

Disabled & Elderly Health Programs Group

August 7, 2015

Lisa Hettinger
Administrator, Medicaid Benefits
State of Idaho, Department of Health and Welfare
450 West State Street PTC Building, 10th Floor
Boise, ID 83705

Dear Ms. Hettinger,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Idaho's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Idaho submitted its STP to CMS on March 13, 2015. CMS has noted several areas of the STP that do not include sufficient detail for CMS to make a determination of how Idaho intends to come into compliance. These concerns and related questions for the state are summarized below.

Settings:

- The state identified two types of provider owned and controlled settings: Residential Assisted Living Facilities (RALFs) and Certified Family Homes (CFHs), as well as eight service types (Habilitative Supports, Habilitative Intervention, Adult Day Health, Community Crisis Supports, Day Habilitation, Developmental Therapy, Residential Habilitation-Supported Living, and Supported Employment). It is unclear if this is an exhaustive list of all settings within the state. Idaho provided a comprehensive list of waiver and relevant state plan services, but needs to include a list of every setting type and the corresponding waiver. Please provide this information.

Systemic Assessments:

- The state cited a global regulation (IDAPA code 16.03.10) as evidence that the state's regulations are not in conflict with Federal requirements. Are there subsections that more specifically address each setting or federal requirement? Please identify those sections/subsections and the specific settings that are impacted.
- It is unclear whether the state code meets federal settings requirements, is silent on those issues or conflicts with the requirements. Please clarify.

Site-specific Assessments:

- Assessment Process: The state provided a narrative for its residential setting assessments and intends to complete these assessments by December 2017. The state did not provide a narrative for the non-residential settings assessments. Within the timeline, there is an action item "Assessment of Compliance" which will take place in 2017. It is unclear if this includes both residential and non-residential settings. Please clarify what assessment activities will be conducted with non-residential settings.

- The state has indicated that it will validate the provider reviews through its standard licensing and certification process. CMS has concerns with this process for validating survey results for RALFs, as these facilities are assessed every five years and it does not appear that the state will be able to complete assessments of all RALFs before March 2019. The state must explain how all RALFs will be assessed before 2019 and how it intends to verify initial and ongoing compliance for all settings.
- **Assessment Timeline:** The state notes that “Medicaid must first enact regulatory changes to allow enforcement before the assessment of individual settings can be completed” (p. 6). CMS is concerned that the state will experience unnecessary delays by waiting to change Idaho administrative code before initiating the site-specific assessment. We recommend initiating the site specific assessments earlier to provide more time for remediation.

Remediation: The current remediation information in the STP lacks detail and the state will need to submit an amendment which delineates milestones and timelines that will ensure the state is able to track progress toward full compliance by March of 2019. Please identify a date when you intend to provide an amended STP with the outcomes of your assessments and more specific remediation plans.

Heightened Scrutiny: The state must clearly lay out its process for identifying settings that are presumed to have the characteristics 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 on 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 either to compliant home and community-based settings or to non-Medicaid funding streams.

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.

If the state wishes to submit such information, it will need to do so in an amended STP that has completed the public input process. If the state determines the setting is institutional in nature, the STP should specifically address how the impacted individuals will be informed and transitioned.

Relocation Plan: While the state mentioned the relocation of beneficiaries, the STP does not include any details identifying specific action steps and corresponding timelines. It is unclear how the state will give notice to participants or how they plan to transition the individuals. Additionally, the state should refer to the participant who will be impacted first rather than the team working with him/her. For instance, “If a setting cannot or will not meet the requirements, the state will work with the participant to assemble the appropriate person-centered planning team to assist in the identification of appropriate settings and choices for relocation.” The plan should include details describing how it will deliver adequate advance notice, which entities will be involved, how beneficiaries will be given information and supports to make an informed decision, and how it will ensure that critical services are in place in advance of the transition.

Other Concerns:

- On p. 2 of Attachments 1 and 2, the state defines age appropriate as “the same as for peers not currently receiving home and community-based services who are the same chronological age.” We note that the definition of “peers” is unclear here. If “peers” is a defining quality that only includes individuals with similar disabilities, then it does not meet the intent of the rule. Please clarify that peers includes individuals with and without disabilities.
- On p. 3 of Attachment 1, the state requires providers to respond with a “yes” to two out of three questions to verify that residents have access to activities. The questionnaire asks, “is the community brought into the home at least monthly (e.g., for age appropriate entertainment, etc.)?” Another question asks, “does the home have an activity coordinator?” These two items alone do not verify residents’ access to the community. As the questionnaire is currently designed, a provider may respond yes to both items, which merely specify that the community has access to the residents, but not that residents have access to the community. The state should ensure that the questionnaire accurately reflects the opportunity for community participation for residents.
- Within the systemic review, the state notes that it requires only 15 day notice for eviction from CFHs. This does not comport with state tenancy laws. Please advise CMS on how the state will resolve this regulation so it complies with the federal settings criteria requiring parity with other state tenant laws.

Please address the issues and questions above, post the revised STP for public comment for 30 days, and resubmit to CMS within 75 days from date of receipt of this letter. 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. In the meantime, please do not hesitate to reach out to Daphne Hicks at Daphne.Hicks@cms.hhs.gov, the CMS central office analyst taking the lead on this STP, with any questions.

Sincerely,

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

cc. David Meacham