

## **Disabled & Elderly Health Programs Group**

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October 15, 2015

Ms. Ruth Kennedy  
Medicaid Director  
State of Louisiana, Department of Health and Hospitals  
628 North 4<sup>th</sup> Street  
Baton Rouge, LA 70802

Dear Ms. Kennedy,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Louisiana's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Louisiana submitted its STP to CMS on March 17, 2015 with updated versions submitted on May 28, 2015 and July 6, 2015. An updated Work Plan Master Document was submitted on August 6, 2015. CMS requests additional detail regarding the settings identified in the STP, systemic and site-specific assessment processes and outcomes, monitoring of settings, remedial strategies, heightened scrutiny and relocation of beneficiaries. These issues are summarized below.

### **Waivers and Settings Included in the STP:**

- The STP included a settings analysis at the agency level, although a number of items listed under the Office for Citizens with Developmental Disabilities (OCDD) Settings Analysis category of "Settings May Be Compliant or With Changes Will..." were services, not settings. Please update the STP to include the settings in which the services are delivered.
- Please provide clarification on the setting identified as "Participant resides in housing which is owned or leased by a family member" to ensure that it is not a congregate setting.
- Please provide clarification on the following services and settings and identify how they will be addressed in the STP: skilled maintenance therapy, center-based respite, substitute family care/adult foster care, permanent supportive housing, host homes, transition intensive support coordination in nursing facility, and transition services to private residences.

### **Systemic Assessment:**

- The STP indicated that the state completed an assessment of its licensure and certification rules, operations, and provider qualifications. Please provide detail regarding the systemic assessment process. Please update the STP to include the methodology the state used to conduct this assessment.

- Additionally, the state did not clearly identify what standards were reviewed against each of the new federal home and community-based settings requirements. However, Louisiana determined that “modifications to the documents were not needed.” Please provide a crosswalk of the state rules and regulations that the state reviewed against each of the relevant sections of the federal requirements and clarify which components of the state documents reinforce each of the setting’s requirements.

**Site-Specific Assessments:**

- The STP included a settings analysis for the three agencies, Office of Aging and Adult Services (OAAS), OCDD, and Office of Behavioral Health (OBH) that categorized settings and/or services into the following compliance categories: presumed fully compliant, may comply with changes, presumed non-home and community-based, and do not comply with the new rule. The STP did not include an estimate of the number of settings in any of these categories. Please include an estimate of the number of settings falling into each of the four compliance categories.
- CMS has a concern about the state’s categorization of some settings that “may be compliant, or with changes will comply with home and community-based characteristics.” Among those settings are (1) Apartment complexes where the majority of residents receive home and community-based services; (2) Provider owned or controlled housing of any size; and (3) Multiple locations on the same street operated by the same provider (including duplexes). If these settings are comprised of individuals that are primarily or exclusively people with disabilities, they may have the effect of isolating individuals receiving HCBS from the larger community. Please clarify why the state believes these settings are not settings that are presumed to be institutional in nature.
- The STP identified activities for initial provider self-assessments, site visits and participant surveys. The August 6, 2015 Work Plan Master Document specifies the initial provider self-assessment completion dates as: OAAS (May 31, 2015), OBH (June 30, 2015), and OCDD (September 30, 2015), followed by site visits to validate the provider self-assessments. The site visits will be conducted within the following timeframes: OAAS (July – December 2015), OBH (July – December 2015), and OCDD (May – October 2015). Participant surveys will be completed by October 2015, with the exception of surveys for OAAS, which will not be completed until February 2017. Both the STP and the August 6, 2015 Work Plan Master Document include an activity to “Identify and send letters to providers who are not compliant with the home and community-based settings rule” on June 2, 2015 for OAAS providers and August 1, 2015 for OBH and OCDD providers. Please align your timeframes to notify providers after the site assessments and participant validation processes are completed or explain how the state will notify providers who are not compliant prior to the date when the site assessments are completed via site visits and participant validation processes.

- Please provide more detail on the sampling methodologies, site visit processes, and the state’s approach to data validation in the STP.
- Responses to public comments suggest that OBH will conduct onsite visits for a sample of residential and non-residential settings to ensure compliance with the home and community-based settings regulation (p. 56). Each of the agencies mentioned using a sample for site visits, but only OCDD provided details as to the method and size of its planned sample. Please provide corresponding information for OBH and OAAS. Page 83 of the STP notes that “OCDD would like to propose utilizing National Core Indicator (NCI) data as a possible source of information. In addition to NCI data, service provider agencies conduct participant surveys as part of their internal quality processes. OCDD would like to work with service providers to assure that appropriate questions are included in these surveys and evaluate existing policy/procedures for service providers to enhance their existing surveys.” Please clarify how NCI data will be cross-walked to specific sites.

