

October 2, 2015

### **Comments Regarding Betty's Village Proposal, United Spinal Association**

Thank you for the opportunity to provide comments regarding the proposal submitted by Opportunity Village to develop plans for a living site called Betty's Village. United Spinal Association strongly urges the Division of Health Care Financing and Policy (DHCFP) to deny Home and Community Based Services (HCBS) funding to Betty's Village.

Founded in 1946 by paralyzed veterans, United Spinal is the largest disability-led nonprofit organization serving and representing the interests of more than a million Americans living with spinal cord injuries and disorders. United Spinal has dedicated its energy, and programs to improving the quality of life for these Americans of all ages and advancing their independence.

United Spinal fully supports the comments submitted by the Autistic Self Advocacy Network (ASAN). According to ASAN, by its own description, Betty's Village does not meet the community integration standards the Centers for Medicare and Medicaid and Services (CMS) mandated in its January 2014 Final Rule on HCBS settings. Under the new rule, residential HCBS settings must be integrated into the community and must include meaningful safeguards for residents' autonomy, privacy, and access to the community. The final CMS regulations support the historic 1999 Supreme Court decision *Olmstead v. L.C.*, which held that the States must provide people with disabilities with "community-based treatment" and appropriate supports, 527 U.S. 581, 607 (1999). Over the course of the past two years, states have begun to submit Transition Plans to CMS which are designed bring state settings into compliance with the final CMS rule and the Supreme Court's decision in *Olmstead*.

In recognition of the particular risks associated with provider-owned residential settings, the Final Rule includes additional requirements for such settings. Residents in provider-owned settings must, among other things, have lockable doors, access to food or visitors at any time, and be physically accessible. In addition, the Final Rule bars HCBS funding from going toward settings that isolate people with disabilities - such as those on the grounds of a hospital or those that cluster people with disabilities together in a remote area - even if those settings might theoretically meet the additional requirements for provider-owned settings. A setting that isolates people with disabilities must be individually approved by CMS through a "heightened scrutiny" process and will not be approved to receive HCBS funding unless it overcomes the presumption that it has the characteristics of an institution.

Betty's Village, which would provide services to hundreds of people with disabilities clustered onto a single campus, meets neither the requirements of provider-owned settings nor the requirements of the HCBS heightened scrutiny approval process. Betty's Village is isolated from the broader community, is disability-specific, and uses behavioral interventions normally used in institutional settings (Such as progressive prompting sequences designed to, according to Betty's Village, "de-escalate inappropriate behavior," written behavior programs, and medication used to control the person's behavior). CMS' guidance on HCBS states that settings with these characteristics generally isolate individuals from the broader community and are considered similar to institutions.

In addition, the proposal by Nevada's Division of Health Care Financing and Policy (DHCFP) to finance additional segregated settings instead of financing the development of new, integrated residential settings violates the integration mandate in Olmstead. Settings like Betty's Village segregate people with disabilities from their communities and greatly limit their autonomy.

United Spinal supports the additional specific arguments against funding provided by the Autistic Self Advocacy Network in submitted comments. Programs such as Betty's Village are not truly home and community based, nor do they increase the independence and true inclusion of individuals with disabilities. Please contact Carol Tyson, Director, Disability Policy, with any questions at [ctyson@unitedspinal.org](mailto:ctyson@unitedspinal.org) and (202) 556-2076 ext 7104.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carol Tyson', written in a cursive style.

Carol Tyson  
Director, Disability Policy  
United Spinal Association