October 7, 2011

To: Becky Phillips, Administrative Rules Coordinator, Ohio Department of Developmental Disabilities

From: Jeff Davis, Director of Government Relations, OPRA

Subject: Comments on OAC 5123:2-1-08 “Waiting Lists”

Please see below OPRA’s comments on the proposed Waiting List Rule:

1. In paragraph (C) we would recommend re-inserting existing language establishing that individuals not subject to waiting lists receive services “within ninety days of the date that the need for such services has been documented on the individuals ISP in accordance with applicable law, which determination shall be included in the individual’s record maintained by the county board.”

OPRA is quite agreeable if the Department wishes to establish a more immediate time frame in rule but ninety days has been the governing language for years and has proven valuable in practice.

1. OPRA recommends re-inserting existing language that gives priority status to individuals seeking to leave ICFs/MR or nursing facilities (NF) for the following reasons:
* Eliminating the priority status of individuals living in ICFs/MR or NFs from the waiting list will raise serious questions about Ohio’s Olmstead compliance;
* In proposed paragraph (F)(3)(B), waiver waiting list priority will be granted to individuals with intensive needs. Effectively, individuals in ICFs/MR with intensive needs will be more likely to receive community integrated waiver services, while ICF/MR individuals without intensive needs will remain. The individuals with needs most appropriate for waiver services (i.e. individuals without intensive needs) will be forced to remain in ICFs/MR , while individuals with intensive needs, who are appropriately suited for ICFs/MR, will receive services in a setting which is not appropriate to their needs.
* This proposed alteration of the priority scheme runs contrary to Ohio DODD’s stated principle of “seeking cost efficiencies and appropriateness of care, especially in institutional settings, thereby making more dollars available to support community-based care.”[[1]](#footnote-1) As illustrated above, maintaining individuals without intensive needs in ICFs/MR does not demonstrate a commitment to appropriateness of care. In fact, it supports the exact opposite conclusion. While the state claims to eliminate barriers for people moving from institutions to home and community-based settings, it actually proposes to erect greater obstacles by removing waiting list priority for institutionalized individuals without intensive needs. Plenary authority exists under federal Medicaid law, the ADA and Ohio’s stated principle regarding community integration in order to reinstate this provision.
1. In Paragraph (G)(1)(c)(ii) delete the proposed language “Sharing of services among any individuals with priority under paragraph (F) of this rule when the services are appropriate for the individuals.” and insert the following: “Individuals who are willing to live with other individuals in existing service settings.” This better clarifies the proposed intent of the language by ensuring that individuals can be offered the opportunity to live with others even if staffing patterns must change to accommodate that. Similar language should also added that governs individuals not in a priority status to ensure the opportunity to live with others.

In summary OPRA is appreciative of the opportunity to comment on the proposed rule. We also appreciate the ongoing effort the Department put into soliciting stakeholder comment and participation on development of this rule.

1. Balancing and Beyond: A Vision for Community Services and Supports for Individuals with Disabilities, 2010 Draft, pg. 11. [↑](#footnote-ref-1)