The State of Maryland is preparing to submit plans to the Federal government for implementation of Community First Choice (CFC) under the Affordable Care Act. Much is still unclear about what the development process for CFC is, and what it will look like.

The questions below were submitted to the state by a team of advocates and officials, several of whom are on the Maryland Disabilities Forum's Board of Directors. The questions are aimed at clarifying Community First Choice and understanding how it will affect the process of bringing consumer choice to personal care in Maryland.

The answers were provided by Lorraine Nawara, Deputy Director for Community Integration at the Maryland State Department of Health and Mental Hygiene.

1. How much time, prior to submission to the federal government, will plans or amendments be submitted to stakeholders for our review. We note that at least thirty days would be realistic for meaningful community review and comment.

Plans for implementation of the Community First Choice program are being developed with the CFC Council and are shared at each meeting. Once regulations or a state plan amendment are drafted based on the input and feedback from the Council on individual issues, the draft documents will be shared with the Council and discussed at a meeting. After their feedback is received and incorporated into drafts, the Department will submit plans to CMS for feedback prior to formal submission. Any feedback received from CMS will also be discussed with the Council. Prior to the final submission to CMS, the Council will have the opportunity to review multiple drafts over a period of time greater than 30 days.

For regulation changes, a similar process will be followed in which drafts of regulations will be shared with the Council prior to being finalized and submitted to the Joint Committee on Administrative, Executive, and Legislative Review After publication of proposed regulations in the Maryland Register, a formal 30 day public comment period is allowed.

2. Please provide the current list of Activities of Daily Living that the State intends to include in CFC. Please note that the consumers on the CFC advisory committee expressed their consensus that communication (including assistive technology devices) is an activity of daily living.

The Community First Choice program will not change the State's criteria for medical eligibility for nursing facility level of care. Therefore, the activities of daily living included in CFC are the same as are listed in nursing facility regulations as quoted below.

Code of Maryland Regulations 10.09.10.01B

(2) "Activity of daily living (ADL)" means one of five functions (bathing, dressing, mobility, continence, eating) for which nursing home residents are to be evaluated in terms of requiring help in the performance of the function.

For reference, the definition of ADL in the Federal CFC regulations is below.

Authority: Sec 1102 of the Social Security Act (42.U.S.C 1302)
Subpart K –- Home and Community-based Attendant Services and Supports State Plan Option (Community First Choice)
§ 441.505 Definitions.
As used in this subpart: Activities of daily living (ADLs) means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

While communication is not listed as one of the activities of daily living used to determine eligibility for nursing facility level of care, nor are communication services allowable under the CFC authority, other services offered under Community First Choice may provide assistance with communication. For example, personal care providers may assist with communication and a variety of assistive communication devices may also substitute for this human assistance.

3. What is the State going to propose as the definition of community? We believe that the intent of CFC, at minimum, is for noncongregate living situations in which individuals have signed leases, lockable doors, Etc.

The Community First Choice Regulations do not include nor require that the State propose a new or alternative definition of community. The final rule includes discussion of the definition and CMS states:

In consideration of the comments received, we are not finalizing the setting provisions of proposed §441.530 at this time…. We plan to propose home and community-based settings shall have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

- The setting is integrated in, and facilitates the individual's 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, in the same manner as individuals without disabilities;
- The setting is selected by the individual from among all available alternatives and is identified in the person-centered service plan;
- An individual's essential personal rights of privacy, dignity and respect, and freedom from coercion and restraint are protected;
- Individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact are optimized and not regimented;

- Individual choice regarding services and supports, and who provides them, is facilitated.;
- In a provider-owned or controlled residential setting, the following additional
  conditions must be met. Any modification of the conditions, for example, to address the safety needs of an individual with dementia, must be supported by a specific assessed need and documented in the person-centered service plan:
  ++ The unit or room is a specific physical place that can be owned, rented or occupied under another legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the State, county, city or other designated entity;
  ++ Each individual has privacy in their sleeping or living unit:
  -- Units have lockable entrance doors, with appropriate staff having keys to doors;
  --Individuals share units only at the individual's choice; and
  --Individuals have the freedom to furnish and decorate their sleeping or living units;
  ++ Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time;
  ++ Individuals are able to have visitors of their choosing at any time; and
  ++ The setting is physically accessible to the individual.

We also plan to propose that home and community-based settings do not include the following:

1) A nursing facility;
2) An institution for mental diseases;
3) An intermediate care facility for the mentally retarded;
4) A hospital providing long-term care services; or
5) Any other locations that have qualities of an institutional setting, as determined by the Secretary. The Secretary will apply a rebuttable presumption that a setting is not a home and community-based setting, and engage in heightened scrutiny, for any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment in a building on the grounds of, or immediately adjacent to, a public institution or disability-specific housing complex.

The CMS comments included in the final rule allow states to provide services in all settings that are currently defined as the community under other authorities. This flexibility will allow individuals residing in Alternative Living Units licensed by the Developmental Disabilities Administration and Residential Rehabilitation Programs licensed by the Mental Hygiene Administration to receive CFC services if they meet the eligibility criteria. However, individuals residing in Assisted Living Facilities licensed by the Office of Health Care Quality will not be able to access CFC services as this would be a duplication of services already provided in that setting. No new congregate setting

or licensure is being considered by the Department as part of CFC. However, the intent is to maximize consumer options and to allow access to CFC services to as many individuals as possible

4. Please tell us how the State is proposing to assure that consumers have control over their own budgets?

An individual who elects to self-direct will have the opportunity to choose their level of involvement in directing their budget within certain limitations. For instance, plans of service are reviewed for medical necessity and to ensure that they meet health and safety assurances required by CMS. All goods and services on a self-directed plan of service will be subject to Departmental review to assure that all items are allowable according to State and Federal Medicaid rules.

