

TCM MEETING
09.01.16

PRESENT: Jo Hetrick, Community Living Opportunities; Tim Gorton, Donna Holstein, SLI; Lisa Frazier, Susie Decker Case Management; Erin Arnold and Shawna Link, Caring and Compassionate Care; Becky Patterson, Becky's Bridges; April Patton, Megan Boydston, Kenisha Morton, Monaco & Associates; Tracy Herman, Debra McKee, TARC; Mary Kennedy, TARC Case Management; Merilee Larson, Lifeworx; Coleen Hernandez, Paula O'Brian, CDDO; Adrian Rivera, Sabrina Winston, Billie Padilla, CDDO

CDDO Updates:

- ✓ BCI will be moved from the TARC server to the Cloud this fall. BCI users should not notice any difference.
- ✓ Sabrina introduced the new CDDO Liaison Jess Reling.
- ✓ The CDDO is working on updating policies.
- ✓ Affiliate Agreements will be sent out soon.
- ✓ The CDDO has volunteered to be the first to have the State Peer Review November 10, 2016.
- ✓ PCSP - (handout) Coleen and Tim are participating on the State's work groups. Each group is submitting their recommendations by Sept. 15th. Everyone is to go through PCSP training. The purpose to have a uniformed PCSP for any waiver.
- ✓ Wichita State was chosen to ensure that the State's policies meet the CMS Final Rule and Article 63 & 64.

Stakeholder Meeting:

- ✓ It was suggested that TCMs make sure that persons on their caseloads are connected with services.
- ✓ The State is looking at non-utilization of services. Some people were coded incorrectly so be sure they are utilizing their services. The CDDO has to report why someone is not accessing services.
- ✓ Initially the person should be added to the WL per the sign-in sheet. A 3160 is required to be in KMAP.

Guest Speaker:

Shelby Fry, TIES Director, spoke about the Workforce Innovation and Opportunity Act (WIOA). (handouts)

- ✓ Shelby stated that she participated on the Sheltered Workshop state workgroup, that Sheltered Workshops must be compliant within five (5) years which began in 2015.

- ✓ The WIOA is a re-authorization of the Workforce Investment Act of 1988. The WIOA defines disability as individuals with significant disabilities which includes returning combat veterans, persons with TBI, missing limbs to persons with I/DD.

Key points of change:

- ✓ Schools can no longer contract while the person is still in high school that pay subminimum wages.
- ✓ Voc-Rehab must use 15% of the Title 1 funding in transitioning individuals age 24 and under. The transition process should begin for individuals at age 16 or 17. It was stated that Voc-Rehab is not prepared for this.
- ✓ The last provision of the WIOA came into effect on July 22, 2016. It states that individuals 24 and under cannot go into a special minimum wage position until they have gone through training by the Designated State Unit, which is through Voc-Rehab. It includes career counseling, peer review, and any other federal or state programs deemed eligible.
- ✓ Everyone regardless of age must receive career counseling, local self-advocacy, self-determination and peer mentoring training opportunities yearly to continue to receive special minimum wages. New individuals must be done every six (6) months.
- ✓ If an individual is working but not eligible for HCBS funding, there is a possibility of eligibility for the Working Healthy Supported Employment Waiver.
- ✓ If the individual is TCM only the TCM must become an ILA.
- ✓ Shelby stated that TIES is not accepting anyone under the age of 24 unless they have received their certificate through Voc-Rehab.

Next meeting is Monday, Nov. 3rd, 3-5 pm.

COMMENSURATE PAGE

For Employers Serving Persons With Disabilities

July/August 2016

Wage Hour Division Begin Enforcement of the WIOA Limitations on FLSA Commensurate Wages

The U.S. Department of Labor, Wage Hour Division, WHD, announced on July 27, 2016, that it will begin enforcement of the Section 511 of the Workforce Innovation and Opportunity Act, WIOA. It also published and released on July 27, a Field Assistance Bulletin (FAB) No. 2016-2 to its Regional Administrators and District Directors, a letter to all Section 14c Special Minimum Wage Certificate holders, and WHD Fact Sheet #39H, a new non-technical fact sheet explaining its enforcement of the WIOA restrictions.

Effective July 22, 2016, Section 511 of the WIOA prohibits the payment of commensurate wages unless the employer and the worker, age 24 or younger have received a certificate from a Designated State Unit (DSU) of the state Vocational Rehabilitation agency regarding information and training for competitive integrated employment, CIE. Section 511 also prohibits commensurate wages after a certain date with workers age 25 or older, unless the employer has documentation that they have received career counseling and information about local supports, including the benefit of CIE.

What Does the WHD Enforce?

When certifying and/or investigating a work program, (a CRP, work activity center or similar program) paying commensurate wages, the WHD will only enforce the requirement for the certificate from the state VR DSU for youth age 24 and younger and the employer's documentation of the career counseling required for all workers paid commensurate wages of any age, including youth. The requirements are effective depending on the date of employment, DOE, of the worker.

