



## Disabled & Elderly Health Programs Group

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July 23, 2015

Lisa Lee  
Commissioner, Department for Medicaid Services  
Commonwealth of Kentucky, Cabinet for Health and Family Services  
275 East Main Street, 6 West A  
Frankfort, KY 40621

Dear Ms. Lee,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Kentucky's revised Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Kentucky submitted this revised STP to CMS on April 14, 2015, in response to feedback from CMS on the original STP submitted on December 19, 2014. While Kentucky has addressed several of CMS' concerns and made some important additions to the STP, CMS still needs some additional information on the results of the site-specific assessments. The remaining concerns and related questions for the state are summarized below.

### Assessments

- **Systemic assessments.** In the revised version of its STP, Kentucky has added citations from the state's regulations that the state reviewed for each waiver. However, the STP does not specify which citation addresses which of the federal home and community based settings regulatory requirements or whether any of the state regulations will need to be revised to come into full compliance. Please provide this information in the next iteration of the state's STP.
- **Site-specific assessment process.** Kentucky has updated its STP to include estimates of the number of residential settings falling into each of four compliance categories. These categories include: fully align with the federal requirements; do not comply with the federal requirements and will require modifications; cannot meet the federal requirements and require removal from the program and/or the relocation of individuals; and are presumptively non-HCB but for which the state will provide evidence to show that those settings do not have the characteristics of an institution and do have the qualities of HCB settings. The state has not yet provided the requested additional information about the provider-specific assessments and surveys. Did the providers attest to meeting the federal regulations through their policies and procedures, or did the providers conduct site visits? A reliable validation process should be developed and used by the state that ensures the reliability of the provider information. The state should include information in the STP on the validation process it used to substantiate the information collected on both residential and non-residential settings.

- **Non-residential settings assessments.** Once Kentucky receives the completed compliance plan templates regarding non-residential settings, the state should be sure to include estimates of the number of non-residential settings (not just the number of providers or percentages) falling into each of the four compliance categories in its updated STP.
- **Site-specific assessment results.** CMS needs information on what types of settings fall into each of the 4 compliance categories and whether the setting is residential or non-residential. The STP should provide more detail on the settings that fall into the fourth category of settings presumed to have institutional characteristics but for which the state will provide evidence to show that those settings do not have the characteristics of an institution and do have the qualities of home and community-based settings (to be evaluated by CMS through the heightened scrutiny process). Please identify which specific settings fall into each of these categories due to their location (i.e., settings located in a building that is also a publicly or privately operated facility providing inpatient institutional treatment; and settings located in a building on the grounds of, or immediately adjacent to, a public institution) and which specific settings fall into each of these categories because they have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

**Heightened Scrutiny.** What process has/will the state use to identify settings presumed to have the characteristics of an institution for which evidence will be submitted for the application of heightened scrutiny? Given the estimated large number of settings that fall into the categories of “potentially isolating” and “isolating,” the state may be initiating the heightened scrutiny process far too late in the compliance transition period to allow adequate time for corrections or relocation to other compliant settings if the settings in question cannot be deemed to have the required qualities of a home and community-based setting.

### **Remedial Actions**

- Please provide any remedial actions that are specific to individual settings. Once Kentucky receives the completed compliance plan templates from providers, the STP should be updated to include more details on remedial actions.
- CMS needs to understand the length of time it will take to change needed regulations, licenses and certifications, or to issue sub-regulatory guidance to providers and stakeholders.
- The timeline for bringing providers into compliance by March 17, 2019 may not allow enough time for implementation of the “second round changes identified in the STP,” which are the more complex and difficult changes for providers to implement. As noted above, CMS has significant concerns about the potential number of sites that may require heightened scrutiny or removal from the pool of settings if the state determines the institutional presumption should stand. While the state provided some rationale in the revised STP, CMS remains concerned about the timeline and believes the state should revisit its approach on this issue. Please describe how the state intends to complete all necessary assessment and action steps by the March 2019 compliance date.

- Kentucky's STP describes the state's current monitoring process for HCBS waiver providers, but should include details on the monitoring process it intends to use to ensure that all timelines and milestones in the remedial process are met, and the processes the state will use to ensure continued compliance of its settings with the federal requirements. If the state is updating their licensure/certification requirements to ensure the licensing/certification entities and processes monitor compliance on an ongoing basis it should indicate this in the STP.
- The state provides an assurance that it will provide reasonable notice and due process to beneficiaries who must be relocated, and includes the timeline for the relocation processes. However, the STP does not include a description of the actual 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 of an alternate setting that aligns with the regulation, and that critical services/supports are in place in advance of the individual's transition. CMS is requesting the state ensure this information is available in the STP.

### **Timeline for Updated Statewide Transition Plan**

- In the updated STP submitted on April 16, Kentucky states that it intends to update the STP again with the complete results of the site-specific assessments, publish the STP for public comment, and re-submit it to CMS in December 2015. In the timeline on pp. 4-6 of the STP, Kentucky also indicates that it will update the STP with evidence for heightened scrutiny review in 2017, and re-submit the STP to CMS by April 15, 2017. CMS is concerned this latter timeframe for re-submission occurs too late in the transition period to ensure that all individuals receiving HCBS are in a compliant setting by March 17, 2019. In the version of its STP to be submitted December 31, 2015, please set a more expeditious schedule for processing and forwarding heightened scrutiny requests to CMS.

Please do not hesitate to reach out to Michele MacKenzie at 410-786-5929 [Michele.MacKenzie@cms.hhs.gov](mailto:Michele.MacKenzie@cms.hhs.gov), the CMS central office analyst taking the lead on this STP, with any questions.

Sincerely,

Ralph Lollar, Director  
Division of Long Term Services and Supports

cc. J. Glaze