

**Disabled & Elderly Health Programs Group**

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October 8, 2015

Marie Zimmerman  
Medicaid Director  
State of Minnesota, Department of Human Services  
540 Cedar Street, PO Box 64983  
St. Paul, MN 55167-0983

Dear Ms. Zimmerman,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Minnesota's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Minnesota submitted its STP to CMS on January 8, 2015. CMS is requesting supplemental information on the public comment processes, the settings identified in the STP, assessment processes and outcomes, ongoing monitoring, remedial actions, the heightened scrutiny process, and relocation of beneficiaries. These issues are summarized below.

**Public Comment:**

- Within the STP document, the state should include the URL where the STP can be found online.
- CMS identified a number of issues with the state's original public comment process. When the STP goes back out for public comment, the state should do the following:
  - Provide CMS evidence, including dates, on how it released statements of public notice for the STP.
  - Include the start and end dates for the public comment period in the STP that verifies the public comment period lasted for 30 days.
  - Provide CMS with evidence (such as a screenshot or a link to a website) that the entire STP was made available for public comment both online and via hard copy.
  - Clearly explain what options were available for the public to provide input on the entire STP (e.g., mail, email, public forum). The state should have provided at least one option for the public to provide input in addition to the state's website.

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

Minnesota lists the five 1915(c) waivers that are included in its STP, but does not identify the setting types in each of these waivers. Please include a list of the setting types, by waiver, that are impacted by the new federal requirements and covered by the STP. Please ensure that settings in which home and community-based services authorized under the Section 1115 demonstration are provided are addressed in the STP.

### **Systemic Assessment:**

- The STP stated that the systemic assessment would be complete by April 2015. Please add the outcomes of that assessment to the revised STP.
- In the STP please also include a crosswalk of the federal settings requirements to the related state requirements that the state reviewed, and note whether the state requirements comply, do not yet comply, or are silent with regard to each of the relevant sections of the federal requirements.

### **Site-Specific Assessments:**

- Please provide additional clarification on the timeline for site-specific assessments. The STP indicates the settings assessments would be completed by June 2015. Given that the provider self-assessments were not due until June 1, 2015, please clarify if the state's validation activities were completed by the end of June 2015 and if the site-specific assessments have been completed in their entirety.
- Please provide more detail regarding the use of on-site assessments for settings identified as partially or fully compliant. It is not clear whether on-site assessments will only be for settings presumed not to be home and community-based, or whether they will also be used to validate the survey results for settings reported by providers to be partially or fully compliant.
- Please provide additional information on the mechanisms in place for validating the self-assessment surveys, and how the state plans to validate a statistically significant sample of settings. Please provide additional detail related to the action item on p. 9 of the STP, "Verify provider self-assessment results."
- Please provide more information on the methodology of the assessments and how the results will be analyzed to determine the outcomes of the site-specific assessment.
- Once the state has completed its assessments, please provide estimates of the number of settings by waiver that: 1) fully comply with the federal requirements, 2) do not comply and require modifications, 3) will not comply and require relocation of beneficiaries, and 4) are presumed not to be home and community-based and will require heightened scrutiny.

### **Monitoring of Settings:**

Please explain which monitoring processes will continue after the transition period ends and how frequently the monitoring activities will occur. It is important for the state to continue the monitoring process after the transition period ends.

### **Remedial Actions:**

- When the state has completed its systemic review, it should lay out its remedial actions to address the specific issues found in that review. These remedial actions should include milestones and monitoring processes to ensure that timelines associated with remedial actions are met. Please include these actions in the STP before it goes back out for public comment.
- When the state has completed its site-specific assessments, please include detail about the specific remedial actions, including measurable milestones, planned to address issues found with each setting.

- On p. 11 of the STP, the state says it plans to “finalize compliance” from January to March 2019 by verifying the compliance of all settings using data gathered. Please clarify the activities involved in the final compliance check and provide additional milestones around the relocation process, to demonstrate full compliance by March 2019.
- On p. 5 of the STP, the state notes that for services provided in a nursing facility, hospital, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), or Institutions for Mental Diseases (IMD), the "Provider could choose to seek a separate license or separate services from the institutional setting and provide information on how the settings meet the criteria of a home and community-based setting...If the provider chooses to not continue to provide HCBS, individuals receiving services will receive information on options for other services and support on making choices." Please clarify how the state will address services that are provided in a nursing facility, hospital, ICF/DD, or IMD and clarify the statement regarding the remedial actions for these service settings described on p. 5. The state should confirm that it is not billing the federal Medicaid program for services provided to individuals in an IMD, given that the IMD exclusion prohibits Medicaid from making payments for services rendered to Medicaid beneficiaries aged 21 to 64 in IMDs.

**Relocation of Beneficiaries:**

CMS is requesting additional information on the timeline for the relocation of beneficiaries. Please provide additional detail on the following aspects of the relocation process:

- How the state will provide reasonable notice and due process;
- The estimated number of beneficiaries impacted;
- A description of the process to ensure beneficiaries can make an informed choice among alternate settings; and
- How all needed services and supports will be available to beneficiaries at the time of relocation.

**Heightened Scrutiny:**

The state must clearly lay out its process for identifying settings that are presumed to have institutional qualities. 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 settings meeting those scenarios in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved.

Settings that are presumed to be institutional in nature 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; and
- 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 its revised STP, in accordance with the questions and concerns above, within 75 days after the call with CMS. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Lynell Sanderson in the CMS Central Office at 410-786-2050 or at [Lynell.Sanderson@cms.hhs.gov](mailto:Lynell.Sanderson@cms.hhs.gov) with any questions related to this letter.

Sincerely,

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

cc: Ruth Hughes, ARA