

Department of Social Services
55 Farmington Avenue
Hartford, Connecticut 06105

August 9, 2015

RE: Notice of Intent; Prevocational Services (CMS Guidance) and Cognitive Behavioral Service

Dear Commissioner Bremby and CT Legislators,

CT Brain Injury Support Network opposes the proposed changes to Waiver 1 and 2.

- Cognitive Behavioral Service change is opposed by providers, doctors families and survivors. The change is already guaranteed, per attached statements from doctors, to result in a loss of providers to a service already in crisis.
- With this legislation Cognitive Behavioral Providers (CBPs) are at great risk of no longer being considered independent providers by the Dept. of Labor.
- Prevocational Service change - CMS guidelines have NOT been fully disclosed by Dept. of Social Services, who have crafted their responses to the "requirement" mandating this change by excluding portions of the guidelines in the explanations given by Centers for medicare and Medicaid.
- Prevocational changes are in direct conflict with 42 Code of Federal Regulations (CFR) 440.180
- ABI Group Day replacement service is proposed, per Dept. of Social Services as the "The most likely service to be utilized as an alternative is ABI Group Day." A service only expected to serve less than 6% of survivors and rarely used, if ever, in more than 18 years, is now proposed as a day care service (warehousing) for the more than 55% percent of survivors who receive prevocational services (ABI Waiver 2).
- Dept. of Social Services refuses to allow families and survivors access to informational forums, basic information and educational meetings regarding proposed changes - ONLY Providers and select groups are allowed to attend, even when requests for access to the information and public forums for families and survivors have been made, these requests have been DENIED or ignored.
- The "promise" of no changes to Waiver 1 - DSS has implemented too many significant changes to the ABI Waiver in less than a year, causing great hardship on families, survivors and providers. Survivors and families are being crushed under the non stop changes.
- The hope given to families and survivors for a voice in the process: Despite the intent of legislators, The Legislative Advisory Committee has failed to be, as promised, a committee to help all who attended the Public Hearing on ABI Waiver 2 in March 2014. With no input on the agenda, and only allowed to discuss Waiver 2, if any discussion takes place at all, many survivors and families are deeply disappointed and will be in attendance at the next, and what we are told is the possible final, committee meeting.
- More than 230 signatures were obtained by CT Brain Injury Support Network (CTBISN) in opposition to a recent proposal from DSS regarding institutionalization of those who are physically disabled, should these newest proposals be approved, we plan to legally challenge the legislation.

- The lack of movement through the waiting list for services is a significant issue, but the Waiver itself is being dismantled - we have to address this issue first and foremost.

CT Brain Injury Support Network is opposed to the changes proposed in the Notice of Intent and after discussions with Cognitive Behavioral Providers, has found the statement made by Dept. of Social Services on June 3rd to be incorrect, CT Brain Injury Support Network has noted the conflict to DSS:

“The changes to the” (Cognitive Behavioral) “service were a direct result of a meeting and several communications with the providers of cognitive behavioral services. There was consensus regarding the changes. This change is proposed will the full knowledge of the provider community and the department did not get any feedback that we should not proceed with this change.”

According to attached comments by doctors, the lower rate in the proposal will cause providers/doctors to stop providing services completely or will cause providers to stop accepting new clients.

With the lack of Cognitive Behavioral Providers already at a near crisis point the proposal only intensifies the crisis we are facing. Although some will continue providing services due to their commitment to an “indigent” population, after more than 18 years with no rate increases for ANY services it is clear there is not a consensus in support of the proposed changes and the loss of highly valued doctors and providers will be a huge blow to survivors and families already struggling to maintain services in the community.

With this legislation Cognitive Behavioral Providers (CBPs) are at great risk of no longer being considered independent providers by Dept. of Labor

- They are at risk of being considered employees of the state. The state of CT would then be a third party employer.
- When CBPs are no longer independent the person centered provision in the waiver is compromised.
- The state, in this amendment, is telling CBPs how, where and when to work. The state dictates what materials they use for reporting. The state demands use of their forms. According to Dept. of Labor previous decisions this would mean the CBP would not be an independent contractor and may in fact be an employee of the state.
- We plan to challenge this legislation, should it pass.

