

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

August 9, 2018

Dennis R. Schrader
Medicaid Director
Maryland Department of Health
201 West Preston Street, Room 525
Baltimore, MD 21201

Dear Mr. Schrader:

In follow-up to the 8/2/17 initial approval granted to Maryland'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 Maryland in order to receive final approval of the HCBS Statewide Transition Plan

PLEASE NOTE: It is anticipated that the state will need to go out for public comment once these changes are made and prior to submitting to CMS for final approval. The state is requested to provide a timeline and anticipated date for resubmission for final approval as soon as possible.

Site-Specific Assessment & Validation

CMS requests that the state provide the following information regarding the site-specific assessment process.

- ***Provider Self-Assessment:***
 - Describe the criteria that the state uses to assess the compliance of each setting with the HCBS settings criteria, including both residential and non-residential settings across the state's HCBS authorities.
 - The link to the *Hilltop Institute "HCBS Final Rule: DDA Residential Provider Self-Assessment Summary" November 22, 2016* full report goes to the report dated August 2016 and does not include the Community Pathways Waiver program settings results. Please update the link to the November 2016 document.

- ***Participant Assessments:*** The state indicated the Department of Health and Mental Hygiene will be using the Community Setting Questionnaire (CSQ) utilized for the Community First Choice program for all waiver programs, including the Community Pathways program. Please describe how participant assessments can be linked back to specific settings.

- ***Setting Validation:*** Please provide details, including a timeline, for validating the site specific survey including the following:
 - Please clarify how the state will validate provider self-assessments. If a subset of sites will be visited, describe the criteria for selecting those sites. States may use a combination of various strategies to assure that each setting is properly validated (including but not limited to state onsite visits; data collection on beneficiary experiences; desk reviews of provider policies, consumer surveys, and feedback from external stakeholders; leveraging of existing case management, licensing & certification, and quality management review processes; partnerships with other federally-funded state entities, including but not limited to DD and aging networks, etc.).
 - Please include timelines and milestones for the validation process.

- ***Aggregation of Final Validation Results:*** Please update the initial findings of setting compliance across the respective programs with final results once all validation activities are completed. Please delineate the compliance results across categories of settings for all programs in a manner that is easy for the public to review and understand. At a minimum, please make sure to confirm the number of settings in each category of HCBS that the state found to be:
 - Fully compliant with the HCBS settings criteria;

- Could come into full compliance with modifications during the transition period;
 - Cannot comply with the HCBS settings criteria; or
 - Are presumptively institutional in nature.
- **Group Settings:** As a reminder, any setting in which individuals are clustered or grouped together for the purposes of receiving HCBS must be assessed and validated by the state for compliance with the rule. This includes all group residential and non-residential settings (including but not limited to prevocational services, group supported employment and group day habilitation activities). The state may presume that any setting where individualized services are being provided in typical community settings comport with the rule. Please confirm that the STP accurately includes all group residential and non-residential settings in its assessment and validation activities.
 - **Reverse Integration:** CMS requests additional detail from the state as to how it will assure that non-residential settings comply with the various requirements of the HCBS rule, particularly around integration of HCBS beneficiaries into the broader community. States cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries is not considered by CMS by itself to be a sufficient strategy for complying with the community integration criteria outlined in the regulation.
 - **Non-Disability Specific Settings:** Please provide clarity on the manner in which the state will ensure that beneficiaries have access to services in non-disability specific settings among their service options for both residential and non-residential services. 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.

Site-Specific Remedial Actions:

In addition to the results of the setting assessment and validation activities, please also include:

- The state’s approach to addressing discrepancies between site visit results and survey results.
- The plan for bringing settings into compliance (e.g. corrective action plans, ongoing data submission requirements, etc.), including timelines.
- How the state will review and follow-up with providers who submit corrective action plans (CAPs) and how compliance with the CAP will be monitored by the state and completion confirmed by the end of the transition period.
- Communication and assistance for beneficiaries receiving services from providers unable to achieve compliance: 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 Maryland 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 source. 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, 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.

Ongoing Monitoring

The following additional information is requested regarding the monitoring process.

- Provide details including timelines on how the Quality Council will monitor settings' compliance with the settings criteria on an ongoing basis beyond 2022. Maryland plans to use data collection strategies across various entities in the waiver system to monitor ongoing compliance. Please describe the following:
 - The data collection strategies that are required across various entities in the waiver system, including participants, providers, managed care entities, etc. that will be used to monitor quality related to the settings criteria.
 - How the collected data will be aggregated and used to measure compliance.
 - How results of quality data reporting will be used as a basis for maintaining compliance with the settings criteria and for assisting settings to reestablish compliance if necessary.
- The state should also ensure in their monitoring plan a process which includes the ongoing monitoring of individual private homes, non-licensed settings, and any individualized day or supported employment settings for compliance with the settings criteria

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>.