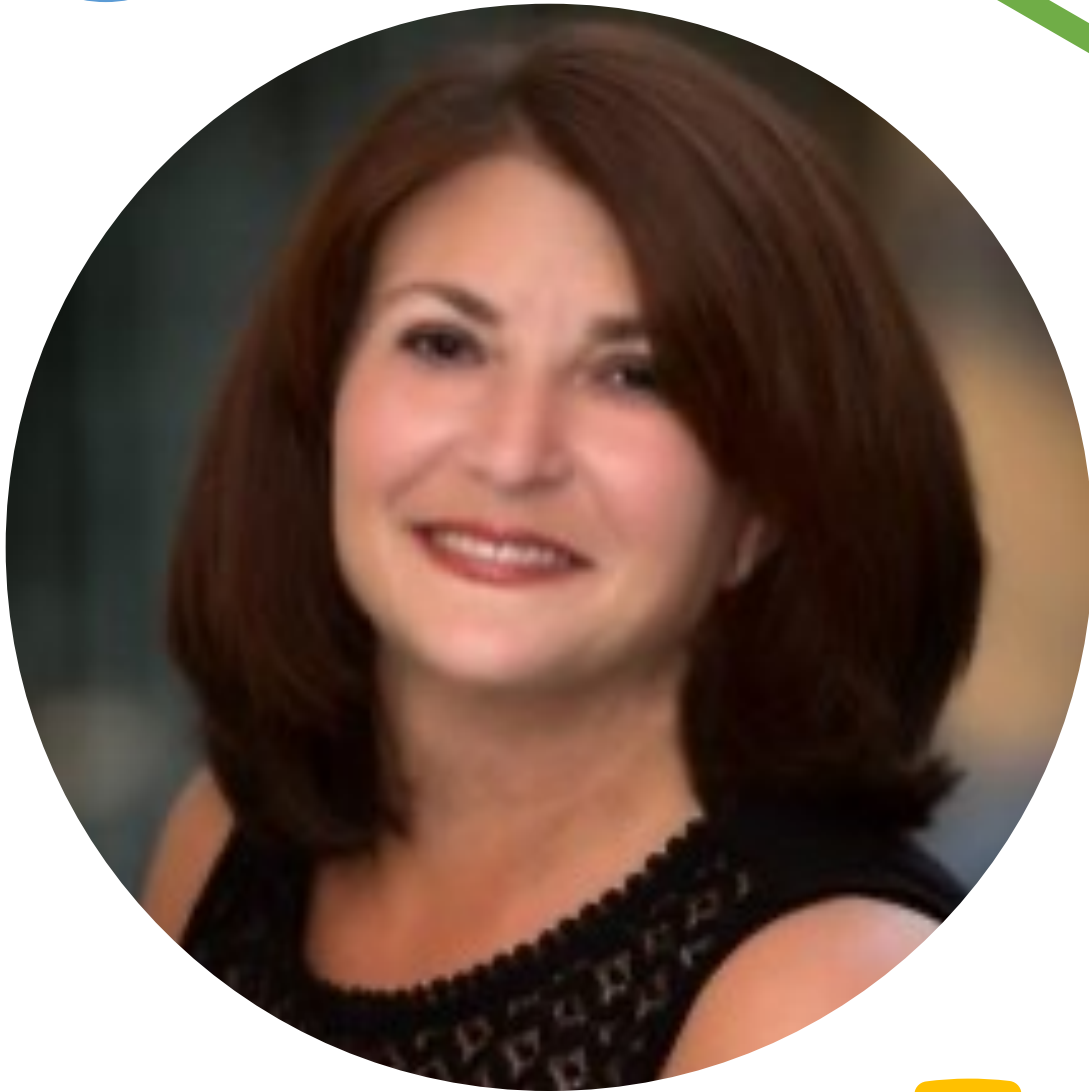


Deadline 2023: No More Waiting for the Home and Community Based Services Settings Rule

