

Public Comments

1915 (c) HCBS Developmental Disabilities Waiver

The State secured formal public input from December 1, 2016 through February 1, 2017 during the Developmental Disabilities Waiver Renewal. The Human Services Department (HSD) and Department of Health (DOH) solicited input via multiple forums including: mailings, emails, newspaper announcements, web postings, and public hearings.

Commenter	Public Comments	State Response
Family Representative	<p><u>Comment:</u> The DDW should only be for severe to medium needs/disabilities. HSD is relaxed on screening those who are on the DDW.</p>	<p><u>State Response:</u> The State is not considering changing waiver eligibility requirements at this time. The State agrees that services and supports should be based on need.</p>
Family Representative	<p><u>Comment:</u> Community working situations for people with disabilities are lacking. Waiver recipients need training and supported employment to be contributing members of society.</p>	<p><u>State Response:</u> Various initiatives are taking place to increase employment for people with Intellectual/Developmental Disabilities (I/DD) in New Mexico. Please contact your case manager for assistance or additional details or review information posted here: http://www.actnewmexico.org/community-supports-and-employment.html</p>
DDW Recipient	<p><u>Comment:</u> A waiver recipient states that he is most comfortable in the home and questions whether it will be a requirement to go out into the community.</p>	<p><u>State Response:</u> The State is required to comply with the Center for Medicare and Medicaid Services (CMS) settings requirements. This includes assuring rights and personal choice and preferences are respected.</p>
Family Representative	<p><u>Comment:</u> Encourage that the DDW remain in force and maintain the current services.</p>	<p><u>State Response:</u> The State intends to continue operation of the traditional DD Waiver. The varieties of services offered currently remain in the DDW Renewal application to CMS.</p>

<p>Family Representative</p>	<p><u>Comment:</u> DDW recipient’s mother states having the DDW has helped her child have a rich quality of life that would be impossible for this parent to give him.</p>	<p><u>State Response:</u> Thank you for your comment.</p>
<p>Family Representative</p>	<p><u>Comment:</u> Grateful that the Supports Intensity Scale (SIS) scoring will no longer be used and for the help from DDW in caring for her daughter. The comment noted the need for discussion with families when new rules and regulation are made and a need to streamline paperwork that can be burdensome to families.</p>	<p><u>State Response:</u> Rules and regulations will go out for public comment. The documentation is required to assure health, safety and program compliance to the CMS.</p>
<p>Family Representative</p>	<p><u>Comment:</u> Concern regarding the removal of the SIS. The comment questioned how DD waiver participants will be evaluated and what assessment will replace the SIS.</p>	<p><u>State Response:</u> The DDW Renewal Application includes general language about continued use of the Outside Review to approve service requests. The State is working on a transition plan to include any necessary adjustments to Clinical Criteria to be implemented by July 1, 2017. Please refer to the ACT website for information: http://actnewmexico.org/downloads/DDSD-DDW-SIS-OR-Letter-20161026.pdf</p>
<p>Providers, advocacy and advisory groups</p>	<p><u>Comment:</u> Multiple comments were received regarding the implementation of the Outside Reviewer (OR). Comments noted the OR learning curve has been steep, repetitive, delays budgets and services to the point where</p>	<p><u>State Response:</u> The implementation of the Outside Review involves a number of factors related to CMS requirements for recipient individualized review as well as state programmatic needs. Key issues include the form and content of the submissions, who completes the reviews, and frequency of the reviews. The State invites ongoing stakeholder input as it develops procedures to improve efficiency of the process. The Outside Review is a process whereby a clinical determination is made on whether requested services and supports are needed. The State continues to develop procedures to improve</p>

