

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 7, 2015

Kathy Stiffler  
Acting Medicaid Director, Medical Services Administration  
Michigan Department of Health and Human Services  
Capitol View Building  
201 Townsend Street  
Lansing, Michigan 48913

Dear Ms. Stiffler:

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Michigan's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Michigan submitted its STP to CMS on January 16, 2015. CMS needs additional information on how the STP and the waiver specific transition plans relate, along with additional clarity on the systemic and site-specific assessment process, remediation efforts, and the relocation plan for beneficiaries. The concerns and related questions are summarized below.

### **Settings:**

- Upon request, the state provided CMS with a list of all home and community-based settings where individuals live and where they may receive services. Michigan should include in the STP a list of all residential and non-residential setting types. It is difficult to distinguish from the list submitted the categories/types of settings in the state. The settings addressed must include all settings in which home and community-based services are provided under the state's 1915(b)(3) authority.

### **Waiver Transition Plans:**

- The statewide transition plan does not contain as many meaningful action items as the waiver-specific transition plans and the dates for corresponding activities do not consistently align. Please ensure that all activities match across the plans and include accurate dates. For example:
  - Habilitation Supports waiver transition plan includes an item for stakeholder education while the STP does not.
  - MI Choice waiver transition plan includes an item for Individual Provider Remediation 5/15-12/15, while the STP describes individual non-compliant setting remediation occurring from 10/16-9/18.

- While CMS agrees that the services under the Children’s waivers (SEDW & CWP) are provided in the home and are therefore presumed compliant, the state must indicate how it will provide ongoing monitoring if new settings types are added. If settings outside the private family home are added to these waivers, the settings must undergo assessments to determine compliance.

**Stakeholder Notification:**

- Public Notice: The state indicates on page 1 of the Summary of Public Input document that stakeholders were notified of the public input period via email blasts, postings on their website, and via stakeholder events. It is unclear if the stakeholder events were sufficient to ensure non-electronic notice and non-electronic availability of the STP. The state must at a minimum provide two (2) statements of public notice and public input procedures; one of which must include non-electronic communication. Please describe how this requirement was met.
- Public Comment: The state must specify the dates for subsequent public comment periods that will occur after the assessments have been completed. These dates and activities must be included within the STP.
- Public Comment Summary: The state needs to provide a summary of issues identified in public comments and the disposition of those comments. The state should not indicate comments “will be taken under advisement” but rather whether they have been incorporated into the STP or not and the rationale.

**Systemic Assessment:**

- The state has proposed to complete the systemic review of state policies by 9/30/2015. Following the review, the state should provide a list of settings that:
  - currently comport with federal requirements;
  - do not currently comport with federal requirements but may after modifications;
  - cannot comport with federal requirements; or
  - may be submitted for the heightened scrutiny review process.

**Settings Assessments:**

- Assessment Timelines: The timelines for several assessment activities do not align. For example, the state indicates that it intends to notify providers who cannot meet HCBS requirements and their participants on June 2016 (Row 24). However the state also indicates that it will begin the relocation process January 2016 (Row 27), prior to notification. The state should crosswalk preliminary assessment activities against subsequent assessment and remediation activities to ensure that timelines are cohesive and understandable.

**Systemic Remediation:**

- The state has indicated that it will update MDCH policies, procedures, standards, and contracts from 10/1/2015 through 3/1/2017. The state should separate these activities and provide more specific timeframes so that it is clear when each type of document will be

updated. This will allow the state and CMS to better track progress and more quickly identify any potential delays.

### **Settings Remediation:**

- The state has included several action steps with timelines and activities that are very broad. For example, "Establish requirements for new providers" (row 23) will be conducted from 1/1/2015 until 3/17/2019. The activities include changes to language in the contracts as well as technical assistance. Other items with overly lengthy timelines include: compile, analyze, and review assessment data for MI Choice waiver (Row 18); develop a list of settings based on current compliance status (Row 21); develop and implement corrective action plans (Row 25); transition of participants in non-compliant settings (Row 27). These activities should be broken out into more manageable action items with shorter timelines so that the state, CMS and stakeholders can better assess progress toward ensuring compliance by March 2019.

### **Heightened Scrutiny:**

The state should clearly lay out its process for identifying settings that are presumed to have the characteristics of an institution. These are settings for which the state should 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 settings meeting the scenarios described in the regulation, the presumption will stand and the state should describe the process for informing and transitioning the individuals involved either to compliant settings or to non-Medicaid funding streams. These settings 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.

### **Relocation Plan:**

The state does not provide information about how far in advance beneficiaries will be informed of the need for relocation, nor does it include a description of what opportunities, information, and supports the state intends to provide to the affected participants. The STP also does not provide the number of beneficiaries or settings impacted as the assessments have not yet been completed, and the state should provide these estimates as data becomes available. Furthermore, the timelines for provider/beneficiary notification and beneficiary relocation do not align, as the state indicates it will initiate relocation prior to the notification process. The state should address the issue with the timeline as well as identify an earlier end date for the relocation process that will ensure the state can address all individuals' needs and successfully place them in home and community-based settings prior to the end of the transition period..

After revising the STP to address these issues and prior to submitting the revised STP to CMS, the state must provide another 30-day public notice and comment period and ensure that it uses at least two methods of notification, one of which must be non-electronic. CMS would like to have a call with the state to go over these questions and concerns and to answer any questions the state may have. The date for resubmission will be discussed at this meeting based on when the state can reasonably provide the analysis of the systemic assessment and identify specific milestones and timeframes. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. In the meantime, please do not hesitate to reach out to Pat Helphenstine at [Patricia.Helphenstine1@cms.hhs.gov](mailto:Patricia.Helphenstine1@cms.hhs.gov), the CMS central office analyst taking the lead on this STP, with any questions.

Sincerely,

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

cc. R Hughes