DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Baltimore, Maryland 21244-1850

Disabled & Elderly Health Programs Group

November 8, 2016

Joseph Moser
Director of Medicaid
State of Indiana, Family and Social Services Administration
402 West Washington Street, W461, MS 25
Indianapolis, IN 46204

Dear Mr. Moser:

I am writing to inform you that CMS is granting the state of Indiana **initial approval** of its Statewide Transition Plan (STP) to bring settings into compliance with the federal home and community-based services (HCBS) regulations found at 42 CFR Section 441.301(c)(4)(5) and Section 441.710(a)(1)(2). Approval is granted because the state completed its systemic assessment, included the outcomes of this assessment in the STP, and clearly outlined remediation strategies to rectify issues that the systemic assessment uncovered, such as legislative changes and changes to policy documents, and is actively working on those remediation strategies. Additionally, the state submitted the April 2016 draft for a 30-day public comment period, made sure information regarding the public comment period was widely disseminated, and responded to and summarized the comments in the STP submitted to CMS.

After reviewing the April 2016 draft submitted by the state, CMS provided additional feedback on August 16th and again on November 2nd requesting that the state make several technical corrections in order to receive initial approval. These changes did not necessitate another public comment period. The state subsequently addressed all issues, and resubmitted an updated version on November 4, 2016. These changes are summarized in Attachment I of this letter. The state's responsiveness in addressing CMS' remaining concerns related to the state's systemic assessment and remediation expedited the initial approval of its STP. CMS also completed a spot-check of 50% of the state's systemic assessment for accuracy. Should any state standards be identified in the future as being in violation of the federal HCBS settings rule, the state will be required to take additional steps to remediate the areas of non-compliance.

In order to receive final approval of Indiana's STP, the state will need to submit an updated STP that includes the following updated components:

- Complete a thorough, comprehensive site-specific assessment of all HCBS settings, implement necessary strategies for validating the assessment results, and include the outcomes of this assessment within the STP;

- Draft remediation strategies and a corresponding timeline that will resolve issues that the site-specific settings assessment process and subsequent validation strategies uncovered by the end of the HCBS rule transition period (March 17, 2019);
- Outline a detailed plan for identifying settings that are presumed to have institutional characteristics including qualities that isolate HCBS beneficiaries, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- Develop a process for communicating with beneficiaries that are currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings rule by March 17, 2019; and
- Establish ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

While the state of Indiana has made much progress toward completing each of these remaining components, Attachment II to this letter outlines additional changes that must be resolved to CMS' satisfaction before the state can receive final approval of its STP. Upon review of this detailed feedback, CMS requests that the state please contact Patricia Helphenstine at 410-786-5900 or Patricia.Helphenstine1@cms.hhs.gov or Michelle Beasley at 312-353-3746 or Michelle.Beasley@cms.hhs.gov at your earliest convenience to confirm the date that Indiana plans to resubmit an updated STP for CMS review and consideration of final approval.

It is important to note that CMS' initial or final approval of a STP solely addresses the state's compliance with the applicable Medicaid authorities. CMS' approval does not address the state's independent and separate obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act or the Supreme Court's Olmstead decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the *Olmstead* decision is available at http://www.ada.gov/olmstead/q&a_olmstead.htm.

I want to personally thank the state for its efforts thus far on the HCBS statewide transition plan. CMS appreciates the state's completion of the systemic review and corresponding remediation plan with fidelity, and looks forward to the next iteration of the STP that addresses the remaining technical feedback provided in the attachment.

Sincerely,

Ralph F. Lollar, Director
Division of Long Term Services and Supports

ATTACHMENT I.

SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF INDIANA TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 11-4-16

- **Formatting of STP:** Each division/division branch in Indiana has developed its own unique plan to comply with the home and community-based settings rule, and although each individual plan contains assessments and remediation plans, each division presented those plans in different formats. CMS requested the state align the Statewide Transition Plans (STPs) submitted by each division/division branch so that each STP is consistent in terms of its organization and the content included.

  State's Response: The state has provided a revised STP with each division/division branch using the same format for their respective section, resulting in a more consistent document. The new format used for each division's systemic assessment is very well organized and easy to understand.

