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Suellen Galbraith  
Director of Government Relations

### **CMS Issues Advanced Notice of HCBS Waiver Regulation**

As part of President Obama's announcement regarding the administration's *Year of Community Living* initiative, Cindy Mann, director of CMS' Centers on Medicaid and State Operations announced that, "CMS is also inviting comments on proposed changes to current regulations giving states greater flexibility to serve people based on their individual needs rather than on their diagnosis." Mann referred to a CMS rulemaking process that would improve current regulations by removing federal barriers that stand in the way of states' ability to design needs-based, person-centered home and community-based waiver programs.

CMS issued an [Advance Notice of Proposed Rulemaking \(ANPRM\)](#) in the June 22<sup>nd</sup> *Federal Register* announcing the **intention of the agency to publish proposed** amendments to Medicaid's 1915(c) home and community-based services waivers regulations.

### **Option for Multiple Target Group and Needs-Based HCBS Waiver**

Since 1981, states have had the authority to waive specific federal Medicaid statutory requirements so that a state may offer home and community-based services to state-specific groups of Medicaid beneficiaries who meet a level of institutional care that is provided in the Medicaid State plan. Section 1915(c) allows states to waive *comparability* and target three population groups: aged or disabled, or both; persons with mental retardation or developmental disabilities, or both; and persons with mental illness. Currently, there are more than 350 different HCBS waiver programs operated by the states, serving 1 million individuals.

CMS believes that allowing states the option to design HCBS waiver programs serving more than one target population will enhance state flexibility, minimize administrative burden, allow states to design person-centered delivery systems across diagnoses or existing dedicated funding streams, facilitate compliance with the Americans with Disabilities Act and *Olmstead* decision, and facilitate a more needs based service system.

In order to assure that individuals supported by HCBS waivers receive individualized services, CMS plans to require that: (1) the service planning process be *person-centered*, and (2) the services specified in the plan of care be based on the needs of the individual, not an average need among one target group. CMS also intends to update the language related to target groups to reflect more contemporary, person-first language.

## Home and Community-Based Characteristics

While CMS has supported state efforts to serve individuals in the least restrictive setting possible, *home* and *community* have never been explicitly defined. CMS has attempted to address the problem of institution-like living arrangements indirectly through its review of state service definitions for HCBS—but, the agency believes it has had limited success in this area.

It is CMS' intention to publish as part of the proposed rule, requirements related to identifying the home and community-based *character* of the settings in which HCBS participants live or receive supports. CMS is considering publication of a proposed rule that would provide that states must define, and CMS must approve, standards for home and community under HCBS waivers. CMS believes that proposed requirements in this area will provide HCBS participants with increased choice and notice of housing alternatives and will provide consistency across other statutory authorities—for example, Money Follows the Person Demonstration Program and the Deficit Reduction Act section 1915(i) HCBS state option.

CMS is planning to propose that individuals receiving HCBS waiver services must reside in the home or community, in accordance with either of two criteria:

- resides in a home or apartment not owned, leased or controlled by a provider of any health-related services; or
- resides in a home or apartment that is owned, leased or controlled by a provider that meets standards for community living, as defined by the state and approved by the HHS Secretary.

CMS does not contemplate specifying criteria for home and community standards in the proposed regulation, but instead solicits stakeholder guidelines for state definitions.

Last year, CMS invited ANCOR, along with several other national organizations, to provide early input prior to the agency issuing this advance notice. ANCOR provided comments and also urged the agency to convene a face-to-face stakeholders' meeting on changes CMS was contemplating.

ANCOR will be providing written comments on the ANPRM developed in conjunction with its Government Relations Committee. **We welcome member and LINKS reader comments on this advanced notice.** Please send your comments by August 3<sup>rd</sup>, with "CMS ANPRM" in the subject line, to Suellen Galbraith at [sgalbraith@ancor.org](mailto:sgalbraith@ancor.org). The CMS concepts and background information on the notice of advance rulemaking is available online at <http://edocket.access.gpo.gov/2009/pdf/E9-14559.pdf>.