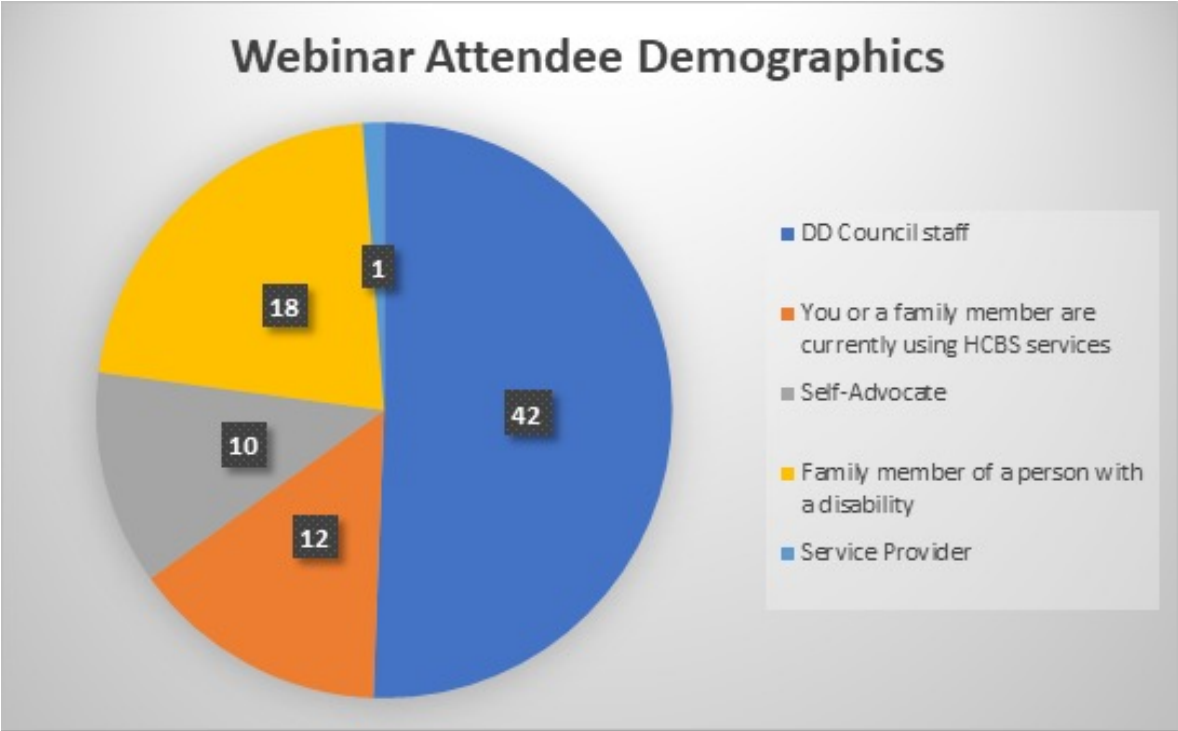




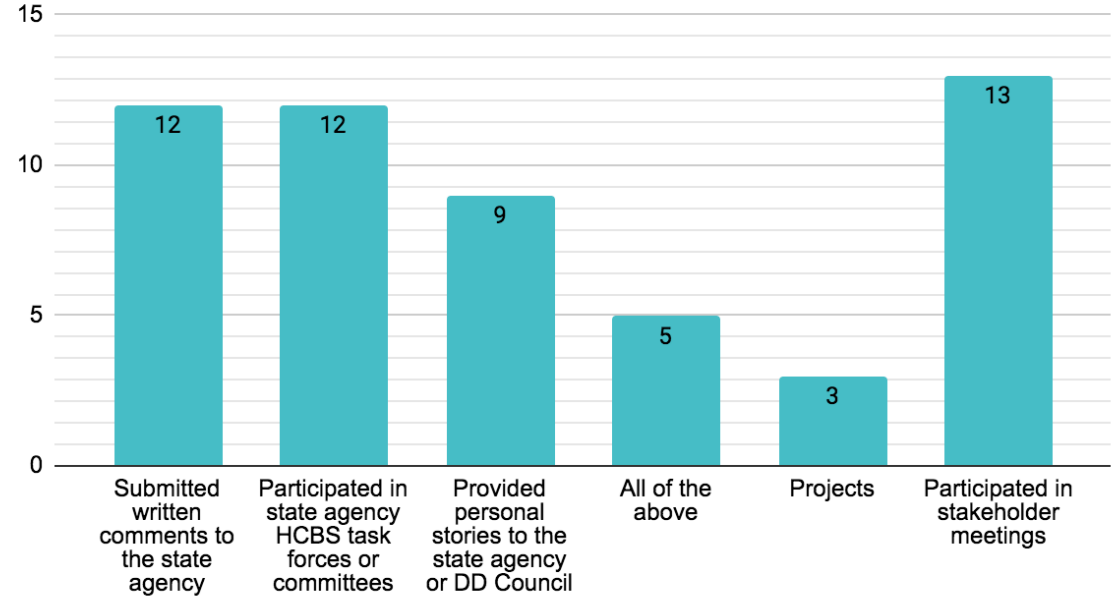
Welcome

Donna Meltzer, CEO
National Association of Councils on
Developmental Disabilities