- **Settings Included in the STP:**
  - **Structured Day Program:** In the Division of Aging (DA) section of the STP, the state included the number of Structured Day Program (SDP) providers, but only specified that 12 of those providers have active waiver consumers through the Traumatic Brain Injury (TBI) waiver program and provide services in non-residential settings. The STP indicated DA will use an assessment approach similar to that used to assess individual settings, but at the time the STP was written did not have enough information to identify instances of non-compliance with the home and community-based settings requirements. It is unclear whether the 54 other settings are serving consumers and/or are residential settings and will be assessed, or whether the state is solely assessing the 12 non-residential settings under TBI. The state was asked to clarify this in a revised STP.

    State's Response: Indiana included the following language to the STP on page 48. "In the fall of 2016, DA will work with the Division of Disability and Rehabilitative Services (DDRS) to align evaluation and remediation processes with these shared providers. All 66 SDP providers will be assessed. In addition to DDRS efforts, in January 2017 through March 2017, the participant's waiver case manager will conduct reviews with the individual SDP participants to identify any specific concerns indicating provider non-compliance with HCBS characteristics. Notifications of identified issues will be sent out to providers in March 2017 through June 2017. DA will then review these plans, request changes as needed, and then compile a master calendar for remediation activities. DA will monitor, follow up with providers on their progress, and then complete a site visit to

validate the completion of the plan. Providers who choose not to submit a remediation plan will not be permitted to accept any new participants. Current participants served in these locations will be assisted with the transition process according to their preferences. These providers and any others unable or unwilling to remediate areas of non-compliance will be decertified by March 2019."

- **Structured Family Caregiving:** In the DA section, the state clarified that the Structured Family Caregiving (SFC) service can also be provided in the home of a caregiver selected by the individual and, that typically, the beneficiary and caregiver are living in the same residence. DA explains it will clarify the service description in an upcoming waiver amendment to indicate that SFC cannot be offered in a provider-owned setting, no waiver residents are being served by SFC in a provider-owned setting and the service cannot be provided by an individual provider, only by a provider agency. CMS noted that this service description still suggests that the setting is provider controlled. If an individual is receiving HCBS, and a residential setting where the individual lives or receives services is tied in any way back to a provider entity, then this setting would be considered provider owned or controlled. CMS asked the state to provide additional details describing how the state will assure that settings under the SFC service category comply with the federal HCBS rule.

  State's Response: The state has included the following information in the STP on page 6. SFC is "a living arrangement in which a participant lives in his or her private home or the private home of a principal caregiver who may be a nonfamily member or a family member who is not the participant's spouse, the parent of the participant who is a minor, or the legal guardian of the participant; support services are provided by the principal caregiver (family caregiver) as part of structured family caregiving; only agencies may be structured family caregiving providers, with the structured family caregiving settings being approved, supervised, trained, and paid by the approved agency provider. This is not a provider owned or controlled setting as long as the caregiver is a related family member. DA will evaluate each situation individually to determine if the caregiver is not a related family member and if the participant resides in that caregiver's home. DA believes that few, if any, situations will prove to be provider owned or controlled but any that are will be assessed and remediated individually for compliance with the HCBS settings requirements. SFC will be included in regulatory language to cover any situations that do involve services in the home of an unrelated paid caregiver."

- **Supported Employment:** In the DA section, the state lists supported employment as a setting that is individualized and provided in a non-residential setting that is not provider owned or controlled. CMS reminded the state that all settings that group or cluster individuals for the purposes of receiving HCBS must be assessed by the state for

compliance with the rule. This includes all group residential and non-residential settings, including but not limited to prevocational services, group supported employment and group day habilitation activities. CMS asked the state to clarify within the STP that all supported employment services and individual day habilitation services require a 1:1 service ratio. If this is not the case, CMS asked the state to include group supported employment settings among the settings that will be assessed and validated for compliance with the home and community-based settings requirements.

State's Response: The state has indicated in the STP that there are currently only three waiver participants receiving this service under the DA's TBI waiver, served individually by three providers. DA has reviewed the settings in which these three participants receive this service (page 48).

