

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

Henry Lipman
State Medicaid Director
Office of Medicaid Business and Policy
State of New Hampshire, Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301-6521

Dear Mr. Lipman:

In follow-up to the July 3, 2017 initial approval of New Hampshire's Home & Community Based Services (HCBS) Statewide Transition Plan (STP), CMS provided 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.

As a reminder, in order to receive final approval, all STPs 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 looks 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 positioned below the word "Sincerely,".

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 New Hampshire 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 consideration of final approval as soon as possible.

Site-Specific Assessment Activities

CMS requests the state clarify in the STP (a) its approach that all settings are initially presumed to be out of compliance with one or more of the federal HCBS settings criteria and thus require modifications to come into full compliance; and (b) how it is working with settings to remediate areas of non-compliance by the end of the transition period.

- ***Provider Self-Assessment:*** Please update the STP to describe the types of enhancements made to the state's initial assessment tools/process, as indicated on a call with CMS, to assure a more accurate reflection of setting compliance, and how the state is engaging with providers to discuss areas of non-compliance.
- ***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 criteria if they are integrated in typical community neighborhoods where people who do not receive home and community-based services 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 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.

Remediation:

- ***Reverse Integration Strategies:*** 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.
- ***Non-Disability Specific Settings:*** Please provide clarity on the manner in which the state will ensure that beneficiaries have 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.
- ***Communication with and Support to Beneficiaries of Options when a Provider will not be Compliant:*** New Hampshire has described a process for communicating with and assisting beneficiaries receiving services from providers not willing or able to come into compliance by the end of the transition period. CMS requests the following additional information:
 - 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.

Validation: States are responsible for assuring that all HCBS settings comply with the HCBS rule in its entirety. The STP must lay out a description of the state's approach to validating provider self-assessment results.

- **Validation Strategies:**

- The state has indicated that a survey will be completed to demonstrate that each setting complies fully with the HCBS settings criteria. Please indicate whether the survey will be conducted onsite or electronically, and who will complete the survey (i.e. state staff/personnel, consumers, providers, etc.). Please note that each setting must be validated beyond the provider self-assessment.
- For the DD waiver, please confirm the proportion/percentage of consumers surveyed, how consumers are selected for participation and the modes by which consumer feedback is collected (i.e. electronic, in-person or telephonic interviews, hard-copy mail). Please also indicate how the state will reconcile discrepancies between consumer and provider feedback.

- **Use of State Certification & Licensing Reviews to Validate Completion of Site-Specific Remediation Activities:** Per the STP, the state is using the certification and licensing reviews to determine whether settings have remediated areas of non-compliance and fully adhere to the federal HCBS settings criteria for the Developmental Disabilities, Acquired Brain Disorders and Choices for Independence (DD/ABD and CFI) waivers. Please provide information about this process including how the state will ensure that all issues are remediated by March 2022.
- **Timeline:** Please confirm the timeline for the remediation activities across settings, as well as the site-specific evaluation/validation process for all HCBS settings.

Ongoing Monitoring of Settings

New Hampshire's STP includes 11 ABD/DD *Monitoring Goals* and 12 CFI *Monitoring Goals*. As the public commented, the state is undertaking some important activities, such as the publication of an annual report during the transition period and an analysis of the rates paid to CFI providers. The state does not discuss when it will make the determination that a site cannot implement the necessary remediation, which will require communication with beneficiaries regarding alternate compliant settings or alternate funding streams.

- CMS requests that New Hampshire provide additional interim milestones for its Monitoring Goals prior to March 2022 addressing the concerns noted above.
- CMS also requests that it revise the ongoing Monitoring Goals #8 for ABD/DD waivers and #7 and #8 for the CFI waiver to include the frequency of the assessments.

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 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>.

New Hampshire states in the revised STP that the state's assessment identified four settings (pp.132-133) that met one of the first two categories of settings presumed to have qualities of an institution. The state also reports that it will be examining settings that have the effect of isolating as part of its certification and licensing process and reports a future process for conducting these within the STP. In addition, the evidence for the one ABD/DD site (an Easter Seals residence in Concord, NH) is included as Attachment H within the existing draft STP (and will be reviewed by CMS separate and distinct from feedback on the STP). Please address the following requests regarding heightened scrutiny in the STP:

- In the STP, the *DD/ABD Provider Results* indicate that six residential providers reported that they were on the grounds of, or immediately adjacent to, a public institution. However, the state estimates only one facility meets the definition requiring a heightened scrutiny review. Please clarify that the state is including all settings that fall into categories 1 or 2 in its internal review process, and that any not being submitted by the state to CMS for a heightened scrutiny review are settings the state has determined do not fall into either category, or cannot or will not overcome their institutional presumption and come into compliance with the federal HCBS rule.

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.