

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850



Disabled & Elderly Health Programs Group

April 4, 2018

Jen Steele
Medicaid Director
State of Louisiana, Department of Health and Hospitals
628 North 4th Street
Baton Rouge, LA 70802

Dear Ms. Steele:

In follow-up to 03/03/2017 initial approval of Louisiana's Home & Community Based Services (HCBS) Statewide Transition Plan (STP), CMS provided additional detailed feedback to the state to assist with final approval and implementation of its STP. CMS acknowledges that since this technical assistance was provided work has continued within the state to bring settings in to compliance and further develop the STP; however, a summary of this feedback is attached for reference to assist in the state's efforts as it works towards final approval.

In order to receive final approval, all Statewide Transition Plans should include:

- A comprehensive summary of completed site-specific assessments of all HCBS settings, validation of those assessment results, and inclusion of the aggregate outcomes of these activities;
- Draft remediation strategies and a corresponding timeline for resolving issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the HCBS settings transition period (March 17, 2022);
- A detailed plan for identifying settings presumed to have institutional characteristics, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- A process for communicating with beneficiaries currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings criteria by March 17, 2022; and
- A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the federal settings criteria in the future.

Prior to submitting the updated version of the STP for consideration of final approval, the state will need to issue the STP for a minimum 30-day public comment period.

I want to personally thank the state for its efforts thus far on the HCBS STP, and look forward to the next iteration of the STP that addresses the feedback in the attachment.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph F. Lollar", is written over a faint, larger version of the same signature.

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

ATTACHMENT

Additional CMS feedback on areas where improvement is needed by the State of Louisiana in order to receive final approval of the HCBS Statewide Transition Plan

PLEASE NOTE: It is anticipated that the state will need to go out for public comment 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.

Public Engagement

- In the STP's master work plan (Attachment A), the state includes a brief section on "*Continued Community Outreach*", and offers some limited detail of what this will include. CMS requests the state provide additional details on what will be included in terms of the state's continued efforts to engage the public throughout the implementation process of the STP.

Site-Specific Setting Assessment & Validation Processes

- ***Office of Adult and Aging Services (OAAS) Validation:*** In addition to site visits, OAAS conducted in-person individual consumer interviews with a proportion of HCBS beneficiaries. Please indicate if the results of the consumer interviews were linked back to specific settings, and what the state's process is for working with providers to address any disagreement between consumer interview responses and provider self-assessment results.
- ***Office of Behavioral Health (OBH) Validation Strategy:***
 - Part of OBH's validation strategy includes contracting with Coordinated System of Care (CSOC) staff to conduct site visits at 5% of all HCBS settings on a quarterly basis. Please confirm that the intention of the state is for the CSOC staff to conduct site visits on all settings over a 5-year period (assuming a 5% visit rate quarterly, or 20% visit rate annually). If this is the case, please confirm what the initial compliance results included in the STP are based on.
 - Please clarify how the HCBS settings criteria have been incorporated into the re-credentialing tools and in the quarterly site visits tools completed by the CSOCs. Please provide details regarding the frequency of the re-credentialing reviews and whether these reviews entail a site visit.
 - It appears that wrap-around facilitators are responsible for completing quarterly face-to-face interviews with all participants. Please confirm whether all HCBS participants receive a quarterly face-to-face interview, or do only the participants in a certain percentage of settings receive the quarterly interviews. Please clarify how the quarterly CSOC onsite visits and wrap-around facilitator consumer interviews are aligned.
 - Additionally, it appears that any violations to the HCBS rule identified in the consumer interview process are to be reported to the CSOC contractor. Please describe the process that the CSOC and the state will take to assure that any discrepancies between the consumer responses and provider self-assessments are adequately addressed.
 - Please confirm the timeline that OBH anticipates having the quarterly face-to-face interviews with all HCBS participants completed within the transition period.

- **Office for Citizens with Developmental Disabilities (OCDD) Provider Self-Assessments:**
 - Please confirm that a self-assessment was completed by providers for each individual setting they are responsible for.
 - Please confirm that validation activities will also be conducted on settings where providers reported 100% compliance in the self-assessments.
 - Please clarify how OCDD plans to assess settings of any provider who did not complete the provider self-assessment.
 - Please describe how OCDD is performing oversight of the Louisiana Governing Entity (LGE) process for reviewing and approving the provider transition plans for those providers who reported non-compliance and the ongoing oversight that will occur for this process.
- **OCDD Validation Activities:** OCDD conducted a two-phase validation process of its 11,458 settings.
 - **Phase 1:** 10% of residential and nonresidential settings received a desk audit and another 10% of both types of setting received a site visit: “...OCDD realized that the phase I sampling methodology did not result in a statistically significant sample for the non-residential services. As such, OCDD has opted to conduct site visits on all 97 active non-residential providers statewide.” Please confirm whether an additional percentage of residential settings underwent a desk audit or site visit beyond the initial 20%.
 - **Phase 2; Individual Experience Surveys (IES):** After an initial sampling method was incorporated, the state realized that similar to Phase 1, a sampling methodology did not result in a statistically significant sample for non-residential services, so has opted to conduct the IES with all individuals accessing non-residential services. Please confirm whether a similar expanded use of the IES is being scheduled for all individuals receiving residential HCBS. If not, please confirm that every residential setting has received or will receive at least one validation strategy (desk audit, onsite visit, and/or IES).
- **Aggregation of Final Validation Results:** Once the state’s validation activities have been completed, please provide an update of the number of sites falling into categories of compliance (fully compliant with the settings criteria, could come into full compliance with modifications, cannot comply with the federal settings criteria, or are presumptively institutional in nature).
- **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 HCBS settings criteria if they are integrated in typical community neighborhoods where people who do not receive 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 settings criteria over time. Note, settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual) are considered provider-owned or controlled settings and should be evaluated as such.
- **Group Settings:** As a reminder, any setting in which individuals are clustered or grouped together for the purposes of receiving HCBS must be assessed and validated 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). The state may presume that any setting where individualized services are being provided in typical community settings comport with the rule. Please confirm that the STP accurately includes all group residential and non-residential settings in its assessment and validation activities.

