



MISSISSIPPI DIVISION OF  
**MEDICAID**

## **Public Comments**

### **Home and Community-Based Services (HCBS) Independent Living (IL) Waiver Renewal**

March 20, 2017

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Systems Change and Capacity Building  
The Arc of Mississippi

I celebrate the best of the Independent Living waiver; one-on-one support, flexible services, and self direction. The IL waiver allows for growth in a person's quality of life as they experience disability in Mississippi.

My public comments fall into three categories; 1) lack of public input 2) single provider under the B4 system, and 3) changes in training requirements.

1. A stakeholders meeting was announced by email (no posting that we could find on the Medicaid website) with 48 hours notice. It was held late on a Friday afternoon. There were no consumers of services in the room, the closet was relative of a person who receives IL services who was brought uninvited by an attendee. I asked about a public meeting and we were told they would love to have a public meeting if people wanted one. Dorothy Young said that "everything is open for public comment; Medicaid will be responsive to ideas on how to directly reach families and will welcome their input." After the meeting a number of people emailed Medicaid and asked for a public meeting but no meetings were convened. Several people cc'd me when they submitted their requests. No answers to the emails were received to my knowledge.

2. I object to the 1915(b)(4) plan for using a single provider in the staffing / service provision of the Independent Living waiver. Currently the IL waiver is managed / administered by the Mississippi Department of Rehabilitation Services (MDRS). The case management services for the IL waiver are also provided by MDRS. Even more, personal care attendants (PCAs) are employed through the Ability Works agencies, a division of

MDRS. When I asked about this at the stakeholders meeting the response was that the PCAs are self-employed, resulting I thousands of providers rather than a single provider. First of all, if this was accurate there would be no need for a 1915(b)(4) application for a single provider of services. I asked several PCAs after the meeting as I encountered them working if they were self-employed and they didn't know what I was talking about. They get W2 forms as employees and one PCA I spoke with told me she receives health insurance benefits. Their checks come from Ability Works, a division of MDRS. I believe it is the hope at MDRS that recipients of the IL waiver will know who it is that they desire for their supports. In these instances the process works well; MDRS uses Ability Works to hire them and the preferred support person goes to work. What happens many other times is that the waiver recipient doesn't know anyone ready and willing to work as their PCA / direct support professional. A couple of things may happen as reported to me. It may be they remain on the roles as an active waiver recipient but they aren't actually receiving PCA services. Sometimes a list of PCAs in the area is given to a waiver participant to use to contact potential workers to see if they want to be their PCA. The problem is the list may not have any available PCAs on it. People on the telephone list sometimes react in anger because they keep getting "these calls". One person I talked to had a long list but as it turned out the phone numbers were not on the same lines as the corresponding names of the workers so every single person on the list they called said they had the wrong number. So, if they are not able to identify or contact someone they may go without services. With a single provider of services the waiver recipient has no choice for a better way or even additional help finding a PCA. I have been contacted by providers in other waivers to ask about the process for becoming an Independent Living waiver provider. It is ironic that one of the proposed changes to the waiver is listed under 1.g. removing the stand-alone Freedom of Choice form.

3. There is a relaxation of training requirements in this proposed renewal. Although the renewal lists in 1.d. to Revise and strengthen PCA training requirements and include annual training requirements, the proposal is for the case manager to provide the training themselves. While there is a list of topics that should be covered in the training (disability awareness, infection control, grooming, housekeeping, etc) there is no formal curricula planned. I realize the very spirit of a self-directed waiver has to allow for latitude in training that should be specific to the individual being supported. I cannot overstate the need for basic professionalism regardless of the individual circumstances of a person supported. There may be topics that the case manager may not be qualified to teach, and no plan is being offered for the origins and fidelity of the training, consistent testing parameters, or transcripts to record the outcome of the training. It does state that the PCA must demonstrate learning prior to rendering services. How does one demonstrate confidentiality, lifting, employee boundaries, emergency response, and the like in an office environment to a case manager? Balancing Incentive Funds were used to introduce a new training model through DirectCourse, an online distance learning format. MDRS stopped the process before the last year of funding. Their frustration as reported to me was the 40 hours of training the Division of Medicaid required before they went to work. Many of their new service recipients were coming straight from rehabilitation and needed a PCA to go to work immediately. This could be mitigated in several ways; the time needed for criminal background checks is often enough time for training to be completed, or the proposed 30

day rule for training completion could be used. One way to tackle this issued would be for Mississippi to create a pool of qualified individuals who are ready, willing, and qualified to go to work on all of our waivers, creating a proactive rather than reactive approach to the issue. While I was directly involved in the provision of this training, I want to be clear that this is an advocacy issue. Our organization does not profit from this training. Our goal is to impact the moment of interaction between the giver and receiver of services which is where quality is defined.

Thank you for the opportunity comment on this waiver renewal application. It was explained to us at the stakeholders meeting that from now on all public comments were to accompany the actual renewal application. Please notify The Arc if comments are to be sent to CMS separately.

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March 24, 2017

Stacie Clark, Exec. Director, ID/DD Waiver  
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Public Comments for IL Waiver  
PCA Services

It appears that this is structured as an agency with choice model. Currently the only agency allowed to provide this service under the IL Waiver is Ability Works through the Mississippi Department of Rehabilitation Services. We would like to request open enrollment for PCA Services as a provider agency with choice for this service. In addition to already providing these services for the E&D Waiver and ID/DD Waiver, we cover every county in the state of Mississippi and have thirteen offices located throughout the state. We have staff dedicated to assisting each person with staffing and/or scheduling the service to best meet their needs. In the event of an employee call-in, no show or unexpected change for the person receiving services schedule, etc., we are also able to provide “back-up” coverage as needed and this is already a part of our daily operations to ensure each person receives their service/assistance as planned.

