

House Committee on Finance and Appropriations Health and Human Services Subcommittee

Testimony of Director John L. Martin Ohio Department of Developmental Disabilities

February 25, 2015

Chairman Sprague, Ranking Member Sykes, and members of the Health and Human Services Subcommittee, my name is John Martin. I am the Director of the Department of Developmental Disabilities (DODD).

Today I want to begin with gratitude in mind. Our system is undergoing a significant amount of change, and this puts increased pressure on everyone. I want to thank individuals and families, who are working through this change with us; their input is helping us shape the future of the system in a way that is meaningful to the individuals we serve. I want to thank those who work in our system for their help in moving this charge forward, including providers, County Board staff, our advocacy groups, and DODD staff; the perspective and support of those who are on the front lines is critical in developing and implementing new programs. I also want to thank the Governor for his historic support for individuals with developmental disabilities; this Executive Budget represents the most significant influx of new money in years, and lays the groundwork for transformational change. And I would also like to thank you for the opportunity to discuss the work of DODD, and the 2016-2017 operating budget recommendations. I look forward to working with each of you on behalf of Ohioans with developmental disabilities.

Introduction

Ohio has a strong tradition of providing services for individuals with developmental disabilities. During the 1950s, 60s and 70s, this tradition led parents, advocates, and local communities to develop schools in their communities when there were no other educational options, sheltered workshops when there were no other vocational options, and large institutions when there were no other residential service options.

Today, our system, both here in Ohio and nationally, is at a crossroads as the expectations of and for individuals with developmental disabilities rightfully increases. Individuals want to more fully participate in their communities – they want to engage in everyday life activities, maintain strong family relationships, make social contacts, explore work options, find cultural enrichment, and achieve economic independence.

As these expectations are growing, our system must evolve to support those needs. This budget builds on the positive momentum begun by Governor Kasich's previous state budgets, and expands not only the ways in which individuals can more fully participate in their community, but also increases the number of individuals we are able to serve.

President Bush signed the Americans with Disabilities Act (ADA) into law 25 years ago. In so doing, he welcomed Americans with disabilities into the mainstream of life. "We embrace you for your abilities and for your disabilities, for our similarities and indeed for our differences, for your past courage and your future dreams," he said. The President said the purpose of the Act was to "ensure that people with disabilities are given the basic guarantees for which they have worked so long and so hard: Independence, freedom of choice, control of their lives, the opportunity to blend fully and equally into the rich mosaic of the American mainstream."

This landmark legislation was signed in 1990, and while we have come a long way, today there are people with disabilities across Ohio who have not been welcomed, and who have not been given independence, choice, or

control. For example, 36 percent of adult Ohioans with developmental disabilities want a job in the community.¹, and approximately 2,500 people living in Intermediate Care Facilities (ICF) are on a waiting list for Home and Community-Based Services.

The ADA empowered people. Section 202 of the Act prohibited discrimination on the basis of disability in the services, programs, and activities provided or made available by state and local governments. The Justice Department’s regulations imposed an “integration mandate” requiring public entities to administer services, programs, and activities “in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”² People with disabilities began asking – and demanding – to be treated as equal and included in society; to be given choice and opportunity. In 1999, in *Olmstead v. L.C. by Zimring*, 527 U.S. 581, the U. S. Supreme Court ruled that “[u]njustified isolation . . . is properly regarded as discrimination based on disability.”³

As you review this budget, it should be reviewed in the context and spirit of this Act, and as a continuation of the work of millions of Americans, and Ohioans, who have shown us what is possible – their lives are a testament to the fact people with disabilities, even the most severe disabilities, can participate fully in community life. It also should be viewed in the context of the research which supports this Act – that quality of life and satisfaction are the highest among those living in small settings; that people are happiest when they earn real money from real work.

And it should be viewed with the knowledge that change is difficult when looked at through the front windshield, but often is satisfying as we look through the rear view mirror. We acknowledge that change is especially hard for those we serve, and their families who have been through so much already – they have laid awake nights wondering if their children were going to live; they have spent their days wondering if they would get a phone call from the school or police; they have quit their jobs to care for their children. We know many are satisfied with their services, and that they don’t object to institutions or workshops. We also know that the research shows they won’t object to community life once we get there.

