

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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October 8, 2015

Joe Moser  
Director of Medicaid  
State of Indiana, Family and Social Services Administration  
402 West Washington Street, Room W461, MS 25  
Indianapolis, IN 46204

Dear Mr. Moser:

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Indiana's Statewide Transition Plan (STP) to bring state standards and settings into compliance with the new federal home and community-based settings requirements. Indiana submitted its STP to CMS on December 14, 2014. CMS requests supplemental information from the state on the settings included in the STP, assessment processes and outcomes, monitoring, remedial action processes, heightened scrutiny and relocation of beneficiaries. These items are summarized below.

**Settings included in the STP**

Indiana's STP did not identify all of the setting types that are included in the state's 1915(c) waivers and 1915(i) State Plan Amendments (SPAs). Please identify all setting types in the waivers and SPAs that are impacted by the new federal requirements. Following are requests for each Division:

- **The Division of Aging (DA)**
  - DA listed all setting types in its waivers in the STP, with the exception of Structured Day Program settings. Please include these settings in the revised STP.
  - The STP states that Structured Family Caregiving settings are already fully compliant because they are provided in the participant's home. However, the waiver indicates these services could be provided in the home of a caregiver. Please clarify the settings in which this service is provided. If this service is provided outside of the participant's private home, please clarify how the state ensures those settings comply with federal requirements.
- **The Division of Disability and Rehabilitative Services (DDRS)**
  - DDRS does not reference the setting types or the number of settings covered by its waivers. However, DDRS does mention the development of a "comprehensive settings results document that will address number of settings in full compliance, which need modifications, cannot meet requirements, or are presumed non-HCBS" with a timeline for completion by April 2017. Please include the full listing of settings types in this waiver in a revised STP. The submission date for this revision will be discussed later in this letter.

- **The Division of Mental Health Addiction (DMHA)**
  - The STP states that services provided under the 1915(c) Psychiatric Residential Treatment Facility Transition are exempt from the settings requirements, as they are individualized services provided in a public setting or in the client’s private home. Please provide additional information on this waiver, including the types of public settings where these services are being provided. Please explain why Indiana believes these particular facilities are exempt from the rule’s requirements. CMS is clarifying here that no setting is exempt from this regulation. CMS believes the state may be asserting that the settings are in compliance. Please clarify the statement. If it is the state’s intent to advise that the settings are compliant, please include further details on these services and settings that support this rationale.
  - CMS requests clarification on the 1915(i) Child Mental Health Wraparound, for which Indiana states that services are exempt from the HCBS settings requirements as they are individualized services provided in a public setting or the client’s private home. CMS is clarifying here that no setting is exempt from this regulation. CMS believes the state may be asserting that the settings are in compliance. Please clarify the statement. If it is the state’s intent to advise that the settings are compliant, please include further details on these services and settings that support this rationale.

**Systemic assessments**

For systemic assessments conducted by all three divisions, CMS requests that the STP clearly indicate the state standards for both residential and non-residential settings, including specific citations that the state reviewed against the settings requirements in the federal regulation. Please crosswalk these state standards against the federal requirements to show how they are in compliance, or what changes the state will need to make to bring them into full compliance. The following is information needed from each Division:

- **DA**
  - In the STP, DA provides a summary of the systemic assessments that have been completed, and lists the standards that are either out of compliance or require further review to determine compliance. However, DA does not provide details about, or citations for, these standards. Please provide this information in the revised STP so that CMS can understand the state’s assessments.
  - For two settings under DA (Adult Day Services and Structured Day Programs) the STP states that a systemic assessment has not yet been completed (p. 11), and no dates are provided for the completion of this assessment. Please specify the intended completion dates for these activities, or the actual completion dates if they have already been completed. Because the STP states that the assessments have not yet been completed, the STP does not include outcomes of the systemic assessments for the Adult Day Services and Structured Day Program settings. Please revise the STP to include these results when they are available

