Disability Law Center’s report raises concerns about the State’s process to implement new regulations

In 1987 President Ronald Reagan declared March National Developmental Disabilities Awareness Month, asking “all Americans to join me in according to our fellow citizens with such disabilities both encouragement and the opportunities they need to lead productive lives and to achieve their full potential.” Today, the Disability Law Center (DLC) released a report, titled *HCBS Settings Rule: Evaluating Utah’s Transition Process An Opportunity for Inclusion*, which details the results of a year-long assessment of the State’s efforts to comply with the new federal Home and Community-Based Settings (HCBS) regulations in an ongoing effort to ensure President Reagan’s words are not hollow.

In 2014, the Centers for Medicare and Medicaid Services (CMS) issued a final rule to define and describe the requirements for HCBS settings. The purpose of the rule is to enhance the overall quality of HCBS programs, add protections for individuals receiving services, and carry out CMS’s intent that individuals receiving HCBS have full access to the benefits of community living and are able to receive services in the most integrated setting.

HCBS services are those that support people with disabilities who want to remain at home or in their community rather than receive services in an institution. Because these services are an alternative to institutional care, it is critical that these services give individuals real opportunities to live, work and play in the community. The purpose of this overhaul is to allow states time to ensure that home and community-based services are not being delivered in a way that isolates people with disabilities from the broader community, states have been given five years to evaluate settings and fully resolve areas of noncompliance.

Despite knowing about this process for more than two years, the State has yet to identify, let alone remediate, any areas of concerns. The DLC conducted its own survey to determine the State and service system’s current level of compliance. Using a stratified random sample of service providers, staff from the DLC found that approximately 20 percent of settings identified may actually isolate individuals from the broader community rather than support individuals to live independently. These results are troubling given that full compliance is required by 2019. It is the State’s responsibility to help providers understand the new requirements and assist them in coming in to compliance. The results of the DLC report indicate that many service providers will need to make significant changes in order to be compliant. Without meaningful direction from the State detailing a path to compliance, these providers and the people with disabilities who rely on them, may run out of time. This means that people with disabilities who rely on these models could be without services in 2019 if appropriate action is not taken soon.

Additionally, the results of the DLC survey indicate that service providers who are not currently compliant would readily accept assistance from the State, however, most providers felt there was not sufficient information from the State about the specific changes that will be made or how providers will be impacted. As 2019 quickly approaches, the DLC is urging the State to take immediate action to ensure no services are lost. They also urge the State to thoughtfully consider the results of their findings. If immediate action is taken, there is still time within the transition process to ensure compliance with the new settings rule and improve the quality of our home and community-based service system.
The Disability Law Center (DLC) is a private non-profit organization. The DLC’s mission is to enforce and strengthen laws that protect the opportunities, choices and legal rights of Utahns with disabilities. Our services are available statewide and free of charge, regardless of income, legal status, language, or place of residence.

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For more information regarding the Disability Law Center’s Report or the HCBS Regulations, please contact Mary Anne Davies or Laura Henrie at (801) 363-1347.