

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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July 10, 2018

Dr. Matthew Van Patton  
Director, Division of Medicaid & Long-Term Care  
Nebraska Department of Health and Human Services  
301 Centennial Mall South, 3rd Floor  
PO Box 95026  
Lincoln, NE 68509-5026

Dear Dr. Van Patton:

In follow-up to the 3/31/17 initial approval granted to Nebraska'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.

As a reminder, 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 Nebraska 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 consideration of final approval as soon as possible.***

#### **Waiver Services included in the STP**

Discrepancies were identified with the settings described in the state's STP (pg. 16-17) and the settings described in the state's waivers. Please clarify the following:

- ***Aged and Disabled (A&D) Waiver:*** Under the service category “*Extra care for children with disabilities*”, the waiver includes “License-exempt family child care home” and “In-home child care provider”. These settings should be included in the STP.
- ***Developmental Disabilities (DD) Children’s Comprehensive Waiver:*** Outline within the STP the types of settings in which “Habilitative Child Care” is provided. The state should also clarify in their STP all day habilitation settings where Medicaid HCBS are provided.
- ***DD Adult Day Services Waiver:*** Include the community day activity settings where HCBS retirement services are provided.
- ***DD Adult Comprehensive Services Waiver:*** Clarify in the STP whether community living and day supports occur in private homes only or also other settings (e.g. assisted living facilities and settings where group day or employment activities are taking place).

#### **Identification and Classification of Settings**

As a reminder, states are responsible for assuring that all HCBS settings comply with the HCBS settings criteria. Quality thresholds should not be used to reduce the state's requirement to assure compliance across settings. CMS requests Nebraska provide additional details about the following:

- ***IDD Residential Settings:*** The State has implemented a random sampling process that resulted in on-site validation of 34 IDD residential settings. Please provide additional information as to how the state plans to assess or validate the remaining IDD residential settings. Please also provide the compliance determinations: 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.
  - o Please clarify the following statement in the STP: “Most apartments have lockable doors. For those that do not, it is because of health and safety issues due to the cognitive or functional impairments of the individuals. This information is documented in the Plan of Services and Supports”. The state must assure that

individuals have lockable doors to their apartments, and if they do not, that the modification is based on a specific assessed need and justified in the person-centered service plan as described at 42 CFR 441.301(c)(4)(vi)(F).

- ***Individual, Privately-Owned 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.
- ***IDD Companion Homes and Extended Family Homes (EFHs):*** Please confirm whether these settings were included in either of the state's sampling assessment processes thus far, and if not, please provide additional details as to the state's strategy for assessing these residential settings for compliance.
- ***Host Homes:*** Pursuant to previous correspondence sent electronically from CMS on 6/7/2017, please include any and all host homes included in the 1915(c) waiver application with the control number NE 4154, which were not previously identified as a setting in the STP.
- ***Group Settings:*** 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.

**Site-Specific Assessment & Validation Processes:** More detail is necessary for CMS and the public to understand the scope of the site-specific assessments.

- ***Sampling:*** Please clarify the differences between the initial set of settings that were assessed in 2014 and those assessed in 2016. Additionally, please discuss how the sample was selected for provider self-assessments and how the state intends to assess the remaining settings.
- ***Validation:*** States must use at least one strategy for validating initial assessment findings. Nebraska is relying on its existing licensing and service coordination processes to validate and monitor settings for compliance on an ongoing basis. Please include the timeline for assuring that all settings are assessed and validated.

- ***Accuracy of Number of Settings:***
  - In some cases, the total number of settings described in the compliance status summaries does not match the table of settings included in the STP; please ensure these numbers align. In addition, please confirm there is only one traumatic brain injury (TBI) setting.
  - The state does not discuss how it intends to validate the 113 DD Group home self-assessments. The STP describes that a random sample of 50 DD Waiver providers were assessed. Please provide more information on how the state validated the sample results and how the remaining settings will be validated. Similarly, please provide additional narrative on how the 183 A&D settings were assessed.
- ***Personnel involved in Site-Specific Assessment & Validation Processes:*** A&D and TBI site-specific assessments are conducted by managed long term care (MLTC)-contracted community agencies, in addition to the state leveraging Area Agencies on Aging (AAAs) to conduct assessments on assisted living facilities. The state should address whether there could be any potential conflicts of interest by (a) confirming that none of the entities engaged in the assessment or validation processes are direct service providers of Medicaid HCBS; and (b) sharing any further quality assurance practices the state is implementing (i.e. random spot-checks or reviews by state staff, etc.) to preserve the fidelity of the assessment and validation processes.

### **Remediation Activities**

- ***Reverse Integration Strategies:*** 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 to 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.
- ***Communication with and Support to Beneficiaries of Options when a Provider will not be Compliant:*** 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 Nebraska 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 by the end of the transition period, with the regulation. 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.

### **Monitoring of Settings**

Additional information about the monitoring of settings is needed.

- Please provide additional information regarding the use of the ongoing desk reviews as part of the ongoing compliance monitoring process. [For example, will a desk review for every setting occur regularly, and if so, how frequently? When participants surveys are used, will all participants in every setting complete a survey? How often will the survey be conducted?]
- The STP states that the state will evaluate the viability of validating settings on an ongoing bases with the National Core Indicator (NCI) data. Please update the plan to describe the use of NCI data as an ongoing validation or monitoring mechanism. Given that the NCI data is state specific as opposed to provider or setting-specific, please include information on other methods the state will deploy to assure ongoing monitoring for compliance with the federal HCBS requirements at the *setting* level is conducted with fidelity.
- The state should also include in their monitoring plan a process which includes the ongoing monitoring of individual private homes, non-licensed settings, and any individualized day or supported employment settings for compliance with the settings criteria.

### **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>.

### **Milestones**

CMS provided the state with a draft milestone chart reflecting anticipated milestones gleaned from the state's STP. Please review and edit these milestones and resubmit the document to CMS. CMS will upload the information into the milestone tracking system where the state will be able to track and edit the STP milestones.