

**SUMMARY OF FINDINGS AND RECOMMENDATIONS:
Home and Community-Based Settings Statewide Transition Plan
Systemic Assessment Review**

Date Statewide Transition Plan (STP) resubmitted to CMS: 7/28/16

Note: All page reference numbers in this feedback are the numbers printed on the bottom of the STP document's pages.

Transition Plan Introduction

The links to the various authorities that regulate and support HCBS in Idaho are very helpful. However, there were no links provided to the A&D Waiver Provider Training or the Idaho Medicaid Provider Agreement. Since these documents are referenced in the Systemic Assessment, it would be helpful to have links to them.

IDAHO RESPONSE: Links to the A&D Waiver provider training modules and the Medicaid Provider Agreement have been added to the STP introduction.

The state lists links to the HCBS Waivers and 1915(i) State Plan Amendments in the introduction. Additionally, the Overview on page 1 explains what waivers and 1915(i) programs are under the state's authority. However, there is no quick reference to know who is covered by each of the 1915 authorities and the only way to find out was to dig into each of the links. It would be helpful if the state could add a brief description of who is covered by the waiver or 1915(i) program in the overview. As an example, the Children's 1915(i) could have the description: "the children's 1915(i) program provides services to children birth through 17 years of age who have a developmental disability described in section 16.03.10.500-506 of the IDAPA code".

IDAHO RESPONSE: Brief descriptions of who is covered by each HCBS program have been added to the STP.

Systemic Assessment and Remediation

There are two over-arching issues within the systemic assessment that affect several areas (provider choice and the exception to restraint requirement).

Exception to Restraint Requirement. Regarding the federal requirement that participants have freedom from restraints, there are exceptions allowed but only if specific requirements are followed and documented in the person-centered plan. Idaho's exception requirements in IDAPA 16.03.10.315 follow the federal regulations, however they only pertain to provider own or controlled settings even though Idaho allows restraints in other settings. CMS has issued 1915(c) policy guidance clarifying that if restraints are allowed in settings other than residential provider owned or controlled settings, the same requirements described in 42 CFR 410.301(c)(2)(xiii) must be applied. The following sections are affected:

- *Non-Residential Service Settings: Children's Developmental Disability:* Page 15 #7, 21.905.01 only says: Be free of mechanical restraints, unless necessary for the safety of that person or for the safety of others; (7-1-11) and 16.03.21.915 does not include the exception

requirements. Restraints must be documented in the person-centered plan and only implemented after all of exception requirements met.

- *Non-Residential Service Settings Gap Analysis: Adult Developmental Disabilities and Aged and Disabled Services, Adult Day Health:* Page 19 #7, 16.03.21.915 (for DDAs) does not list all of the requirements for the restraints exception requirements – missing time limited, prior methods tried listed, data collection. Also, the restraint requirements for the setting adult day health centers appear to remain silent.
- *Community Crisis Supports (Adult DD 1915i):* Page 22 #7 16.03.21.915 and 16.04.17.405.08 do not meet all of the requirements for the restraint exceptions. As remediation, 16.03.10. is referenced. 10.313 is applicable, but it does not allow exceptions for restraints. Therefore there needs to be an appropriate regulation that meets all of the exception requirements.
- *Adult DD 1915i:* Page 27 #7, several IDAPA regulations are provided as support to the regulation. However they are only partially compliant as they do not include all of the requirements for allowing an exception to the restraint requirement.
- *Residential Habilitation Supportive Living (A&D and DD waivers):* Page 29 #7 IDAPA 16.04.17.405 and 402.d along with 16.03.21.915 are referenced as supporting the regulation. However, they are only partially compliant as they do not include all of the restraint exception requirements.
- *Supported Employment (A&D and DD waivers):* Page 31 #7, the adult DD waiver, Appendix G, describes the process for implementation of restraints. However, the waiver is an agreement between the State of Idaho and CMS. It is not an agreement between the State of Idaho and their providers. There needs to be another authority for this provision. The state also references the Idaho Medicaid Provider Agreement, but CMS does not have access to this document, therefore was unable to verify if it meet the federal requirements.

IDAHO RESPONSE: As indicated in the STP (page 2), a reference to identified support for an HCBS regulation in the systemic assessment does not necessarily mean the requirement was *fully* supported by the rule cited. Many of the HCBS requirements were only partially supported by existing rules and statute, provider agreements, etc. Consequently, Idaho drafted comprehensive HCBS administrative rules (IDAPA) based on the federal regulation language and early guidance from CMS. Neither indicated that all of the exception requirements described in 42 CFR 441.301(c)(2)(xiii) must be applied to the setting qualities described in 441.301(c)(4)(i)-(v).

The process of risk mitigation has been incorporated into IDAPA under 16.03.10.313 in order to address those circumstances in which those setting qualities that apply to ALL HCBS settings (including the use of restraints) pose a risk to a participant. This process will operationally incorporate elements of the exception requirements.