We currently meet and/or exceed the minimum requirements currently necessary for IL Waiver. We actively provide this service for two other waiver programs in the state of Mississippi under guidelines established by the Division of Medicaid and/or the Mississippi Department of Mental Health, as well as providing this service for various other waiver programs in an additional eleven states.

Per IL Waiver standards we have an ongoing personal care curriculum approved by the Division of Medicaid and the Mississippi Department of Mental Health for all non-licensed personal care attendants prior to their providing services to a person. Documentation of the curriculum is maintained in their file for review upon request. The training is

conducted by a registered nurse and/or agency representative as permitted by law to train nurse aides that includes the purpose and philosophy of self-directed services by the disabled, disability awareness, employee-employer relationships and the need for respect for the person's privacy and property. We also currently include training on Vulnerable Person's Act, caregiver boundaries and managing challenging situations. Our training also covers the basic elements of body functions, infection control procedures, maintaining a clean/safe environment, appropriate and safe techniques in personal hygiene, dressing, bladder and bowel routine, grooming to include bed, sponge, tub or shower bath, hair care, nail and skin care, oral hygiene, transfers and equipment use and maintenance. Housekeeping assistance/instructions include meal preparation and menus that provide a balanced nutritional diet. With participation from the person we assist with personalizing their specific needs in accordance to and along with the Plan of Service and Supports (PSS).

The cost of PCA training and instruction is provided by Oxford Health Care and we ensure that each person demonstrates competency in performing each activity of daily living tasks. In addition to technical skills required, the PCA must demonstrate the ability to comprehend and comply with basic written and verbal instructions at a level determined by the person/agency representative/registered nurse to be adequate in order to provide great care and service.

We meet and/or exceed the standard requirement for experience/competency of a nurse aide, personal care attendant, certified nursing assistant prior to rendering services to anyone. We require two years' experience as one of the criteria to be eligible for employment.

We currently meet/exceed the requirement for justification to employ a relative, as well as a "preferred caregiver" as the PCA attendant as stated in the standards. We employ family members currently in the two waivers we provide services for in accordance with the standards already in place and required by the Division of Medicaid and/or the Mississippi Department of Mental Health. For those persons' who do not have a family member or preferred caregiver to serve as their PCA attendant, we have staff available for interviews to assist them in finding a caregiver of their choice.

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March 30, 2017

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Disability Rights Mississippi (ORMS) is the designated Protection and Advocacy organization for the State of Mississippi and is a part of the national network of Protection and Advocacy organizations, as established in 42 USC 15041, *et seq.* ORMS provides legal assistance, advocacy services, and information and referrals to residents of Mississippi

living with disabilities. ORMS also investigates allegations of abuse and neglect of persons with disabilities and is empowered by federal law to do so. Our primary areas of focus are the ADA, HUD, Medicaid services, treatment facilities, and educational services for children.

### *Independent Living Waiver*

1. Under this Waiver, Participants are required to use the Department of Rehabilitation Services for case management services. We believe that Participants should have the freedom to choose among various providers for their case management services similar to the manner proposed in the Elderly and Disabled Waiver renewal proposal. The freedom of choice provisions in the HCBS settings regulations are for the benefit of the Participant and we see no reason why they should be waived in this instance. We strongly object to a waiver of any provision that limits the freedom of choice of providers for Participants.
2. We are also concerned that there is no effective freedom of choice of Personal Care Attendants (PCAs) for Participants under this proposed renewal. Currently, all PCAs under this Waiver are hired through Ability Works, which is part of the Department of Rehabilitation Services - the same entity that Participants are required to use for case management services and the agency that administers the Waiver itself. While PCAs may technically be independent contractors for tax purposes, we would argue that this arrangement essentially eliminates meaningful choice on the part of the Participants. Any PCA that is to be funded through the Waiver can *only* come through the Department of Rehabilitation Services. Additionally, there are no other entities, either public or private, with whom these "independent contractor" PCAs may independently contract to perform such services. As such, PCAs under this Waiver are "independent contractors" in name only. In our view, this arrangement is unacceptable and gives Participants in this Waiver no effective way to exercise meaningful choice in their care.
3. We believe that this Waiver should utilize Money Follows the Person (MFP) funds as other waivers and programs do under the auspices of Medicaid. Why are these funds not being utilized in this Waiver?
4. The stakeholders meeting for these waiver renewals were held with very little notice. The notice was sent out 48 hours before the meeting and the meeting itself was held late on a Friday afternoon. There were no participants in the room from either waiver being discussed that day. There was never any public meeting for this Waiver or the Elderly and Disabled Waiver of which our organization is aware. We do not believe that meeting practices such as these are in keeping with the requirements to inform the public and various stakeholders of the proposed changes to the programs they depend on for their vital care.
5. We believe that the concerns about conflicts of interest and Participant choice that are driving the most significant changes to the Elderly and Disabled Waiver should apply equally to the Independent Living Waiver. Currently, and under this proposed renewal, the Mississippi Department of Rehabilitation Services is essentially the only provider of

services under this waiver. There is no reason why the Department of Rehabilitation services interests should supersede those of Participants right to meaningful choice in how their care is delivered under the HCBS regulations.

We would like to thank the Division of Medicaid for their diligent efforts in the transition towards bringing the waiver programs in full compliance with the new federal regulations regarding HCB settings and look forward to your responses to the questions and issues that we have raised.

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