

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**

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August 13, 2015

Justin Senior  
Deputy Secretary for Medicaid  
Florida Agency for Health Care Administration  
2727 Mahan Drive  
Tallahassee, FL 32308

Dear Mr. Senior,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Florida's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Florida submitted its STP to CMS on March 17, 2015. CMS notes areas where additional information is needed regarding assessment processes and outcomes, remedial action processes and monitoring process. These items and related questions for the state are summarized below.

The state should ensure that future versions of any waiver-specific transition plans align in detail and specificity with the STP. CMS notes that while no revised waiver-specific transition plan is required at this time, if a waiver-specific transition plan is submitted to CMS in a future amendment or renewal, it must align with the most current version of the STP on file with CMS.

### **Assessments:**

#### **Systemic Assessment:**

Florida described its systemic assessment of the state standards and the outcomes of that assessment, and provided specific state regulations that were analyzed. Please add the specific aspect of each regulation found to comply with, not comply with or be silent on the qualities required to be present, and the changes that must be made to each regulation to bring them into compliance. For example, it appears that two Florida statutes conflict with the HCBS visitation requirements: F.S. 429.28 (1)(d), and F.S. 393.13:3 both allow restrictions on visitation. In addition, CMS needs information detailed below about the state's findings.

- Please submit a revised systemic assessment outcomes chart. The STP notes that some pieces of the systemic assessment are ongoing, namely Rule Division 59G, F.A.C. and

Rule Chapter 65G-4, F.A.C. Please provide final outcomes, as well as additional details on changes made or justifications for why changes were not made to laws, regulations, policies, etc. that were reviewed.

- Please provide additional details on how restraint policies fit in the state’s overall systemic assessment, and how they comport with the HCBS regulations. As CMS cannot approve home and community-based settings with intervention policies that are more restrictive than those authorized in the state’s institutional settings, please verify that these same types of interventions are approved in institutional settings in the state.

- **Site-specific assessment:**

CMS requests additional information on a number of aspects of the site-specific assessment process. Please provide additional detail on the following:

- Provide the specific date for when the state will submit the detailed results of the site-specific assessments. CMS expects that the state will post an amended STP for public comment once assessments are complete. This STP should also include any evidence that the state is submitting for heightened scrutiny, as further described below
- Please describe who the “reviewers” are who reviewed the non- residential providers, mentioned on p. 6 of the STP, and how many sites they will visit. Note: the state will need to conduct an assessment of all residential settings; please detail how you will complete this and who will do it.
- Please describe what the “preliminary assessment” (STP p. 5) means as compared to the full assessment process, including how many sites the state assessed in the preliminary phase, and whether the preliminary assessment process included validity checks.
- Please provide additional information on DOEA’s site visits to residential providers. For example, how many site visits will be conducted each year; how DOEA determines its sample of sites to visit, and whether this sample is different each year.
- Please provide additional information on managed care plans’ role in the residential provider assessment process. While the state indicates that it will rely on managed care plans, it is unclear what exactly the role of those managed care plans will be in these assessments.
- Please clarify that for non-residential settings the assessment will be filled out separately for each site that a provider may operate.
- Please provide assurances that the state will validate all provider assessments and reports for both residential and non-residential providers, and please describe the validation process.

**Remedial Actions:**

CMS notes that the assessments are not yet complete, and thus the state is not able to link remedial actions to specific providers at this time. The revised STP should make this link.

**Systemic remediation:**

Please provide specific remediation actions with milestones and timelines for making regulation and policy changes between 7/1/15 and 8/30/16. Please indicate the length of time it takes to process each step necessary to achieve these changes.

**Site-specific remediation actions:**

Please provide clarification on timelines within the milestones. The action items and timelines in the Site Assessment and Determination section of the STP should be clarified. For example, “Non-Residential Provider Self-Assessment Period” specifies that the state will disseminate the assessment and collect data from non-residential provider sites from 2/23/15 to 4/30/15. However, “Residential and Non-Residential Site Assessment Process” specifies that the state will develop the assessment process and plan beginning 5/1/15 ending 7/31/15. Thus, it appears that assessments are completed prior to the development of the assessment process and plan. The state should review this section of the STP to ensure that the assessment activities and timelines align

**Monitoring:**

- Please clarify the use of the assessment tool, and whether the tool will be used for the state’s ongoing monitoring process, and if so, how?
- The state notes that it is still developing a monitoring process. What will the monitoring process entail and when will it be finalized and submitted to CMS?

**Estimates of Settings:** Please provide estimates of the number of settings that fall into the compliance categories:

- Fully comply with the federal requirements;
- Do not comply with the federal requirements and will require modifications;
- Cannot meet the federal requirements and require removal from the program and/or relocation of individuals; and
- Presumptively have institutional qualities but for which the state under heightened scrutiny will provide evidence to CMS that these settings do not have the qualities of an institution and do have the qualities of home and community-based settings.

### **Heightened Scrutiny**

The state should clearly lay out its process for identifying settings that are presumed to have institutional qualities. 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 for settings meeting the scenarios described in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved to other compliant settings or settings not funded by Medicaid HCBS.

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 HCBS from the broader community of individuals not receiving Medicaid HCBS.

Information has been made available to CMS that some large intentional communities are planned in Florida for people with disabilities. Please clarify if the state is contemplating Medicaid funding for these settings or contemplating that these settings might fall in the category of isolating settings that the state would bring to CMS under a heightened scrutiny request. In addition, please clarify whether such settings already exist in Florida and are receiving home and community-based funding.

The state should submit a revised STP no later than 75 days from receipt of this feedback letter that addresses CMS' concerns. In addition, the revised STP should include a remediation plan with specific milestones and corresponding timeframes for achieving systemic and site-specific compliance.

Once all systemic and site-specific assessments are completed, the state should submit an amended STP that includes all final outcomes and remediation actions specific to each compliance issue. This document should be posted for public comment for a period of 30 days, prior to being submitted to CMS. Based on the state's current STP and timing, CMS would expect this revised STP to be submitted in the summer of 2016, once site-specific assessments are completed and outcomes can thus be included. Please include the submission date for that future STP in the revised STP due within 75 days.

CMS would like to have a call with the state to go over these questions and concerns and to answer any questions the state may have. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Patricia Helphenstine at 410-786-5900 or at [patricia.helphenstine1@cms.hhs.gov](mailto:patricia.helphenstine1@cms.hhs.gov), the CMS Central Office analyst taking the lead on the STP with any questions.

Sincerely,

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

CC: Becky Bush, Florida Agency for Health Care Administration