- Nationally, research on the closure of state-operated centers shows, prior to closure, 85 percent of the families were opposed to closure. After closure, satisfaction was as high as 80 percent.
- In Ohio, the Department’s most recent follow-along visit with those who moved out of a state-operated Developmental Center between January 1, 2011, and February 20, 2015, shows 77 percent of the individuals report feeling happy in their new home, and 81 percent of the families/guardians reported being satisfied or highly satisfied with their family member’s current setting.

Today, we are looking through the front windshield. It will take great faith and courage to believe the rear view mirror will tell a different story.

This budget is built on my belief, and our shared belief, that all of us are created equal. We all have challenges, we all are likely to become disabled in some way, and even those of us with the most severe disabilities can be living, working, and receiving services as full participants in our community.

¹ National Core Indicators, 2012-2013 Ohio Adult Consumer Survey State Report

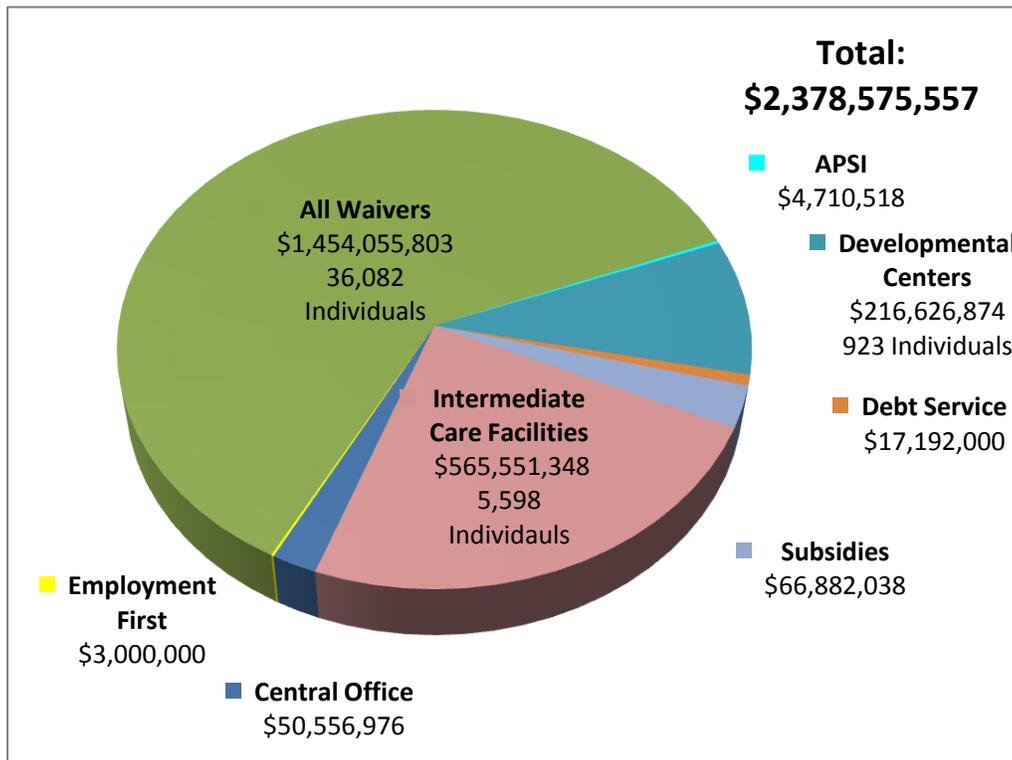
² 28 C.F.R. 35.130(d).

³ Id. at 597.

Background: Current Fiscal Overview

Before I describe how the Department’s budget seeks to expand opportunities to live and work in the community, a brief overview of the DD system is warranted. The DD system is funded through a unique combination of local, state, and federal dollars. The uniqueness lies in the significant role local dollars play in our system. With the passage of HB94 in 2001, local dollars were made available to leverage federal dollars, enabling significant growth in the amount funding available for Home and Community-Based Services (HCBS) waivers. The chart below (Figure 1) provides an overview of this service delivery system **today**, and the number of individuals served by its various parts.

