

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Disabled & Elderly Health Programs Group

August 9, 2018

Drew Snyder
Executive Director
Division of Medicaid
Mississippi Department of Human Services
550 High Street, Suite 1000
Walters Sillers Building
Jackson, MS 39201-1325

Dear Mr. Snyder:

In follow-up to the 5/25/2017 initial approval granted to Mississippi'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 rule 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 rule 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 Mississippi 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 resubmitting 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 Assessments

In follow-up to the most recent dialogue between CMS and the state, CMS offers the following feedback in regard to the state's site-specific assessments of settings.

- The state is reminded that all provider-owned or controlled HCBS settings must be assessed for compliance with the federal HCBS settings criteria, and the state is responsible for validating provider self-assessments with at least one validation strategy per individual setting. Please confirm the following:
 - How the state is utilizing its various validation strategies (desk reviews, onsite visits, and consumer surveys) to assure that each setting's initial assessment results are validated.
 - Whether assessments and interviews will take place in person or remotely.
- ***Onsite Visits:*** On pages 150-151, the state indicates that onsite visits will be conducted for 100% of settings along with a random sample of consumer interviews. Please confirm that this is the state's strategy across all HCBS authorities for all categories of settings, and if not, please clearly distinguish the setting assessment/validation activities for each waiver/setting category. Please include this information in the STP.
- ***Consumer Surveys:***
 - Please clarify whether the consumer surveys will be conducted in-person or via online/mail (on page 17 the STP denotes these will be conducted in-person, and on page 151 it states that surveys can be completed online, by mail or by phone).
 - Please confirm how the state will address with providers any discrepancies identified between the consumer survey responses and the original provider self-assessments.
- ***Group Services:*** As a reminder, all settings that group or cluster individuals for the purposes of receiving HCBS must be assessed by the state for compliance with the settings criteria. This includes all group residential and non-residential settings, including but not limited to prevocational services, group supported employment and group day habilitation activities.
 - In addition, please clarify in the STP that 1915(i) supported employment services are not provided in settings that group or cluster individuals.
- ***Timeline:*** With respect to timing of the state's site-specific assessment process, some of the dates that the state provided seem to conflict. For example, on page 150 of the STP the state indicates it does not expect to complete validating the provider self-assessments until December 31, 2017; however, the state also indicates it will conduct a second round of site visits to providers found to be noncompliant through the initial assessments to check for progress on coming into compliance by June 30, 2017 (p. 156). Please clarify these dates in the STP.
- ***Individual, Private Homes:*** The state may make the presumption that privately-owned or rented homes and apartments of people living with family members, friends, or roommates meet the HCBS settings criteria if they are integrated in typical community neighborhoods where people who do not receive HCBS also reside. A state will generally not be required to verify this presumption. However, the state must outline what it will do

to monitor compliance of this category of settings with the regulatory criteria over time. Note, settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual) are considered provider-owned or controlled settings and should be evaluated as such.

- Supported Living: The state received public comments regarding supported living arrangements, and specifically concerns over whether or not the state is planning to assess and validate these settings when they are provider owned or controlled (page 15). Please confirm how the state will determine if there are any supported living arrangements that are in fact provider-owned or controlled and, if so, how the state plans to assess/validate these. Additionally, any supported living arrangements that are determined by the state not to be provider-owned and controlled should still be included in the state's monitoring activities for ongoing compliance. Please include this information in the STP.
- 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.
- Reporting of Final Assessment/Validation Results: Once the state has completed its assessment and validation of settings, please include the aggregate results based on compliance level (fully comply; do not comply but could with modifications; cannot comply; and are presumed to have the qualities of an institution, but for which the state will submit evidence for the application of heightened scrutiny) within the STP.

Site-Specific Remedial Actions

- CMS requests the state add details to the STP regarding site-specific remediation, including the types of technical assistance the state is providing to providers to help them come into compliance with the federal settings rule.
- 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 Mississippi 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 alternative funding stream. 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.

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>.

Monitoring of Settings

CMS requests additional information about the state's anticipated approach with respect to ongoing monitoring and compliance of settings:

- Additional information on how the state will share its plans for monitoring of ongoing compliance of settings with beneficiaries, external stakeholders and the public.
- Confirmation of the state's intention and strategies for monitoring individual, private homes for ongoing compliance with the federal settings criteria.
- For all monitoring plans, provide further details, including start and end dates for interim milestones, the entities responsible for the various monitoring activities, and the state's plan for overseeing monitoring efforts.