- **Systemic Assessment Format:** CMS asked the state to check and update the links in the systemic assessments to ensure they are functioning correctly. CMS also asked the state to ensure that the codes, policies, and manuals that the state is using in the STP to indicate provisions that are in conflict versus silent with respect to the federal home and community-based settings requirements are specific with the section number, language, and other identifying criteria. Additionally, the state needed to assure that each element under the HCBS federal regulations is adequately addressed in every relevant state standard for which the specific federal requirement is applicable. CMS also requested that Indiana provide excerpts and/or summaries from each state standard in the systemic assessment crosswalks that illustrates the compliance status of each standard with the federal HCBS settings rule (i.e., fully comply, do not comply, or silent). Each state standard also needed to be appropriately labeled with a compliance level. For all crosswalks, the state needed to include a column that explains/provides a rationale for which aspects of each regulation comply with the necessary components of the federal requirements, which areas do not comply, and areas in which a state policy may be missing language that is necessary to comply with one or more aspects of the federal requirements. CMS also asked the state to ensure that all regulations/policies were analyzed prior to resubmission.

  State's Response: In response to these requests, the state completely reformatted the systemic assessment crosswalks for each division/division branch. Each systemic assessment now contains all of the details requested above in a well-organized manner. Each regulation and policy was analyzed, labeled with a compliance level, and the state's rationale for the compliance level and the excerpts/summaries from each state standard are all contained in the current systemic assessment crosswalks.

- **Assisted Living:** CMS noted that the state identified inconsistencies in the state's existing licensing requirements of Medicaid-funded Assisted Living (AL) settings as Residential Care

Facilities that led providers towards an institutional model. CMS asked the state to provide more information in the STP about how the state is planning to address this issue, and what systemic changes will occur. The state also needed to include any information about the roll-out of the proposed tiered standards structure for AL settings, including any changes in state standards that must occur as a part of helping settings come into compliance with the federal HCBS requirements.

State's Response: The state has indicated in the STP that DA will be taking a two tiered approach to resolving this conflict. First, there will be an approximately six-month hiatus on new AL provider enrollment beginning in September 2016. During this time DA will enter into a memorandum of understanding (MOU) with Indiana State Department of Health (ISDH) to waive certain provisions of the residential licensure requirements for those providers participating in the Medicaid waiver program. A new certification process will be developed to include all of the federal settings requirements (page 43). This will allow existing licensed residential care facilities certified as waiver AL providers to continue participating in the current waiver programs, assuming they do meet all of the HCBS characteristics and pass any necessary heightened scrutiny review if they meet the criteria for settings presumed to have the qualities of an institution but are assessed by the state as overcoming that presumption. This will represent a minimally compliant tier 1 standard. For tier 2, DA will design, submit to CMS, and upon approval, implement a new Medicaid HCBS program. This program will include a congregate, residential option for consumers. It may or may not be called assisted living. DA will work with stakeholders and obtain technical assistance to evaluate the appropriate vehicle for this new program, possibly a Community First Choice or 1915(i) state plan service. A residential care facility license will not be required to participate in the new program. Standards will be developed to support a new certification system for these providers that will be administered through DA and not ISDH. These standards will be based on HCBS characteristics, and may also include Money Follows the Person qualified community setting guidelines and state statute regarding housing with services establishments. Administrative rules will be amended to reflect these standards (page 44).

- **Non-Disability Specific Settings:** CMS requested that each systemic assessment include an analysis of any gaps or inconsistencies in state standards that need to be rectified in order to ensure each individual is presented with a non-disability specific HCBS option across service categories.

State's Response: The state provided information in each division's systemic assessment indicating which state standards will be remediated in order to ensure each individual is presented with a non-disability specific HCBS option. For example, the Division of Mental Health and Addiction–Youth (DMHA-Y) indicated that 405 IAC 5-21.7-6(c)(2) will be

updated to include the words "and among setting options including settings that offer the same degree of access as individuals not receiving Medicaid home and community based services" (page 92). The DA has indicated that 455 IAC 2.1 will have additional language to specify required characteristics of HCBS settings to include that settings are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting (page 11). DDRS has indicated that additional rule language will be added to policies/procedures that address both residential and non-residential settings to ensure settings are selected by the individual from options including non-disability specific settings (page 63). The Adult DMHA 1915(i) team has indicated that in an effort to bring the rule into compliance with the requirement for members to be offered a choice of non-disability setting choices, the Adult 1915(i) program team will review and draft language specifically addressing this issue during the next BPHC module review (page 113).

