



NEVADA'S PROTECTION & ADVOCACY SYSTEM FOR INDIVIDUALS WITH DISABILITIES

September 18, 2015

COMMENTS REGARDING BETTY'S VILLAGE PROPOSAL

The Nevada Disability Advocacy & Law Center (NDALC) is a private, statewide non-profit organization that serves as Nevada's federally-mandated protection and advocacy system for human, legal, and service rights for individuals with disabilities.

The final Home and Community-Based Services (HCBS) regulations promote full community integration for individuals with disabilities by providing the opportunity for individuals to receive long term services and supports in the most integrated setting possible, rather than in an institution.

The regulations define an integrated setting as one in which an individual with a disability receiving HCBS has "full access...to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving HCBS." 42 CFR 441.530(a)(1). The regulations are clear that HCBS may not be provided in institutional settings, or settings with institutional qualities. 42 CFR 441.530(a)(2).

In addition to recognizing the importance of ensuring equal community access for individuals with disabilities, the new rule complements the *Olmstead* decision, which held that states must provide services to individuals with disabilities in "the most integrated setting appropriate to their needs." *Olmstead v. L.C.*, 527 U.S. 581 (1999).

NDALC is concerned that the Betty's Village proposal does not comport with the intent of the HCBS regulations to maximize community integration and freedom of choice for individuals with disabilities. Betty's Village is a disability-specific facility that will house 100 individuals with intellectual disabilities on the grounds of a supported employment campus, segregated from the community at large. In addition, the following other characteristics suggest that Betty's Village may have impermissible "institutional qualities":

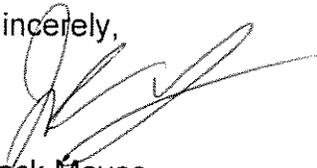
- **Choice of providers.** As in an institution, Betty's Village employees will provide everything from round-the-clock supervision to meal preparation, activity planning, financial management, and nursing services. This arrangement limits residents' choice of providers.

- **Access to food and scheduling autonomy.** Meals will be prepared by employees and served to building residents in a communal dining area. Many individual rooms do not include kitchens, and it is unclear whether residents will have access to food or meal preparation space in the communal kitchen. The regulations require that individuals “control their own schedules and...have access to food at any time.” 42 CFR 441.530(a)(1)(vi)(C).
- **Landlord-tenant protections.** The proposal did not indicate whether residents would occupy individual units under a “legally enforceable agreement” with the same protections as provided under Nevada’s landlord-tenant law, as required by the regulations. 42 CFR 441.530(a)(1)(vi)(A).
- **Visitors.** The proposal states that Betty’s Village will offer designated areas for residents to visit with family and friends. However, the proposal is unclear whether residents will be allowed to have “visitors of their choosing at any time,” as the regulations mandate. It may be difficult for Betty’s Village to offer flexible visiting hours because of the communal design of its facilities. 42 CFR 441.530(a)(1)(vi)(D).
- **Lockable doors.** The proposal does not state whether individual units will have the required lockable doors. 42 CFR 441.530(a)(1)(vi)(D).

NDALC recognizes the value of a continuum of housing and service options for individuals with disabilities. Betty’s Village may offer a desirable alternative to community living for some individuals with disabilities. However, with the passage of the Achieving a Better Life Experience Act (which allows individuals with disabilities to establish tax-free savings accounts), prospective residents can choose Betty’s Village without the contribution of HCBS waiver funding.

Nevada has limited resources for HCBS programs. In fact, NDALC understands that there are currently individuals who remain institutionalized or at risk of institutionalization because there is a wait list for HCBS. NDALC strongly encourages the State to focus its resources on truly integrated long term services and supports, in order to comply with the HCBS rules and *Olmstead*, and to support individuals with disabilities in fully participating in community life.

Sincerely,



Jack Mayes
Executive Director