- **.DDRS**
  - The Division completed a systemic assessment between May 2014 and September 2014. In the STP, DDRS provides a summary of its assessment of the compliance of its waivers with the federal requirements, and cites the standards that are either out of compliance or require further review to determine full compliance. The STP provides an analysis of the settings based on the Indiana Administrative Codes. However, please provide a crosswalk of all the state standards that were reviewed for these waivers against the relevant portions of each specific federal requirement.
  - DDRS reports that “while the state does have policies and procedures that support the HCBS rules, a more in-depth analysis will be completed in order to ensure full compliance due to inconsistencies in NCI [National Core Indicator] data.” Please provide additional information on how DDRS plans to use the NCI data and how the NCI data was used in the process of a systemic review.
- **DMHA**
  - DMHA provides a summary of its systemic review, which has been completed, including citations for standards that are out of compliance or require further review to determine compliance. However, the STP does not provide citations for the standards that were found to be in compliance. Please update the STP to provide citations for all standards that were reviewed, and like above, please crosswalk these standards with each relevant section of the federal regulations.

### **Site-Specific Assessments**

CMS requests that all three Divisions provide an estimate of the number of settings in each waiver that fall into each of the following categories: fully comply with the federal requirements, require changes in order to comply with the federal requirements, cannot comply with the federal requirements, and presumptively have institutional qualities but for which the state intends to submit evidence for heightened scrutiny. Additional requests for each division are described below.

- **DA**
  - The STP highlights the specific setting types the state has and has not assessed. For those settings that have been assessed, the STP explains whether they do or do not demonstrate full compliance with the federal settings requirements. However, the areas of non-compliance are not fully defined for all settings. Please add more detail to explain the specific compliance issues for each setting.
  - The start and end dates for completing site-specific assessments and for remediation are unclear. Please clarify these timelines in the STP.
  - Please provide additional details about the methodology that the state is using to complete site-specific assessments, including intermediate steps and milestones.
  - Please provide a description of the validity checks for the state’s site-specific assessments. The description should include sample size, methodology, and completion timelines.

- **DRRS**
  - DDRS describes a validity check for its provider surveys that will include the identification of specific sites that will need further review. After receiving training to ensure consistency, State Developmental Disabilities staff and case management staff will review the results of the assessments to validate the results. Please provide more information on how case managers will be used to validate the provider surveys.
  - DDRS conducted a preliminary setting analysis, but did not delineate the setting types that were assessed, or the results of the preliminary analysis. Please provide details about the setting types that have been assessed, and update the preliminary setting analysis to include all completed assessments.
  - DDRS states that provider assessments and subsequent validity checks will be conducted as the next phase of review. Once these assessments are complete, please update the STP to include the full results.
  
- **DMHA**
  - According to the STP, DMHA plans to conduct assessments via member survey (December 2015) and provider survey (June 2015). Please provide clear start and end dates for these surveys and clarify how the member surveys will be crosswalked against the provider surveys.
  - CMS also requests that DMHA provide additional details about the methodology that is being used to complete site-specific assessments, including intermediate steps and milestones.

### **Monitoring of Settings**

- **DA & DMHA**
  - DA and DMHA both propose a sequence of monitoring actions that include engaging key stakeholders throughout the process to provide feedback and assist with continued assessment. Both operating agencies addressed incorporating on-site reviews, provider training, and policy revisions in their proposed monitoring strategies. However, it was not clear whether these monitoring activities would continue beyond March 2019 to ensure continued compliance of settings. Please provide additional details for the oversight and monitoring processes, including continued monitoring of compliance.
  
- **DRRS**
  - DDRS identifies an existing tool, the “90 Day Check List,” as a source of monitoring. However, there is no additional information on the ongoing monitoring process for settings. CMS requests further information on the 90 Day Check List, how it will be used to monitor settings and whether this or other mechanisms will be used to ensure ongoing monitoring after March 2019.