Webinar Participants – 36 State DD Councils



Ways DD Councils have advocated for the HCBS Settings Rule



HCBS Settings Rule Webinar

HCBS Settings Rule Refresher

National Efforts to Engage
Stakeholders

Advocacy in Action:
Vermont and Michigan

Panel Question and Answers



Speakers

Erin Prangley, Director, Policy, National Association of Councils on Developmental Disabilities

Kate Brady, PhD, ABD is Project Manager for NCAPPS & HCBS Setting Rule Engagement at Human Services Research Institute (HSRI)

Kirsten Murphy, Executive Director for the Vermont Developmental Disabilities Council

Brett Williams, Public Policy Analyst for the Michigan Council on Developmental Disabilities and NACDD Public Policy Committee Chairman



HCBS Settings Rule Refresher

Erin Prangley, Director, Policy
National Association of Councils on
Developmental Disabilities





Many people with disabilities still do not have the opportunities they would like to be active and included members of their communities .

HCBS Settings Rule Timeline

1990: Americans with Disabilities Act community integration mandate. People with disabilities may not be excluded from participating in, or denied the benefits of, governmental services, programs, or activities. The ADA's regulations require state and local governments to "administer services, programs, and activities in the most integrated setting appropriate" to the needs of people with disabilities and that such a setting "enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible."

1991: Olmstead v. L.C. ex rel. Zimring, ("Olmstead") the United States Supreme Court held that it is discrimination to deny people with disabilities services in the most integrated setting appropriate. Accordingly, the Court found that individuals with mental disabilities are entitled to live in the community, whenever appropriate, and to receive treatment there, rather than in institutions.

2014: CMS amended the HCBS rules for person-centered planning, which included HCBS settings requirements.

2023: The March 17, 2023, transition period deadline for modified compliance, subject to corrective action plans.



Goals and Scope of HCBS Rule

To “ensure that individuals receiving services through HCBS programs have full access to the benefits of community living”

To “further expand the opportunities for meaningful community integration in support of the goals of the ADA and the Supreme Court decision in Olmstead”

Applies to all HCBS authorities – residential, non-residential, day services, employment services, etc.



May 2022 Modifications to Rule Timeline

Not every setting in the country will be fully compliant with all requirements of the settings rule by March 17, 2023.

May 2022 CMS guidance to states says state plan requirements must be "both **meaningful for individuals receiving services** and **reflective of realities that states and providers have been facing in addressing and living through the COVID-19 PHE.**"



Rule Requirements by March 2023 (cannot be waived)

1. States must receive final Statewide Transition Plan approval.
2. All states and settings will be fully compliant with the following regulatory settings criteria that are not impacted by the COVID-19 PHE, including its exacerbation of the workforce shortage, by the end of the transition period.
 - Privacy, dignity, respect, and freedom from coercion and restraint; and
 - Control of personal resources.
3. All states and provider-owned and controlled residential settings will be fully compliant with the following regulatory settings criteria that are not impacted by the COVID-19 PHE, including its exacerbation of the workforce shortage, by the end of the transition period.
 - A lease or other legally enforceable agreement providing similar protections;
 - Privacy in their unit, including lockable doors, and freedom to furnish or decorate the unit;
 - Access to food at any time;
 - Access to visitors at any time;
 - Physical accessibility; and
 - Person-centered service plan documentation of modifications to relevant regulatory criteria.



Required documentation by January 1, 2023 (cannot be waived)

- Description of how the state's oversight systems (licensure and certification standards, provider manuals, person-centered plan monitoring by case managers, etc.) have been modified to embed the regulatory criteria into ongoing operations*;
- Description of how the state assesses providers for initial compliance and conducts ongoing monitoring for continued compliance*; and
- Description of a beneficiary's recourse to notify the state of provider noncompliance (grievance process, notification of case manager, etc.) and how the state will address beneficiary feedback.

