

**Residential State Supplement (RSS)**  
**Legislative Review Workgroup**  
**September 24, 2013 Meeting Minutes**

**In attendance:** Tracy Plouck, Ohio Mental Health & Addiction Services  
Jonathan Baker, Ohio Department of Mental Health & Addiction Services  
Marc Baumgarten, Ohio Department of Mental Health & Addiction Services  
Angie Bergefurd, Ohio Department of Mental Health & Addiction Services  
Kueiting Betts, Ohio Department of Mental Health & Addiction Services  
Missy Craddock, Ohio Department of Mental Health & Addiction Services  
Marty Falin, Ohio Adult Care Facility Association  
Liz Henrich, Ohio Association of County Behavioral Health Authorities  
Janet Hofmann, Ohio Department of Aging  
Ellie Jazi, Ohio Department of Mental Health & Addiction Services  
Beverley Laubert, Ohio Department of Aging  
Jody Lynch, Ohio Department of Mental Health & Addiction Services  
Mark Mayle, Ohio Adult Care Facility Association  
Grace Moran, Ohio Department of Aging  
Beth Oberdier, Disability Rights Ohio  
Janel Pequignot, Ohio Department of Mental Health & Addiction Services  
Cora Petrosky, Ohio Department of Mental Health & Addiction Services  
Terry Russell, NAMI Ohio  
Daniel Schreiber, Ohio Office of Budget & Management  
Rick Tully, Governor's Office of Health Transformation  
Hubert Wirtz, The Ohio Council of Behavioral Health & Family Services Providers

**Welcome and Introductions**

Ellie welcomed the workgroup members and attendees introduced themselves.

**Opening Remarks by OhioMHAS Director, Tracy Plouck**

Director Plouck gave opening remarks regarding the RSS Legislative Review, which OhioMHAS requested in the FY 2014-15 budget. This initiative is an opportunity to examine how Ohio approaches funding for the RSS Program and allowable fees for Adult Care Facility and Adult Foster Home (ACF/AFoH) operators. The department currently does not have additional appropriations that was set aside for the RSS Program, but an incentive program was developed for ACF/AFoH operators to connect their residents with local services in accordance with priorities of the Governor's Office of Health Transformation. As OhioMHAS successfully implements the Recovery Requires a Community initiative, which funds the ACF/AFoH Incentive Program, the department can see whether the program can be funded at higher levels.

The budget includes temporary language that requires the department to work with the community to look at allowable fee rates for ACF operators and the RSS Program, which currently includes approximately one-quarter of ACF/AFoH residents. The workgroup is going to look at both, recognizing there are different requirements around each component, and provide recommendations for change that can then be reviewed in concert with the department's next opportunity to examine financing. The discussion is not a guarantee that there will be change, but it helps to inform next steps that can be contemplated through the state budget process.

The first workgroup meeting is the foundation to provide members with program information, then options will be discussed at the next meeting. There will also be three Community Forums held to obtain further community feedback, which will be presented to this workgroup.

### **RSS Legislative Review PowerPoint Presentation**

Ellie presented information regarding the workgroup's purpose and scope, the RSS Program, disparity issues for ACF/AFoH residents, and the new ACF/AFoH Incentive Program (please review the presentation slides for detailed information).

Questions and concerns discussed by workgroup members during the presentation:

- After OhioMHAS began administering RSS, one of the program's changes was that enrollment was opened. Terry Russell (NAMI Ohio) disagreed, stating that if people have to be discharged from nursing homes to be eligible to apply for RSS, then it is not "open enrollment".
- Ellie indicated one of the RSS program eligibility criteria is that the applicant be receiving Social Security, SSI and/or SSDI. Terry indicated there is a specific statute that does not allow SSDI under the RSS program.
- Information was presented regarding program enrollment during FY 2013 (slide #16). Although OhioMHAS has been actively enrolling people, the number of overall RSS consumers has continued to decrease. There were 1,210 enrolled consumers at the end of FY 2013, which is down from 1,450 when the department began administering the program in FY 2011.
- Ellie explained the reason for some disenrollments is lack of communication between certain County Department of Job & Family Services (CDJFS) offices and OhioMHAS. Some CDJFS offices are not aware or do not contact Ellie as required about the RSS disenrollment. An example is when someone is admitted to a nursing home short term and that individual should remain enrolled in RSS, but instead the CDJFS may complete the disenrollment.
- Data was reviewed regarding types of residences for RSS consumers and current licensed ACF/AFoH beds (slides 17 & 18). Currently there is no procedure to get to the "real time" count of the number of occupied beds as that changes daily. Terry indicated that the workgroup should also talk about the need for ACF beds, which are not reflected in the presented figures. Terry reported that most home operators will not accept a resident with SSI who does not have RSS.
- Mark Mayle (OACFA) indicated there are SSI clients who have been disenrolled from RSS because they no longer meet the financial criteria due to cost of living increases and Medicaid spend-down. Ellie stated the spend-down is not part of the RSS calculation and the Cost of Living Adjustment (COLA) disregard is a federal requirement. Terry stated the dollar amount for the COLA disregard for SSI has been increased throughout the years; on the other hand, the RSS benefit has not changed much during the same period of time.
- The funding for the ACF/AFoH Incentive Program comes from the Recovery Requires a Community Initiative, which is \$750,000 for each of the next two fiscal years (FY 2014-15 and FY 2015-16).

