

New Hampshire Transition Plan Brief Analysis

New Hampshire's plan has many positive features including strong focus on advisory council input and use of site visits and participant surveys. Still, there are concerns about the validity of the provider and participant survey process. The plan also fails to take an overall assessment of community service gaps and include any mention of efforts to seek appropriations or resources to fill these gaps. This approach may mean that the state misses an opportunity to enhance service infrastructure as part of the transition process and may make it difficult to ensure that all settings meet the Rule standards by 2019. Additionally, New Hampshire appears to be misinterpreting the requirements for heightened scrutiny, and may have failed to identify all settings that isolate. It is recommended that future plan revisions:

Public Comments:

- Ensure that all of the appendices to the plan posted for public comment are accessible by individuals who use a screen reader device. The current plan has posted appendices that are scanned documents and thus not accessible by screen reader (e.g. appendix F. and G).
- Identify whether the participants completing the survey who were identified as having assistance from a case manager were actually interviewed on the survey questions. Also, explain how the residents who used case managers for assistance completing surveys were offered privacy or protection from fear of retaliation if a review was negative.
- Identify how residents were selected for completion of on-site surveys. In other states we have seen all residents with guardians be excluded from on-site surveys, as well as no efforts made to include surveys from individuals with cognitive or communication difficulties. How did NH select residents for on-site surveys?
- Plan for additional public comment periods. The state indicates that they are still considering whether other settings should be submitted for a heightened scrutiny review. Any settings that are further categorized by the state should be made available for public comment. Also, the remediation and transition portion of the plan lacks detail and timeframes, a public comment period should be provided when these details are developed.

Positives with public comment process: use of advisory councils for input and review of comments.

Assessment Process and Analysis

- Modify the assessment results analysis to account for the fact that respondents may not have understood the survey questions. The analysis of the survey results identifies in three or more places that respondents may not have understood the question, yet no information is provided as to what was done with these questions, and how much weight should properly be given to the

survey results. There is no mention of improved training for respondents and no acknowledgement that if respondents misunderstood this question that lack of training may have impacted the validity of other survey responses.

- Clarify the process for ensuring all HCBS settings are assessed for rule compliance in enough time to come into compliance by the March 2019 deadline. The plan indicates that all settings will be assessed, however, it is unclear how this will be achieved. For example: the survey tool does not ensure this. The analysis mentions that the provider survey was voluntary, and that not all providers completed a survey. It was unclear if another method was used to ensure the settings that did not have provider assessments were reached (e.g. phone call, site visit); Also, the plan indicated that the site visits would reach 59% of settings that were selected based on certain criteria and recommendations by the advisory council. The survey analysis indicates that any setting that refuses a site visit will receive an unannounced licensing review. These are good practices, but they do not explain how 100% site assessment will be timely achieved.
- Ensure that site visits include meetings with community advocacy groups likely to be familiar with the setting, such as the P&A, ILC, past residents, etc. This is a recommendation in CMS guidance on heightened scrutiny.
- Ensure that as various updates are made to assessment and monitoring tools, that they not only are available to the advisory council for comment but, if they are significant changes, made open for public comment.

Positives in the assessment process: consult with Advisory Council on: qualifications of the site reviewers; sites that should be selected for a site visit; and training curriculum and tools for site reviewers. Requirement that providers that refused site visits were visited unannounced by OPS. Use of a “concern template form.”

Concerns with Timeframes

- An estimated date should be provided with all actions on the timeline rather than just indicate “contingent on requested changes,” e.g. updating tools and licensing, etc. This will increase accountability and the opportunity for stakeholders to assess for plan compliance.
- Ensure the timeframe for transfer of residents from non-compliant settings is identified, and that it leaves enough time for a robust transition planning process for each individual, including sufficient time for completion of an appeals process.
- Include detailed steps for proactive development of a robust community system. The plan does mention that in 2017 a working group will be developed to identify strategies to increase access to the community. This is a good idea, however, if

the group does not convene until 2017 it leaves only a short period of time to make the changes in time for the March 2019 deadline. The plan also mentions continued use of the Leadership Council for employment recommendations. Also good, but it does not ensure deadlines for recommendations that will be achievable as part of the transition plan. It is important that the plan include a comprehensive assessment of the service gaps, with recommendations that can be included in the plan and acted on in a manner that helps ensure the state has sufficient settings, providers, and services to comply with the rule by 2019.