Figure 1: FY15 Estimated Expenditures

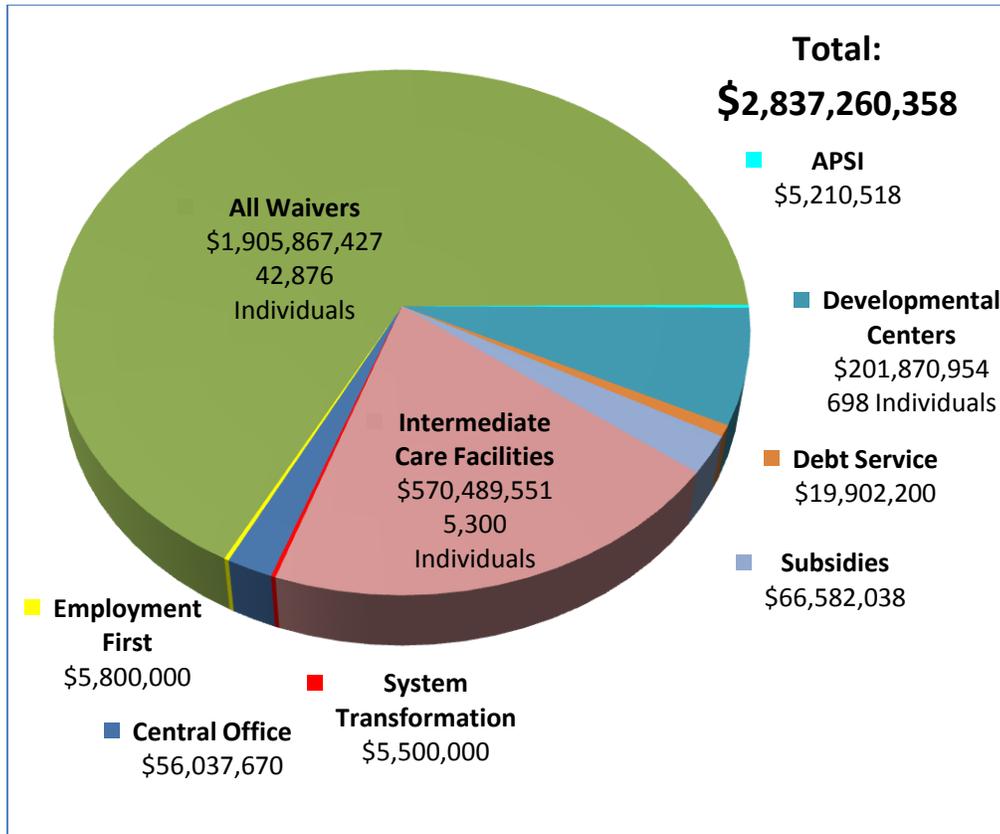


Budget Recommendations

The Executive Budget invests \$316 million (\$129 million state share) over the next two years to increase opportunities for people with disabilities to live and work in the community. The goal is to try to honor the choices of individuals and help those who wish to move into their communities to do so, as well as allow those who wish to maintain their current services to do so.