Prevocational Services

Nancy Grano, from Centers for Medicaid and Medicare Services (CMS), clarified the "intent" of the language used in communications with Department of Social Services regarding Prevocational Services. She stated that the timeframe for services is limited to two years if the state does not provide a justification. The guidance provided by CMS is in direct contradiction to the communication Ct Brain Injury Support Network received from Dept. of Social Services on June 28, 2015:

"CMS directed the state in waiver 2, to set the limit at 2 years and we will propose the same for Waiver 1. Please understand this change is being initiated by CMS

and the state must come into compliance. The two years was based on CMS' statement that the longest time limit they would approve would be 2 years."

When DSS responded to a request for further information regarding the 2-year timeframe for prevocational services, the rest of the language from CMS was not included:

"Less than two years does not need justification, more than two years does."

CMS has not denied the position of CTBISN that Prevocational services can be viewed as goal oriented and by having a goal for the client, services become time-limited. For example, Prevocational services can be used as a means of improving fine motor skills with the goal of changing services to Supported Employment at the end of a time frame (i.e., two years). If the client does not reach the goal there is no language that precludes the client from having an additional two years of prevocational services to improve his gross motor skills with the goal of changing services to Supported Employment at the end of two years. Therefore, the time limit is due to the goal to be achieved. CMS is indicating that Prevocational services are not done without a goal and having a goal results in a time limit. CMS is not indicating that there is an absolute time limit but a goal oriented time limit, DSS is clearly "interpreting" CMS guidelines, or excluding them completely.

Habilitative Goals, Prevocational and Federal Regulations:

Does changing the focus of Prevocational services to employment goals, instead of habilitative goals, contradict Federal Code of Regulations?

42 Code of Federal Regulations (CFR) 440.180

- (i) "Prevocational services, which means services that prepare an individual for paid or unpaid employment and that are not job-task oriented but are, instead, aimed at a generalized result. These services may include, for example, teaching an individual such concepts as compliance, attendance, task completion, problem solving and safety. Prevocational services are distinguishable from noncovered vocational services by the following criteria:
- (A) The services are provided to persons who are not expected to be able to join the general work force or participate in a transitional sheltered workshop within one year (excluding supported employment programs).
 - (B) If the beneficiaries are compensated, they are compensated at less than 50 percent of the minimum wage;
 - (C) The services include activities which are not primarily directed at teaching specific job skills but at underlying habilitative goals (for example, attention span, motor skills); and
 - (D) The services are reflected in a plan of care directed to habilitative rather than explicit employment objectives."

The proposed CT ABI Waiver Amendment states:

"Individuals receiving prevocational services must have employment related goals in the person-centered services and supports plan; the general habilitation activities must be designed to support such employment goals."

Replacement Service for Prevocational

DSS statement June 3rd, 2015: "CMS requires the state to time limit prevocational services and that every client would be reviewed for alternative services to meet their needs. ABI Group day is one of those services. The rate methodology included the fact that the service is not intended to be a one on one service, but rather a group. Consequently, the rate per participant is lower. The department has no option other than to bring the service definition of prevocational services in compliance with CMS requirements.

The language in the Amendment, is quite different:

DSS statement July 28, 2015 - "The amendment is quite specific about this. The language in the amendment is as follows:"

"Upon approval of the amendment, during the next scheduled team meeting or annual reassessment, the prevocational service utilization will be reviewed. We propose a six month transition to other services to replace the prevocational services for those who have received the service for two years or more. The most likely service to be utilized as an alternative is ABI Group Day although other services may also be assessed to be appropriate for the participant."

- ABI Group Day was NOT included in the original Waiver, ABI Group Day was added to the Waiver sometime after 2003, but rarely, if ever, used.
- Waiver 2 was written with only 6% of participants receiving ABI Group Day - clearly it is NOT and never has been, a service of choice for a Waiver that is "person centered", why then is it the service most likely to be utilized as a replacement for prevocational services that 55% of participants receive? (ABI Waiver 2, Appendix J-2, d)
- ABI Group Day is a congregate, warehousing service with unregulated staff to client ratios and a pay rate of only \$16 per hour.
- How will an agency or survivor even organize this kind of service? Will survivors be shuffled from one on one staff to a warehouse type setting and be babysat for the 3-4 hours a day they are imprisoned in group day care?