Some of the service and infrastructure gaps can already be identified from the survey analysis and steps can be immediately added in the plan to address these gaps. For example:

- Few CFI participants felt they had a choice of housemate or where given a choice of setting. This may signal a lack of housing options and perhaps a lack of choice of disability-specific housing, as required by the rule.
- Lack of transportation and provider access to facilitate community integration
- Guardians are sometimes a barrier to full community integration. For example, a low number of CFI survey respondents said they were given information on community living options. The survey analysis said that this is in part because many participants have guardians who made the choice for them. The plan identifies that training be provided to guardians but only in the area of guardianship alternatives. This training should be expanded to cover training to address guardian concerns with resident transition, such as information on community options and resources available, and options for discharge planning, such as site visits prior to placement, etc. To the maximum extent possible, this training should be offered to individuals under guardianship as well.

Remediation, Monitoring and Transition Process

- Rely on more agencies than just the AAA's to provide for resident transition, since these agencies may not be as familiar with the unique transition concerns of non-seniors with disabilities. The state should ensure that resources are provided to meet this increased need and the additional training requirements.
- Ensure that state agencies beyond OPS receive training on the rule and remediation plan. The plan indicates that only OPS is scheduled to receive training on the rule and remediation plan. This ignores the reality that compliance with the rule requires the attention and likely resources from all state offices. For example:
 - the Department of Education should be trained on the rule and corresponding need for incentives to train and recruit personal care

- assistants and others community based providers for which there is a recurrent shortage;
- The Department of Housing should receive training on the rule and the corresponding need for incentives to build community-based homes that are non-disability specific, designed for resident privacy, and provide access to all areas of the home.
 - The Department of Transportation needs training on the rule and the corresponding need for increased transportation options for persons with disabilities.
- Improve monitoring procedures. Licensing offices are the only ones with a formal articulated in the monitoring process. The plan should make sure that licensing offices have the resources necessary to meet the new training requirements and undertake review of the new requirements.
 - Provide more education to participants and family members on the HCBS Rule and the remediation process. The plan indicates that only providers will receive training on remediation and that only providers will be given training on how to file a complaint and use the concern form. The only mention of resident training is through an annual rights training. This may not be sufficient for non-residential participants, since 21% surveyed said they do not know how to file a complaint. The plan should include more specifics on education of participants about: the rule; the remediation process; what constitutes an appropriate level of community integration in their HCBS programs; and the implications of staying in the setting, including whether they will lose other services and whether there is funding to allow them to continue to receive services in their current setting. Because the state plans to rely on AAA's for transition, the plan should take special care to ensure that these agencies are familiar with the unique needs of non-senior individuals with disabilities.
 - Ensure that public comment is offered when the details of the remediation and relocation process are developed. Currently the remediation plan is too broad to sufficiently comment on. It is not possible to determine when the heightened scrutiny requests are expected to be resolved, and those how long residents will have to be provided notice, appeals and appropriate discharge planning. The plan should provide ballpark timelines for its remediation and transition goals.

Heightened Scrutiny Process

The plan indicates that settings identified as presumptively institutional because of their proximity to institutional settings. It also states that *“Any site that is determined to be isolating will have the opportunity to develop and implement a remediation plan, or the heightened scrutiny process may be initiated, or the relocation process may be implemented”*. This is a misunderstanding of the heightened scrutiny process. A setting that is on the grounds of or adjacent to an institution cannot remediate itself out of the heightened scrutiny process. These settings must either have their HCBS funding

stopped or be submitted for heightened scrutiny, at which time the state can include evidence proving that the setting satisfies all requirements of the rule.

Include as non-compliant “settings_that isolate”. The plan indicates that all of the heightened scrutiny settings are in proximity to an institution. This indicates that New Hampshire may not be properly identifying settings that isolate for heightened scrutiny, and instead is solely focused only on geographic proximity to institutions. This focus is too narrow and may be missing settings that have isolating and institutional characteristics but are not close to institutions. It is unclear whether the list of settings for heightened scrutiny included settings for which surveys or on-site visits indicated a lack of compliance in several areas.