September 16, 2014

Beverly Mackereth, Secretary
Department of Public Welfare
Office of Long-Term Living
Bureau of Policy and Regulatory Management
P.O. Box 8025
Harrisburg, Pennsylvania  17105-8025

Submitted via Email to  ra-pwhcbsfinalrulepl@pa.gov

RE: Pennsylvania Transition Plan for Home & Community Based Settings

Dear Secretary Mackereth:

Thank you for the opportunity to submit comments on Pennsylvania’s proposed Statewide Transition Plan for Home and Community-Based Settings. The Center for Advocacy for the Rights and Interests of the Elderly (CARIE) is a non-profit organization, founded in 1977, seeking to improve the well being, rights and autonomy of older persons through advocacy, education, and action. Overall, CARIE finds the proposed plan lacks specificity as well as a transparent and ongoing strategy to involve stakeholders in the compliance process. On September 5, the Centers for Medicare & Medicaid Services (CMS) released additional guidance to states to help with preparing their statewide transition plans. We hope the Department of Public Welfare (DPW) will amend the plan in response to the last sentence of the document, “Therefore, states are strongly encouraged to describe their process for ensuring ongoing transparency and input from the stakeholders in the Plan.” CARIE recommends that this process go beyond simply utilizing consumer surveys and include strategies that engage consumers, families, and advocates in a meaningful way. There are many action steps identified in the plan that would benefit by having stakeholder input before implementation. This may require some adjustments to the target completion time frames to allow time to engage stakeholders and incorporate recommendations.

CARIE recommends that DPW include more specific information in the plan. For example, a number of action steps include analyzing whether access issues may be created and “Analyze current services, policies, and regulations to identify gaps.” However, there is no clear description of how DPW will address issues to ensure access if a problem is identified or how it will eliminate gaps. What is DPW’s plan of action if there is an identified lack of service settings to offer consumers “individual choice” of providers? Multiple actions steps state, “Revise on-site monitoring tools as necessary,” but there is no description of the monitoring process or how the regulations will be enforced. When individuals need to transition to compliant settings, the plan should outline a specific person-centered planning process for the transition versus
simply stating “work with case management entities…” In addition, the plan does not define the standards or process to be used to overcome the presumption determining whether a setting does not have institutional qualities but rather home and community-based services (HCBS) qualities. DPW should develop clear standards following CMS guidance to ensure HCBS consumers are not in an isolated setting.

Since new person-centered service planning regulations are currently in effect, it is important that the plan include a strategy to ensure that person-centered planning processes are addressed when establishing and monitoring standards for settings. It should be a key component in ensuring a setting meets the HCBS standards. In short, a setting couldn’t be considered non-institutional or community-based without including a routine process for person-centered planning that promotes community integration. Person-centered planning and self-direction are key components to assure consumers have the authority and autonomy to participate in community life. Person-centered planning and self-direction principles should be engrained in DPW’s policies and procedures to the greatest extent possible to help ensure the process will become the norm. Action steps should include a review of each setting’s policies regarding the delivery of person-centered services including how staff are trained. Staff should be trained on how person-centered planning and self-direction is incorporated into their settings so it becomes a part of the culture of care.

DPW seems to overly rely upon self-reporting by providers to determine whether the setting is compliant with the new regulations. The plan should also include site visits and feedback from consumers in these settings to evaluate the type and extent of community interaction. DPW should establish clear criteria to identify and measure isolation and incorporate it in the plan. It is also important that there is ongoing evaluation of settings to ensure that a change in ownership or staff has not changed the status of the setting. For example, a new owner or staff change could create new policies that are coercive and isolate consumers.

CARIE also has concerns about some settings where consumers receive Waiver services and believe the plan should include ways to scrutinize settings to ensure consumers’ rights of privacy, dignity and respect, and freedom from coercion and restraint. There are examples of providers operating boarding homes, some illegally, where consumers reside and receive Waiver services. One provider, **Victory Support Services**, a formerly licensed Personal Care Home explicitly states on its website, “This program is NOT a provider of personal care boarding home services.” DPW was unsuccessful in shutting down this operation as an illegally operating personal care home. The owner successfully appealed his case by stating that since the residents receive Waiver services, they are nursing home clinically eligible and therefore not eligible for personal care home services. There is no question that housing alternatives remain a critical gap in the ability for some to live in the community with Waiver services. However, illegal boarding homes and housing situations like Victory present clear conflict of interest and coercion of residents to accept the presenting provider of care. These types of settings should not be able to avoid being in compliance with these regulations or continue to serve Waiver clients. DPW must identify settings like
Victory Support Services that are licensed home care or Waiver providers to ensure individuals are not living in a setting that may not be identified by typical licensing procedures. Assessors and service managers should be trained to identify and report settings that may violate the regulations. DPW should have a clear and transparent process to receive and investigate these reports or complaints from individuals to ensure Waiver consumers are served in a non-institutional community-based setting. DPW should also have clear communication in place to alert assessors and service managers to unlicensed boarding homes or when there are licensing actions in settings where Waiver consumers are served.

In conclusion, CARIE hopes that the plan will be amended by providing greater detail to avoid any ambiguity in its implementation and enforcement of the regulations. In addition, we hope DPW will utilize an ongoing transparent process that includes meaningful stakeholder input.

Thank you once again for the opportunity to provide comments. Should you have questions or need additional information, please contact me at 267-546-3434 or menio@carie.org.

Respectfully Submitted,

Diane Menio
Executive Director