

# COALITION for COMMUNITY CHOICE: GUIDANCE FOR STATES IMPLEMENTING CMS-2249-F/2296-F

*The Coalition For Community Choice Urges States to Support Expanding, Not Limiting, Home, Community and Employment Options Based on Individual Experiences, Choices and Support Needs, from a Full Array of Options.*

In March 2014, the Centers for Medicare & Medicaid Services (CMS) released final regulations for home and community-based services (HCBS) provided through its 1915(c) HCBS Waiver program, 1915(i) HCBS State Plan Option, and 1915(k) Community First Choice Option.

The CMS regulations ensure supports funded by HCBS waivers are person-centered and assessed based on the outcomes and experiences of individuals with disabilities receiving them. The burden now remains on States, with stakeholder input, to demonstrate that housing, employment, and support service settings are compliant with the new HCBS regulations.

It is imperative that State regulations do not limit residential and meaningful work opportunities and settings that exist or are being created, in local communities. The need is significant:

- 3.5 million individuals with I/DD are living with family caregivers who are often excluded from the workforce to support their family member. <sup>1</sup>
- Almost 1 million individuals with I/DD are living with a caregiver over the age of 60 who will soon be in need of support themselves. <sup>2</sup>
- Less than 250,000 Americans with I/DD were supported to move out of their family home in the past 20 years and waiting lists continue to grow. <sup>3</sup>
- Only 17% of individuals with I/DD earn more than \$150 a week. <sup>4</sup>
- An average of 40% of individuals with I/DD report feeling sometimes or often lonely. The highest reports of loneliness occur in family host / foster homes at 51%, and the lowest reports of loneliness occur in specialized institutional settings for those with I/DD at 37%. <sup>5</sup>

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**To ensure that an array of choices for individuals with disabilities are protected and options are expanded to meet the current and future need, the Coalition for Community Choice (CCC) offers the following guidance to states as they address state policy and procedures to comply with the requirements of the HCBS regulations:**

1. State policy and regulations should not create more restrictive criteria than the federal requirements for HCBS funding.

The HCBS regulations are the product of more than six years of public input and the criteria for HCBS settings are based on the outcomes and experiences of those with disabilities.<sup>6</sup>

2. All criteria for HCBS settings and assessment tools should be based on waiver recipient experiences and outcomes.

Criteria and assessments should NOT be based on physical characteristics, such as population density of waiver recipients or proximity to other services or employment opportunities. Home and community settings should be individually assessed for quality based on waiver recipient feedback. Setting size or physical characteristics are not indicators of institutional attitudes or abuse, thus should not be used.

3. Individuals with disabilities must not be restricted from, or fear loss of support services for, choosing or developing residential, work and community opportunities.

HCBS funding and person-centered planning processes should include the broadest range of opportunities for individuals with disabilities to access or develop without restrictions in HCBS funding. Local community partnerships are forming across the country to develop housing and employment solutions to meet the high demand for their citizens. Federal and state policies must not limit desired support service, employment, or housing choices, but should serve to expand options to address the severe need.

4. The Olmstead Decision, the Americans with Disabilities Act (ADA), and the Developmental Disabilities Assistance and Bill of Rights Act, all protect the right to be supported in individually determined least restrictive environments.<sup>7</sup>

These important protections are not mandates for forced integration; Olmstead expressly cautions against such an interpretation.<sup>8</sup> Thus, those who choose to live or work in a campus, farm-based, or intentional community setting should not be forced to change or limit their preference to be supported in such a setting. A least restrictive environment for one person may not be the least restrictive environment for another with different support needs or choices.

5. States should develop Transition Advisory Committees comprised of individuals with disabilities, families and caregivers of current and future waiver recipients, case managers, school transition specialists, and providers to increase accountability and collaboratively develop plans to meet the immediate and future needs of citizens who use waiver supports. All tools, assessments, policy revisions, and progress steps should be brought to this committee for feedback.

This is a critical need as individuals with disabilities have the right to fulfilling lives, just like everyone else.

<sup>1</sup> Page 6, <http://www.stateofthestates.org/documents/UnitedStates.pdf>

<sup>2</sup> Page 6, <http://www.stateofthestates.org/documents/UnitedStates.pdf>

<sup>3</sup> Page 2, <http://www.stateofthestates.org/documents/UnitedStates.pdf>

<sup>4</sup> <http://www.nationalcoreindicators.org/charts/?i=53>

<sup>5</sup> <http://www.nationalcoreindicators.org/charts/?i=107>

<sup>6</sup> Regulatory requirements of fully compliant HCB settings and those settings that are excluded: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Requirements-for-Home-and-Community-Settings.pdf>

<sup>7</sup> See, *Olmstead v. L.C.*, 527 U.S. 581 (1999); and *Developmental Disabilities Assistance and Bill of Rights Act*, 42 USC 15000 et seq. (2000).

<sup>8</sup> *Olmstead* at 601-602 (“We emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings...Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it.”)