## **Remedial Strategies**

- **DA**
  - DA includes a list of remediation strategies for settings, but both the timelines for these activities, and the description of milestones related to the remediation, are unclear and lacking detail. CMS requests additional detail on the milestones and timelines for the remediation activities.
  - CMS also requests that the specific monitoring process that will be used to ensure timely completion of remediation milestones be clearly defined.
- **DRRS**
  - Milestones are identified for completion of corrective actions for setting types, with timeframes from April 2018 through June 2018, but milestones and corrective actions lack detail. Please provide more information on how the state will ensure that all settings are able to come into full compliance by March 2019.
  - Please provide information on how the state will monitor the remediation process to ensure that timelines and milestones for coming into compliance are met.
- **DMHA**
  - DMHA indicates that the systemic assessment of the waiver did not result in a need for any remediation, but noted further analysis of the individual settings in which members are receiving these services is still needed to determine which require remediation. Please clarify when these assessments will be completed and how that will impact the proposed remedial strategies.
  - Although the site-specific assessments have not been completed, DMHA does provide general remedial strategies for some settings. However, the remedial strategies are lacking in detail and are dependent on the assessments which have not yet been completed. Please provide more detail on the remedial actions that will be used to bring specific settings in this waiver into compliance, including timelines and milestones for those remedial actions.

Please clearly define specific monitoring processes to ensure the proposed remediation milestones and end goals are achieved. In addition, ensure that there is clear delineation of both systemic and setting remediation for all DA, DRRS and DMHA programs.

## **Relocation of Beneficiaries**

Across all three Divisions, CMS requests that Indiana provide information on the relocation of beneficiaries from any setting that cannot come into compliance with the federal requirements. This information should include timelines for relocating beneficiaries, as well as the estimated number of beneficiaries that will be impacted. The state should delineate how the state will provide reasonable notice and due process to any beneficiaries affected by relocation, and a description of the state's process to assure that affected beneficiaries are given the opportunity, information, and supports necessary to make an informed choice of alternate setting. The timeline should provide assurance that all the services and supports they need are in place at the time of relocation. Additional requests for each Division are described below.

- **DA**
  - In the STP, DA lists the number of settings that require relocation but not the number of beneficiaries that are impacted. Please provide the number of beneficiaries that may need to be relocated.
  - CMS requests that Indiana revise timeframes for the Adult Family Care, Assisted Living, Adult Day Services, and Structured Day Programs to allow enough time to transition participants to new providers should that be necessary. The current timeframe, with a completion date of December 2018, is very close to the required compliance date of March 2019. Please indicate your response to this request.
- **DDRS**
  - DDRS describes the forming of a Transition Taskforce to address relocation by March 2017. However, DDRS does not provide discussion of timelines for relocation. Please provide that information.
  - DDRS lists the number of settings and number of beds at each setting, which may indicate the number of beneficiaries affected, but does not clarify how many individuals receiving HCBS currently reside in each setting. CMS requests clarification on the number of individuals who may be affected by relocation.
- **DMHA** does not reference a proposed remediation strategy for relocating beneficiaries. CMS requests that DMHA fully address potential needs for relocation in the next iteration of the STP, complete with timelines for relocation and the number of beneficiaries who may be affected.

### **Heightened Scrutiny**

While the STP does not present evidence for the application of heightened scrutiny for any setting, the STP does indicate the need for continued review of the settings since the residential setting assessments have not been completed. The state must 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 on those 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.

Settings that are presumed to be institutional in nature 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; and
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

Finally, Indiana's Medicaid agency might want to consider re-aligning the implementation timeframes and action steps on this rule in a more consistent manner across its multiple Divisions serving different populations under different waivers. This might afford an easier way to monitor that all the settings for different populations are meeting their milestones leading up to March of 2019.

CMS would like to have a call with the state to go over these concerns and requests, and to answer any questions the state may have before it revises its STP and distributes it for public comment. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact George Failla at 410-786-7561 or at [George.Failla@cms.hhs.gov](mailto:George.Failla@cms.hhs.gov) with any questions related to this letter.

Sincerely,

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

Ruth Hughes, ARA