



March 10, 2017

To: Division of Medicaid Services

From: John Sauer, President/CEO
Jim Williams, Director of Member Enrichment

Re: DHS Statewide Home and Community-Based Services Draft Transition Plan

Thank you for the opportunity to comment on the Department of Health Services (DHS and state Medicaid authority or SMA) statewide Home and Community-Based Services (HCBS) draft transition plan. LeadingAge Wisconsin is the statewide association representing non-for-profit nursing homes, assisted living facilities and other community-based providers in Wisconsin. The Association also has a number of for-profit long-term care providers who have joined LeadingAge Wisconsin as subscriber organizations. In total, the Association represents over 560 nursing home, assisted living, senior housing, and other community-based providers who serve elderly persons and individuals with a disability throughout the state. A large percentage of our members serve Medicaid waiver clients.

The following comments center on the heightened scrutiny process found on pages 16 and 17.

1. DHS estimates 150 settings may have qualities which could result in being labeled as "institution based". The first of three settings identified in the CMS rule are those that are "publicly or privately operated facility that provides inpatient institutional treatment". LeadingAge Wisconsin asks DHS to state in the transition plan that nursing homes are not facilities providing inpatient treatment.
2. LeadingAge Wisconsin believes the presumption that "any HCBS setting in a building located on the grounds of, or immediately adjacent to, a public institution" has the qualities of an institution is flawed. First, it fails to recognize the value of public, campus-based continuums of care. Second, in many instances the facilities located on these campuses were developed in direct response to locally identified needs. In addition, many campus-based settings were created to take advantage of economies of scale. Finally, most of these settings were developed well in advance of the HCBS regulations. LeadingAge Wisconsin requests DHS affirm its support in the transition plan for campuses that offer a continuum of care in their communities.
3. The third location which may be presumed to be "institution-like" are those "settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS waiver services". LeadingAge Wisconsin would like the SMA to define or

provide generic examples of these types of settings. We question how the SMA can make a determination as to whether or not an individual is isolated, particularly if the individual has freely made the decision to live in that setting. We also ask that the final transition plan recognize the realities of service offerings in rural communities where there is a lack of options or population density.

4. Providers determined to be "institution-like" will be subject to the heightened scrutiny process outlined in the transition plan. Direct facility notification of heightened scrutiny is only provided at the beginning of the process. Because the consequences of being labeled "institution-like" are severe (loss of waiver funding, discharge of residents/clients, etc), LeadingAge Wisconsin believes the provider deserves to receive regular and timely written correspondence from the SMA throughout the heightened scrutiny process. LeadingAge Wisconsin strongly recommends that DHS immediately contact providers they think are going to be subject to heightened scrutiny and begin working aggressively with these entities to address concerns and mitigate any impact on the provider and the people they serve.
5. The heightened scrutiny process includes a committee review. LeadingAge Wisconsin believes the transition plan should include details about the makeup of the committee as well as the provider's right to be a part of the committee process including, but not limited to, representation by legal counsel.
6. The transition plan states that the decision to submit evidence to the Secretary of the US Department of Health and Human Services (HHS) regarding a facility's designation as "institution-like" rests with the Secretary of the Wisconsin Department of Health Services. It is unclear in the transition plan when evidence will be submitted to HHS. Will all heightened scrutiny cases be forwarded or only in those situations where the SMA determines the provider is "institution-like"?
7. The transition plan should outline the provider's rights to contest classification as "institution-like" by either the SMA or HHS.

Questions about these comments should be sent to John Sauer (jsauer@leadingagewi.org) or Jim Williams (jwilliams@leadingagewi.org) at 608.255.7060. Again, thank you for the opportunity to comment on the HCBS Statewide Transition Plan.