	<p>many agencies have found it difficult to stay in business. Comments noted this process to be cumbersome and ineffective and that providers have worked without reimbursement, as the budgets are held up by the review process. There has been extra work upon all case managers and budget delays have been extraordinary.</p> <p>A request was made to consider "Waiver Life Without OR" and to consider putting funds used for payment towards the OR (in excess of \$1.5M) toward allowing new clients to come on the waiver.</p> <p>Requested clarification on why the OR process has not been submitted as an addendum to the rewrite with an explanation as to why it is being used at present. If it is determined to be a useful tool or required by further court action, an amendment could be submitted to CMS at a later time. Concerns were raised there is also belief that the OR team has become a rubber stamp for whatever individual DD Waiver teams submit. The cost for the state is about two million dollars per year and it was questioned if this is a good use of state monies at this time.</p> <p>From all the data reported by the OR Team, there have been no denials of any service based on clinical criteria. They have also suspended denials based</p>	<p>efficiency of the process and reduce frequency of reviews.</p> <p>At this time the OR is required by a court- approved settlement agreement and release. For more information, please refer to the ACT website at: http://www.actnewmexico.org/waldrop.html. The contract has been allocated to comply with the settlement agreement.</p> <p>The OR reviewers, using relevant expertise and clear criteria, review clinical documentation submitted for each review request and provide qualified clinical determination for each review.</p> <p>CMS requires the State to describe in its 1915 (c) waiver application how the waiver is being administered, and therefore the OR process is included.</p> <p>The State continues to monitor functions of the OR as outlined in their contract.</p>
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	<p>on purely administrative and/or technical reasons.</p> <p>Request was made to include into the renewal that the OR be re-evaluated after the settlement has been satisfied, for effectiveness and cost efficiency. It was also recommend that other more efficient and cost effective avenues at least be explored, such as: going back to the Level of Care I, II, and III with a Third Party Assessor (TP) approving plans and budgets, using the CIA or an in home assessment.</p> <p>The description of the Outside Review process written into the DD Waiver renewal application is incomplete and must be revised to articulate the full scope of this process, which is now a significant feature of the New Mexico DD Waiver program. It was requested that under the <i>Waldrop</i> settlement, HSD is bound by the decisions of the OR to grant services to a DD Waiver participant, but may decide to approve a Medicaid service that the OR has denied. This is a critical component of the <i>Waldrop</i> framework, as it allows for the possibility that adverse decisions made by the OR can be resolved by the participant and HSD before there is a need to engage in an administrative fair hearing.</p> <p>The description of the OR process notes that the reviewer</p>	<p>The State will continue to invite stakeholder input to review clinical criteria and frequency of the Outside Review. Returning to a previous system requires modification to avoid prior issues raised by the Legislative Finance Committee in 2010 related to inadequacy of the assessment process and unsustainable spending levels. The LFC report is available on the following web link: http://www.nmlegis.gov/lcs/handouts/DD%20Waiver%2006-04-10%20-%204PM.pdf.</p> <p>Should the State decide to substantially change its review process, a waiver amendment to the CMS would be submitted at that time.</p> <p>The State acknowledges that this is an accurate representation of the OR process that is not detailed in the Waiver in Appendix D-1. The State agrees to clarifications recommended. Language will be added to referenced section of the application Appendix D-1 p. 119.</p> <p>The State agrees that the OR process includes the “the duty of the OR to provide detailed written</p>
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	<p>must make a written determination concerning a participant budget. However, the application does not appear to contain the key requirement that said writing must provide the reasons for the denial in detail. This is a critical component of the DD Waiver system, and it is a legal requirement for HSD to provide adequate written reasons for denials of Medicaid services to DD Waiver participants. The duty of the OR to provide detailed written reasons for the denial of a service must be included in both the description of the OR process and the section of the application dealing with 3 participants rights. As it stands, it appears that this key provision is wholly absent from the proposed DD Waiver renewal application.</p>	<p>reasons for the denial of a service". Language will be added to both Appendix D Service Plan Development and Appendix F Participant Rights.</p>
Family Representative	<p><u>Comment:</u> Need clarification on Fair Hearing rights and processes.</p>	<p><u>State Response:</u> Please refer to Appendix F for the description of the Fair Hearing Process.</p>
Provider	<p><u>Comment:</u> Issues related to Behavioral Support Consultation (BSC) under the current DDW Standards.</p>	<p><u>State Response:</u> The comments submitted are pertaining to the DDSD DDW Service Standards. HSD and DDSD will consider these comments when revising the Service Standards.</p>
Provider	<p><u>Comment:</u> A request was made that the rate study for BSC, conducted by Burns and Associates, be used as it was more appropriate. A request was made that the rate study survey could ask</p>	<p><u>Rate Study response</u> DDSD will follow the State's procurement code regulations to secure a contractor to conduct a comprehensive rate review. The rate review must involve a number of factors related to CMS requirements for rate setting methodology for each service or group of related services, including public</p>