### **Applicable Rules & Statutes**

Marc Baumgarten (OhioMHAS) provided an overview of the following rules and statutes. Please review the links below to view full contents of the federal and state rules and statutes:

- RSS Program:
  - [Social Security Act, Sec. 1616. \[42 U.S.C. 1382e\]](#) – *Optional State Supplementation*
  - [Social Security Act, Sec. 1618 \[42 U.S.C. 1382g\]](#) – *Cost of Living Adjustments (COLA)*
  - Ohio Revised Code Sections [5119.69 \[Renumbered as 5119.41\]](#) and [5119.691 \[Renumbered as 5119.411\]](#) – *OhioMHAS; RSS*
  - [Ohio Administrative Code Chapter 5122-36](#) – *OhioMHAS; RSS*
  - [Ohio Administrative Code Chapter 5101:1-17](#) – *Ohio Department of Medicaid; RSS*
  - [Ohio Administrative Code Chapter 3701-17](#) – *Ohio Department of Health; Residential Care Facilities/Assisted Living*
  - [Ohio Administrative Code Rule 5101:3-3-06](#) – *Protective LOC Criteria*
- ACF/AFoH Licensure:
  - Ohio Administrative Code Chapter 5122-33 (two major provisions: [5122-33-16](#) and [5122-33-17](#)) – *Licensure of Adult Care Facilities (includes Adult Family & Group Homes)*
  - [Ohio Administrative Code Chapter 5122-35](#) – *Licensure of Adult Foster Homes*
- Rick Tully (Office of Health Transformation) asked if there is any additional Code of Federal Regulations (CFR). Marc indicated there are several chapters and he agreed to share the information with the workgroup.
- Director Plouck inquired about the “RSS Administrative Agencies” referenced in the Ohio Revised Code, which Ellie explained existed when the Area Agencies on Aging administered the program. There currently is not another administrative agency, but the statute permits the ability to delegate if the department chooses.
- Terry inquired about the following statement on the Ohio Revised Code Sections 5119.69 (renumbered as 5119.41 after the meeting occurred), “..... (G) The Department of Mental Health and Addiction Services shall maintain a waiting list of any individuals eligible for payment under this section but .....”. Ellie explained that there is not currently a waiting list due to available funding. If the number of individuals who meet the eligible criteria exceed the program funding, then those people would be placed on the waiting list. There was group discussion regarding the current eligibility criteria, specifically that people are not eligible to apply for RSS if they are not being discharged from nursing homes. Ellie indicated the workgroup would be reviewing the eligibility criteria and recommend possible changes. Ellie also clarified that “at risk of institutionalization” is not addressed at this point and the workgroup would be asked to provide recommendations.
- Janet Hofmann (Ohio Department of Aging) asked why there are multiple chapters of the Ohio Revised Codes for RSS program. Marc explained that it is because RSS program cuts across multiple agencies.
- Per Ohio Administrative Code Chapter 5101:1-17, RSS payment shall help prevent premature or unnecessary institutionalization. Director Plouck stated that it was decided at some point that RSS was only available for those coming out of nursing facilities, so this specific rule is broader than the program as administered today. Hugh Wirtz (Ohio Council of Behavioral Health & Family Services Providers) expressed this sets up the ability to possibly include ‘at risk’ criteria.

Also, the definition of protective level of care is broader than those being discharged from nursing homes.