Provider Choice. Regarding the federal requirement for individual choice of services and supports, and who provides them, Idaho has promulgated rule 16.03.10.313 that partially complies with this federal regulation. It does not fully comply because, the requirement for the

individual to have the choice of their provider is not included. The following sections are affected:

- *Non-Residential Service Settings: Children's Developmental Disability*: Page 16 #9: Choice of provider is not included in 16.03.10.313, however it was added to 16.03.10.526.06, so this is ok, but the STP is saying the opposite... (i.e. is supported in 313 and not 526)
- *Day Habilitation (A&D Waiver)*: Page 25 #9: Choice of provider is not included in 16.03.10.313, so there is still a gap.
- *Developmental Therapy (Adult DD 1915i)*: Page 27 #9, (IDAPA 16.03.10.653.04.e, 16.03.21.900.03, 16.03.21.915.08 and 16.03.10.313 do not address the requirement that the participant has a choice of their provider.

IDAHO RESPONSE: During the systemic assessment, we determined that IDAPA is silent with regards to some specific service categories. However, explicitly stating that participants have free choice of providers in IDAPA was not necessary to ensure that participant right, as Idaho Medicaid participants already had free choice of providers. This is assured in the Idaho Medicaid Provider Agreement for all Medicaid providers, and within all of Idaho's HCBS programs. Within the new IDAPA rules specific to HCBS, 16.03.10.313.b strengthens the existing participant choice of providers and services – specifically, the selection of where those services are provided.

Provider owned or controlled residential settings – The following issues have been identified in the systemic assessment for these setting types.

- *Opportunities same as non-HCBS individuals*: Page 8 #5. Support should be listed as 16.03.19.200.11 (not .08) because rule (IDAPA 16.03.19.200.08) does not address “free access to religious and other services” as indicated by the state; only health services. Rather, “Right to participate in social, religious and community activities” is addressed under (IDAPA 16.03.19.200.11 (d)). State should extend the referenced regulation to include (11).

IDAHO RESPONSE: The citation for IDAPA 16.03.19.200.11 has been added to the support for this requirement.

- Page 8, #5 continued... Rule (IDAPA 16.03.22.320.07) State indicates that this supports participant's rights to participate in the community. Sounds more like choice of services offered at facility. Use of “external vendors” is unclear.
 - **07. Resident Choice.** *A resident must be given the choice and control of how and what services the facility or external vendors will provide, to the extent the resident can make choices. The resident's choice must not violate the provisions of Section 39-3307(1), Idaho Code. (3-30-06)*

IDAHO RESPONSE: As indicated in the STP (page 2), a reference to identified support for an HCBS regulation in the systemic assessment does not necessarily mean the requirement was fully supported by the rule cited. IDAPA 16.03.19 establishes minimum standards that apply to all Certified Family Homes regardless of payer source. IDAPA 16.03.10 establishes a higher standard for providers that

accept Medicaid dollars for HCBS. IDAPA 16.03.10.314 was developed in order to ensure full alignment with the federal regulation for the purposes of Medicaid reimbursement.

- *Restraints:* Page 8, #7, freedom from restraints is partially compliant. This would be clearer if the State also added to the remediation 16.03.10.315 and 317.

IDAHO RESPONSE: The citation for IDAPA 16.03.10.315 and 317 have been added to the remediation for this requirement.

- *Optimizes, but does not regiment choices:* Page 9, #8, since 16.03.10.313.01.d mirrors this federal requirement, it would be appropriate to add reference to this rule in the remediation section.

IDAHO RESPONSE: The citation for IDAPA 16.03.10.313.01.d has been added to the remediation for this requirement.

- *Visitors at any time:* Page 10, #16, 16.03.19.200.6 and 39-3316 both have the clause “subject to reasonable restrictions”. Therefore there is a gap. How is the state going to clarify what a reasonable restriction is with regards to these regulations? Note: 16.03.10.314 does align with the federal regulation.

IDAHO RESPONSE: As indicated in the STP (page 2), a reference to identified support for an HCBS regulation in the systemic assessment does not necessarily mean the requirement was *fully* supported by the rule cited. IDAPA 16.03.19 establishes minimum standards that apply to all Certified Family Homes regardless of payer source. IDAPA 16.03.10 establishes a higher standard for providers that accept Medicaid dollars for HCBS. IDAPA 16.03.10.314 was developed in order to ensure full alignment with the federal regulation for the purposes of Medicaid reimbursement.

Community Crisis Supports (Adult DD 1915(i)) – This service setting has the following issue. *Setting Selection:* Page 21 #6; there is a gap. 16.03.10.721.07 does not fully comply, rather it is a requirement for the person-centered planning. 16.03.10.728.07 does not fully comply, rather it describes responsibility related to conflict of interest. The state could add to the remediation section that incorporating the HCBS requirement in 16.03.10.313 will meet this requirement.

IDAHO RESPONSE: The following language has been added under Remediation: “Incorporate HCBS requirement into 16.03.10.313.”

Day Habilitation (A&D Waiver) – This service setting has the following issue.

Setting Selection: Page 24 #6 – There is a gap because 16.03.10.328.04 does not address the requirement that the participant selects the setting from options including non-disability specific settings. However, adding as a requirement to incorporate 16.30.10.313 would bring this into compliance.

IDAHO RESPONSE: The following language has been added under Remediation: “Incorporate HCBS requirement into 16.03.10.313.”