<p>Provider</p>	<p>questions that are related to the way the final rate study procedure was conducted, or that a simple Rate Validation Study could be conducted like in years past.</p> <p>Comment: The Standards only allow those in Supported Living to receive the Non-Ambulatory Stipend. Those in Family Living, recipients who choose to live at home, are denied this service. The availability of this Stipend should be based solely on need, not choice of residence.</p>	<p>comment, data sources used and the identification of the entity responsible for rate setting and oversight.</p> <p>State Response: The comments submitted are pertaining to the DDSD DDW Service Standards. DDSD will consider these comments when revising the Service Standards.</p>
<p>Family Representative</p>	<p>Comment: The DDW Renewal process should provide/offer more flexibility in many areas, specifically residential living choices. Request for more flexibility be written into the waiver, where an individual can choose who their housemates are, support to individuals in their personal lifestyle, and promoting autonomy and independence. Group activity is more convenient, economically and financially feasible to agencies, therefore it is group activity that still exists, preventing autonomy. If the new standards are to encourage community involvement by individuals with disabilities then recipients need to live in a “real” neighborhoods in real communities, and begin to cultivate those contacts and relationships within “their” respective communities. Provider agencies need to get</p>	<p>State Response: These comments are related to Federal HCBS Settings Requirements. The State is required to come into compliance by March 17, 2019 and is working on numerous setting validation activities. HSD and DDSD will consider these comments when revising the Service Standards and implementing the Statewide Transition Plan.</p>

<p>Family Representative</p>	<p>out of the way. The DDW was not designed for their personal and financial growth rather for the DDW individual’s personal growth.</p> <p>Comment: DDW Standards should allow for private long-term care agencies to provide services to allow for more competitive service delivery, which would result in a better service product. Freedom of Choice should not mean Freedom to choose from these few enlisted contractors.</p>	<p>State Response: To ensure federal matching funds for the operation of HCBS waivers, such as DDW, the DDW Service Standards comply with services and provider qualifications that are defined in the federally approved waiver. Any private or non-profit agency or sole proprietor can apply to be a waiver provider. For provider enrollment details, please see http://actnewmexico.org/provider-enrollment.html.</p>
<p>Advocacy group</p>	<p>Comment: Comment was received that the system put in place by the <i>Waldrop</i> settlement is an appropriate mix of waiver participant choice and fiscal responsibility. Budget requests and Individual Service Plan (“ISP”) content are decided by the waiver participant and the interdisciplinary team, ensuring person centered planning, while the Outside Reviewer (“OR”) checks to ensure that each proposed budget meets Medicaid fiscal requirements.</p>	<p>State Response: Thank you for your comment.</p>
<p>Advocacy group</p>	<p>Comment: In the renewal application and in its interactions with the community, HSD has emphasized the importance of person centered planning in the DD Waiver budget process. However, some portions of the proposed renewal application</p>	<p>State Response: The State agrees that participant choice and person centered planning are critical elements of a statewide waiver program. CMS outlines many requirements for a person centered planning process to which New Mexico complies or exceeds compliance. Placing limits on amounts, frequency and duration of services is allowable by CMS.</p>

<p>Advocacy group</p>	<p>undermine those efforts toward achieving system wide person centered planning.</p> <p>HSD has placed caps on services in the DD Waiver renewal application which are inconsistent with person centered planning. Caps on DD Waiver Services completely undermine the concept of participant choice and person centered planning.</p> <p><u>Comment:</u> Comment states that the DD Waiver renewal application notes the circumstances under which an administrative fair hearing will be granted to a participant, but leaves out instances where HSD is not reducing or denying a Medicaid service but there is still a dispute over the dollar amount allocated for that service. Because the portion of the application setting out fair hearing rights is not comprehensive, it must be revised.</p>	<p>NM has chosen to specify limits within some core service definitions generally related to non-statutory services or to services whose billable unit requires a cap (e.g. a monthly unit cannot exceed 12 months). However, for adult nursing, therapies, behavior support consultation, preliminary risk screening and consultation, socialization and sexuality education, and nursing, language will be modified to allow for the flexibility of approvals when clinical justification is provided for amounts of these services that exceed the typical level or range of use.</p> <p><u>State Response:</u> The circumstances under which an administrative fair hearing may be granted to a waiver participant are defined by the CMS in the waiver application itself under Appendix F-1 and according to the provisions of 42 CFR 431, Subpart E. Additional information can also be found in the CMS 1915 (c) waiver application Instructions, Technical Guide, and Review Criteria.</p>
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