

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 9, 2018

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

Dear Ms. Taylor:

In follow-up to the 11/8/2016 initial approval of Indiana'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 into 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, the STP 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 Indiana in order to receive final approval of the HCBS Statewide Transition Plan**

#### **Public Notice**

The state provides a thorough description of the work completed to-date on the STP, and includes details of the ongoing dialogue and feedback process it has had in place with CMS. We suggest ensuring this paragraph includes the public comment periods that were conducted so as to further reinforce the transparency of the state's ongoing revision process.

#### **Department of Aging (DA) SECTION**

##### **Site-Specific Setting Assessment**

- Please ensure the language throughout the STP is up-to-date regarding the completion of activities.
- The STP indicates that the state is still working to determine which of the Structured Family Program (SFP) settings are settings in which the HCBS participant is living with an unrelated, paid caregiver. Please provide an estimate of how many SFP settings may be considered provider-owned and controlled, and update the STP to reflect the results of the assessment/validation of any of these settings that were determined to be provider-owned and controlled.

#### **Department of Disability and Rehabilitative Services (DDRS) SECTION**

##### **Site-Specific Setting Assessments**

- **Tiered Evaluation Process:**
  - Please confirm in the STP that the documentation review outlined in Tier 2 of the evaluation process was completed in July 2017 and include these results in the STP.
- **Assessment/Validation:**
  - ***Validation of Provider Self-Assessments:*** Please confirm that results from either (a) documentation reviews or (b) Individual Experience Survey (IES) data were used in all settings (provider owned or controlled residential/non-residential) to validate all provider self-assessments in the STP.
  - ***Two-Tiered Process:*** Tier two of the evaluation process requires that providers “provide documentation that validate their answers to the self-assessment and support their level of compliance with the rule”. The documentation is then used by the state to determine whether a site visit will be scheduled that would allow DDRS to determine if the policies and materials on paper are actually being carried out at the setting in question. While DDRS initially noted that various surveys/data sources (including NCI Data, 90-Day Checklist, and IES Data) would all be used to help measure compliance, their use during this tiered process is unclear. Please clarify how all of the settings are validated in the STP, and confirm whether these sources are being incorporated into the documentation review.
  - ***IES:*** The STP states that, with respect to the IES, “Data was not collected on those who assisted beneficiaries with completion of the survey.” This seems to contradict the initial sentence in this paragraph that states, “All case managers were instructed to complete the survey in person at a face-to-face meeting with the individual or chosen family member”. CMS asks the state to clarify this in the STP.

- **Non-Disability Specific Setting Options:** The STP discusses outlining access to non-disability specific setting options through the PCP/LifeCourse Framework. Please provide details explaining how the use of the PCP/LifeCourse Framework assures access to non-disability specific setting options. 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.
- **Monitoring of Ongoing Compliance:** Please provide more details in the STP on the monitoring process DDRS intends to use to ensure continued compliance of its settings with the federal requirements, including a timeframe for each specific monitoring step listed. Please clarify whether the Monitoring Checklist will be used for all settings beginning in May 2018 (and not just provider-owned or controlled residential settings), or if not, what processes DDRS will use to monitor ongoing compliance of other settings. The STP should also clarify how often the checklist will be administered and how often other monitoring activities (IES, ICI data review) will occur.

## **Department of Mental Health and Addiction (DMHA) SECTION**

### **Site-Specific Setting Assessments**

- ***Validation Strategies for Provider Owned and Controlled Non-Residential Settings:*** Please confirm how provider self-assessment results will be validated in order to establish compliance levels for all settings in the STP. The current methodology suggests that the state is conducting site visits only on settings considered not in compliance, and is basing this initial compliance determination on provider self-assessment results. Out of 188 settings, providers self-assessed 186 to be fully-compliant. Please explain how those 186 settings will be validated in the STP.
- ***Individual, Privately-Owned 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 should 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.
- ***Communication with Beneficiaries of Options 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 Indiana 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 with the regulation by the end of the transition period, or through an alternate funding stream. 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
  - The STP states that no settings have been identified that will be unable to comply, but also states that 12 members are anticipated to require a transition plan. Please clarify this in the STP.

### **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 on a presumptively institutional setting, 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>.