**Monitoring of Settings:**

The STP indicated the state intends to develop a comprehensive monitoring and oversight process and mentions the use of some monitoring mechanisms (e.g. monitoring instrument and random unannounced site visits). Please describe the state’s monitoring plan and identify the monitoring mechanisms to ensure that settings come into compliance by March 2019 and remain compliant thereafter. We note that a number of states are planning to use licensing and certification policies that measure the federal home and community-based settings qualities required as an ongoing monitoring mechanism.

**Remedial Actions:**

- The STP stated that modifications to licensure and certification rules, program operations, and provider qualifications were not needed. However p. 8 of the August 6, 2015 Work Plan Master Document indicated that the state will apply continuous scrutiny to these documents to ensure compliance with the home and community-based settings rule. Please include a remediation strategy for modifying any licensing, certification, policy and procedures, and provider qualifications should the need arise.
- The STP included a chart of remediation strategies with action steps and deadlines to bring providers into compliance. The STP indicated that providers who are not compliant must submit corrective action plans. Please identify key milestones for ensuring that the providers meet the remediation objectives laid out in these corrective action plans within the prescribed timeframes. Please update the STP to include milestones for tracking the provider’s remediation progress.

- Please clarify how the single state Medicaid agency maintains the oversight over the activities conducted by OAAS, OCDD, and OBH to ensure adherence to the remedial activities identified in the STP.

### **Relocation of Beneficiaries:**

The STP includes relocation of beneficiaries as part of its remediation strategy. The state indicated it will develop a plan for individuals residing in non-compliant settings and that it will give notice and a choice of alternative providers to these individuals. The state will then track these individuals to monitor the new placement. The August 6, 2015 Work Plan Document indicated that the development of transition plans for beneficiaries needing to transfer to a compliant setting will occur for both OAAS Waivers between March 2016 and March 2017. The development of transition plans for the OBH Waivers will occur in December 2015 and for OCDD Waivers in September 2015.

- Please identify a more detailed transition plan with timeframes and milestones once the state has identified the number of individuals impacted and the pool of compliant settings (and providers) available.
- OBH and OCDD intend to develop the relocation transition plans for beneficiaries by the end of 2015. Please clarify how this will be accomplished when the settings assessments are not yet complete.
- Please examine all timelines for relocation and align, to the extent possible, planning and implementing of relocation activities across all three operating agencies.
- Please include information in the STP that assures beneficiaries will be afforded ample time to make informed choices about alternate settings and that all services and supports they need will be available at the time of transition.

### **Heightened Scrutiny:**

- The STP identified “settings that are presumed non-home and community-based but evidence may be presented to CMS for heightened scrutiny” for two of the agencies, OAAS and OBH. OAAS identified potential settings for heightened scrutiny as “Adult Day Health Care centers located on the grounds of, or adjacent to, a public institution, and Adult Day Health Care centers located in a publicly or privately-owned inpatient facility.” OBH identified potential settings for heightened scrutiny as “Located in a building that also provides inpatient institutional treatment, any setting on the grounds of or adjacent to a public institution, settings that isolate participants from the broader community, non-medical group homes, and therapeutic group homes.” Please specify the state’s processes for identifying those settings that may require heightened scrutiny.
- If the state is operating with a presumption that an individual’s private home or private family home is meeting this requirement the state needs to confirm that none of these settings were

purchased or established in a manner that isolates the individual from the community of individuals not receiving Medicaid funded home and community-based services. Information available in the Toolkit on settings that isolate may be helpful in this regard. It is not CMS' expectation that a state would presume compliance of a setting where all or the majority of services are rendered in or on the grounds of that setting, or where a group of individuals with disabilities or a specific type of disability (or their families) have purchased and reside in the setting.

CMS would like to have a call with the state to go over these issues and to answer any questions the state may have. The state should resubmit its revised STP, in accordance with the questions and concerns above, within 45 days of receipt of that meeting. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact George Failla in the CMS Central Office 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

cc: David Wright, ARA