Quality measures and assurances for each component of the CFC program have not yet been developed but are to be discussed with the CFC Council during the November 15th meeting. Additional input regarding assurances is welcomed.

5. How does the State intend to establish market rates for wages provided to caregivers?

The Department will engage in a rate setting process that includes analysis of rates in other states, budget considerations, and input from the CFC Implementation Council. The Department's analysis and recommendations will be considered during the collective bargaining negotiations between the State and the provider union.

6. Is it the intent of the State of Maryland to combine MAPC and other personal assistance services into one consumer directed program? How do you intend to do this from an administrative and programmatic perspective?

It is the intent of the Department to streamline the service of personal care across several programs with different eligibility requirements, including MAPC and the Living at Home and Older Adults Waiver programs. This will include developing a single definition of the service, unified rates, and a simplified process for moving between programs. The details of the administrative and programmatic changes are not yet determined. The Department will be discussing options with the CFC Implementation Council as the development of the program progresses.

7. What procedures will be in place to assure that people who choose to self direct their care-givers are able to determine the extent to which nurse monitors need to be involved with training and management of caregivers?

The precise procedures have not yet been determined. However, the CFC Implementation Council has discussed this issue and recommended that participants be able to waive nurse monitoring to the extent that is allowable by the Maryland Board of Nursing and relevant State and Federal rules. It is the intent of the Department to

implement a process through which individuals may waive nurse monitoring, but the procedures and forms have not yet been developed.

8. As part of promoting maximum consumer choice and self-direction within the CFC, how will the State provide for a self-directed program counselor role (aka, support broker, consultant, advisor, advocate, etc.,) which is distinct from the traditional case management role?

As discussed with the CFC Implementation Council, Supports Planning will be available for all CFC participants. The Council developed specific roles and tasks for the supports planners which are outlined below. The Council also recommended that participants be able to waive assistance from a supports planner after the initial selection of self-direction and to choose the level of involvement from the Supports Planner.

- Educate participant about self-direction
- Engage in person-centered planning with participant
- Refer to Voluntary training on managing personal care providers
- Complete fiscal intermediary forms and referrals
- Provide traditional case management services such as Plan of Service development, referrals to other programs and services, monitoring of service provision, annual redetermination paperwork, critical incident reporting, etc.

9. As suggested in the SMART Goals template DHMH distributed, a SMART goal is specific and strategic if linked to a broader framework such as, in the case of CFC, a program mission. What process, if any, does DHMH propose to engage the Council in development of CFC Program Mission Statement, Guiding Principles, Visions, Goals, Objectives, and Strategies as a prerequisite to program design as well as a basis for any discussion of "defining quality" and "plans of service (including goals and strengths)" as proposed in the meting agenda for October 31, 2012 (since postponed and rescheduled)?

The Department has an overall rebalancing vision that was developed through the work of the Long-term Care Reform Workgroup and MFP Stakeholder Advisory Group over several years of meeting and discussion of common goals. This vision is outlined below and guides the work the Department is doing to move forward on the Balancing Incentive Program, Money Follows the Person, and Community First Choice. At this time, there are no plans to develop a discreet and separate mission or vision for just the CFC program, as it is integral to the larger rebalancing vision for the State.

Medicaid's Rebalancing Vision

- Improving access to home and community-based services (HCBS)
  - Eliminate barriers to receiving HCBS
  - Improve collaboration between agencies
  - Enhance person-centered focus
- Shift focus from institutional settings to HCBS
  - Shift spending

- Increase self-direction options
- Take advantage of opportunities presented through the Affordable Care Act
    - Community First Choice
    - Balancing Incentive Program
    - Extension of MFP

10. States have the flexibility to include employment as an allowable goal for budget expenses. Does Maryland intend to include this option under CFC in order to promote the integration of people with disabilities into society?

As noted earlier, individual who self-direct will have flexibility in selecting their services as long as they meet Medicaid criteria for medical necessity, health and safety, and are allowable under all State and Federal rules. Employment services are not listed as an allowable service under Federal CFC regulations, however services that support an individual in a work environment may be covered. Any employment-related activity would need to meet the CFC criteria as listed below.

> **§ 441.520 Included services.**
> (a) If a State elects to provide Community First Choice, the State must provide all of the following services:
> (1) Assistance with ADLs, IADLs, and health-related tasks through hands-on assistance, supervision, and/or cueing.
> (2) Acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks.
> (3) Backup systems or mechanisms to ensure continuity of services and supports, as defined in §441.505 of this subpart.
> (4) Voluntary training on how to select, manage and dismiss attendants.
> (b) At the State's option, the State may provide permissible services and supports that are linked to an assessed need or goal in the individual's person-centered service plan. Permissible services and supports may include, but are not limited to, the following:
> (1) Expenditures for transition costs such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities linked to an assessed need for an individual to transition from a nursing facility, institution for mental diseases, or intermediate care facility for the mentally retarded to a home and community-based setting where the individual resides;
> (2) Expenditures relating to a need identified in an individual's person-centered service plan that increases an individual's independence or substitutes for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

Signers in Support Of Consumer choice in Maryland:

Michael Bullis, Executive Director, the IMAGE Center of Maryland

C. David Ward, Maryland Disabilities Forum

Maryland ADAPT

Sarah Basehart-Sorensen, Independence Now

James Martin, Executive Director, Accessible Resources for Independence

Linda Merkle, LAHW participant

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Baltimore County Commission on Disabilities

James Reinsel, The Freedom Center