



July 2, 2012

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-2249-P2
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: Medicaid Program: State Plan Home and Community-Based Services (HCBS), 5-Year Period for Waivers, Provider Payment Reassignment, and Setting Requirements for Community First Choice Proposed Rule, File Code CMS-2249-P2

I am writing on behalf of the Corporation for Supportive Housing (CSH) to comment on the proposed rule, published on May 3, 2012, regarding, among other items, the implementation of the Medicaid Home and Community-Based Services (HCBS) state plan option (1915i) and the settings requirements for Community First Choice (1915k).

CSH is a nonpartisan, nonprofit organization and Community Development Financial Institution (CDFI) that helps communities and states change systems and leverage resources to create supportive housing. Supportive housing, permanent housing with voluntary support services, has been shown to successfully house and stabilize people who were previously chronically homeless or are at risk of homelessness due to mental illness, substance use or physical health impairments.

Comments and Recommendations on Proposed Rule

We want to ensure that, when appropriate, the services delivered in supportive housing are allowable under the various HCBS mechanisms and that all supportive housing, which by definition includes scattered site housing, set-asides within buildings, and single site housing that allow for tenant choice regarding service engagement, and where residents have all the rights and responsibilities of tenancy, are allowable settings for Home and Community Based Services.

Overall, CSH is pleased with this proposed rule, specifically the revised criteria for eligible HCBS settings. In our comments on CMS' April 15, 2011 proposed rule for 1915c waivers, we were concerned about the disallowance of single-site housing settings. It is clear that CMS heard our and our partners' comments that single-site apartment buildings can be an appropriate community setting. The proposed settings criteria for HCBS state plan option and the Community First Choice provisions of the Affordable Care Act (ACA) is developed according to the tenets of the high quality supportive housing that CSH helps communities create across the country.

The following comments refer to proposed rule provisions of particular interest to supportive housing and the continued integration of housing and health financing.

§440.182 State Plan Home and Community-Based Services

The services outlined in this section coincide with those traditionally provided in conjunction with supportive housing. Case management services, personal care services, adult day health services, day treatment and clinic services are all routinely accessed by supportive housing residents. There are additional services we would like CMS to consider as appropriate for HCBS reimbursement.

Tenancy Support Services

Section (9) of this provision allows for 'Other services requested by the agency and approved by the Secretary as consistent with the purpose of the benefit'. We understand that this cannot include room and board expenses. Further, we appreciate CMS referring states to the State Medicaid Director Letter from May 9, 2002 which explains that CMS considers expenses such as security deposits, essential furniture, set up fees and utility deposits and health and safety assurance modifications as 'one-time transitional services' that are eligible for federal matching support. These are all services that supportive housing providers see as vital to ensuring that vulnerable people with chronic conditions secure and maintain housing. Through experience, supportive housing providers have added detail to what these one-time services entail. If CMS finds it necessary to further define these 'one-time transitional services', we suggest including:

Tenancy support services such as – assistance finding housing, assistance applying for housing, assistance negotiating and managing conflict with landlords, and assistance understanding and maintaining tenant responsibilities of a lease (e.g. - helping someone who suffers from a hoarding disorder organize their apartment to avoid eviction).

Medical Respite Services

Health Care for the Homeless professionals have developed medical respite services for people with illnesses that do not require hospital in-patient care but still require extra attention to ensure proper healing. Often, patients leave the hospital still needing to take medications, change bandages, eat a special diet, use assistive devices, etc. Many people go home to family or friends who can help the person while they are still not fully healthy. Single adults experiencing homelessness or with histories of homelessness frequently do not have family or friends who can serve as temporary caregivers. Medical respite services, typically provided by a nurse or nurse practitioner, allow people to still receive medical assistance without unnecessarily being in the hospital or nursing home.

CSH recommends that medical respite services for homeless or previously homeless populations be an allowable HCBS *as long as clients are connected to permanent housing*. For people who are too frail to be alone in their own apartment but do not need hospital care, medical respite professionals, trained to meet the needs of homeless clients, can provide health services that helps the patient heal and return to independent living. We recognize that not all medical respite programs are connected to permanent housing programs. While these programs provide necessary services, we believe that medical respite services not connected to permanent housing are not fulfilling the mission of the home and community based programs. Therefore, we make the qualification that the medical respite services must be delivered to a patient connected with permanent housing to be considered as part of the allowable HCBS transitional services for people as they move out of hospitals and nursing homes and into independent housing.

§441.530 Home and Community-Based Setting and §441.656 State Plan Home and Community-Based Services Under the Act.

