

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

Dave Richard  
Director, Division of Medical Assistance  
The Director's Office  
2501 Mail Service Center  
Raleigh, NC 27699-2501

Dear Mr. Richard,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of North Carolina's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. North Carolina submitted its STP to CMS on March 12, 2015. CMS is requesting some additional information identifying all settings where services are delivered, clarifying the timeline for the systemic assessment, and clarifying details of the site-specific assessment (including potential submission of evidence for heightened scrutiny), remediation, and monitoring actions. These concerns and related questions for the state are summarized below.

### **Settings:**

- Please provide preliminary estimates of how many individual sites/facilities the state expects to fall in to each of the compliance categories (compliant, not compliant but can be compliant with remedial actions, not compliant and cannot become compliant, and facilities for which the state may submit evidence under heightened scrutiny to rebut the presumption that a facility is institutional).
  - Please list all settings types in which waiver services are delivered, including any services provided in foster homes (please also clarify this for the CAP/C waiver).

### **Assessments:**

#### **Systemic assessment.**

- Please specify the time periods for the systemic assessment process vs. the remediation process noting that the assessment should be completed within 6 months of the date that the STP was submitted to CMS (September 12, 2015).

### Site-Specific assessments.

- Please clarify what the provider assessment validation process will entail, what percentage of assessments will be validated, and how they will be chosen.
- Please clarify the state's process for assessing supported employment (the STP notes that the state will "complete an assessment for the corporate sites and a minimum of 10 assessments or 10%, whichever is greater."),
  - How did the state determine this process, specifically for supported employment services?
  - What types of settings are individuals in that require assessing for supported employment?
  - What is the process for assessing other services (in addition to supported employment)?
- Please clarify how the state will oversee local agencies' work, and maintain ultimate responsibility for ensuring compliance with the rules. The state should ensure that there:
  - is no fiduciary link between these local agencies and the providers that are being assessed; and
  - is not a conflict of interest between the stakeholder community and the providers being assessed.
- Please clarify how the state is ensuring that its assessment process represents the individual's viewpoint. Based on the STP, CMS has concerns that the state may be viewing the assessment process from the provider's perspective<sup>1</sup> whereas the regulations were written from an individual's perspective and this is the perspective that the state should use in designing its process.

### Remedial Actions

- Please provide a more detailed description of the remediation plans, such as, how will the focus groups be used in this process? How will the state monitor progress of providers found out of compliance?
- Please provide general expected remediation actions, milestones, and how long each action can be expected to take for all programs. CMS notes that specific remediation steps should be included in the STP that is posted for public comment, once outcomes of the assessments are completed.

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<sup>1</sup> STP p. 12 "Once the self-assessment is complete, DHHS will conduct a follow up survey to assess the process from a provider perspective. The survey tool will be developed by a sub-group of the State, LME-MCOs and Local Lead Agencies as this data will provide insight for future planning. This process will afford providers an opportunity to engage directly with the Department."

### **Ongoing Monitoring**

- Please provide a timeline for when the state will submit a more detailed monitoring plan, including specific milestones and a concrete timeline for ongoing monitoring beyond the transition period. In addition, indicate how the state will monitor changes made based on the assessment outcomes.
- Please describe how the state will link consumer satisfaction data to specific providers/sites as opposed to looking at the data at an aggregate level.

### **Relocation of Beneficiaries**

- Please clarify the timeframe by which the state will begin the relocation/transition process that will create confidence that the state will have transitioned their settings by March of 2019. For instance, specifying that this process will begin at least one year prior to the March 2019 compliance deadline will allow the state time to address any complications that may arise. In addition, specify number of beneficiaries anticipated to be impacted

### **Heightened Scrutiny**

The state should 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, the presumption will stand and the state must 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.

In addition, with respect to the heightened scrutiny process, please clarify the interaction of the following three state strategies for finalizing a determination that it will submit evidence to overcome the presumption that a site is institutional: (1) review of self- assessment responses; 2) request for public comment on each setting in question; 3) institution of the process for administrative review by the State in evaluating heightened scrutiny.

### **Future Amended Plan:**

As noted above, once the state has finalized outcomes from its assessments, it must post an amended STP, including these outcomes as well as specific remedial actions tied to each compliance issue, for public comment before submitting it to CMS. The state should ensure that it includes specific

outcomes for systemic assessments of statutes, regulations, policies, etc., as well as site-specific facility assessments, along with corresponding detailed remedial actions to address each compliance issue. Remediation actions should include milestones and timelines as well.

Prior to that submission, the state must submit a revised STP no later than 30 days from receipt of this feedback letter that addresses CMS' concerns. In this revised STP, the state must identify a date when the amended STP will be provided that describes the finding of the state's systemic and site-specific assessments, all final outcomes and the remediation actions specific to each compliance issue.

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. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Pat Helphenstine at 410-786-5900 or at [Patricia.Helphenstine1@cms.hhs.gov](mailto:Patricia.Helphenstine1@cms.hhs.gov), the CMS CO analyst taking the lead on this STP, with any questions related to this letter.

Sincerely,

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

cc: Jackie Glaze, ARA, Region 4