*Information should already be contained in the state's STP



Corrective Action Plans (State Flexibilities)

CMS will authorize CAPs to continue federal reimbursement of HCBS beyond the end of the transition period, if states need additional time to ensure full provider compliance with the regulatory criteria NOT mentioned above. These include for example:

- Access to the broader community;
- Opportunities for employment;
- Option for a private unit and/or choice of a roommate; and
- Choice of non-disability specific settings.

States must be able to show that their policies and procedures reflect the settings criteria and they have made efforts to implement the criteria to the fullest extent possible and work with CMS on a concrete, time-limited plan to come into full compliance with remaining criteria.

States should seek stakeholder input when developing CAPs.



ARPA Federal Funding for HCBS is Available!

States currently have an unprecedented opportunity to access additional HCBS funding through Section 9817 of the American Rescue Plan Act of 2021.

States can and should be leveraging this opportunity to increase their capacity to offer services in compliant settings (particularly non-disability-specific residential settings), and to expand services that are truly integrated to support individual autonomy and community participation

See your state plan at <https://www.medicaid.gov/medicaid/home-community-based-services/guidance/strengthening-and-investing-home-and-community-based-services-for-medicaid-beneficiaries-american-rescue-plan-act-of-2021-section-9817/index.html>

American Rescue Plan Act of 2021 (ARP) Section 9817: Overview of State Spending Plans



CMS is providing a high-level overview of the states' planned activities based on spending plans reviewed by CMS



\$2,606 Additional Spending per Beneficiary

On average, states plan to spend an additional **\$2,606** for home and community-based services (HCBS) per beneficiary on activities that enhance, expand, or strengthen HCBS.

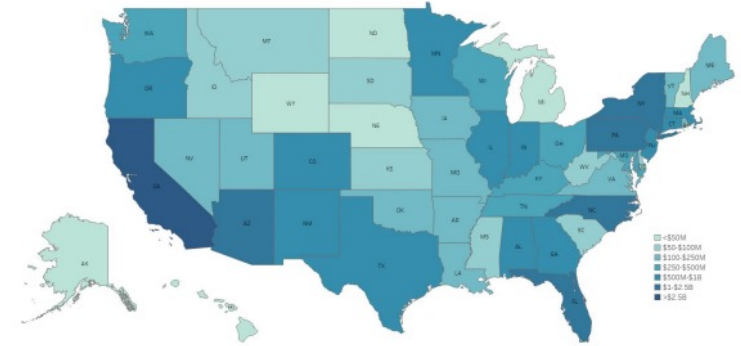


CMS Has Approved All States' Spending Plans

All states can claim the 10 percentage point HCBS FMAP increase from April 1, 2021 to March 31, 2022¹

Total of \$25B in Planned Spending Across States

According to states' spending plans submitted to CMS, each state plans to spend between **\$31.6 million** and **\$4.63 billion** in state and federal funds on activities that enhance, expand, or strengthen HCBS under Medicaid. These amounts will change as states further plan and implement their activities under ARP section 9817.



¹ For some states, CMS has asked the state to provide additional information before one or more proposed activities to enhance, expand, or strengthen HCBS in the state's spending plan and narrative can be approved, and/or has identified an activity that is not approvable under ARP section 9817. For all states, the approval to claim the FMAP increase is based upon the state's continued compliance with program requirements as stated in State Medicaid Director Letter #21-003 - <https://www.medicaid.gov/federal-policy-guidance/downloads/smd21003.pdf>

Call to Action: NACDD HCBS Settings Project

Problem: ACL identified states with final state transition plans (STPs) that had NO STAKEHOLDER input.

Solution: Engage DD Act partners to put HCBS settings rule on the front burner.

Goals: 1) DD Act sister organizations in all states partner to draft comments on pending STPs and engage stakeholders to extent possible; 2) Re-educate self-advocates and stakeholders about the game-changing new rule; 3) Prepare for March 2023 effective date.

Tactics: 1) NACDD webinar on July 13; 2) NACDD state policy committee/mentors; 3) Technical assistance on strategies to analyze STPs and engage state stakeholders; 4) DD Council Survey and white paper.