As mentioned above, the HCBS setting criteria established in this proposed rule are greatly improved from the HCBS waiver proposed rule issued in 2011. We appreciate CMS' work to improve these criteria. The conditions illustrated align with the tenets of supportive housing. The following recommendations would go even further to ensure supportive housing is seen as an appropriate setting for HCBS.

§441.530(a)(1)(vi) (D) and §441.656(a)(1)(vi)(D) – Individuals are able to have visitors of their choosing at any time.

CSH believes a qualification should be made to this section. There are single-site, supportive housing programs that are gender specific for women. Far too frequently, these residents have been victims of domestic violence, rape or other violent acts. Therefore, these supportive housing buildings allow the residents to establish rules so that they

feel safe and can live as a community. Often these rules will include visitor hours and a need for visitors to sign in at a front desk. A key element is that these rules are established by the residents, not the housing provider. CMS should consider making this exception “if the building rules are established and approved by the residents, they are allowable and residents can receive HCBS.”

§441.656(a)(2)(v) and §441.530(a)(2)(v) – Secretary rebuttable presumption authority that a setting is not home and community-based

CMS should clarify that the presumption that a disability-specific housing complex is not a home and community based setting only applies if the setting does not meet the other criteria established in this regulation. In addition, CMS must clarify the meaning of ‘disability specific’.

Affordable housing that is created to ensure housing for people with disabilities does not necessarily mean the housing is developed to segregate or limit community access for residents. In communities, particularly urban settings, where most people live in apartment buildings, people with disabilities living in a building that meets their needs, and the HCBS criteria established in this rule, should be allowable.

In addition, the meaning of ‘disability-specific’ housing context should be explained. Housing developers are unclear on whether this refers to housing where most residents have a single disability, such as mental illness, or if it means that a majority of the housing residents cannot have a disability of any kind. In addition, how many of the residents must have a disability for the housing complex to be considered disability specific? Many supportive housing projects have a mix of residents; some with no service needs and others with high service need. Using this ‘rebuttal presumption’ language requires CMS to create an additional set of criteria that CSH feels is unnecessary. The Secretary should only apply rebuttal presumption when a housing setting does not meet the other criteria explained in this proposed rule, however, simply being a disability focused apartment building does not warrant the need for extra scrutiny.

Other criteria considered by CMS.

In the background section, page 26379, additional criteria are asked to be commented upon. We are commenting on one of them – The receipt of any particular service or support cannot be a condition for living in the unit.

Within supportive housing, all services are voluntary. However, there are housing providers that meet the tenets of supportive housing but require that residents maintain sobriety. Requiring sobriety does not mean that services are mandatory or that the resident is evicted based on use. But often in these housing settings, residents are strongly encouraged to go to group meetings or participate in community activities.

While having such a requirement does not meet the definition of supportive housing, people living with a substance use disorder often choose to live in a sober setting. Ideally, sober housing is offered as part of a continuum of housing options so that a person who is not able to maintain sobriety is offered supportive housing without the sobriety requirement. It is important for those with chronic illnesses to receive coordinated, continuous care without interruption. Therefore, when this is the case, CSH supports HCBS following the person as they choose the housing option that works best for them.

§441.668 Provider Qualifications

§441.668(b)(5) – This provision explains the exception to the conflict of interest requirement that the agent performing the independent assessment cannot be the same as the HCBS provider, unless the State can demonstrate that they are the only willing and qualified agent to perform the task. This allowance requires that the

state create conflict of interest protections including separation of agent and provider functions within the provider agency.

Within supportive housing, it could often be the case that the agent performing the independent assessment will be employed by the HCBS agency. In most cases, it is the service providers within supportive housing that have built the trust and relationships necessary to complete an accurate assessment. In many cases, these service providers are part of the same entity that will access the HCBS, presenting the potential for a conflict. To mitigate this potential, supportive housing providers have developed roles clear lines of authority within organizations, and protocols for working across an organization. Supportive housing providers have a strong, successful history of navigating these dual roles; often as a property manager and a service provider, to best meet the needs of their tenants. CSH fully agrees that safeguards should be in place, but if the requirements the state must meet are too cumbersome or the separation of the agent and provider functions too restrictive, this provision could unintentionally limit the availability of supportive housing for HCBS beneficiaries.

Thank you for the opportunity to comment and we look forward to working with CMS as the final rule is created.

Sincerely,

A handwritten signature in black ink that reads "Deborah De Santis". The signature is written in a cursive, flowing style.

Deborah De Santis
President and CEO