

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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September 4, 2015

Mikki Stier  
Medicaid Director, Department of Human Services  
100 Army Post Road  
Des Moines, IA 50315

Dear Ms. Stier:

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Iowa's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based setting requirements. Iowa submitted its STP to CMS on February 9, 2015, and resubmitted its STP on May 4, 2015, following a public comment period. Upon review, CMS is requesting additional detail on Iowa's efforts regarding review of state regulations and other critical components of systemic assessment; methodologies used to conduct site-specific assessments; processes for remediation and ongoing monitoring; and clear timelines that identify and specify when step-by-step actions will be completed. These items are summarized below.

### **Waivers and Settings:**

- CMS would like Iowa to confirm that each of its 1915(c) and 1915(i) programs are included in the STP. In addition, CMS would like Iowa to clarify how the state will address any remaining concerns from the public comments regarding compliance determinations once its assessments are completed, as these comments were not addressed in the version of the STP submitted to CMS for review.
- In the Iowa settings analysis that describes categories of settings and their potential for compliance with the home and community-based settings requirements, it is unclear if setting types are included in the STP. Please confirm that all settings were included and, if not, please provide CMS with a list of all settings. It would be helpful to list settings designated by their program type: 1915(c), 1915(i), or both. Iowa needs to identify the number of settings that fall into each category: settings presumed fully compliant with the home and community-based characteristics; settings that may be compliant and with changes will comply with the regulation; settings presumed to have institutional qualities but evidence may be submitted to CMS for heightened scrutiny review; or settings that do not comply with the regulation.

- CMS recognizes that Iowa plans to submit its 1915(b) waiver in September 2015 to incorporate managed care. Please note that the FAQ released by CMS in June 2015 specifies that if the 1915(b)(3) services authorized are home and community-based those services must also be compliant with the home and community-based setting requirements.

### **Systemic Assessments:**

- Although the STP notes review of administrative rules and provider manuals and includes a general settings analysis, it does not describe a detailed systemic assessment that includes review of all licensures, certifications, regulations (administrative code), and policies and procedures. Iowa should confirm with CMS whether an assessment of all these documents was completed and provide to CMS its methodology for conducting systemic assessment and the findings.
- Findings should identify:
  - Details regarding what was found in the state's review of Iowa Administrative Code including the specific sections of the Code and other state policies and procedures that apply to Iowa's various settings.
  - The sections of the state's policies that apply to specific qualities mandated by the federal home and community-based settings requirements (i.e. a crosswalk of state policies and federal regulations). Please indicate which regulations, policies and procedures fall into each of the following three categories: conflicts with federal settings requirements (if any), remains silent on the specific qualities required (including for provider owned or controlled) and fully complies with the requirements in the federal regulation.
  - The specific revisions that are needed in order to comply with the federal home and community-based requirements.
- In addition, Iowa should provide CMS with the date of completion of this systemic assessment, identify which portions of systemic assessment have been completed to date, provide specific estimated deadlines for incomplete activities, and note when the results of the systemic assessment will be made available to the public.

### **Site-Specific Assessments:**

- CMS recognizes Iowa's efforts to assess compliance with the new settings requirements through use of Geographic Information System (GIS) data to analyze provider locations and member addresses, onsite assessments and reports, provider self-assessments, information from "other projects collecting HCBS setting data," and information from the Iowa Participant Experience Survey (IPES). Use of the GIS, in particular, is a viable strategy to identify settings that isolate. However, CMS requests significant detail and clarification regarding Iowa's process to conduct site-specific assessments including the following:
  - A validation process to inform the provider self-assessments and onsite reviews.

- Details on the methodology used to determine which settings undergo onsite review including the number of settings assessed, the type of sample (i.e. random, representative), how the sample was determined and whether it is statistically significant, and the frequency of onsite reviews.
- Please report to CMS the state’s best estimates regarding the number of settings presumed fully compliant with the home and community-based characteristics; settings that may be compliant and with changes will comply with the regulation; settings presumed to have institutional qualities but evidence may be submitted to CMS for heightened scrutiny review; or settings that do not comply with the regulation. If some onsite assessments have been completed, Iowa should provide a statement of outcomes that describes a list of setting-specific compliance issues and remedial actions to address these issues. Iowa needs to provide the number of onsite assessments that need to be completed and the beginning and end dates for these onsite assessments.
- In addition, Iowa should provide CMS with specific dates of completion for all activities rather than “ongoing” dates. Specifically, deadlines for all site-specific assessments and their results are needed, as well as a date by which Iowa will advise CMS and the public about findings from the assessments. While ongoing assessment is a good indication of compliance monitoring, interim milestones and end dates for the initial set of assessments are needed. Without such dates, it is not possible for the state, the public or CMS to measure Iowa’s progress toward compliance.

**Monitoring:**

- Please provide CMS with specific milestones and a step-by-step process that clearly indicates how the state will ensure ongoing compliance. This process should be separate from remediation actions as ongoing monitoring and remediation are two separate activities of the state’s oversight structure. Use of licensing reviews is an acceptable format for ongoing monitoring.
- The timeline for ongoing monitoring should include end dates so that the state, the public and CMS are all aware of the activities that have occurred and can track initial findings. Please provide this information to describe how the state will monitor its own progress and advise CMS on its progress using set milestones and dates.

**Remediation:**

The STP does not identify milestones and interim deadlines. Iowa should provide CMS with a detailed remedial strategy that includes milestones with specific dates of completion for all remedial actions.

**Relocation of Beneficiaries:**

The STP clearly articulates action items to transition beneficiaries to compliant settings. However, Iowa should provide CMS with a specific timeline for each step of the process in the 12/1/14 to

3/16/2019 timeframe. The number of beneficiaries impacted and included in the transition process should be provided to CMS once known. The STP should describe how individuals transitioning will be given the information and support to make an informed choice about alternate settings, and the process to assure that all critical services and supports are in place at the time of relocation.

**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 should 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 compliant settings or settings not funded by Medicaid HCBS.

Settings presumed to be institutional 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.

The STP notes a proposed end date to submit evidence to CMS of March 16, 2019. Iowa needs to provide an earlier date by which it will submit any heightened scrutiny evidence to CMS so that settings have adequate time to comply with the home and community-based setting requirements following feedback from CMS. In Iowa's submission to CMS, the state needs to identify: 1) each specific setting presumed to have institutional qualities, 2) the step-by-step process for identifying these settings, and 3) a specific timeline with exact dates for each step of the process.

Iowa should submit an amended STP with the additional information requested in this letter, including the findings from the systemic assessment and its remedial strategies and milestones, no later than January 31, 2016. This must include a 30 day public notice and comment period prior to submission to CMS.

CMS would like to have a call with the state to discuss these questions and concerns and to answer any questions the state may have and to discuss when the state believes it will complete its site-specific assessment. A representative from CMS' contractor, NORC, will be in touch shortly to

schedule the call. Please contact Claire Hardwick, the CMS central office analyst taking the lead on the STP, at (410) 786-6777 or at [Claire.Hardwick@cms.hhs.gov](mailto:Claire.Hardwick@cms.hhs.gov), with any questions.

Sincerely,

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

cc: James Scott, ARA