

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 26, 2015

Mary Dalton  
Medicaid and Health Services Branch Manager  
Montana Department of Public Health and Human Services  
111 North Sanders  
Room 301  
Helena, MT 59620

Dear Ms. Dalton,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Montana's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Montana first submitted its STP to CMS on December 12, 2014, and then submitted a revised version on March 18, 2015. CMS notes areas where additional information is needed regarding assessment processes and outcomes, remedial action processes, and monitoring. These items and related questions for the state are summarized below.

### **Public comment:**

- **Determinations about setting compliance:** The STP does not include information on how specific settings comply with the settings requirements, and the public was unable to comment on this. When the state has made its determinations about compliance with the settings requirements, it should integrate this information and re-post the STP for public comment.
- **Integration of public comments into the STP:** The state indicated that no changes were made as a result of public input, despite receiving valuable comments. The state should provide a rationale for not doing so.

### **Identification of settings and waivers:**

- **Settings analysis:** The state submitted a high level settings analysis, but it does not appear that an actual settings review was conducted at the time of the STP submission. The analysis refers to settings with general language, and did not identify some key settings,

such as retirement homes. The state should clarify the list of relevant settings that are included in the 1915(c) waivers and 1915(i) state plan amendment.

- **Impacted waivers and state plan amendments.** Within the STP, the state should identify the specific 1915(c) waivers and 1915(i) state plan amendments that are impacted by the new HCBS settings requirements.

### **Assessments:**

- **Systemic assessment:** The state provides a brief description of its plans for conducting a systemic assessment, but does not provide interim milestones for this process and does not identify the specific state regulations and policies the state plans to review. As the state has not finished its systemic assessment, the STP did not identify the specific aspect of each regulation found to comply with provisions of the regulation, not comply with these provisions or be silent in regard to the federal HCBS requirements, or the changes that must be made to each regulation to bring it into compliance. CMS requests that Montana provide this information so that CMS is better able to understand the state's assessment.

The state needs to complete its systemic assessment by September 18, 2015, which is six months after Montana submitted the latest version of its STP. The state does not need to have completed remedial actions for the systemic assessment by this time, but Montana should identify the time frames necessary to remediate any issues identified in the review of state regulations and policies.

- **Site-specific assessment:** Montana has not completed site-specific assessments, but indicates plans to conduct provider self-assessments and member experience surveys. The state plans to validate the provider self-assessments via onsite reviews. CMS requests that the state clarify if the provider-self assessments are mandatory. If the provider self-assessments are not mandatory, CMS would like Montana to indicate how the state will assess providers who do not respond. The state must ensure that the member experience surveys are site-specific, meaning the survey identifies the setting and location, if they will be used as a validity check. Lastly, CMS requests some additional information on the state's validation process, including how the state will determine which settings require onsite reviews. Montana noted that it plans to complete the site-specific assessment process by August 1, 2016. CMS is concerned that the state may face challenges in completing remedial actions in a timely manner given this extended timeline. Please describe how all remedial actions will be completed by the conclusion of the transition period in March 2019.
- **Estimates of the number of settings in compliance:** Because the state has not completed its assessment, the STP does not provide estimates of the number of settings that:
  - fully comply with the settings requirements;
  - do not currently comply but could by the end of the transition period;
  - cannot comply with the settings requirements; or

- are presumptively institutional. CMS requests that this information be included in the STP once assessments are completed.

**Heightened Scrutiny:** For settings presumed to have institutional qualities, the high-level settings analysis included in the STP acknowledged the state will be required to “provide specific individual justification if any setting in this category is deemed compliant.” Please describe the state process for identifying settings that are presumed to have institutional qualities. 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 to other compliant or non-Medicaid funded settings.

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.

### **Remedial Actions:**

- **Systemic assessment changes:** The state has not completed its systemic assessment, and thus has not made any determinations of compliance for its standards. Currently, the state only has one overarching milestone in Section 4 of the STP. This milestone is to revise the Administrative Rules of Montana and the Provider Manual. However the state provides no steps or monitoring process to ensure that the necessary revisions are made. Please provide more interim steps, milestones, and a timeline for making such revisions.
- **Settings assessment changes:** The state has not completed its site-specific assessments, and thus does not include any remedial actions specific to particular settings. The state also does not include any plans for a monitoring process to ensure these timelines and milestones are met. The state plans on requiring providers to complete a compliance plan, which will then be evaluated and validated by the state via on site reviews.

CMS requests further information about how the state will approve provider compliance plans, the elements the state would require in a provider compliance plan, and what would lead to disapproval. For example, CMS would like to know how the compliance plans will be reviewed, and how the state will ensure they are enforced. Please also provide a clearer timeline of when remedial actions for specific settings will be implemented.

**Monitoring of settings:** The state does not include a description of its plans for an ongoing monitoring process. CMS requests that Montana include additional information on what this process will involve, such as the frequency of monitoring activities, who will carry out the activities, and what steps will be involved to ensure settings continue to remain in compliance.

**Relocation of beneficiaries:** The state provides an assurance that it will provide reasonable notice and due process to beneficiaries who must be relocated, and includes the timeline for the relocation processes. Please include details in the STP regarding the number or estimated number of beneficiaries impacted (when known), and a description of the actual 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 of an alternate setting that aligns with the regulation, with critical services and supports in place at the time of relocation.

CMS would like to have a call with the state to go over these questions and to answer any questions the state may have. The state will need to revise and resubmit its STP, which will necessitate the STP being re-posted for public comment. The state should plan to resubmit the STP no later than November 15<sup>th</sup>, following the review of findings from the next public comment period. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Ondrea Richardson at (410) 786-4606 or at [Ondrea.Richardson@cms.hhs.gov](mailto:Ondrea.Richardson@cms.hhs.gov), the CMS CO analyst taking the lead on the STP with questions.

Sincerely,

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

cc: Richard Allen, ARA