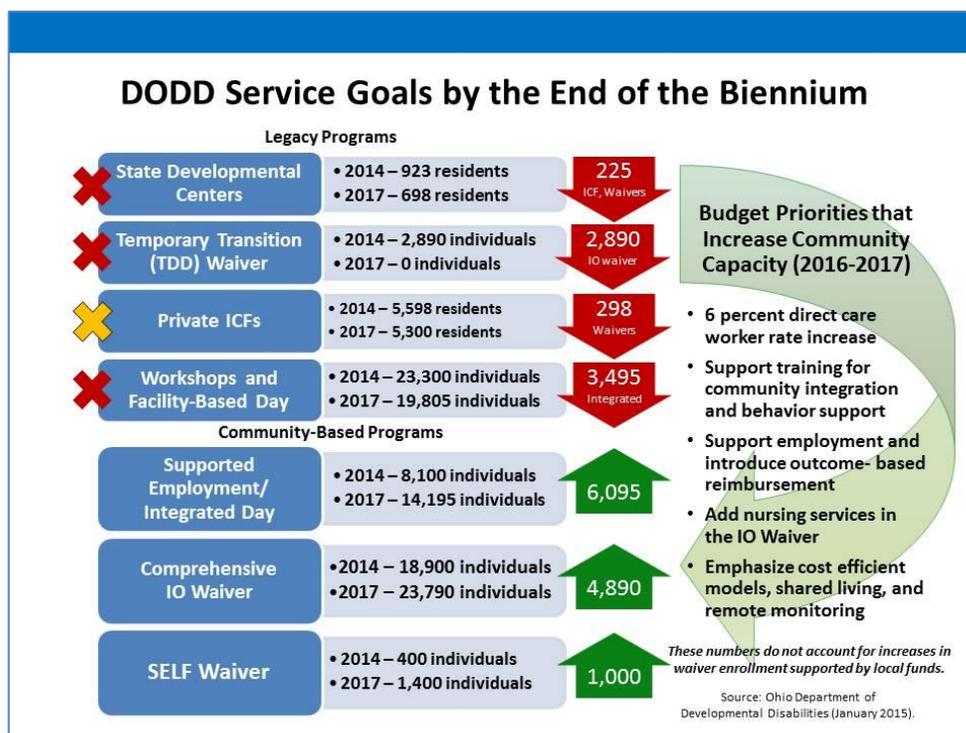
The chart below (Figure 2) provides an overview the department’s budget for State Fiscal Year 2017.

Figure 2: FY17 Expenditures as Budgeted



Over the next two years, as waiver enrollment grows to serve an additional 3,000 individuals in community settings, enrollment in state-operated Developmental Centers (DC) and privately-operated Intermediate Care Facilities (ICF) decreases (Figure 3). As participation in supported employment and integrated day services increases by 6,095, the number of individuals served in workshops and facility-based day settings is estimated to decrease by 3,495. These numbers do not account for increases in waiver enrollment supported by local funds.

Figure 3: DODD Service Goals by the End of the Biennium



The financial resources necessary to achieve these gains represent the most significant health and human services investment in the Executive Budget. It continues the trend to downsize state-operated DCs and large private ICFs, convert ICF-funded beds into HCBS waivers, and expand community employment opportunities.

The Department’s budget can be categorized in four areas: Strengthening the Community System, Reducing Waiting Lists, Modernizing the Intermediate Care Facility Program, and Ensuring Developmental Centers are Fiscally Sound. While I have broken it down into these four areas, it’s important to remember that this is a system, and everything is interconnected. Therefore, changes to one area often have a downstream impact on other areas, or are required to realize change in other areas. This is reflected in the Department’s budget; for example, changes to the ICF program support – and are necessary to – initiatives to strengthen the waiver program.

Before I begin to review the budget recommendations in more detail, I wanted to share some thoughts around the efforts to increase the number of people who receive services in the community. This is a national trend, and a direction we have been heading as a state. While there are outside factors that are encouraging this change, it’s the right thing to do. The more people participate in their communities, the better we are as a whole, and the more opportunities there are for enrichment in each of our lives.

In the Department’s budget, there are initiatives that will help individuals move from an institutional setting into a community setting. It is the Department’s responsibility to ensure families are aware of the benefits and options available in the community, and to take appropriate steps to ensure the health and safety of the individuals who choose to move into the community.

Strengthening the Community System

With thousands of people living in community-based settings, we must continue to examine and improve our system to ensure their health and safety. The Executive Budget has several initiatives that will help strengthen the community system.

The first component focuses on ensuring support for individuals with complex needs to encourage community-based services as an alternative to institutionally based care. The budget continues the \$2.08 per hour rate increase (one year) for HCBS waiver providers if the individuals they are serving were residents of a public hospital, DC, or converted ICF immediately prior to waiver enrollment; and the behavior support rate modification of \$2.52 per hour for those serving individuals with challenging behavioral needs, as well as taking steps to ensure a more consistent availability and application of the behavior support rate modification. Additionally, the Executive Budget adds a nursing service to the Individual Options (IO) Waiver to provide direct services from a licensed nurse to individuals with significant medical needs.

