



Institute on Public Policy
for People with Disabilities

Promoting policy and practice that supports all people with intellectual and developmental disabilities
to access services and resources to pursue meaningful and valued lives

Illinois State Transition Plan Summary

February 2020

Background

The Centers for Medicare and Medicaid Services (CMS) published final regulations governing Home and Community Based Services (HCBS) including the Community Integrated Living Arrangements (CILA) and Developmental Training (DT)/Community Day Services (CDS) programs. The regulations, which were finalized on March 17, 2014, require that any setting that provides Medicaid services under subsections 1915(c), 1915(i), or 1915(k) demonstrate the characteristics of a community-based, rather than an institutional setting, and the regulations provide guidance to distinguish the two. Under the new rule, states that provide Medicaid services through any of those three subsections of section 1915 of the Social Security Act must ensure that their HCBS provider settings comply with the new regulations by March 17, 2022. Illinois oversees 9 separate waivers affected by the rule; the Institute's comments will focus specifically on the waivers overseeing I/DD services.

The 2014 CMS HCBS Settings Rule requires states to submit a State Transition Plan (STP) to CMS summarizing the activity the state will undertake to come into full compliance with the Rule requirements. Illinois remains one of 6 states that has yet to receive initial approval from CMS for its STP. Illinois last published its STP for public review and comment in 2016. Since that time, the state has been in communication with CMS and has undertaken steps to address questions/concerns/issues expressed by CMS with the proposed STP. On 2/5/20, Illinois again posted the draft STP for public review and comment which is due by 3/5/20. This period allows stakeholders to share questions/comments/concerns they may have with the proposed STP, with the assurance that comments require a response from the state and allows for CMS to directly see public reaction to the STP.

The entire STP is 290 pages including the following sections which are likely of most interest to the I/DD community:

- Executive Summary, background and major revisions (pgs. 4 – 17)
- Appendix A: Major Rule, Policy and Form Changes to I/DD Waivers (pgs. 19 – 20)
- Appendix B-3: System Remediation Grid DD HCBS Programs (pgs. 33 – 51)
- Appendix F: Heightened Scrutiny Sites (pgs. 107 – 109)
- Appendix G: Action Steps to Bring Illinois Into Compliance (pgs. 110 – 115)
- Appendix O-3: Summary of Public Comments and State Response to 2016 STP (pgs. 287 – 290). This section is particularly helpful to see how the state categorized the most recent set of public comments and general responses to these.

The Institute has reviewed the entire document and shares the following suggested areas of comment for those that may not be in a position to absorb the entire 290-page document. Robust public comment is essential to identifying systemic issues which may impede Illinois' ability to fully comply with the spirit and requirements of the 2014 Rule. The absence of substantial public comment could easily be interpreted as support for the current state of the community system and confidence that the Illinois I/DD HCBS system is well-positioned to fully comply with the rule requirements by 2022. Perhaps the best evidence of the impact of public comment appears on page 287 of the STP where the state explains the rationale for reclassifying an HCBS setting that was subject to Heightened Scrutiny to Level 1 (fully compliant) as a result of input received through the public comment period.

Progress Since Last Public Comment Period

The state has clearly devoted substantial resources and time toward updating the STP including aligning rules, regulations and policies with the requirements of the 2014 Rule. We acknowledge and commend the state for the action taken and look forward to continued progress in these areas.

Impact of Workforce Crisis

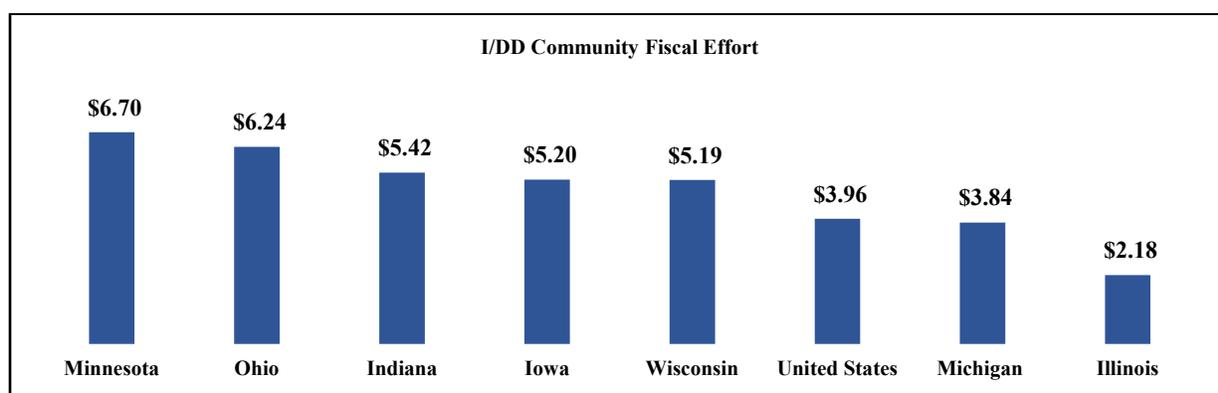
It is widely acknowledged and accepted that the I/DD community system is facing an extreme challenge in recruiting and retaining a stable direct support workforce. The provider rate study underway, the Ligas Court Monitor's continued finding of non-compliance and recent reports highlighting families' inability to secure community placement even when funding has been awarded, are all evidence of this reality. Much of the content of the rule relates to personal choice, autonomy and individualization in service delivery. We are concerned that the workforce

crisis is causing reduced staffing levels in many HCBS settings and an inevitable impact on the ability of people receiving HCBS services to execute choice, autonomy and individualization in their daily lives.

