

April 26, 2011

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-2337-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

RE: Comments on CMS Proposed Rule for “Medicaid Program: Community First Choice Option” (42 CFR Part 441, CMS-2337-P, RIN 0938-AQ35)

The Brain Injury Association of America (BIAA) is submitting the following comments on the CMS Proposed Rule for the Community First Choice Option.

**Definitions—§441.505.** The definition of “individual’s representative” should explicitly include spouse and partner, and it should be clear that “authorized individual” is someone who has been designated by the participant or family to represent the participant to the extent the participant wishes.

**Eligibility—§510.** BIAA supports the eligibility criteria which should help States to provide community services to individuals with brain injury who do not exceed 150 percent of the FPL without determining level of care. Some States use nursing home level of care assessments that do not acknowledge that individuals may not be able to conduct activities of daily living without cueing or compensatory strategies. These States base functional assessment on direct caregiving needs, which excludes people with brain injury.

**Assessment of Need—§535.** We support natural and informal supports to be considered in service planning to support community integration, we do not want it construed that the existence of family, natural and other informal supports be a reason for reducing the level of services to the individual.

BIAA supports face-to-face assessment of individuals with brain injury, which often needs to be done throughout the year. Individuals with brain injury often have changing needs due to behavior, improved cognitive skills, emerging health care issues, and may need to be assessed often to account for these changes.

**Person-Centered Service Plan—§540.** We object to the proposed conflict of interest standards at (c)(4) that prohibit any involvement of family members and persons who are financially responsible for the individual with the service plan development process, if the person requests their participation. These prohibitions may inappropriately undermine the preference of individuals to choose persons they wish to involve—which is part of the person centered planning process, meaning the individual selects his/her circles of support to provide input. BIAA asks that CMS provide clarifying language as to explain the intent of the provision.