<u>Initial Approval</u>	<u>CMIA</u>	<u>Final Approval</u>
Alabama	Illinois	Alaska
Arizona	Maine	Arkansas
California	Massachusetts	Connecticut
Colorado	Nevada	Delaware
Florida	New Jersey	District of Columbia
Georgia	Texas	Hawaii
Indiana		Idaho
Iowa		Kentucky
Kansas		Minnesota
Louisiana		Missouri
Maryland		North Dakota
Michigan		Ohio
Mississippi		Oklahoma
Montana		Oregon
Nebraska		South Carolina
New Hampshire		South Dakota
New Mexico		Tennessee
New York		Utah
North Carolina		Virginia
Pennsylvania		Washington
Rhode Island		
Vermont		
West Virginia		
Wisconsin		

Each State Status

Initial Approval (AKA) "Heightened Scrutiny Package."

CMS notified the state that while the STP is sufficient, but the state needs to identify settings that are presumed to have institutional characteristics and any information the state may wish CMS to consider under the heightened scrutiny process.

CMIA: The communication CMS sends to the state notifying the state that public comment, input and summary requirements are met, but CMS has identified issues that must be resolved in the STP prior to initial approval.

Final Approval: The communication CMS sends to the state notifying the state that public comment, input and summary requirements are met, the STP has provided all necessary information including but not limited to; systemic assessment, site specific assessment, settings presumed to have institutional characteristics, information regarding heightened scrutiny or the state's decision to let the presumption stand, and clear remedial steps with milestones are delineated.

View STPs: <https://www.medicaid.gov/medicaid/home-community-based-services/statewide-transition-plans/index.html>

Resources and Toolkits



HCBS Settings Rule Implementation – Moving Forward Toward March 2023 & Beyond

This Rule Rules! The HCBS Settings Rule and You

- Designed for state programs to strengthen their infrastructure and develop stronger HCBS for beneficiaries
- Toolkit contains four modules
 - State strategies to help increase the share of long-term services and supports (LTSS) provided in community-based settings (history/context of LTSS reform and rebalancing)
 - Tools designed to assist states with policy and programmatic strategies (describes key elements of HCBS systems that are economically sustainable and equitable for all individuals with LTSS needs)
 - Cases studies of innovative programs and creative ways states are leveraging available federal authorities to transform LTSS systems (describes the various Medicaid authorities that states can choose from to cover their HCBS programs)
 - Links to resources (provides examples of state models of care and strategies to reform LTSS systems and expand HCBS)
- Go to <https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-services-final-regulation/index.html>
- Published a toolkit for advocates, families, and administrators on how to ensure that people with disabilities receive Medicaid-funded HCBS in integrated settings that offer full access to the community
- Includes four different resources
 - A resource for advocates and their families that explains what the new HCBS rule means and how to make their voices heard as their states make their transition plans. It also includes scripts for writing to their state's Medicaid agencies on how they think their state's HCBS program needs to change
 - A resource for state administrators and professionals on how to come into compliance with the new rule. It includes detailed guidance on the implications of the new rule, suggestions for elements to be included in the transition plan, and examples of useful tools and questionnaires for accessing provider compliance.
 - A research brief explaining how scattered-site supported housing can help states meet the integration and choice standards in the new rule.
 - A fact sheet on integrated housing for people with disabilities.
- Go to <https://autisticadvocacy.org/policy/toolkits/hcbsrule/>

Additional Resources ICDD and CQL

VIDEOS

- [HCBS Video: Overview](https://www.youtube.com/watch?v=xnbtb5Jpz7c) (7:26 minutes)
at <https://www.youtube.com/watch?v=xnbtb5Jpz7c>
- [HCBS Video: What does the Rule Guarantee?](https://www.youtube.com/watch?v=8sJl-LF5ufg) (5:17)
at <https://www.youtube.com/watch?v=8sJl-LF5ufg>
- [HCBS Video: Provider Requirements for Residential Settings](https://www.youtube.com/watch?v=sjy334aMXXk&feature=youtu.be) (6:32)
at <https://www.youtube.com/watch?v=sjy334aMXXk&feature=youtu.be>
- [HCBS Video: Rights Restrictions & Modifications](https://www.youtube.com/watch?v=Vg5DA_ouOwY) (3:44) https://www.youtube.com/watch?v=Vg5DA_ouOwY
- [HCBS Video: Your Services Should Be All About You](https://www.youtube.com/watch?v=-xqttlDcAkM) – for people receiving HCBS that discusses rights and choice. <https://www.youtube.com/watch?v=-xqttlDcAkM>

