. We applaud the inclusion of the explanation of provider assessments, the initial assessment data and determinations of compliance, and the information concerning the validation process, site visits, remediation strategies, and the Heightened Scrutiny process.

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:

**DIVISION OF DISABILITY AND REHABILITATIVE SERVICES SECTION**

**Section 2: Systemic Assessment**

**Systemic Assessment Crosswalk**

INARF applauds the changes to code, policies, and procedures that have been modified or drafted in pursuit of compliance with the rule. We note that some code, policies, and procedures state that language will be added, particularly 460 IAC citations. INARF appreciates the process and the length of time required to change Indiana Code (IC) and Indiana Administrative Code (IAC), and we noted that the Systemic Assessment section lists the timeline for completion of changes to IAC as

December 2017 and changes to IC as May 2018. This timeline seems aggressive for the amount of changes needed to achieve compliance. INARF requests clarification of the timeline for revisions to Administrative Code and recommends that the timeline may need to be adjusted.

INARF continues to advocate for the inclusion of stakeholders such as providers, the Arc of Indiana, Case Management organizations, and individuals receiving services 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:

- Will stakeholders have the opportunity to review and provide feedback concerning changes that have been made to code, policies, and procedures before these changes are fully implemented?
- Many items related to the 90-Day Checklist/Monitoring Checklist are marked as fully compliant or partially compliant. The link to this document in the STP currently does not work, so stakeholders cannot access this document to review it and provide their feedback concerning compliance. Could the link to this document be fixed or the document be shared with stakeholders prior to the comment period for the next version of the STP?
- The timeline for completion of many remediation activities for the 90 Day Checklist/Monitoring Checklist is listed as August 2016, yet one item is still stated to be partially compliant with language to be added (see STP page 67). Should the timeline for this item be revised to state the timeline when changes are expected to be completed?
- Concerning the Individual Rights and Responsibilities (4600221014) policy, the chart states that Language has been drafted to include all aspects of HCBS rule surrounding individual rights containing the right to make choices in life. Will stakeholders have the opportunity to review this draft language and provide feedback?
- The chart lists one IC citation related to seclusion and restraint that already fully complies with the HCBS Rule. Has DDRS identified any other specific Indiana Code changes that will be needed to achieve full compliance, particularly related to client rights? If so, when those changes will occur?

### SECTION 3: SITE SPECIFIC SETTING ASSESSMENT

#### 90-Day Checklist Data Review

INARF appreciates the additional information included in this version of the STP concerning the revisions to the 90-Day Checklist/Monitoring Checklist and its use for compliance measurement. We would appreciate additional clarification and detail concerning the requirements for “No” answers to be supported by a specific need and justified in the person-centered service plan. We would also request the addition of specific information concerning the enhancements to the Person Centered Planning process and the corresponding annual systemic verification process that DDRS will implement to ensure ongoing monitoring and compliance.

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

- What would the minimum requirement be for a specific need that would support or justify a No answer?
- Who decides if the specific need provides sufficient justification for the No answer?

- For cases in which the provider and the case manager do not agree, who would make the final decision concerning the need to submit a corrective action plan?
- Will the additional monitoring and compliance activities outlined in the STP significantly add to the workload of case managers? If so, what actions will be taken to address this?
- What kinds of revisions will be made to the provider enrollment process and the Compliance Evaluation and Review Tool (CERT) to measure ongoing compliance? Will stakeholders have the opportunity to provide feedback concerning these changes?

### Individual Experience Survey

INARF appreciates the additional information and clarification provided concerning the design, development, administration, and analysis of the Individual Experience Survey (IES), including the details concerning which entities were responsible for the completion of specific activities. While we acknowledge that the information concerning activities related to the survey describes how the survey process was designed to be completed, we question if the description reflects the reality of how the survey was completed. For example, the narrative in the STP states that “[t]he individual’s case manager was responsible for ensuring completion of the survey with the individual during their quarterly meeting.” However, the IES report indicates that only 70% of surveys were completed with case managers and the consumer participated in the completion of only 60% of the surveys. In addition, the data gleaned from the IES is now dated as it was collected from late 2015 to early 2016. While information for some waiver participants will be the same, it may be different for many.

Although the IES does provide data that serves as a starting point, the survey had some significant limitations and the data gleaned from it must be considered through the lens of these limitations. Because of the limitations of the data, we recommend that DDRS rely more on provider surveys and self-assessments, documentation received from providers, and site visits for determinations of compliance.

### Provider Assessment

INARF applauds the inclusion of additional information concerning the tiered evaluation process for determining each setting’s compliance. INARF appreciates the webinars, technical assistance sessions, tutorials, and FAQs issued by DDRS for the self-assessment and validation processes. We recommend including a brief explanation of the tiered evaluation process before the explanation of the provider self-assessments to provide greater clarity for stakeholders who are unfamiliar with the full process.