Two Different Requirements

All Workers Regardless of Age: All consumer workers paid commensurate wages, including youth age 24 or younger, must receive at least annually, (twice in the first year), career counseling and information about local self-advocacy, self-determination, and peer mentoring training opportunities in their local area. The employer has the burden to obtain from the individual or other source the documentation that the counseling and information were received. For those employed on or before July 21, 2016,

this requirement begins July 21, 2017. For those employed as of July 22, 2016, the requirement begins immediately and the first counseling must be given within six months of the DOE, again six months later and annually thereafter.

Youth Age 24 or Younger: Youth age 24 or younger cannot be paid commensurate wages unless the employer has a certificate from the state VR DSU. The certificate documents that the youth has received; 1) transition services under the IDEA and/or pre-employment transition services under the WIOA, 2) the youth was ineligible for VR services OR failed to reach an employment outcome after working a reasonable period under an IPE with the case closed, and 3) received career counseling and information about other federal and state programs. This requirement begins immediately for youth employed as of July 22, 2016. Such youth must be paid at least the applicable minimum wage until the certificate is received. For youth employed on or before July 21, 2016, this requirement begins July 22, 2017.

What is the Date of Employment (DOE)?

The WIOA's FLSA enforcement is determined by when the consumer worker was initially employed. This is not the same as the date of enrollment in a services program. An individual may have been enrolled in a program receiving services but not performing compensable work subject to the FLSA. The date of employment, DOE, would be the first day the consumer engaged in compensable work. Employers should have readily available the birth date and the DOE of each worker receiving commensurate wages in preparation for their FLSA Section 14c Certificate renewal application and for inspection during an investigation.

MKAI is communicating with WHD representatives about the WIOA enforcement requirements. WHD field and District Office staff are generally unaware of the WIOA requirements and the new enforcement FAB. The new proposed Special MW certificate application will be issued soon. The information requested has been reduced from the first proposed draft, but will require much more information than the current application, including worker's birth dates, date of employment and DSU certificate information.

Next month we will continue our discussion about the WHD WIOA enforcement requirements.

**HCBS Settings Final Rule
Non-Integrated Employment Settings Workgroup
Notes from August 24, 2016 Meeting**

1) **Historical Perspective** – Understanding the “protection” bias inherent in the current system and using that knowledge to help change hearts and minds.

We need to understand and appreciate that the current I/DD system was largely developed to serve the policy purpose of de-institutionalization, with a promise to families that the system would “take care” of the person with I/DD with a protectionist mentality. We have to understand that in order to bring people to the new policy reality of most inclusive, integrated setting inherent in the HCBS final rule.

The following write up from Ron Pasmore does an excellent job of defining this challenge its related opportunities effectively:

*The community based IDD system that operates today was developed in the 1990's and utilized HCBS to reduce reliance on state institutions. The **promise** to families and guardians was that home and community services offered improvements to the lives of persons with IDD while preserving the health and safety protections that persons received from institutional care. Our systems as defined within Articles 63 and 64 regulations were developed with emphasis on preserving health and safety and protection from harm for persons with IDD while in the community. Expectations of the IDD system stakeholders including families, guardians, providers and the community at large is that persons in community programs are supervised 24/7 and protected from coming to harm. As an example, under our current system a consumer may decide to leave the day program walk down the street to a store to purchase a candy bar. Leaving their program would be considered elopement and a report of neglect could be in order because the person being served was not observed to have left their program. The episode could have resulted in an angry guardian because the person served was on a strict diet and the provider “allowed this to happen.” Many consumers of day services have the term “constant supervision” in their service plans. Many service plans actually restrict access to the community for some persons being served.*

The HCBS Settings Final Rule leads us to serve persons in the most integrated setting appropriate. Underlying this change, though, is a change in basic philosophy of the expected outcome of services – leading towards helping persons with IDD to lead lives that are more like everyone else in the community. The community system, as currently funded, will no longer be able to assure an assumed expectation of stakeholders of protection from harm and 24/7 supervision. Instead of preventing individuals from harm through constant supervision, the system will need to focus upon teaching persons to learn from natural consequences. Expectations of the service systems funded through HCBS that stakeholders have today are going to need to be reformulated through ongoing education. The assurance of 25 years ago that recipients of HCBS would have the same level of protection they had in the state institution needs to be addressed and changed.

2) **Definitions** – There will need to be redefining of service definitions. Thankfully, the WISE groups have already spent considerable time making several definitional recommendations in this regard, which will prove valuable as a starting point.

- The prior work product of the WISE groups can help inform the discussion of this workgroup and the state's efforts to conform to the final rule regarding the definitions and funding process, as well as information in the IDD waiver application regarding legwork for definitions (i.e. day services, has to be categorized, that pre-vocational has to be separated out from day habilitation, definitions need to be developed to ensure adherence to the policy that most integrated setting, etc.)

