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### **Home and Community-Based Service (HCBS) Waivers Free Choice of Providers Rule 5123:2-9-11 December 29, 2014**

Thank you for the opportunity to speak here today on the Home and Community-Based Services (HCBS) Waivers Free Choice of Providers (FCOP) rule (5123:2-9-11) being proposed by the Ohio Department of Developmental Disabilities (DODD). My name is Mark Davis, President of the Ohio Provider Resource Association (OPRA). OPRA has represented providers who serve individuals with Intellectual and Developmental Disabilities (I/DD) in Ohio for over 40 years. We are deeply committed to a system that provides individuals with real choice of their service provider. OPRA appreciates being asked to participate in a DODD workgroup that discussed changes to the FCOP rule. My comments today will focus on issues remaining with the proposed rule, starting with our general issues and followed by specific recommendations on certain sections.

#### **General Issues**

Under the Medicaid program, all eligible individuals who receive HCBS services are entitled to receive HCBS services from any willing and qualified HCBS Medicaid provider. Medicaid is required to be administered on a statewide and uniform basis. Several changes to this rule remove assurances of the choices that people with I/DD currently are afforded. The proposed rule, as drafted, suggests a departure from Ohio's attempts to operate the HCBS I/DD program on a statewide and uniform basis.

CMS's new rule prohibits case management (service and support administration) providers from providing HCBS waiver services because of the conflict of interest inherent in these situations. Clearly, this is a major issue for Ohio, where county boards routinely provide assistance to individuals with choosing HCBS waiver service providers while at the same time, offering the very same HCBS waiver services. The proposed rule does not do enough to achieve conflict-free case management and compliance with federal regulations.

- The proposed rule diminishes the role of Department in administering and enforcing the procedures regarding a Medicaid recipient's right to free choice of provider. The Department's role is very watered down compared to the current law, and, the effect, we believe creates an unlawful delegation to the county boards not contemplated within relevant Medicaid law.
- It eliminates the Department's role in administering the statewide list of qualified providers.

- It removes documentation requirements of the provider selection process, leaving unknown, how the state will determine whether a statewide and uniform process is being followed.
- It allows County Boards to adopt their own county-by-county processes relative to free choice of provider in violation of statewideness and uniformity requirements of Medicaid. Any process regarding free choice of a Medicaid provider must be uniform and statewide. The proposal will lead to county boards imposing county specific requirements on Medicaid eligible individuals that do not comply with Medicaid law.

### **OPRA's specific recommendations**

1. The proposed rule minimizes the role of DODD in administering and enforcing the procedures regarding a Medicaid recipient's right to free choice of provider. It needs to be clearly stated, that the state has the responsibility to ensure individual's rights to free choice of provider; what the state will do to monitor free choice of provider; and what the state will do if there are issues raised about free choice of provider (notification, review and corrective action). Suggested revisions:
  - a. Revise (C)(2)(d) "Utilizing the department-approved, statewide, uniform format to create a profile of the type of services..."
  - b. Revise (D)(2) to read "Provide annual data to the department on department-developed benchmarks for recruitment of sufficient providers of HCBS services provided by the county board."
  - c. Delete division (E). This section seems duplicative of current statute and rule.
  - d. Add a division to (F) "The department will monitor and assure compliance with individual's free choice of Medicaid HCBS provider requirements."
  - e. Revise (F)(3) to read "The department will analyze quarterly data from county boards and HCBS claims to identify issues with free choice of provider, monitor county board self-referrals and assess the effectiveness of corrective actions related to free choice of provider. The department shall integrate the results of their monitoring of county boards into each county board's accreditation review."
2. Revise (C)(1)(e) "The service and support administrator shall assist the individual with the provider selection process if the individual requests assistance and the county board does not provide HCBS waiver services."
3. Note regarding the implementation of (C)(2)(b): The department's current guide to interviewing prospective providers is geared to residential services. We recommend that this guide be revised to reflect the complete array of HCBS services and questions that individuals may want to pose to providers of these services.
4. Revise (C)(2)(c) Sharing objective information with the individual about providers, including copies of the most current and completed provider

- compliance reviews and provider responses to compliance reviews for requested services and number of individuals served; and any information about services...
5. Note regarding the implementation of (C)(2)(c): Ensure that individuals accessing provider compliance reviews online understand that the information only includes certain timeframes (timeframe for the most current and completed reviews) and that some providers will show up as not having a compliance review due to technical issues at the department. Include notation that these providers have remained certified and that these providers' next compliance reviews will be posted upon completion.
  6. Revise (C)(2)(h) "Scheduling and participating as needed with interviews of prospective providers except when the county board is one of the providers to be interviewed. If the individual chooses to interview the county board as a prospective provider, the service and support administrator shall disclose to the individual that the service and support administrator is employed by the same agency. The service and support administrator may participate in this interview as directed by the individual."
  7. Add a division (C)(2)(i) Individuals may request assistance with provider selection from anyone of their choosing.
  8. Revise (C)(4) to include specific action taken by the department when there is an identified concern about free choice of provider (process for notification, review, corrective action and follow up to resolution); and to require county boards to report data on free choice of provider to the department on a quarterly basis.
  9. Revise (D)(2) "Implement a process ~~and establish annual~~ to send data to the department on benchmarks for recruitment..."

Thank you for the opportunity to testify today. We respectfully request that the department work with OPRA and other stakeholders to revise the proposed rule and address concerns with the proposed FCOP rule, so that individuals with I/DD have free choice of provider and the rule complies with federal regulations.