Consider a CILA setting with 8 residents (65% of all CILA settings have 6+ residents, with more people living in 8-person settings than any other size) where people want to engage in a variety of individual activities that require staff support and/or transportation. It's unlikely that an adequate number of direct support staff would be on duty to enable residents to engage in separate activities. Another example is the typical weekday routine in many (most?) CILA homes; residents wake at the same time, eat breakfast at the same time and depart the residence at the same time in the same vehicle for the same destination (day program). From both a staffing and reimbursement perspective (CILA agencies are not reimbursed for daytime hours), any significant departure from this scenario is unlikely without a significant investment of resources and rate structure modification.

Reimbursement Levels

A strong factor in the workforce crisis and the challenge Illinois faces in complying with the HCBS rule is the inadequacy of reimbursement rates for HCBS services. Illinois ranks 46th lowest nationally in investment in community services (State of the States in Disability Services, 2017) and compares unfavorably to our neighboring Great Lakes states as well as the national average.



Community spending for persons with intellectual and developmental disabilities (I/DD). I/DD spending is divided by statewide personal income, which has been divided by \$1,000, resulting in \$s and cents per \$1,000 of personal income.

Acknowledging recent modest increases in DSP and provider reimbursements as well as the ongoing rate study commissioned by the state, we remain concerned that without a significant and soon investment of resources in the HCBS system, Illinois will not be able to demonstrate compliance in 2022. While the STP highlights several process-oriented changes underway in the System Remediation Grid (pgs. 33 – 51), these alone and without accompanying investment that will enable HCBS providers to actually meet the new requirements, will not change the practice of HCBS service delivery nor the experience of people receiving those services. It's noteworthy that at 19 pages, the DD waiver grid is the lengthiest of any of the 9 waivers and nearly double the size of the next closest waiver program. Also noteworthy is that nowhere in the "Action Steps" column does it indicate that rate inadequacy will be addressed. We fear that while Illinois may demonstrate compliance on paper in 2022, the experience of people receiving HCBS services will change little from the current practice.

Classification of HCBS Settings

The STP summarizes the self (provider) assessment process and classification of HCBS settings into one of four categories:

1. Settings that fully align with the federal requirements
2. Settings that do not comply with the federal requirements but may comply with modifications
3. Settings that are unable to meet the federal requirements and require removal from the HCBS program and relocation of individuals; and
4. Settings that are presumably not home and community-based (i.e., are presumed to be institutional), but for which the State may provide justification/evidence to federal CMS through the heightened scrutiny process to prove that the settings do not have the characteristics of an institution and do have the qualities of home- and community-based settings.

The self-assessment process along with on-site visits from state agencies and desk review resulted in 78% of I/DD HCBS settings being categorized as fully in alignment with the federal requirements (Category 1) and an additional 16% of settings not in compliance but may comply with modifications (Category 2). Illinois is not generally regarded as a national leader in community I/DD services. The finding that 94% of current HCBS I/DD settings fully comply

with the requirements of the 2014 Rule or may comply with modifications could be perceived as optimistic, given the transformative intent of the Rule. Indeed, if 94% of *Illinois* settings in their current state are fully or near-compliant with the settings requirements, the energy and effort CMS has invested for well over a decade in creating the rule, seems unnecessary. Alternatively, we may find that CMS has concerns with the classification process which yielded such a high compliance rate, which could contribute to our status as one of only 6 states awaiting initial approval for the STP.

Explanation of “Heightened Scrutiny” Classification and Process

Page 13 of the STP outlines the Heightened Scrutiny process and page 108 includes a listing of HCBS settings currently under Heightened Scrutiny. Per the STP, the Heightened Scrutiny process presents an opportunity for the state to provide evidence to CMS that identified settings indeed do meet the requirements of the rule, most notably, that a site is not institutional and that it does have the qualities of a home and community-based setting as described in the federal settings rule. Per the STP and conversation with HFS, a separate public comment period will provide an opportunity for stakeholders to comment on whether the listed sites should or should not be deemed HCBS-compliant.

The STP indicates that all Community Day Service agencies serving 100 or more individuals in one building will receive an onsite assessment to ensure they meet the qualities of home and community-based settings as defined in the federal settings rule (see 42 CFR 441.301(c)(4)(i) through (v)). A letter will be sent in advance of an on-site visit to gather current information on site configuration, the number of people being served, etc. Additionally, other waiver sites identified as needing an on-site assessment, either based on patterns identified through assessments conducted in the above groupings or as part of ongoing monitoring efforts will also be subject to onsite review. The 100-person threshold for triggering closer assessment compares to Tennessee’s STP (which was the first to obtain full CMS approval) which established 4+ as the size of a setting that would be subject to heightened scrutiny.

The above comments are intended as constructive insight and observations with the belief that all stakeholders in both the public and private sector share the common goal and vision of assuring that people with intellectual and developmental disabilities supported by the HCBS system have the opportunity to maximize their independence, autonomy and presence and participation in their local communities.

Comments can be submitted to the following email address by 3/5/20 HFS.SWTransitionPlan@illinois.gov

Upcoming Opportunities to Learn More

The Institute is available for further discussion/clarification on any items related to the STP; contact kathy@instituteonline.org

February 27, 2020

10:00 – 11:30 a.m.

Community Alternatives Unlimited

8765 W. Higgins Rd. Ste. Suite 300

Chicago

RSVP preferred, but not required, to Elizabeth at eramossosa@cau.org

March 3, 2020

10:00 – 11:30 a.m.

Illinois State Capitol

501 South Second Street, Room 122B

Springfield

No RSVP required

Illinois Council on Developmental Disabilities and The Arc of Illinois are hosting a webinar:

Tuesday, February 25

2-3:30 pm

[Register here!](#)

Link to the [Illinois STP](#)