Four State Examples of MFP I/DD Policy: Negating Beneficiary Choice

New York

New York used MFP to undertake sweeping ICF closures of both state run and privately run facilities,[1] reducing total ICF capacity by over 6,000 beds. Only 150 state run ICFs beds and 456 private ICFs beds will be open after completion of the New York's MFP plan.[2] Such a dramatic reduction in ICF capacity could not be accomplished without forcing Medicaid beneficiaries with intellectual and developmental disabilities (I/DD) from ICF placements.

State of New York materials outlining its MFP plans pay lip service to individual choice of setting;[3] but when entire settings close, individual choice is negated. Additionally, once a person moves to a community setting in New York, there is no going back to an ICF. New York's "ICF Transition FAQ" makes clear,

> "If an individual moves to a setting where needs are not being met, the individual may work with his or her Medicaid Service Coordinator and OPWDD's Front Door staff **to identify another community-based setting** that will better meet his or her needs."[4] (Emphasis added.)

New York closed four of its six state run ICFs and used MFP funds to transfer residents. The census of the state run ICFs was reduced from 1,650 to 150. The private ICF census was reduced from 5,660 to 456. MFP funding was used to incentivize private providers to close ICFs and transfer residents.

> "Further, OPWDD has established a revenue neutral policy for funding providers' conversions of ICFs to Individualized Residential Alternatives (IRAs) (community homes) to ensure continued funding for necessary clinical and support staff. **OPWDD is working on development of funding support for ICFs that will downsize and/or close.**"[5] (Emphasis added.)

Ohio

In 2015, MFP funds helped finance the closure of two state run ICFs serving approximately 200 people. MFP funds were used to transfer residents.

Private ICF providers have been encouraged to reduce private ICF capacity by approximately 1,000 beds. This is to be accomplished through converting ICF beds to waiver beds, closing whole private ICF settings, and downsizing the number of beds per setting. MFP funds are used to transfer residents from closed beds/facilities. Incentives are provided to providers to encourage them to participate in the closings.

> "The department will be collaborating with Providers on exercises (assessments/cost projection and related) to determine the mechanics of transitioning small facilities from ICF funding to waiver funding. The goal of these exercises will be to gather information **to understand where additional supports and funding mechanisms** beyond the current waiver services are needed for these transitions to be successful **for both providers** and individuals."[6] (Emphasis added.)

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[1] https://opwdd.ny.gov/transformation-agreement/mfp/home

[2] https://opwdd.ny.gov/sites/default/files/documents/RevisedICF-TransitionPlan-1_29_14.pdf

[3] https://opwdd.ny.gov/sites/default/files/documents/ICF_TransitionPlanImplementationStrategy_0.pdf, page 2

[4] https://opwdd.ny.gov/sites/default/files/documents/5-7-15_ICF_Transition_FAQ.pdf, pages 1-2

[5] https://opwdd.ny.gov/sites/default/files/documents/5-7-15_ICF_Transition_FAQ.pdf, pages 2-3

[6] https://www.ohca.org/uploads/news/The_Future_of_the_ICF-IID_Program_White_Paper.pdf, page 4

"Options counseling," a program whereby ICF families are encouraged to leave ICFs, is another means of forcing residents from ICF settings. The vast majority of family guardians of ICF residents refuse options counseling or refuse community services after speaking with counselors, but this program has removed hundreds of individuals with I/DD from ICFs who do not have an involved family member and are wards of the state-funded guardian of last resort. In these cases, the state-funded guardian performs the counseling, asking intellectually disabled individuals who have been judged incompetent by a probate court if they would like to move to a community setting. Of the 481 private ICF residents transferred through options counseling between 2015 and 2018, 395 were wards of the state-funded guardian.

As individuals leave ICFs, a stated goal of Ohio's MFP program per Mathematica is, "develop mechanisms to limit 'back-filling' of institutional beds vacated by MFP transitioned individuals."[7] This is accomplished by not informing new families seeking services of the private ICF option and closing admissions to state-run ICFs. If a private ICF is unable to fill enough beds due to lack of state referrals, it may go out of business, causing its remaining residents to lose their services and home.

Texas

Texas used MFP funds to incentivize private ICF providers to engage in "voluntary closures." In its MFP protocol, the state of Texas explained that incentives to close private ICF settings were necessary because community settings are more expensive to run than large ICFs, making providers reticent about converting their programs. The state used the enhanced FMAP from MFP to help off-set costs that ICF providers incur when they close their ICF facilities.