Comments and questions regarding the Setting Assessment chart:

- 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. Could DDRS provide clarification concerning why homes with **more than 4** individuals residing together are specifically identified as a potential issue?
- Regarding Settings located on the ground of or immediately adjacent to a public institution, could DDRS provide additional information concerning what these settings are and to what kinds of institutions they are adjacent?

- Regarding “Settings that have the effect of isolating individuals; Residential settings where respondents to the IES indicated few social interactions outside of their home”: Since site visits have not yet occurred to review these settings, we recommend changing the language to “Settings that **may** have the effect of isolating individuals.” The current language implies that they have already been found to be isolating. In addition, we have already noted the limitations of the IES and the data gleaned from this survey. We request additional information concerning these settings and how they may have the effect of isolating individuals.
- Regarding Day Service Settings, Approximately 182 sites and Congregate Settings of 4 or more homes located close together, Approximately 50 sites: INARF requests additional information concerning these settings and how they have the effect of isolating individuals. In addition, apartments are typically built close together. Individuals can choose to live in apartments or homes that are located close to the residences of other individuals with disabilities. How will DDRS determine if these instances are congregate settings, and why is 4 or more homes located close together cited as the threshold?

### Validation Process for Residential and Non-Residential Settings

INARF appreciates the inclusion of additional information about the validation process for residential and non-residential settings, especially the data concerning the Tier 1 analysis and the associated preliminary determinations of compliance.

We have identified the following comments and questions concerning this process:

- The language in the setting assessment chart and the narrative information regarding the 1,044 and 1,011 sites is inconsistent. The chart lists 1,044 sites that are provider owned or controlled while the narrative lists 1,011, with 1,044 sites requiring additional information before a determination can be made. We would appreciate clarification concerning the number of sites in each category.
- The narrative states that 18% of non-residential sites were found to be in compliance. Is it realistic to expect that the other 82% will be able to achieve compliance by the current stated deadline?
- Is the DDRS contracted entity completing all of the validation of the non-residential provider self-assessment responses and site visits?
- Could DDRS provide additional information concerning the comprehensive training and guidance staff of DDRS and the contracted entity did/will receive in order to complete the validation process and site visits?
- With 172 initially requiring a site visit, 109 sites requiring additional information, and an additional 19 that did not complete the survey likely requiring a site visit, does the contracted entity have the capacity to complete the validations and site visits? When are the site visits expected to be completed? Will there be sufficient time for the site visits to be completed, the results to be compiled and disseminated, and the corrective action plans to be developed and approved by DDRS by December 2017?
- When does DDRS anticipate that the secondary determinations of compliance and need for site visits will be completed and sent to providers?
- Could DDRS provide additional information concerning the site visits and what will occur during site visits? Has a comprehensive tool been developed for site assessors to complete at each site? How will accuracy and consistency be ensured?
- Again, due to the limitations of the IES, INARF recommends not relying too heavily on the data from the IES to validate compliance of providers’ responses.

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## Remediation Strategies

INARF appreciates the additional information concerning remediation strategies included in this version of the STP.

We have identified the following questions and comments related to remediation strategies:

- Could DDRS provide additional information concerning the template that will be developed for provider specific transition plans?
- How will findings of non-compliance be communicated to providers? How long will providers have after they receive their findings of areas of non-compliance to develop their provider specific transition plan/corrective action timeline and plan?
- Will providers have access to the tracking database to review the status of their remedial plans and the associated timelines, or will they have to request status updates from DDRS if they want to check on the status of their plans more often than the quarterly communications?
- Will DDRS or a contracted entity provide the technical guidance concerning completion of remedial plans?
- Will DDRS or a contracted entity complete the verification of completion activities including site visits and documentation review?
- Does DDRS anticipate that verifying completion of corrective actions for individual-specific remediation activities will significantly increase the workload of case managers?
- INARF recommends reviewing the dates outlined in the action item chart and revising the timeline for completion chart as needed to reflect updated timelines and dates of completion.
- INARF notes that there are several significant action items with a timeline for completion of December 2017. We recommend reviewing these action items and their timelines for completion to ensure that the identified timelines for completion are realistic. If not, INARF recommends revising them as needed.
- The timeline for completion of the Transition Taskforce is March 2017. Have members of the Transition Taskforce been identified? When will the taskforce be convened, and will meetings be open to the public? Will information and proposals from these meetings be disseminated to stakeholders for feedback?
- CMS has set the deadline for compliance with the HCBS Rule on March 17, 2019. DDRS has a significant amount of action steps to complete prior to this date. INARF believes that a lengthened timeline for compliance with the HCBS Rule in Indiana would enable providers to more easily achieve compliance and allow the transition period to be smoother and more successful for individuals, families, providers, and the state.

## Heightened Scrutiny

INARF also appreciates the additional information provided concerning heightened scrutiny, particularly the steps to determine if Heightened Scrutiny will be submitted to CMS. INARF requests that additional information concerning CMS' role in the Heightened Scrutiny process be added to the STP.

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.