The second change further strengthens the direct care workforce. It increases Homemaker Personal Care (HPC) and Shared Living waiver provider rates 6 percent to support a more stable, consistent workforce. Providers must increase wages to attract and retain dedicated staff, and this budget gives them resources to do so.

The third change reduces administrative complexity. It converts all 2,890 Transitions Developmental Disability (TDD) waivers to IO waivers. Due to the limitations of the TDD Waiver, the individuals enrolled have few providers to choose from, and have few community options. Moving from four waivers to three will simplify the system. Also, the Department plans to develop a more predictable daily or weekly rate using a cost projection tool, reducing the need for frequent adjustments to payment authorizations, and claims adjustments by providers.

Modernize Employment Services

Another aspect of strengthening the community infrastructure is modernizing employment services. Employment is a key part of the human experience. It gives someone's day meaning and purpose, and it offers financial freedom.

While Ohio currently ranks 6th in the nation for enrollment in day services, and 8th in the nation for integrated employment services per capita, we still have many individuals asking for support in gaining employment. To build on the work established by Governor Kasich's Executive Order establishing the Employment First initiative, this budget provides transitional funding to support individuals in moving to integrated day and employment options that are being developed by the Department. This change in services will take place over an extended timeframe.

Shift to an Agency-only Model

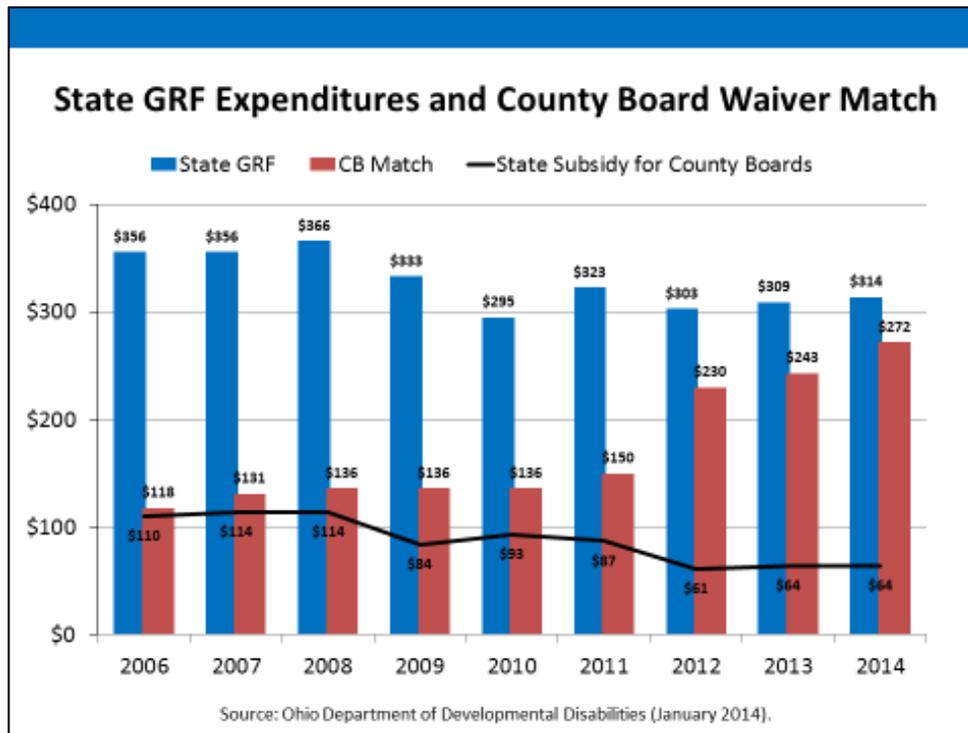
As part of the broader budget, the State's move to an agency-only model will be a big change for many of the individuals we serve – while independent providers only account for approximately 6 percent of the total claims and 18 percent of the people served, they represent 76 percent of all providers. This will be a gradual transition over the next four years, allowing both individuals and providers time to prepare for changes.

