



Disability Rights Ohio
50 W. Broad St., Suite 1400
Columbus, Ohio
43215-5923

614-466-7264 or 800-282-9181
FAX 614-644-1888
TTY 614-728-2553 or 800-858-3542
disabilityrightsohio.org

Sent via email to HCBSfeedback@medicaid.ohio.gov, facsimile to (614) 466-6945, and regular mail

June 5, 2015

Implementing a Medicaid 1915 (i) Program for Adults with Severe and Persistent Mental Illness in Ohio
Ohio Department of Medicaid
P.O. Box 182709, 5th Floor
Columbus OH 43218

Re: *Implementing a Medicaid 1915 (i) Program for Adults with Severe and Persistent Mental Illness in Ohio*

Ohio Department of Medicaid:

Disability Rights Ohio, the Ability Center of Greater Toledo, and Advocates for Basic Legal Equality collectively submit this letter to comment on Ohio's proposed new 1915(i) Medicaid state plan amendment.

Disability Rights Ohio is a non-profit organization and the protection and advocacy system in Ohio, and its mission is to advocate for the human, civil and legal rights of people with disabilities across the state. The Ability Center of Greater Toledo is a Center for Independent Living serving seven counties in northwest Ohio. The Ability Center seeks to assist people with disabilities to live, work, and socialize within a fully accessible community through our core services and programming. Advocates for Basic Legal Equality, Inc. is the nonprofit legal aid provider for thirty-two counties throughout Northwest Ohio, and provides legal services to low-income individuals, including persons with mental illness.

Whenever designing, expanding, or creating new programs or services for people with disabilities, the state of Ohio must do so in light of its legal obligations, particularly under Title

II of the Americans with Disabilities Act (ADA) and the U.S. Supreme Court's decision in *L.C. v. Olmstead*, 527 U.S. 581 (1999), which require the state to administer its programs and services to people with disabilities in the most integrated setting appropriate to their individual needs.

In Ohio, there are a number of systemic obstacles which prevent people with mental illness from being able to live and work in integrated settings in our communities. Far too often, because of the absence of a robust home and community-based mental health system, people with mental illness are needlessly segregated in nursing facilities and other residential settings, hospitals, and even prisons, and jails, which is a violation of their rights under federal law. Currently, for example, there are thousands of people with mental illness unnecessarily institutionalized in nursing facilities throughout the state. The recent creation of the "Recovery Requires a Community" program has begun to make progress on this systemic issue and to help transition people back into the community, but much work remains.

It appears the state has proposed a new 1915(i) state plan amendment because of changes to Medicaid eligibility as Ohio transitions from a 209(b) state to a 1634 state and eliminates the spend-down option. However, this is an opportune time to greatly improve the mental health system in Ohio and ensure that people with mental illness through the state have access to an expansive array of home and community-based services to support them in integrated settings in the community. Below are specific ways in which the state's proposed 1915(i) state plan amendment can be revised to achieve these very important goals.

1. Ohio should ensure broad financial eligibility criteria for the proposed 1915(i) program.

On pages seven and eight of the application, under financial eligibility, the state checked 2(a), but not 2(b), thus limiting the number of people who could benefit from the proposed 1915(i) program. Box 2(b) is preferable since any person who is eligible for home and

community-based services (HCBS) under an approved 1915(c) waiver or section 1115 waiver and whose income does not exceed 300% of the SSI federal benefit rate would meet the financial eligibility criteria. Instead, the state proposes to cover only those individuals whose income is under 150% of the federal poverty level and who meet the needs-based criteria, which is much narrower.

People with slightly higher incomes should be able to benefit from this new program too, and many people who are eligible for HCBS waiver services may not qualify under the needs-based criteria. The possible exclusion of people enrolled in waiver programs would be unfortunate since the new services covered under the proposed 1915(i) program (recovery management, supported employment, and peer recovery support service) may not be otherwise covered. As stated above, the state should commit to the broadest coverage possible. The intent of the 1915(i) program is to maximize integration of persons with disabilities into their communities. Thus, the Department of Medicaid should include those who qualify for HCBS waivers, under 2b of page eight, in its financial eligibility criteria for the 1915(i) program.

2. The proposal should extend the needs-based eligibility criteria to persons with mental illness who would benefit from HCBS to integrate into their communities.

On pages eleven through thirteen, ODM's proposed needs-based criteria for eligibility is too stringent. As written, it would limit eligibility only to those with a recommendation for *intensive* community-based care through ANSA, and but for HCBS, "would not be maintained in the community and would relapse to previous levels of functioning." It further limits eligibility to only those persons who have already spent significant time institutionalized, or who have visited an emergency department with a primary psychiatric diagnosis.

The state should extend its 1915(i) program to persons with mentally illness in a much broader way so that those who need HCBS in order to integrate into their community or to

remain integrated can have access to this program. But the proposed criteria would prevent many people who need the proposed HCBS from accessing it. Allowing access to the program only to persons who are at risk of “relapse to previous levels of functioning” is too narrow. Many persons with mental illness who are not necessarily at risk of relapse need the services to better integrate into their communities.