- Marc stated there are several rescinded rules for Ohio Administrative Code Chapter 5101:1-17. CDJFS does not have financial determination and criteria in Ohio Administrative Code, but list them in the Medicaid Eligibility Manual in order to have more flexibility with changes. Marc agreed to share the most recent version of the manual with the workgroup. Rick inquired whether CRISE completes the RSS benefit calculations and Ellie confirmed that CRISE determines financial eligibility according to the “Financial Need Standard”.
- Terry stated there were discrepancies between OhioMHAS’ interpretation and an attorney who represents some ACF’s regarding how much ACF operators can charge residents. Terry stated there are still questions about individuals’ ability to maintain more of their SSI income, but also does not like that residents can only retain \$30 for personal spending at nursing homes. Marc indicated that one of the topic areas in the workgroup that should be discussed is whether operators should be entitled to charge more than currently allowed in OAC 5122-36-05.

### **Brainstorm & Discussion**

Workgroup members divided into two groups to brainstorm ideas about changes to the RSS Program and issues facing ACF/AFoH operators. The topics discussed were as follows:

- 1) RSS Program
  - a) Expand eligibility criteria
    - i) Include community-based clients, not just nursing facility (NF) residents
      - (1) How enroll those already in ACF/AFoH’s? Board referrals?
      - (2) Only including NF applicants demonstrates clearer cost savings to state
    - ii) “At risk of institutionalization”
      - (1) Look at federal definitions
      - (2) Include Protective Level of Care (LOC) component
      - (3) Include homeless as can be defined as “at risk” due to increased health issues
    - iii) Include other populations, i.e., current patients at state psychiatric hospitals, those with multiple emergency department admissions, offenders being released from prison/jail
    - iv) Include those not currently enrolled in Medicaid (MA), such as those who will be eligible under MA expansion
  - b) Waiting list will demonstrate need for program
  - c) Remove rule exclusion for those needing more than 120 days of skilled nursing care who receive medication administration only (not assistance with self-administration of meds)
- 2) ACF/AFoH Operators
  - a) Prohibit home operators from being representative payees
  - b) ACF standards should include a quality component, e.g., choice, client satisfaction, health/safety.
    - i) Ohio is a pilot state for National Association of Aging/Disability regarding quality
    - ii) Review DD criteria for selecting providers, i.e., Nice Neighbors Program
  - c) How track current bed utilization to show legislature need?
    - i) Possibility of snapshot or daily average?
      - (1) Use ACF/AFoH Incentive participation to get info
    - ii) Where is need for homes?
      - (1) Geomapping

- 3) Allowable Fees
  - a) Current allowable fees:
    - i) Not enrolled in RSS - SSI recipients (\$22/day); Social Security & SSDI recipients pay even less
    - ii) Enrolled in RSS
      - (1) Adult Group Homes - \$28/day
      - (2) Adult Family & Foster Homes - \$24/day
  - b) Increasing allowable fees would help operators with overall costs (including living wages), but would not address disparities among residents
    - i) COLA Disregard for SSI vs. Social Security and SSDI recipients
      - (1) Have higher COLA disregard for Social Security & SSDI recipients
      - (2) Lobby for federal changes to address disparity
  - c) Consider Fair Market Rent (FMR) values established by HUD for single-room occupancies (SRO's)
  - d) Establish payment structure for "critical access" facilities – incentive to have homes where needed (per geomapping)
  - e) Allow ACF/AFoH's to bill for services to residents, e.g., CPST
    - i) Federal match for MA-billable services
- 4) Residential Care Facilities (RCF) /Assisted Living has 17+ beds
  - a) Placement does not result in de-institutionalization
  - b) Can we no longer link with RSS recipients? If not, how to control the number of RSS consumers residing in Assisted Living?
  - c) Require that they link RSS residents with community BH providers?
  - d) 22% of RSS consumers live in RCF's; are they eligible for Assisted Living Waiver?
- 5) ACF/AFoH Incentive Program
  - a) Define measures for improved outcome; incentive beyond just connecting
  - b) What are expectations for community BH?
    - i) Include client choice
  - c) Use operator participation info to get snapshot or daily average of bed utilization
- 6) Resources for Future Discussions
  - a) Age/demographic breakdown of SSI/SSDI
  - b) Capture reasons for disenrollment from RSS
  - c) ACF/AFoH Budget for average occupancy, including staffing needs & operation costs, etc.