Stakeholders are pushed to the side when it comes to Public Hearings, discussions, feedback and input on changes:

- Stakeholders directly impacted by the changes are forced to attend Aug 11, 2015 Public Hearing without any answers to the questions formally sent in, as required in the Notice of Intent, to Dept. of Social Services, regarding proposed changes.
- DSS is "unresponsive" to CT Brain Injury Support Network questions (7/22, 7/27 and 7/28) regarding the timeframe for responding to stakeholders written questions, per the Notice of Intent guidelines.
- No forums or open discussions have been held or scheduled with families and survivors regarding changes, DSS is unresponsive to requests for informational forums with any stakeholders except providers/agencies.
- The Legislative Advisory Committee has failed to be, as promised, a committee to help all who attended the Public Hearing on ABI Waiver 2 in March 2014. The Committee is only allowed to discuss Waiver 2, members are not given input on the agenda, and it is our

understanding the intent is for the committee to have one final meeting and then be terminated. The promise given at the Hearing in March 2014 is far from being kept.

DSS has implemented many significant changes to the ABI Waiver in less than a year since Waiver 2 was passed, causing great hardship on families, survivors and providers:

- ILST independent contractors changed to household employees - has caused significant hardship on families and survivors with a number of survivors still left with unfilled shifts and services, some are still reeling from this change and trying to make accommodations more than 6 months later. (DSS promised in April, 2014 that families and survivors would be given plenty of time to adjust to the change, instead, in late 2014 they were given approx. 30 days to implement the change or lose services).
- New criteria for Agency Providers - new, complex criteria with a very limited timeframe, less than three months, to fully implement. In some cases it appears agencies may be forced to leave the Waiver and will prohibit smaller agencies from being formed in the future. This has been the basis of growth for providers and choice for consumers, why would DSS choose to remove this option?
- DSS has moved forward with educating/counseling and updating a group of agency providers who seem to be DSS "preferred" providers, thus ensuring these agencies will be prepared for any new changes – why isn't this being done across the board for ALL agencies?
- DSS preference for specific agencies and providers significantly impacts and limits choices of services and providers for participants, this was never how the Waiver was intended to function.

The ABI Waiver community is under duress, the multiple changes, lack of communication, poorly funded programs that are now going to be hit with even lower rates is unsustainable. In the 18 years of successfully providing services to survivors, the waiver and participants have never been under such fire and fear for the services that allow them to live successfully in the community.

Is this deterioration of services the legacy legislators in CT want to leave behind in regards to caring for survivors of brain injury? CT Brain Injury Support Network is fully prepared to legally challenge these latest changes should the legislative vote be "yes."

Respectfully,
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Attached -
- Stephen D. Sarfaty, Psy.D., ABPDC, FACPN, ABPP-CN
- Jed Struckus, Ph.D
- Dr. Tracey Sondik
- Comments from Cognitive Behavioral Providers

"It appears that the answers lean in the direction of paying the higher rate for face-to-face meetings with anyone with the reasonable caveat that the survivor be included whenever possible and minimally once per quarter. I remain concerned about the lower rate for non-face to face time.

If the intention is to put a premium on face-to-face work that is understandable. However, the lower rate is simply untenable. I believe that rate could be a devastating factor in the attainment and recruitment of neuropsychologist. Specifically, it already appears that my staff will decline any future referrals, which require us to apply our expert neuropsychological services at that reduced rate."

"As providers most of us are acutely aware of the fundamental difference that is made for survivors and families by the opportunity to provide our services through the waiver for persons and communities instead of leaving them constrained to lives and institutions. Furthermore many of us have had the deep satisfaction of the win-win opportunity of making a significant contribution to the quality of lives of survivors and families by our input to this program. In order for this program to work for survivors it also has to work for providers." "The threat to neuropsychologist participation is one of the most dangerous yet."
Stephen D. Sarfaty, Psy.D., ABPDC, FACPN, ABPP-CN

"Unfortunately, I will not be able to attend the hearing. I am in full support of Dr. Sarfaty's comments, and would add that if these changes are instituted (with the lower rate as part of the plan), I will, with regret, resign from the Waiver. While I appreciate the observations made earlier by Dr. Piassetsky about the needs of the indigent patient, I might also point out that if, as a group of providers, we continue to accept diminishing fees for our services, there is no incentive within the system to address what I believe is a serious problem with the Waiver, namely that it does not pay a "fair fee" to any vendor. As I stated in an earlier email, a simple adjustment of CBP fees to keep pace with inflation would now mean that the CBP rate would be \$144.82. The \$105 rate is still substantially lower than this COL shift, and the \$68 rate makes absolutely no sense. The system must believe that CBP providers are immune from cost of living changes. It is my opinion that the Waiver is being slowly suffocated by this failure to adjust rates in any reasonable way."