- **Systemic Assessment Remediation:** In each of the systemic assessment crosswalks, CMS asked the state to ensure there is a column outlining the specific steps the state proposes to take to address each of the relevant standards, rules, and regulations that the state identified as either being in conflict with or silent on required elements of the home and community-based settings rule. The state needed to clarify what steps the state will take to adopt necessary language changes within these policies, standards, rules, and regulations, and the timeframe in which it will complete each action item. The state was also asked to include information indicating how the policies, standards, rules or regulations will be changed.

  State's Response: Within each division's systemic assessment crosswalk, the state has provided detailed information regarding the specific steps the state will take to address each instance of silence or conflict with the federal requirements. The state has also included the language they expect to use and the timeframe in which it will complete each action item.

- **DDRS Remediation:** CMS asked for additional details on how the Individual Rights and Responsibilities are being adjusted in the DDRS systemic assessment crosswalk.

  State's Response: DDRS provided the specific language used to remediate the Individual Rights and Responsibilities state standard throughout the systemic assessment crosswalk. For example, DDRS indicated that language has been drafted to include all aspects of the HCBS rule surrounding individuals' rights, including the right to independence in making life choices. This includes, but is not limited to where and with whom to live, relationships with people in the community, how to spend time and participating in program planning and implementation (page 62).

- **Compliance Determination:** CMS asked the state to update the STP to ensure that no division is using an 85% threshold to determine compliance with the home and community-based settings requirements. All waivers, policies, and settings must be 100% compliant with the home and community-based settings requirements.

  State's Response: The STP no longer references an 85% threshold for compliance, in support of the requirement that all waivers, policies and settings must be fully compliant with the federal settings requirements.

- **Provider Owned and Controlled Nonresidential Settings:** CMS asked the state to ensure individuals experience these settings in the same manner as individuals who do not receive Medicaid HCBS in provider-owned and controlled non-residential settings.

  State's Response: In response to CMS' request, Indiana included remediation language indicating that individuals receiving HCBS in nonresidential settings should experience such settings in the same manner as individuals that do not receive Medicaid HCBS in these provider-owned and controlled settings.

- **Respite:** CMS asked the state to clarify whether respite is limited to less than 30 days in the STP.

  State's Response: The state indicated that respite services are services that are provided temporarily or periodically in the absence of the usual caregiver. Service may be provided in the following locations: in an individual's home or in the private home of the caregiver (page 6).

- **DA Systemic Assessment:** CMS asked the state to provide more specific language for the changes that will be made to the DA Medicaid Waiver Provider Reference Module throughout the DA systemic assessment crosswalk. CMS also asked the state to include more details on what language the state will use to ensure the new Assisted Living certification system is in line with the federal settings requirements.

  State's Response: The state has provided the specific language for each federal requirement that it will use to update the DA Medicaid Waiver Provider Reference Module in the DA systemic assessment crosswalk. The state provided the specific information indicating how they will ensure the new Assisted Living certification system incorporates all of the federal settings requirements (pages 43 and 45).

- **Lockable Doors:** CMS noted that Current DA AL Rule 455 IAC 3-1-5(f) allows lockable doors unless a physician or a mental health professional certifies in writing that the recipient

is cognitively impaired so as to be a danger to self or others if given the opportunity to lock the door. This is in conflict with the rule, which indicates that any modifications to provider owned or controlled settings requirements must occur according to the person-centered planning process outlined in 42 CFR 441.301(c)(4)(vi)(F). CMS asked the state to provide a remediation plan for this.

State's Response: The state has indicated that the non-compliant language from 455 IAC 3 will be removed and 455 IAC 2.1 will assure that individuals have access to lockable doors, with only appropriate staff having access to keys, and modifications to the settings criteria will be based on a person-centered planning process in compliance with the regulation (page 26).

