

Disabled & Elderly Health Programs Group

November 5, 2015

Shannon McMahon
Deputy Secretary, Health Care Financing
State of Maryland, Department of Health and Mental Hygiene
201 West Preston Street, Room 525
Baltimore, MD 21201

Dear Ms. McMahon,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Maryland's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Maryland submitted its STP to CMS on March 12, 2015, and resubmitted it on June 10, 2015. CMS is requesting some additional information regarding waivers and settings included in the STP, assessment processes and outcomes, monitoring activities, remedial action processes, heightened scrutiny and the relocation of beneficiaries. These issues are summarized below.

Waivers and Settings Included in the STP:

- The state identified "shared living" as a service in the STP, but indicated that shared living complies with the regulatory requirements because it is an individualized service provided in the participant's private home or community. CMS notes that Licensed Residential Providers for Individual Family Care are included in the waiver as a setting under the shared living service and this service may be provided for up to three participants unless otherwise approved by the Developmental Disabilities Administration (DDA). Please clarify where this service is provided and ensure it is adequately addressed in the STP.
- Maryland also uses adult foster care settings in its home and community-based service programs. Please comment on the state's plans to address adult foster care in the STP.
- Please ensure that all settings that are part of all impacted waivers are included in the STP.

Site-Specific Assessments:

- The state has not yet completed its site-specific assessments. The state conducted a preliminary survey and lays out a comprehensive plan for future assessments, including a review of sample leases or residency agreements, waiver-specific surveys of providers and participants, and site-specific assessments of sites that require further review. Please provide additional information on how the state will follow up on the compliance of sites for which providers do not complete the survey.
- Please provide additional information on the state's validity check for provider sites that self-report that they are in compliance. Will the state use site-visits and/or another mechanism to follow-up with these sites?

- CMS requests the state further explain its use of National Core Indicator (NCI) data. The state does not explicitly indicate whether they plan to use NCI data in the future as a measure of compliance. The use of NCI data to check site-specific compliance is only relevant if such data can be linked to specific sites.
- The STP references an 86th percentile as a standard against which to analyze Maryland's settings. Please note that all settings must be 100% compliant with the federal home and community-based settings requirements. Please clarify how the state will ensure all settings have the characteristics of a home and community-based setting.
- Please provide information on how Maryland will ensure that a statistically significant sample is used for the follow up site visits.
- Maryland states that it will complete its site-specific assessments by August 2017, and produce a report on these assessments in December 2017. CMS has concerns about this timeframe, as it may not allow for the transition of participants as needed by March 2019. CMS recommends that the state move up the completion date to an earlier timeframe (late 2016 or early 2017) for completing the assessments and producing the needed analysis.
- Please include in the STP detailed and specific milestones related to the site-specific assessment to demonstrate the interim steps the state will use to complete the assessments on time.
- The state concluded which settings fully comply, and which will require further review. However, CMS requests that the state determine the number of settings that comply with the regulation, can comply with modifications are presumed to have institutional characteristics and the number of settings that cannot meet the federal requirements and require removal from the program and/or relocation of individuals.
- Upon completion of the site-specific assessment, please provide outcomes for the assessments and final milestones for both residential and non-residential settings in a revised STP that goes through the public approval process.

Monitoring of Settings:

Please provide further details regarding the specific monitoring process the state will use during and after completion of the transition period to ensure that 100% of the settings used in the system comport with the regulation.

Remedial Actions:

- Although the state has completed its systemic assessment, it does not outline specific remedial actions to address each compliance issue found with state standards in the systemic assessment. Please provide a list of the documents the state intends to revise, the areas that will be revised, and what quality of a home and community-based setting the revisions will address.
- Once the site-specific assessment is complete, please take the same steps and outline the specific remedial actions to address the specific compliance issues found with settings in the site-specific assessment.

- CMS suggests that the state consider moving up the timeframe for remediation of compliance issues in specific settings, and/or include interim milestones to demonstrate the ability to achieve setting compliance and/or relocate beneficiaries as needed by March 2019.

Relocation of Beneficiaries:

- Please indicate when the state will submit an estimate of the number of beneficiaries impacted by relocation, and describe in more detail the process for providing beneficiaries informed choice of an alternate setting that aligns with the regulation and that allows for critical services/supports to be in place in advance of their transition.
- As noted above, CMS suggests accelerating the timeline for the settings assessment in order to allow more time for the relocation process.

Heightened Scrutiny:

The state has informed the public that they need to collect more information to determine the settings to be submitted to CMS for heightened scrutiny. Please lay out the process for identifying settings that are presumed to have institutional characteristics. 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 for such settings as described in the scenarios in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved.

Settings presumed to be institutional 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.

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 a revised STP, in accordance with the issues outlined above, within 45 days of receipt of this letter. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Michele MacKenzie in the CMS Central Office at (410) 786-5929 or at Michele.MacKenzie@cms.hhs.gov, with any questions related to this letter.

Sincerely,

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

cc: Francis Mccullough, ARA