INTERACTIVE GUIDES

- [HCBS Guide: Your Right To A Community Life](https://www.c-q-l.org/resources/guides/hcbs-guide-your-right-to-a-community-life/) (for people receiving HCBS) <https://www.c-q-l.org/resources/guides/hcbs-guide-your-right-to-a-community-life/>
- [HCBS Guide: Supporting The Right To A Community Life](https://www.c-q-l.org/resources/guides/hcbs-guide-supporting-the-right-to-a-community-life/) (for staff who support people receiving HCBS – focuses on community) <https://www.c-q-l.org/resources/guides/hcbs-guide-supporting-the-right-to-a-community-life/>



Illinois Council on
**Developmental
Disabilities**

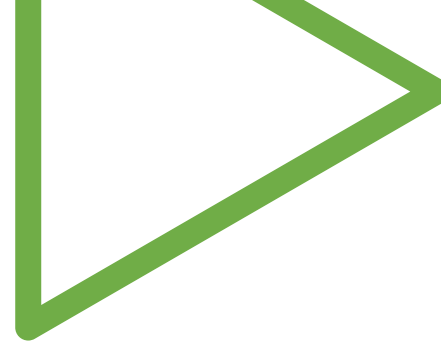


For more information contact Erin Prangley at eprangley@nacdd.org.



National Efforts to Engage Stakeholders

Kate Brady, PhD, ABD
Project Manager for NCAPPS & HCBS Setting Rule
Engagement at Human Services Research Institute
(HSRI)



HCBS Settings Rule Stakeholder Engagement Partnership

*Funded by ACL and administered
by NCAPPS at HSRI.*

Kate Brady, PhD ABD
Project Manager, NCAPPS at HSRI



NCAPPS



The goal of NCAPPS is to promote systems change that makes person-centered principles not just an aspiration but a reality in the lives of people across the lifespan.



AGENDA

01

HSRI's Partnership

03

Questions/Ideas

Why Engagement?

02

Resources

04

Why focus on Stakeholder Engagement now?

- Many factors seems to have produced a lull in response to submitted STPs
 - Changes in deadlines and settings interpretation from CMS
 - Covid-19
 - Competing demands for advocacy
- This dip in momentum is what we are hoping to change!

Scope of HSRI's contributions

Improving engagement with state agencies implementing the rule

Reviewing state drafts of transition plans and setting specific heightened scrutiny packages and submitting public comments, including the review of and comment on state settings assessment tools

Building community-level awareness of the rule and its implications for individuals receiving HCBS

Raising setting-specific issues with ACL and creating a better pathway to surface issues the individuals are experiencing in each state.

With support from ACL, HSRI is collecting and organizing existing informational and training resources related to the HCBS final rule based on assessed needs of subcontractors.

Subcontractors

APRIL

ASAN

AUCD

NACDD

NASILC

NDRN

HSRI is partnering with the subcontractors to:

Collect and organize existing informational and training resources related to the HCBS regulation for use in training and technical assistance.

Facilitate the lead organizations for the P&A network, CILS, DD Council and UCEDs, ASAN and SARTAC to plan and support advocacy efforts that will feedback to the state and CMS regarding the State Transition Plan and the state's efforts to implement the HCBS settings rule.

Provide guidance on organizing cross disability efforts

Provide guidance on prioritizing stakeholder feedback

Assist in identifying training materials appropriate for the groups

Provide guidance on developing capacity among self-advocates and families to engage meaningfully in stakeholder feedback and surfacing issues the individuals in the state experience

Opportunities for Engagement

1

Statewide Transition
Plans

2

Heightened Scrutiny
Packages:

- CMS Site Visits
- ACL Stakeholder
calls

3

Corrective Action
Plans

4

Waiver Amendments
and Renewals

Where are the Stakeholders?

INDIVIDUAL PEOPLE WITH
DISABILITIES THEIR FAMILIES,
AND NEIGHBORS

ADVOCACY GROUPS:
Parent Groups
Sibling groups
Self-advocate groups.

PROTECTION FROM HARM
RESOURCES:
State P&A
Ombudsman
Adult Protective Services

PROVIDER ORGANIZATIONS
AND ASSOCIATIONS

Engagement Activities



Show up and give in person public comment



Submit written comments from your council



Coordinate templates for others to use in submitting comments.