- **DDRS Systemic Assessment:** CMS noted that the DDRS systemic assessment crosswalk did not provide evidence that individuals have control over their personal resources, per the federal requirement that settings are integrated in and support full access of individuals receiving Medicaid HCBS 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, to the same degree of access as individuals not receiving Medicaid HCBS. CMS asked the state to provide evidence of this or provide a remediation plan in the crosswalk. The state was also asked to ensure that the state standards in the DDRS crosswalk indicate that individuals must be free from coercion and restraints and that any use of restraints authorized under a Medicaid HCBS authority be documented through the person-centered planning process. Additionally, the state was asked to include excerpted language from IC 32-31 for the federal requirement on leases.

  State's Response: The DDRS systemic assessment crosswalk now indicates that additional rule language will be added to policies/procedures that address both residential and nonresidential settings to ensure protections are in place to address control of personal resources (page 61). Additional rule language will also be added to policies/procedures to clarify that any use of restraint must be supported by a specific assessed need and justified in the person-centered planning process (page 65). The state will also strike the word "unnecessary" from 460 IAC 6 to ensure that no unauthorized restraints are used (page 66). The state provided the excerpted language from IC 32-31 indicating that all persons with disabilities are entitled to full and equal access, as other members of the public, to all housing accommodations offered for rent, lease, or compensation in Indiana (page 71).

- **DMHA-Y Systemic Assessment:** CMS informed the state that licensed foster family homes are considered provider owned or controlled settings and the regulations and licensing standards for those settings must be included in the systemic assessment. CMS asked the state to update the systemic assessment with this information. Additionally, the state

appeared to be changing state code to indicate that individuals do not reside in provider owned or controlled settings. This is incorrect as the STP notes that children do reside in licensed foster family homes, which are provider owned or controlled settings.

State's Response: The state has included the regulations and licensing standards for children foster homes throughout the systemic assessment crosswalk. The state also corrected the STP to indicate that the settings do include provider owned or controlled settings.

- **DMHA-A Systemic Assessment:** CMS asked the state to include excerpted language from IC 12-8-6.5-5 and IC 12-15 that have been determined to meet the federal requirements throughout the crosswalk. State standard IC 12-8-6.5-5 indicates the reader should refer directly to IC 4-22-2. The state should include a link to this rule in the crosswalk, and indicate the language that meets the CMS criteria. Additionally, the links for IC 12-15 referenced a personal folder and needed to be updated to reference the correct state standard.

  State's Response: The state provided the excerpted language and corrected all links.

- **Provider Owned and Controlled Residential Settings:** CMS asked the state to include 42 CFR 441.301(c)(4)(vi)(F) in the systemic assessment crosswalk, which pertains to the process the state must follow in order to modify any of the conditions under the federal settings rule that apply to provider owned and controlled residential settings.

  State's Response: The state included 42 CFR 441.301(c)(4)(vi)(F) in each of the systemic assessment crosswalks.

ATTACHMENT II.
ADDITIONAL CMS FEEDBACK ON AREAS WHERE IMPROVEMENT IS NEEDED TO RECEIVE FINAL APPROVAL OF THE STATEWIDE TRANSITION PLAN

PLEASE NOTE: It is anticipated that the state will need to go out for public comment again once these changes are made and prior to resubmitting to CMS for final approval. The state is requested to provide a timeline and anticipated date for resubmission for final approval as soon as possible.

Site-Specific Setting Assessment & Validation Activities

- **Individual Private Homes:** The state may make the presumption that privately owned or rented homes and apartments of people living with family members, friends, or roommates meet the home and community-based settings requirements if they are integrated in typical community neighborhoods where people who do not receive home and community-based services (HCBS) also reside. A state will generally not be required to verify this presumption. However, the state must outline what it will do to monitor compliance of this category of settings with the federal home and community-based settings requirements over time.
    - As with all settings, if the setting in question meets any of the scenarios in which there is a presumption of being institutional in nature and the state determines that presumption is overcome, the state should submit to CMS necessary information for CMS to conduct a heightened scrutiny review to determine if the setting overcomes that presumption. In the context of private residences, this is most likely to involve a determination of whether a setting is isolating to individuals receiving HCBS (for example, a setting purchased by a group of families solely for their family members with disabilities receiving HCBS).