The Department will add a self-directed option to the IO waiver, the details of which will be determined by stakeholders. This would allow more individuals to continue working with non-agency providers through Employer Authority. This model, which currently exists under the Self-Empowered Life Funding (SELF) Waiver, allows individuals receiving services or their representative to become the legally responsible employer of the direct service workers, or to partner with an agency who agrees to be the employer on the individual's behalf.

Reducing the Waiting List

Thanks mainly to the availability of local tax levy dollars, Ohio has been able to continue to enroll individuals in DODD HCBS Waivers even through the recession (Figure 4). As a result, over the past four years, Ohio has enrolled approximately 2,000 additional individuals per year in DODD waivers.

Figure 4: GRF Expenditures and County Board Waiver Match



Despite significant gains, the capacity of the local system to add waivers is not infinite. Also, there are more than 40,000 Ohioans on waiting lists – 22,000 of whom have immediate needs, 8,000 of whom live with an aging caregiver, and 1,000 of whom will lose the support of their primary caregiver in the next year. In response to meeting the needs of what many consumers want and to reduce waiting lists, the Executive Budget seeks to expand the available home and community-based services.

The Executive Budget provides \$95 million in additional state funding for waivers and the infrastructure mentioned above. It will provide approximately 2,000 IO new waivers, and 1,000 new SELF waivers to enable individuals across the state currently on the waiting list to access services, to avoid ICF admissions, and to give individuals in ICFs a choice to leave. This reinforces the State’s commitment to promoting home and community-based services.

Modernizing the Intermediate Care Facility Program

House Bill 153 (passed July 2011) transferred the operation of the ICF program from Medicaid to DODD. After the transfer, DODD began a process to encourage both the conversion of ICF beds to waivers, and the downsizing of large ICFs (nine or more beds). While these efforts have helped more people move into a community setting, there still is work to be done; per capita, Ohio ranks 6th in the country for the number of individuals living in non-state operated ICFs, and 2nd for the number of individuals living in large ICFs. The Executive Budget focuses additional reforms on large ICFs, both reducing the number of people who live in them, and offering community-based alternatives.

The first initiative authorizes the Department to pay a flat rate for those residents residing in an ICF who have the least support needs. The savings from this provision, along with additional dollars, will be used to support individuals with significant needs, provide for a modest rate increase, and cover transition costs when a large ICF downsizes. Also, the Executive Budget, for the first time, gives the Department the authority to offer rental assistance for individuals leaving ICFs, and to buy back ICF beds.

The second initiative will require County Boards to complete an assessment prior to admission to a large ICF. The assessment will determine if less restrictive options (such as home and community-based services) could meet the individual's needs, and will assist the individual and family in understanding all of the options which may be available.

The third initiative ensures individuals and families in an ICF regularly receive information about the features and benefits of HCBS waivers. If an individual chooses this option, the Department may fund their waiver (subject to available funding). When an individual moves from a large ICF into the community on a state-funded HCBS waiver, their ICF bed will be closed, and the funding will be shifted to the waiver.

The fourth initiative ensures individuals living in ICFs have greater privacy. Consistent with trends experienced in other health care facilities such as nursing facilities, the Executive Budget will enforce the requirement that ICFs have no more than two residents per bedroom; previously, some ICFs were grandfathered. ICFs cannot admit new residents until they have no more than two per bedroom; they can continue to operate at current census if, by December 2015, they submit a detailed plan about how the facility will come into compliance by 2023.

The fifth initiative addresses objections to downsizing. An often-stated barrier by ICFs to downsize or convert beds to home and community-based services is the financial impact this has, especially in regards to the capital costs of the facilities. To alleviate some of this impact, the Executive Budget authorizes a temporary increase to capital ceilings for ICFs undergoing downsizing and conversion efforts. Also, the Department will do a case mix adjustment after the downsizing or conversion.