Consult partners about submitting joint comments



Call your legislators and other elected officials

Thank You.

For more information visit the NCAPPS website at:

[NCAPPS.acl.gov](https://www.ncapps.acl.gov)

or

Contact Kate Brady directly at: KBrady@HSRI.org

NCAPPS is funded and led by the Administration for Community Living and the Centers for Medicare & Medicaid Services and is administered by HSRI. The content and views expressed in this presentation are those of the presenters and do not necessarily reflect that of Centers for Medicare and Medicaid Services (CMS) or the Administration for Community Living (ACL) .





Vermont Advocacy in Action

Kirsten Murphy, Executive Director
Vermont Developmental Disabilities Council




Vermont Stakeholder Engagement

*How the Green Mountain State is influencing implementation of the
HCBS Settings Rule*



Keeping the Promise

Self-Advocates Defining the Meaning of Community Living, 2011



Keeping the Promise Continued

You can trace a straight-line from
Keeping the Promise to the Settings Rule:

“Outcomes from self-directed
lives must be the measure of
success” (pg. 3).

Why is Stakeholder Input Important?



Foundational Value

- Nothing about us, without us.

Practical Reality

- Self-advocates and families can see what state agencies can not.



How does Vermont DDC work with partners?

- **C**onduit for information.
- **C**onvenor of stakeholder meetings & town halls.
- **C**omposer of public comment for sign-on.



What has the VTDDC done?

Conflict of interest free case management

- State claimed the rule did not apply.
- State asked for “the choice model.”
- State was put under a plan of correction.
- Timeline for the plan was reduced by CMS.

We built a relationship with CMS.

Renewed focus on the Settings Rule

- State filed a plan saying there were no settings that merited heightened scrutiny.
- CMS selected VT for review & a visit this summer.
- CMS asked the Council to host a stakeholder session.

Our relationship with CMS paid off!

What more will VTDDC do?

- Strategic use of \$'s:
Implementing Act 186.
- Multiple formats:
What Makes a House a
Home?
- Use all the tools.



Start with a blank canvas

Stakeholder Engagement is not “public comment.”

Public comment is when you put out a draft of a policy, regulation, or program that has *already been thought about* and ask the public to react.



Tips for Stakeholder Engagement

- Set your terms and insist upon them – recording, time, location, etc.
- Ensure a safe space – consider confidentiality & conflicts of interest.



Tips for Stakeholder Engagement Continued

- Insist meeting materials are accessible.
 - Send materials in advance
 - Need to know vs nice to know
 - Use plain language
- Ask open-ended questions.



Michigan Advocacy in Action

Brett Williams, Public Policy Analyst for the Michigan Council on Developmental Disabilities and NACDD Public Policy Committee Chairman



HCBS – STAKEHOLDER INPUT

BRETT WILLIAMS

MICHIGAN DEVELOPMENTAL DISABILITIES COUNCIL



THE IMPORTANCE OF STAKEHOLDER INPUT - HCBS

Advocacy is
never a
“**won**” and
done.

THE VALUE OF STAKEHOLDER INPUT

EXTREMELY COMPLEX:

- **NO** TWO STATES HAVE THE SAME NEEDS, NOR SYSTEMS OF SUPPORTS AND SERVICES
- **PROGRAM DESIGN** – SYSTEMIC OPERATIONS VERSE BENEFICIARIES NEEDS
- **PERSPECTIVES** – BEST RESULTS ARE DRIVEN FROM EXPANSIVE INPUT AND THOUGHTFUL CONSIDERATION

PARTNER ENGAGEMENT AND ACTIVITIES

- PROACTIVE OUTREACH
- START WITH WHAT IS IN YOUR ARENA – DD ACT PARTNERS
- EXPAND YOUR NETWORKS
- YOUR DSA

PARTNER ENGAGEMENT AND ACTIVITIES CONTINUED

- ACTIVITIES RELATED TO HCBS
- STATE TRANSITION PLAN
- MEDICAID POLICY PROPOSALS
- MEDICAL SERVICES ADMINISTRATION
- STATEWIDE SELF-ADVOCACY ACTION TEAM

MOVING FORWARD

- PROVIDING COMMENTS – STATE
- CMS / STATE PLAN AMENDMENT FEEDBACK
- CMS AND OTHER

Questions for the panel?

Please use the "raise hand" function or type your question in the chat box.