- **Training & Technical Assistance for Staff Conducting any Assessment or Validation Activities:** Please provide more information on how each division is providing training to the case managers and state staff that will administering participant surveys, as well as reviewing survey results and the site-specific assessment results as they pertain to the federal requirements.

- **Confirmation of Corresponding Assessment/Validation Activities:** As a reminder, the state must assure at least one validation strategy is applied to confirm a provider self-assessment of a setting.
    - Please clarify the validation process and format of (i.e. more detail on the types of questions and the format of responses) the consumer surveys and provider self-assessments used across all divisions.

- **<u>Division of Aging HCBS Programs:</u>**
  - ***Adult Family Care (A&D, TBI):*** The STP verifies that there are currently 40 enrolled AFC homes, and only 44 current waiver consumers in 21 of the AFC sites.
    - Please verify whether the provider self-assessments were completed by 100% of the AFCs.
    - The STP notes on page 41 that the state completed 23 site surveys out of 40 enrolled Adult Family Care (AFC) settings, but then states on page 50 that "Site surveys completed on all sites". Please rectify this inconsistency. Please also provide additional details on how the state selected the 23 AFCs for site surveys, and also please confirm whether these 23 site surveys included the 21 AFC sites in which waiver beneficiaries currently reside.
    - If not all of the 21 AFC sites in which waiver beneficiaries currently reside received a site survey, please describe what additional steps the state will take to validate that these settings are in full compliance with the federal HCBS requirements. Please also confirm whether or not the state plans to conduct site surveys on the remaining 17 sites that have not yet received one.
    - Please confirm if the site surveys included interviews or observational work with staff and individual consumers (independent of staff monitoring), and if so, what percentage of consumers were interviewed on average per setting.

  - ***Adult Day Services (A&D, TBI):*** The STP verifies that there are currently 43 enrolled providers of Adult Day Services (ADS), and 572 current waiver beneficiaries receiving services in 38 of these settings.
    - Please confirm whether the initial self-survey requested of providers of Adult Day Services (ADS) was completed by 100% of the providers. Additionally, the STP reports that only 62% of providers responded to requests for documentation to help DA complete a follow-up documentation review. Please describe what steps the take took with respect to non-responders.
    - Site visits were completed by the state for all of the settings in which waiver recipients are currently receiving ADS. Please confirm if the site visits included interviews or observational work with staff and individual consumers (independent of staff monitoring), and if so, what percentage of consumers were interviewed on average per setting.
    - Please provide additional detail as to the Department of Aging's plans to conduct ongoing compliance monitoring activities of these settings.

- ***Structured Family Care (A&D):***
  - Please update the state's analysis to verify the number of Structured Family Care (SFC) settings that are in the home of a paid caregiver that is not a family member. These settings would be considered provider owned or controlled and would need to be assessed and validated to assure full compliance with the federal HCBS requirements. Please also describe the assessment/validation activities the state will conduct with respect to this subset of SFC settings.
  - For ongoing compliance monitoring, it appears the state will be relying heavily on data collected from provider compliance reviews (completed every 3 years) and information gathered from case managers on a random sample of participants in completing the Person Centered Monitor Tool. Please clarify how often the case managers will complete the Person Centered Monitoring Tool (PCMT) on page 53.

- ***Initial Results:*** The STP includes a table on page 48 that suggests that 60 out of 1,638 ADS/AL sites are presumed not to be home and community based, and that 81 out of 1,743 ADS/AFC/AL sites are considered to be settings that could meet the home and community based rule with some modifications. Please differentiate the number of settings in the table by setting type, and also confirm what the state's interpretation of compliance level is for the remaining settings across ADS/AFC/AL setting categories.

- **<u>Division of Disability and Rehabilitative Services (DDRS) HCBS Programs:</u>**
  - ***Use of NCI Data & 90-Day Checklist:*** After first utilizing data from the National Core Indicators (NCI), the state concluded that the NCI data was insufficient in measuring all areas of HCBS compliance. As such, the state relied heavily on a 90-day checklist as well for conducting preliminary assessment work. However, the STP states that Indiana will be updating the 90-day checklist by December 2017, so there are concerns that the 90-day checklist may lack specific HCBS requirements. Please provide additional details about what changes are being made to the 90-day checklist, and how the state was able to obtain the information needed to make an accurate assessment/validation of a setting's compliance using the existing 90-day checklist.