Similarly, many persons with mental illness may need HCBS, even though they have not spent time in an institutional setting, and many persons with mental illness need HCBS to prevent them from entering into an institutional setting. The proposed eligibility limitations could give persons with mental illness an incentive to actually become institutionalized in order to access the services.¹ The ADA or *Olmstead* protects people who are at risk of institutionalization, and one need not be admitted to a facility in order to have the legal right to home and community-based services he or she needs.² This policy is inconsistent with the purpose and intent of 1915(i) under the Affordable Care Act and the ADA and *Olmstead*.³ To be sure, persons who spend time in institutions should access the program, but the state must also allow those who would like HCBS to *avoid* institutionalization equal access. Thus, we recommend that the Department of Medicaid put in place less stringent needs-based criteria for eligibility of the 1915(i) program.

¹ Page 12 of the form “§1915(i) Attachment 3.1 G or J” provides that the applicant must meet certain risk factors during the five years prior to enrollment, including “more than 30 consecutive days of psychiatric inpatient services,” “discharged from correctional facilities with a history of inpatient or outpatient behavioral health treatment,” etc.

² According to the U.S. Department of Justice, which interprets and enforces the ADA: “[T]he ADA and the *Olmstead* decision extend to persons at serious risk of institutionalization or segregation and are not limited to individuals currently in institutional or other segregated settings. Individuals need not wait until the harm of institutionalization or segregation occurs or is imminent. For example, a plaintiff could show sufficient risk of institutionalization to make out an *Olmstead* violation if a public entity’s failure to provide community services or its cut to such services will likely cause a decline in health, safety, or welfare that would lead to the individual’s eventual placement in an institution.”

³ See CMS, Improving Access to Home and Community Based Services, SMDL# 10-015, available at <http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD10015.pdf>.

3. *The proposal should target a broader category of persons with mental illness who could benefit from HCBS.*

As of 2010, close to 418,000 adult residents of Ohio lived with a serious mental illness.⁴ Yet Ohio's public mental health system provided services to only 22 percent of adults who live with serious mental illness in the state.⁵ In short, there is a great need to provide services to people with mental illness in Ohio, including the proposed services in Ohio's proposed 1915(i) program: peer recovery support; recovery management; and supported employment. According to the federal Centers for Medicare and Medicaid Services (CMS), the purpose of the 1915(i) provisions is to make HCBS available to more persons.⁶ Along with that goal, states are no longer able to establish waiting lists for services, limit the number of people receiving the service, or limit the services geographically.⁷

While states are allowed to create targeted groups, the August 10, 2010 letter from CMS to State Medicaid Directors assumes that states will select targets in order to direct different kinds of services to each target group as appropriate for their unique needs. Ohio's proposal would not provide unique services to multiple target groups. Instead, it uses the targets provision to limit who may access services. The limitations do not relate to the actual need for specified 1915(i) services.

⁴ National Alliance on Mental Illness, *NAMI State Advocacy 2010, State Statistics: Ohio*, available at http://www2.nami.org/Content/NavigationMenu/State_Advocacy/Tools_for_Leaders/Ohio_State_Statistics.pdf.

⁵ *Id.*

⁶ CMS, *supra* note 2 at 1.

⁷ *Id.* at 2.

CMS's August 10 letter gives an example of a rather broad target group, persons with "chronic mental illness."⁸ This target would encompass a significantly larger number of persons than Ohio's current proposal to limit services only to persons with schizophrenia, bipolar disorder, or major depressive disorder. Many people in Ohio suffer from other mental illnesses that place them at risk of institutionalization and make it difficult for them to live in the community without support. Given the great need for access to HCBS by those with chronic mental illness, we urge the Department of Medicaid to select broader targets for its proposed 1915(i) services.

Conclusion

The state should broaden the availability of the proposed 1915(i) program to a greater number of persons with mental illness. Many of the planned limitations on eligibility appear unnecessary and inconsistent with the purpose of 1915(i). A growing body of research and literature support the fact that making HCBS services, including supported employment, available to people with mental illness creates a powerful benefit, not only to the individual, but to the state as well.⁹ We encourage ODM to make this new program available to the many persons with mental illness who need HCBS to live independently but who would be excluded by the current proposal.

Respectfully,

⁸ *Id.*

⁹ *See e.g.* Bazelon Center for Mental Health Law, *Getting to Work: Promoting Employment of People with Mental Illness* (Sep., 2014), available at <http://www.bazelon.org/LinkClick.aspx?fileticket=TWG5AEIvqjs%3D&tabid=738>.

/s/ Katherine Hunt Thomas

Katherine Hunt Thomas
The Ability Center of Greater Toledo

/s/ Kevin Truitt

Kevin Truitt
Disability Rights Ohio

/s/ George Thomas

George Thomas
Advocates for Basic Legal Equality, Inc.