



Nothing about us without us!

Monica Coury
c/o Office of Intergovernmental Relations
Arizona Health Care Cost Containment System
801 E. Jefferson Street, Mail Drop 4200
Phoenix, Arizona 85034

VIA ELECTRONIC MAIL: HCBS@azahcccs.gov

Dear Ms. Coury,

The Autistic Self Advocacy Network writes to express concern about the Department's implication in the Arizona Health Care Cost Containment System (AHCCCS)'s October 2015 home and community-based services (HCBS) transition plan¹ that a disability-specific farmstead setting may qualify as "community-based" and therefore be eligible for Medicaid HCBS funding. We do not believe that the setting as described in the comment excerpts could ever pass heightened scrutiny review, as it is a highly segregated setting which has the effect of entirely denying the persons living there access to the broader community of individuals not receiving Medicaid-funded HCBS. We believe that settings that cluster people with disabilities together in a setting where they both live and work, isolated from the broader community, bear little resemblance to traditional community farms and therefore cannot pass heightened scrutiny review.

Some comments cited in the October 2015 transition plan suggested that the rules governing Medicaid HCBS funding unfairly target rural or agricultural settings. This is not the case. Rather, the rule targets disability-specific, *segregated* farmsteads similar to the one described in the letter. CMS' issued guidance on settings that tend to isolate people with disabilities states that settings that are designed specifically for people with disabilities and "provide multiple types of abilities and services on-site" are more likely to isolate the community of individuals receiving Medicaid-funded HCBS from the broader community of those who do not. Such settings tend to function as home, health care provider, disability support service provider, and employment or daily activity provider at the same time. CMS also *specifically* states that such disability-specific farmsteads and farm communities tend to isolate people with disabilities, and that people who work on such farms tend to receive most if not all services on the farm.

¹ Arizona's HCBS Transition Plan Is located here: <http://www.azahcccs.gov/hcbs/>

An ordinary ranch or farm, in which people with disabilities had access to the broader rural community of people without disabilities and worked with people without disabilities, would likely pass or not require heightened scrutiny review. But this is not the type of setting described in Arizona's transition plan. The letters on pg. 20 and 21 of the transition plan describe the farmstead clearly as *not* being "in the town community." In fact, letters in support of Arizona's farmstead present in the Transition Plan describe the setting as isolated from the town communities nearby and as providing health care, daily living activity support, and employment services at the same facility.² Residents of the farmstead therefore do not have the opportunity to "receive services in the community" and "seek employment and work" in integrated settings required by CMS' final HCBS regulations, and it is unlikely that the setting would pass heightened scrutiny. 42 C.F.R. § 441.301(c)(4)(i).

The comments that are set out in the transition plan on the farmstead setting actually do not pertain at all to whether the setting is home and community-based. The letter on pg. 20, for example, describes a person with significant support needs, and uses the significant support needs of the person in question as justification for why the setting should receive HCBS funding despite being disability-specific, segregated, and isolated from the broader community. The level of disability of a person receiving a particular service is not relevant to whether the service is home and community based. The HCBS Settings Rule explicitly acknowledges, for example, that a residential provider may make individualized modifications to policies to account for individual needs, but these needs do not exempt the provider from complying with the rest of the rule.

The farmstead described is also a provider-owned setting that does not adhere to the rules required for HCBS that are provider-owned in CMS' final regulations. Provider-owned settings are required to allow residents to "control their own schedules," and according to the letters it is not likely that the farmstead or series of farmsteads in question provides the residents with this right. Transition Plan pg. 20, 21, 42 C.F.R. § 441.301(c)(4)(vi)(C). It is unclear, but CMS' Evaluation Team will need to determine, whether the residents of the farmstead have the same protections as tenants in a traditional lease agreement in Arizona would have. 42 C.F.R. § 441.301(c)(4)(vi)(A). Moreover, adherence to the rules for provider-owned settings is necessary, but not in itself sufficient, to pass heightened scrutiny.

The Transition Plan also appears only to evaluate a sampling of each type of setting which must undergo heightened scrutiny review. The farmstead described in the

² See Centers for Medicare and Medicaid Services, "Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community," <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf> (noting that settings "designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities" may isolate individuals from the community)

transition plan is one of at least four settings in Arizona that we have identified as isolating.³ The Evaluation Team should evaluate all settings that have been found to require heightened scrutiny, rather than a sampling of similar settings. According to CMS regulations, every setting that must pass heightened scrutiny must individually be approved by CMS in order to receive HCBS funding.

We further recommend that self-advocates with developmental disabilities should be on the Evaluation Team in addition to provider representatives, other advocates, and AHCCCS staff. Self-advocates are in an excellent position, having experienced many placements and supports themselves, to determine whether or not a placement is unduly restrictive. We note that according to the most recent data available, there are no self-advocates on AHCCCS' current Autism Advisory Committee.

We thank you for your time and looks forward to hearing more from you on this issue. Please direct all inquiries to Samantha Crane, Director of Public Policy at the Autistic Self Advocacy Network, at scrane@autisticadvocacy.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samantha Crane', with a stylized, cursive script.

Samantha Crane
Director of Public Policy
Autistic Self Advocacy Network
cc: Alissa Deboy, Melissa Harris, Ralph Lollar, James Toews and Jodie Anthony

³ The other three settings are Echoing Hope Ranch in Bisbee, AZ; First Place Arizona in Phoenix, AZ; and Rainbow Acres in Camp Verde, AZ.