  - ***Individual Experience Survey:*** On page 79, the STP describes this tool as being designed to be "completed by participants when able or the person who knows them best." Please provide additional details about how individuals providing support to beneficiaries completing the survey were selected, as well as any education or training they received about the setting requirements and beneficiary rights outlined in the federal HCBS rule before assisting the individual in completing the survey.

Please provide additional details as to how the privacy of beneficiaries will be protected while completing the surveys. Please also confirm the percentage of beneficiaries who completed the survey, and whether the state collected data on who assisted beneficiaries in completing the survey (and if so, please summarize this information and include in the STP).

- ***Validation Activities:*** Based on a desk review of provider-specific documentation, as well as responses from the provider self-survey and individual experience surveys, the state indicated that it will complete follow-up site-specific visits on any settings in which there are discrepancies between the data points provided by providers versus service recipients. Please confirm the number of settings that received a site-specific visit. Please also include information from the Comprehensive Settings Result Document into the STP when it is available.

- ***Preliminary Results:*** The table on pages 80-82 outlines the preliminary results of the assessment and validation activities conducted across settings for DRRS, but the information confirms that the analysis thus far reveals less than full compliance. Please provide additional details on the exact compliance level across federal HCBS requirements, and preferably categorized by setting type.

- **Division of Mental Health and Addiction HCBS Programs**

  - ***DMHA/Youth Programs:***
    - Any foster homes or residential settings in which youth receiving supports under a DMHA HCBS program in which the primary owner of the home is a paid caregiver must be assessed and validated to confirm it is in compliance with the federal HCBS rule.
    - To validate the state's assumption that no youth was living in or receiving services in an institutional or otherwise non-compliant setting, a survey was conducted with all interested participants. Please confirm that the survey completion rate included all youth currently receiving HCBS services by DMHA/Youth. Also, please provide additional detail around the training provided to the Wraparound Facilitator and other individuals who assisted in conducting the survey of youth HCBS beneficiaries.
    - The STP also confirms that most DMHA youth beneficiaries (358, or 94%) were found to live in single family homes in the community and less than 6% (21 out of 379) of youth are living in foster care family homes in the community. The STP also states that DMHA followed up with approximately 36 youth and families with additional questions to ensure settings were in compliance (including emails and phone calls). Please clarify what percentage of the 36 youth that were part of

the follow-up included youth living in foster care versus single family homes. Please also provide additional details about how DMHA-Youth will continue to monitor all residential settings for ongoing compliance with the federal HCBS rule.

- ***DMHA/Adult Programs:***
  - The state should reaffirm that any residence an individual receiving HCBS lives in that is owned by a paid caregiver that is not a family member must be treated as a provider owned and controlled setting.
  - CMS is concerned that Community Mental Health Centers (CMHCs) are being allowed to distribute and collect the resident surveys, which will then be used by the state to verify the initial data furnished by providers in their self-assessments. Please explain why the DMHA designed the validation process of provider-owned and controlled settings in this manner, and what if any additional steps the state implemented to assure that clients received accurate information on their rights afforded to them under the rule and privacy/confidentiality in completing the survey.

  Based on the desk review comparing results from provider self-assessments and resident surveys, DMHA staff will then conduct a variety of validation activities, including audit of provider documentation, calls with providers, or site visits. Please describe what settings will receive which of these validation activities and how the state will determine what settings will need a site-visit.

Site-Specific Remedial Actions

- CMS requests that the following details on the remediation plan be included in the revised STP across all divisions.
  - Please specify who will be developing the remediation plan, the date by which all of the remediation plans should be submitted and the date by which they will be reviewed and approved by the state.
  - Detail examples of specific remedial actions that could be included in the remediation plan.
  - Clarify the process that the state will use to verify completion of setting-specific remediation plans with providers.
  - Describe how the state will monitor any new remediation process to ensure that timelines and milestones for coming into compliance are met.

- ***Non-disability Specific Options:*** Please explain what steps the state is taking to assure that beneficiaries have non-disability specific settings options under the state's various HCBS authorities in the STP. The state should provide this information in all sections of the STP.