3) **Capacity Building, Systems Transformation Support & Sustainability** – As a group we want to also spend time making recommendations regarding capacity building, systems transformation support and ensuring sustainability of current funding streams

4) **Principles Toward the New Policy** – We support the following overall principles for Kansas' policy in regards to this issue: policy and procedure changes need to ensure that non-integrated employment settings be limited to pre-vocational supports, be time-limited, goal-oriented, person-centered, and used only when it is truly the most integrated setting. This stated policy to conform to the settings rule mandate cannot be in name only. Kansas policy and procedures need to contain effective accountability mechanisms in order to ensure these principles

are accomplished. Ensuring these mechanisms are meaningful and ensure adherence to these principles is important to effectuate the policy (additional note: regarding defining integrated setting adherence, the group talked about several questions or related issues in this regard, such as who does the assessment regarding most inclusive setting and how can this be an independent process to protect against conflicts, who performs the follow ups on these, how are the goals set, etc.).

5) Robust Education on the Settings Rule, Starting Now – A detailed and robust education/outreach/communication plan needs to be developed regarding the HCBS Settings Final Rule and its impact in Kansas. The group believes that Kansas is behind other states in this regard, and that great focus needs to be placed immediately on educating self advocates, families, guardians, providers and others about the Final Rule. A compilation of effective materials and information disseminated from other states should occur immediately, because the I/DD public in Kansas is not well informed about the final rule or its ramifications.

- Part of this education needs to also focus on better ensuring the person or their supports do not chose a more restrictive environment than is needed for reasons such as parental comfort, staff convenience, ease of use or other protectionist reasons as described in Ron Pasmore section detailed above.

6) Navigator/Ombudsman – There is a need for creating an independent navigator/ombudsman to help address the complexities of HCBS, which have gotten more complex with the settings final rule. This is an important but unmet need in this regard. Thankfully, the WISE groups have made detailed recommendations for creating this capacity. We want to examine those recommendations.

7) Better Coordination with the Day Services Workgroup – The non-integrated employment settings workgroup sees overlap with the day services group on this topic. Therefore, we want support from the state to ensure better coordination between these two groups.

8) Other Items to Consider:

- Unintended Consequences? – We need to also be thinking about the potential unintended consequences of any changes to the current system.
- Changes Must Meet Future Needs & Policy Direction – Whatever is developed regarding these policies and conforming to the HCBS settings final rule, it needs to ensure that it can work regardless of how HCBS is structured or reformatted in the future in Kansas.

Person Centered Plan

Questions to Consider:

1. Who should complete the person centered plan?
2. How the plan should be completed with the individual?
3. How the information is used?
4. How to get the information?

Consider who completes the plan and how is disseminated updated and useful

Reminders:

- The individual leads the process where possible.
- The individual's representative should have a participatory role, as needed and defined by the individual.
- Includes people chosen by the individual.
- Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions.
- Is timely and occurs at times and locations of convenience to the individual.
- Provide information in plain language in a manner that is accessible to individuals with disabilities and persons who are limited English proficient.
- Includes strategies for solving conflict or disagreement within the process, including clear conflict of interest guidelines for all participants.
- Providers of HCBS for the individual or those who have an interest in or are employed by the provider of HCBS for the individual must NOT provide case management or develop the person centered plan.
- Offers informed choices regarding the services and supports they receive and from whom.
- Includes a method for the individual to request updates to the plan as needed.
- Records the alternative home and community based settings that were considered.
- The plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports.
- The plan must reflect the setting where the individual resides is chosen by the individual. The setting must be integrated in, and supports full access of individuals receiving HCBS to the greater community including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving HCBS.
- Remember the setting options are identified and documented in the person centered plan and are based on the individual's needs, preferences, and, for residential settings resources available for room and board.
- Reflect the individual's strengths and preferences.
- Reflect clinical and support needs as identified through the assessment of functional need.

- Include individually identified goals and desired outcomes.
- Reflect the services both paid and unpaid that will assist the individual to achieve identified goals, and the providers of those services and supports including natural supports.
- Reflect risk factors and measures in place to minimize them, including individualized back-up plans.
- Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her. At a minimum the plan must be written in plain language and in a manner that is accessible to the individual.
- Identify the individual and or entity responsible for monitoring the plan.
- Be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation.
- Be distributed to the individual and other people involved in the plan,
- Include those services, the purpose or control of which the individual self-direct.
- Prevent the provision of unnecessary or inappropriate services and supports.
- Document that any modification must be supported by a specific assessed need and justified in the plan.

The following must be in the plan:

- ✓ Identify a specific and individually assessed need.
- ✓ Document the positive interventions and supports used prior to any modifications.
- ✓ Document less intrusive methods of meeting the need that have been tried but did not work.
- ✓ Include a clear description of the condition that is directly proportionate to the specific assessed need.
- ✓ Include a regular collection and review of data to measure the ongoing effectiveness of the modification.
- ✓ Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- ✓ Include informed consent of the individual
- ✓ Include an assurance that interventions and supports will cause no harm to the individual.
- ✓ The plan must be reviewed and revised upon reassessment or functional need at least every 12 months, when the individual's circumstances or needs change significantly, or at the request of the individual.

Person centered plans will be required for all HCBS participants. Think about each waiver and consider who completes the plan with all of the elements. Who implements the plan and keeps it accurate and up to date. How does the individual request? In addition consider the time to complete the plan and consider all populations when making changes to plans.