

PAR Call

Proposal to Increase Community Integration

Feb. 13, 2017

Pa. Services

- *Pa regulations: **Vocational facility*** —A premise in which rehabilitative, habilitative or handicapped employment or employment training is provided to one or more disabled clients for part of a 24-hour day.
- *Pa Regulation: **Adult training facility*** —A building or portion of a building in which services are provided to four or more individuals, who are 59 years of age or younger and who do not have a dementia-related disease as a primary diagnosis, for part of a 24-hour day, excluding care provided by relatives. Services include the provision of functional activities, assistance in meeting personal needs and assistance in performing basic daily activities.

Facilities, People Served and Expenditures

465 facilities

Type of Service	People Served	Total Expenditures	Average Paid Amount Per Person
Sheltered Workshops /Prevocational	8,811	\$87,854,356	\$9,971
Adult Training/Day Habilitation	11,708	\$194,180,668	\$16,585
Total	20,519	\$282,035,025	

Proposal to Achieve Greater Community Integration in Facility Based Services

New Service Definition – *Community Participation*: includes vocational facility and adult training facility but requires time in community integrated activity. Allows providers to modify service models to continue to participate in the program.

- 25% community integration by Jan. 2018
 - 50 % community integration by June 2018
 - 75% community integration by Jan. 2019
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- Limit size of facility to 100
 - Limit size of new facilities to 15

What is behind the change

The Americans with Disabilities Act

- The title II regulations require public entities to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”⁵ The preamble discussion of the “integration regulation” explains that “the most integrated setting” is one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible

Workforce Investment and Opportunity Act (WIOA)

- Defined competitive integrated employment as full or part-time work at minimum wage or higher, with wages and benefits similar to those without disabilities performing the same work, and fully integrated with co-workers without disabilities. Limits education systems’ use of sheltered workshops
- “Limitations on use of subminimum wage” - no entity which holds a 14(c) special wage certificate under the Fair Labor Standards Act of 1938 (FLSA) may compensate an individual with a disability under the age of 24 at a wage which is less than the federal minimum wage unless...a series of requirements are met
- A requirement for state VR agencies to set aside at least 15 percent of their Federal VR program funds to provide pre-employment transition services to assist students with disabilities make the transition from secondary school to postsecondary education programs and competitive integrated employment

CMS HCBS Rule

- Conflict Free Case Management
- Requires Person-Centered Planning
- Settings must meet the Integration Rule - “Provides opportunities to seek employment and work in competitive integrated settings; ensures the individual receives services in the community to the same degree of access as individuals not receiving HCBS Waiver.”

§ 441.530 Home and Community-Based Settings Rule

- (a) States must make available attendant services and supports in a home and community-based setting consistent with both paragraphs (a)(1) and (a)(2) of this section.
- (1) Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:
 - (i) **The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.**
 - (ii) The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
 - (iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
 - (iv) **Optimizes but does not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.**
 - (v) Facilitates individual choice regarding services and supports, and who provides them.

§ 441.530 Home and Community-Based Settings Rule cont.

(2) Home and community-based settings do not include the following:

- (i) A nursing facility;
- (ii) An institution for mental diseases;
- (iii) An intermediate care facility for individuals with intellectual disabilities;
- (iv) A hospital providing long-term care services; or
- (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or **any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution** unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

CMS guidance about settings that have the effect of isolating HCBS recipients from the broader community.

- Designed specifically for people with disabilities or with specific disabilities
- Comprised primarily of people with disabilities and staff providing services
- PWD are provided multiple types of services onsite
- PWD have limited interaction with the broader community
- Use restrictive interventions

<https://www.medicaid.gov/medicaid/hcbs/guidance/index.html>

CMS Affirms Rule in North Dakota Program

- CMS reviewers conducted general observations of the facility-based Day Program which included services to twelve individuals who live off-site in community settings, but come on-site to attend this Day Program. This program is under ICF/IID leadership, but separately licensed as a North Dakota Day Program. Activities in this program take place on the ICF/IID campus alongside ICF/IID residents, under the direct supervision of the ICF/IID staff. Staff engaged in programs serving individuals who are receiving home and community-based services must complete additional training requirements. **Approximately 10 of the 12 individuals in this program spend the majority of their day on-site** engaged in such activities as mail and package delivery, swimming, a sensory stimulation room, the greenhouse, laundry, etc. Individuals are transported back to their community living arrangements at the end of the day. Person-centered service plans were reviewed for these individuals as well.
- Information submitted by the state for the heightened scrutiny review is not sufficient for the facility-based Day Program. **CMS finds that the Day Program setting does not meet the characteristics of home and community-based because the majority of individuals receive most of their services at the facility-based program and are not integrated into the greater community. Therefore, the state must take significant action to ensure greater community integration during the transition period, including providing increased opportunities for individuals to participate in community-based, rather than facility-based work, activities, and services and supports if the state wishes to continue using this setting for home and community-based services.** If this is the state's intent, the state will need to add information into the STP about the actions that will be taken during the transition period to bring the non-residential setting into compliance. Until that time, the institutional presumption stands.