Monitoring of Settings

Once the site-specific assessments are complete, please provide more details on the monitoring process the state intends to use to ensure continued compliance of its settings with the federal requirements, including a timeframe for each specific monitoring step listed. For each section in the STP related to ongoing monitoring of setting compliance, the state should include a description of the training that will be provided to staff assigned to complete each monitoring activity, as well as any action the state is planning to implement to improve quality assurance in its ongoing monitoring activities.

- The Department of Aging is relying heavily on data from the Provider Compliance Review (PCR) and Participant-Centered Compliance Review (PCCR) to help inform ongoing compliance monitoring of settings. The PCR is administered every three years and the PCCR is administered annually but only on a randomized sample of participants. Please confirm whether or not all participants will participate in the person centered compliance reviews (PCCR) at least once every 3 years in order to fully inform the comparison of results from provider compliance reviews in the same time period. Also, please describe the training the case managers will receive on the federal HCBS requirements to help inform their ongoing monitoring activities, as well as any education/training required of other individuals who may be supporting participants in the successful completion of the PCCR.

Heightened Scrutiny

The state must clearly lay out its process for identifying settings that are presumed to have the qualities of an institution. These are settings for which the state must submit information for the heightened scrutiny process if the state determines, through its assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution. If the state determines it will not submit information, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved either to compliant settings or to non-HCBS funding streams.

- These settings include the following:
    - Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
    - Settings in a building on the grounds of, or immediately adjacent to, a public institution;
    - Any other setting that has the effect of isolating individuals receiving Medicaid home and community-based services from the broader community of individuals not receiving Medicaid home and community-based services.

- On page 81, the STP indicates that further outreach and analysis is needed to determine the number of sites, if any, in Indiana that may be settings located on the grounds of or immediately adjacent to a public institution. Please update this to include the additional activities the state undertook to accurately identify all settings that are located on the grounds of or immediately adjacent to a public institution, and verify the total number of settings identified.

- As a reminder to the state, CMS' *Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community* along with several tools and sub-regulatory guidance on this topic are available online at: http://www.medicaid.gov/HCBS.

Communication with Beneficiaries of Options when a Provider will not be Compliant

Per CMS' request, the state should include additional information about the assistance provided to beneficiaries who are required to locate and transition to compliant settings. The state should also include additional information in the STP about the plans and timeline for these beneficiaries and their families.

- Report the estimated number of beneficiaries that may be living or receiving services in settings that may not meet the requirements of the Final Rule, and update and tailor the state's beneficiary plan and timeline accordingly.
    - ***Beneficiary Communication Timeline:*** For those settings that are not able to be brought into compliance, please provide more details regarding the state's proposed process for helping beneficiaries transition to other settings with timelines.
- Provide more detail about the steps the state will take to transition beneficiaries to compliant settings, and who will be responsible for executing each step of the transition. For example:
    - For all DA programs, it appears the case manager will develop a transition plan for the beneficiary requiring transition to a compliant setting, but it is not clear how the transition plan and the individual's person-centered plan are connected, or how the transition plan is informed by the individual's person-centered team.
    - DDRS should provide details regarding notice and procedural safeguards that will be provided to participants who will potentially face transition to compliant settings as requested in the public comments. Additionally, CMS is concerned that providers are only required to provide individual service coordinators 20 days' notice before a contemplated change in an HCBS beneficiary's residence, and strongly encourages the state to expand that timeframe.
    - The DMHA-Y indicates that as part of its Site-Specific Remediation and/or Beneficiary Setting Transition, the division will draft a policy requiring that Wraparound Facilitators review any transition of the participant to a new setting

to ensure that the setting is compliant with the federal requirements. The Division also notes settings found to potentially be out of compliance would be remedied or the participants transitioned no later than July 31, 2017. Please provide additional details describing this transition process.

Milestones

A milestone template will be supplied by CMS. Please resubmit the chart with any updates no later than 30 days after receiving this communication and the template. The chart should reflect anticipated milestones for completing systemic remediation, settings assessment and remediation, heightened scrutiny, communications with beneficiaries, and ongoing monitoring of compliance. It should also include timelines that address the feedback provided in this letter.