- ***Non-Disability Specific Settings:*** Please provide clarity on the manner in which the state will ensure that beneficiaries have access to services in non-disability specific settings among their service options for both residential and non-residential services. The STP should also indicate the steps the state is taking to build capacity among providers to increase access to non-disability specific setting options across home and community-based services.
- ***Reverse Integration:*** CMS requests additional detail from the state as to how it will assure that non-residential settings comply with the various requirements of the HCBS rule, particularly around integration of HCBS beneficiaries to the broader community. States cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries in the facility-based setting is not considered by CMS by itself to be a sufficient strategy for complying with the community integration criteria outlined in the regulation.

Site-Specific Remedial Actions:

The following additional information regarding the site-specific remedial actions is requested.

- Please clarify the timeline the STP outlines for the remediation process. According to the STP, the state will finish sending letters to noncompliant providers in March 2017, corrective action plans are due by the end of May 2017, and the state plans to validate remediation activities by June 2017. Please clarify these timelines and outline the steps the state will take for providers not in full compliance by June 2017. Please provide a timeline for all three operating agencies (OAAS, OBH, and OCDD) explaining the steps the state and providers will take to bring all settings into full compliance with the federal regulations by March 2022.
 - Please add details about how the state will work with settings that may not currently be compliant but could come into compliance during the transition period by making necessary changes under a corrective action or remediation plan.
 - Please specify how transition plans with providers will be developed, the date by which all transition plans must be submitted and the timeline by which they will be reviewed and approved by the state.
 - Please describe the process by which the state will ensure that all necessary remediation is completed.

Communication with and Support to Beneficiaries when a Provider will not be Compliant:

Please provide a strategy for assisting participants receiving services from providers not willing or able to come into compliance by the end of the transition period. CMS asks that Louisiana include the following details of this process in the state's next installation of its STP:

- Please include a timeline and a description of the processes for assuring that beneficiaries, through the person-centered planning process, will be given the opportunity, the information and the supports necessary to make an informed choice among options for continued service provision, including in an alternate setting that aligns, or will align by the end of the transition period, with the regulation. CMS requests that this description and timeline specifically explain how the state intends to assure beneficiaries that they will be provided sufficient communication and support including options among compliant settings, and assurance that there will be no disruption of services during the transition period.
- Please provide an estimate of the number of individuals who may need assistance in this regard.

Heightened Scrutiny:

As a reminder, 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 institutional presumption will stand and the state must describe the process for determining next steps for the individuals involved. Please only submit those settings under heightened scrutiny that the state believes will overcome any institutional characteristics and can comply with the federal settings criteria. Please include further details about the criteria or deciding factors that will be used consistently across reviewers to make a final determination regarding whether or not to move a setting forward to CMS for heightened scrutiny review. There are state examples of heightened scrutiny processes available upon request, as well as several tools and sub-regulatory guidance on this topic available online at <http://www.medicaid.gov/HCBS>.

Monitoring of Settings for Ongoing Compliance:

Additional information about the monitoring of settings is needed.

- Please provide more details on the monitoring process the state intends to use to ensure continued compliance of settings with the settings criteria, particularly with regard to ongoing monitoring beyond the end of the transition period.
- Please clarify how all of the settings criteria will be incorporated into the certification/recertification review process.
- The state should also include in their monitoring plan a process which includes the ongoing monitoring of individual private homes, non-licensed settings, and any individualized day or supported employment settings for compliance with the settings criteria.
- ***OAAS Interviews with Beneficiary Sample:*** As part of its annual 1915(c) Quality Assurance Monitoring process, OAAS staff will interview a representative, statistically valid (95% CI) sample of all waiver participants in their homes. This embedded activity is part of the state's ongoing monitoring process for assuring continued compliance of settings with the federal HCBS settings criteria. Please confirm that the data obtained from these interviews will be connected to specific settings.

Milestones

A milestone template has been completed by CMS with timelines identified in the STP and has been sent to the state for review. CMS requests that the state review the information in the template and send the updated document to CMS. The chart should reflect anticipated milestones for completing systemic remediation, settings assessment and remediation, heightened scrutiny, communications with beneficiaries and ongoing monitoring of compliance.