What other states are doing

Settlement Agreements

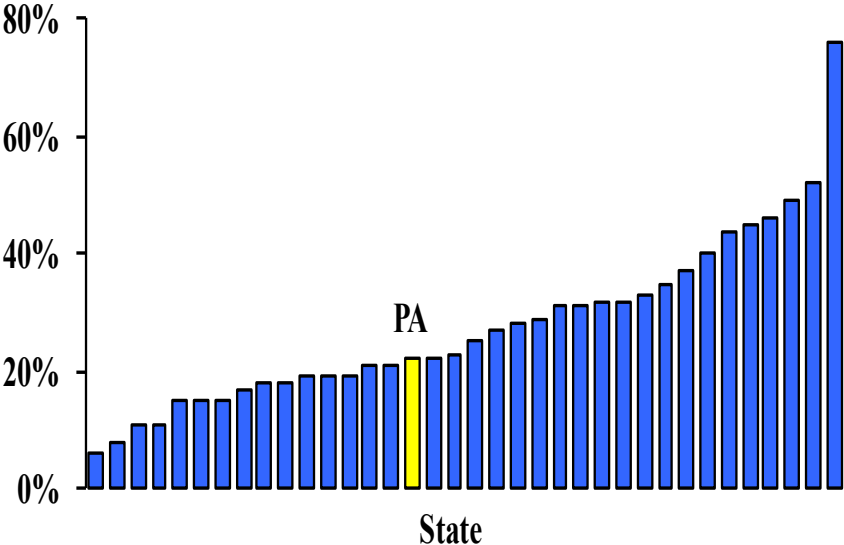
- Oregon Lane v. Brown:
 - By June 30, 2017, Oregon will reduce the current number of adults in sheltered the number of hours adults are working in sheltered workshops;
 - As of July 1, 2015, Oregon will no longer purchase or fund sheltered workshop placements for transition-age youth and working age adults
- Rhode Island: U.S. v. Rhode Island :
 - Supported employment placements that are individual, typical jobs in the community, that pay at least minimum wage, and that offer employment for the maximum number of hours consistent with the person's abilities and preferences, amounting to an average of at least 20 hours per week across the target population;
 - Supports for integrated non-work activities for times when people are not at work including mainstream educational, leisure or volunteer activities that use the same community centers, libraries, recreational, sports and educational facilities that are available to everyone;
 - Transition services for students with I/DD, to start at age 14, and to include internships, job site visits and mentoring, enabling students to leave school prepared for jobs in the community at competitive wages;
 - Significant funding sustained over a ten year period that redirects funds currently used to support services in segregated settings to those that incentivize services in integrated settings.

State initiatives

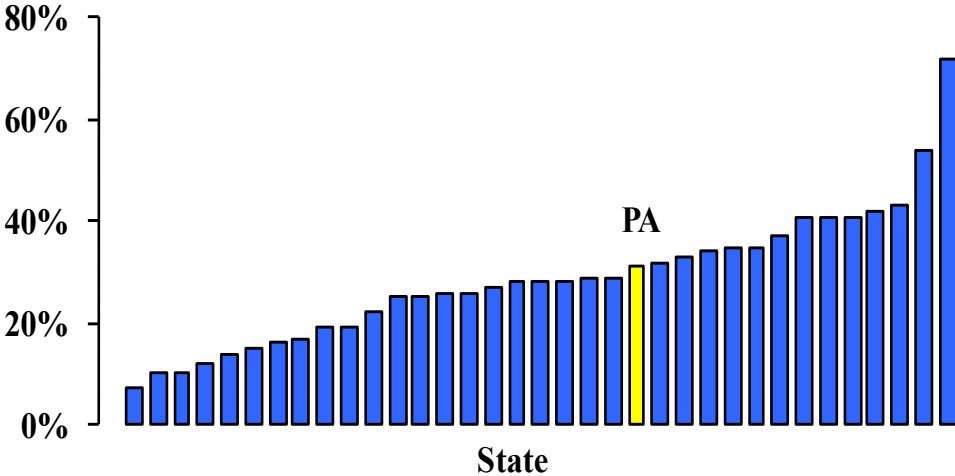
- Vermont – stopped funding sheltered workshops 2005
- Maine – closed sheltered workshops 2008
- Massachusetts - closed all sheltered workshops July 1, 2016
- New York – closed admissions to sheltered workshops July, 2015
- New Hampshire - passed a law to eliminate sub-minimum wage 2015
- Maryland – passed a law to eliminate sub-minimum wage 2016
- New Jersey – does not include workshops in their waiver
- District of Columbia – has no sheltered workshops
- Washington – 300 people remaining in sheltered workshops
- Delaware – entitles all school graduates to employment services through a 1915 (i) state plan service
- Pa. Autism waiver (2008) has never included sheltered workshops

National Comparisons

CRP Survey: Percent in integrated employment



CRP Survey: Percent in facility-based work



Proposed Service Requirements

Proposed

25% community integration by Jan. 2018
50 % community integration by June 2018
75% community integration by Jan. 2019

Limit size of facility to 100
Limit size of new facilities to 15

Alternative Based on Comments

- 25% of participants time in community integrated experiences by Sept. 2018
 - Applies only to individuals whom the agency provides some level of services 3 days a week or more
 - Measured by person on a monthly average basis
 - Exceptions for medical and behavioral causes and the person's choice that is based on direct experience and is considered through ISP
- Adopt community integration measure as part of the 3 yr. provider performance review cycle to provide consumers and families with information on which to make a choice of provider.
- Limit size of new facilities to 25 effective upon adoption of the regulations
- Limit size of existing facilities to 150 by March 2019
 - Existing facilities will be allowed to relocate without penalty.

Limit Size of Facility

No. of Participants Receiving Services in Service Location	No of Facilities
0-25	188
25-100	223
100-150	34
150 - 200	16 (7 <175; 9 >175)
200-300	4

Consequences of doing nothing

Inability to demonstrate compliance in two Medicaid waivers serving 32,000 people and risk sanctions related to \$282,035,025 of expenditures

- Pennsylvania's CMS required Transition Plan commits to establishing a standard in the waiver service definition \$282,035,025 at stake
- Pa is required to do on site reviews and submit evidence of compliance to CMS routinely going forward

Federal Program Integrity Audits will use the CMS service definitions

Federal OIG audits will use the CMS service definitions

ADA litigation against providers and/or state level from Dept. of Justice or advocates