With great regard,
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"Please add my name to the letter supporting Stephen Sarfaty's comments. With the proposed changes to the waiver including the shifting away of DSS social workers from the teams, the neuropsychologists will be be tasked to do even more administrative and clinical oversight. At a diminished rate, this would be impossible for most neuropsychologists."

Dr. Tracey Sondik

"New policy appears to gut opportunity for team and family meetings w/o survivor present. Non face to face rate undermines application of expert discretion related to report writing and review of records and will alienate and/or fail to attract quality experienced talent to provide services."
Stephen D. Sarfaty, Psy.D., ABPDC, FACP, ABPP-CN

"When I first began working with the State of Connecticut in 1990 on what was to eventually become the Waiver (back then it was the TBI Committee), neuropsychologists were reimbursed at a rate of \$80 per hour. That seemed fair to me at the time. Adjusting for inflation, \$80 in 1990 dollars would now be \$144.82 (U.S. Bureau of Labor Statistics). While the increase in face to face reimbursement is welcome (adjusted upward to \$105 per hour), it is still substantially below \$144.82. So low that I am giving serious consideration to resigning from the Waiver. I feel that the Waiver system places providers in situation where they have to continue to accept an inadequate rate of reimbursement in order to remain loyal to their patients. The \$68 per hour fee for non face to face service provision is so low it is ludicrous. My local hardware store charges me that hourly rate to work on my lawn mower. Perhaps I am the only provider in this discussion that feels this way. But unless rates of reimbursement are given a true and fair consideration, I can imagine that the Waiver will eventually fail because of the waning participation of providers."
Dr. Jed Struckus

"I am very committed to the work of the Acquired Brain Injury Program and will work diligently to participate positively for patients and their families living with the sequelae of the traumatic impact of brain injury. Sadly, the emphasis seems to be more on paperwork than individuals yet I will remain optimistic that through compassionate leadership we can together find a way to resolve." - Cognitive Behavioral Provider

"The department tells us that we are independent providers or agencies but if the department controls the rates, how we work, where we work, and the duties to be performed then we are employees of DSS." - Cognitive Behavioral Provider

"After years of advocacy to improve services this appears to reflect a backward trend which will ultimately compromise care and be clinically and cost ineffective."
- Cognitive Behavioral Provider

"I have participated in some version of the Waiver for 25 years, and would love to continue participating in what I think is an outstanding program and something much needed for individuals with ABI and their families. I agree with EBP that as CB providers we should try to remain involved and not abandon the patients in greatest need. But, sadly, I also feel that the system has taken advantage of the heart and commitment of the providers. No one in a salaried position would accept what has happened to rates of reimbursement for providers in the Waiver system. Even with the \$105 rate, providers of CB

services (and other valued services) are being offered less and less for their wisdom and skill sets. The \$68 per hour rate for services that are not "face to face" has reached a point of being insulting. Why is my time less valuable simply because the patient is not present? It is illogical. It no longer reflects any appreciation for the cost of living (which we all share) nor for the abilities of the providers.

While I do not consider myself a "business" (which needs to adjust to the real market place), I am also not a "non-profit clinic". I have turned down recent referrals via the Waiver because the rate is simply unfair. A failure to adjust the rates to reflect the cost of living is, at least in my mind, representative of one of two things: 1) an inability to understand that providers also have costs to bear; or 2) a recognition of 1, and a conscious decision to dismantle the Waiver by compelling providers to say "no" to present clients and future referrals.

I see many patients for little or no reimbursement. It is a choice I make as an independent provider who has to cover his or her own costs. But I cannot support a system in which I assume has had "cost of living" salaries adjusted nominally for their efforts (State and Allied) but has ignored the same reality for providers."

- Jed Struckus, Ph.D.