Lastly, the Executive Budget will reform the ICF reimbursement formula. The reimbursement system is more than 20 years old, and needs to be evaluated in light of the transformational activities taking place in the DD system. The Executive Budget requires the Department to issue a request for proposals for a third party to develop a plan to reform the reimbursement formula; the new formula will include quality measures, make payments based on health outcomes, and promote integrated services appropriate to the needs of the individual.

The ICF program represents an integral part of our system, and we have a long-term commitment to ICFs. This budget invests significant funds to strengthen the ICF program, thus improving quality.

Ensuring Developmental Centers are Fiscally Sound

On February 20, the Department announced the closure of two of our ten state-operated DCs.

In the last eight years, we have helped more people move into the community. During that time, the number of people living in DCs has decreased more than 40 percent, from 1,600 to 900. By this fall, that number will be approximately 800. With this decrease in census, it now costs approximately \$200,000 per year for a person to reside in a DC. Maintaining ten DCs no longer makes sense.

While there are no savings in this biennium, we estimate that closing the Montgomery Developmental Center and Youngstown Developmental Center will save an estimated \$6 million per year beginning in approximately four years. This money will stay within our system, and be redirected to those who are waiting for services. For example, \$6 million could fund approximately 1,000 new SELF waivers.

We will honor the choices of the individuals who live in these closing DCs, and they will have the option to move to another DC, into a privately operated ICF, or into a home in the community with a HCBS waiver. We will work with individuals and families one-on-one to review their options, and develop a personalized transition plan to make their move as easy as possible. We are allowing more than two years for this transition so that individuals and families have time to consider all of their options, and can plan for a smooth transition.

Regarding the future of the Developmental Center program, I do believe that there will continue to be a need for this valuable service option, and our DCs will focus on providing care for those with the most complex behavioral needs.

External Factors Driving Change

It is important to note that these changes are also being influenced by several external forces.

Centers for Medicare and Medicaid Services

A new rule from CMS says that federal Medicaid funds no longer can be used to pay for waiver services that are offered in institutions, adjacent to public institutions, or in other settings that have the effect of isolating people. The Department convened a CMS Transition Plan Committee comprised of stakeholders from across the DD system to identify which settings currently are not in compliance, and to develop recommendations for how to bring them into compliance. Much of what is in the Executive Budget supports that work. It is important to note that CMS' feedback on the draft plan, which will be submitted in March 2015, may affect some of the items outlined in the budget.

Also, CMS released additional guidance on conflict of interest, reinforcing that the same organization that provides case management cannot also provide waiver services. Today, many of our County Boards do both. We are working on a plan that will reduce conflict of interest in the waiver program. We know this is a concern for our County Board partners, and for the individuals and families who are receiving services from their County Board. Our goal is to develop a plan to submit to the CMS that will minimize disruption to the services individuals already receive.

Disability Rights Ohio

In summer 2014, Disability Rights Ohio (DRO) sent a letter to the Governor and Directors Moody, McCarthy and me stating that DRO believes Ohio is violating the Americans with Disabilities Act and the Olmstead decision because the system favors segregation and institutional placement – DRO says that, while the state has made progress, it's not been fast enough. DRO requested the state take specific action to avoid litigation.

While the Department disagreed with much of what was outlined in the letter, we both share a common goal – increasing opportunities for community participation. We have been in negotiations with DRO, and many of the initiatives outlined in this budget support that common goal.

Conclusion

We have a great responsibility. A responsibility to make changes thoughtfully, and with our first priority always being the individuals we serve. To listen to our stakeholders and help them through these transitions. To be accountable for the funds our taxpayers have entrusted to us.

Ohio's developmental disabilities system is at a crossroads, and is ready to head down the path that ensures Ohio's citizens with developmental disabilities receive the basic guarantees of independence, freedom of choice, and control of their lives. Never before have the expectations of individuals been so high, and never before have we been as well-positioned as we are today to help individuals realize their dreams. With your

support, we can help Ohioans with developmental disabilities seize their rightful place as equals in our community.

On behalf of the developmental disabilities community, I want to thank you for your leadership and support for the individuals DODD serves.

I welcome your questions.