

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

March 13, 2018

Judy Mohr Peterson, PhD
Hawaii Medicaid Director
State of Hawaii, Department of Human Services
601 Kamokila Blvd, Room 518 PO Box 700190
Kapolei, HI 96709-0190

Dear Dr. Mohr Peterson:

In follow-up to 01/13/2017 initial approval granted to Hawaii'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,

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 Hawaii 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.

Setting Assessment, Validation & Classification of Results

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. In the STP, the state described its process for completing a mandatory provider self-assessment among all providers in the state. However, the revised plan suggests that Hawaii has not completed the validation of the majority of provider self-assessments.

- ***State Options for Validating Provider Self-Assessments***
 - States may use a combination of various strategies to assure that each setting is properly validated (including but not limited to state onsite visits; data collection on beneficiary experiences and consumer feedback; leveraging of existing case management, licensing & certification, and quality management review processes; partnerships with other federally-funded state entities, including but not limited to Developmental Disability and aging networks; and state review of data from operational entities, such as managed care organizations (MCOs) or regional boards/entities, provider policies, consumer surveys, and feedback from external stakeholders), so long as compliance with each individual setting is validated by at least one methodology beyond the provider self-assessment.
 - Please also include details as to how settings will be validated, so that the STP reflects a comprehensive approach for validating all HCBS settings for compliance with the federal HCBS settings criteria. Quality thresholds should not be used to reduce the state's requirement to assure compliance across all settings. The more robust the validation processes (incorporating multiple strategies), the more successful the state will be in helping settings assure compliance with the rule.
- ***Validating Settings that Did Not Respond to Provider Self-Assessment Request:***
 - The revised plan indicates that the state sent surveys to approximately 1,688 residential service settings and that only 44.4 percent responded. The state explains that it deemed non-responsive settings (totaling approximately 939 residential settings) as "non-compliant" with the rule, and placed them on the list for validation. However, the "*Summary of Provider Compliance after Survey and Validation*" indicates that the state only performed validations for 78 residential settings. The STP does not explain how or why the state selected these 78 settings from the 939 non-responsive settings for validation, and does not indicate that the state validated any of the responsive settings. Similarly, the state sent surveys to approximately 49 non-residential service providers, but only received responses from 59.2 percent, or 29 of them. Yet the revised plan indicates that the state performed validations of only 30 non-residential providers.
 - Please clarify how the state will continue to follow-up to assess and validate settings operated by providers that did not respond to the mandatory provider assessment.
- ***Validation through Consumer Participant Surveys:*** The STP outlined a methodology and sample size for conducting participant surveys to validate the provider self-assessment results. The state noted that the participant survey was sent to 333 residential and 306 non-residential participants with response rates of 47.7% and 33.6%, respectively.

- The state has also indicated that it will identify providers that have an agreement level of less than 60% with the corresponding participant survey. Please describe the methodology for identifying 60% agreement between participant and provider responses, and how that 60% threshold was determined to represent significant enough agreement.
- **Reporting of Final Validation Results and Classification of Settings by Compliance Level:** Once the state's validation activities have been completed, please provide an updated chart 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).

Other Setting Assessment, Validation & Remediation Issues

- **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.
- **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 regulatory 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.
- **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.
- **Communication with and Support to Beneficiaries when a Provider will not be Compliant**
Please provide a detailed 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 Hawaii 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.

Monitoring of Settings

CMS requests the state of Hawaii provide additional information regarding the process for monitoring ongoing compliance of settings with the federal HCBS settings criteria, including identifying:

- The entities who will conduct the monitoring, including those who are responsible for certification and licensure processes,
- The tools used to verify that providers are in continued compliance with home and community-based settings regulations, and
- How home and community-based settings regulations will be integrated into existing procedures.
- That private homes will also be incorporated into the ongoing monitoring.

Please clarify which processes will be used to continually assess settings versus processes used only to screen settings prior to enrollment as a provider.

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>.

Links to Public Documents within STP

Several of the links within the STP were not functional. Please verify that the correct links were included and that they currently work.