> "**In Texas, the cost of operating a HCS (home & community services) residential facility is more expensive than operating a large community ICF/MR.** This higher cost has been an obstacle to the overall reduction of beds in the large community ICF/MR program through voluntary closure. To minimize this obstacle, Texas will use its enhanced Federal Matching Assistance Annual Percentage (FMAP) to help off-set the costs associated with the closure of large ICF/MR."[8] (Emphasis added.)

MFP, therefore, promotes the inefficient use of resources. Without the use of financial incentives, private ICF providers would not convert to HCBS programming since the cost of doing business is higher in HCBS settings. As noted, financial incentives were necessary in New York and Texas as well.

It's obvious that individual choice is not driving Texas MFP policy. The state of Texas provided this mock example in an ICF closure case study,

> "Management of ABC Place invited all residents and their family members/LARs to a meeting on November 4, 2007 to discuss the possibility of closing ABC Place and what the impact would be for the residents. Upon receiving this notification, Ms. Johnson indicated at that time that she was most comfortable with Jim residing in a large community ICF/IID and was very angry about the closure."[9]

The fact that the state of Texas proposed this particular mock example in preparing for its MFP implementation shows that Texas anticipated angry reactions of ICF guardians to the news of facility closures. In other words, transfers were not voluntary.

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[7] https://www.cms.gov/Regulations-and-Guidance/Legislation/DeficitReductionAct/downloads/StateMFPGrantSummaries-All.pdf, page 118

[8] https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2018/mfp-operational-protocol-amendment-5.pdf, page 41

[9] https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2018/mfp-operational-protocol-amendment-5.pdf, page 41

Wisconsin

Wisconsin used MFP to implement its ICF Restructuring Initiative. As with New York, Ohio, and Texas, ICF homes were closed to force individuals with I/DD from ICFs.

> "Under these MFP initiatives, institutional funds for transitioning consumers are used to pay for community services. Consequently, **Wisconsin is identifying ICF-MR facilities to be downsized or closed…**"[10] (Emphasis added).

Beneficiary choice did not drive Wisconsin MFP policy. Beneficiaries were given one choice – community services. 28 ICFs were closed with 936 individuals losing their ICF homes. Only 135 residents remained in ICFs.[11]

> "In support of the ICF Restructuring Initiative, Wisconsin is creating a regional support system that will enable consumers and their guardians, county administrators, and other key stakeholders to understand and **choose alternatives to ICF-MR facilities**. Grant staff helped educate guardians and other judicial personnel about the initiative and about their roles and responsibilities during the planning process and through the relocation process."[12] (Emphasis added.)

The promise that costs will go down in community settings has not been realized. The cost of care for Wisconsin ICF residents who were moved to community settings has proven to be **more expensive.**[13]

> Wisconsin Department of Health Services verifies that in SFY 10, the average cost of the 72 relocated individuals was **$72.88 more per day than their institutional cost.**
> Wisconsin Department of Health Services verifies that in SFY 11, the average cost of the 19 relocated individuals was **$55.88 more per day than their institutional cost.**
> Wisconsin Department of Health Services verifies that in SFY 12, the average cost of the 38 relocated individuals was **$58.11 more per day than their institutional cost.**
> Wisconsin DHS stopped providing this financial information in the statutorily required report in SFY 13.

Conclusion

For the I/DD population, MFP is not about beneficiary choice, or rebalancing. Indeed, state I/DD systems are already overwhelmingly rebalanced toward community settings. Instead, these examples represent the removal of a primary health care option that is being done under the false mantra that everyone can live in a small community setting regardless of their complex medical needs, and regardless of their choice. When dealing with a very vulnerable population such as the I/DD population such policy is dangerous to individual lives.

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[10] http://www.advancingstates.org/sites/nasuad/files/hcbs/files/96/4768/Money_Follows_the_Person_Initiatives_of_the_Systems_Change_Grantees_Final_Report.htm#3-1-9, Section 3 under Wisconsin

[11] https://www.dhs.wisconsin.gov/publications/p01054-16.pdf, page 3 of attachment to cover letter

[12] http://www.advancingstates.org/sites/nasuad/files/hcbs/files/96/4768/Money_Follows_the_Person_Initiatives_of_the_Systems_Change_Grantees_Final_Report.htm#3-1-9, Section 3 under Wisconsin

[13] Documentation for cited average cost figures available upon request.