

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

October 1, 2015

Kathleen Dunn, MPH
Director, Office of Medicaid Business and Policy
State of New Hampshire, Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301-6521

Dear Ms. Dunn,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of New Hampshire's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community based settings requirements. New Hampshire submitted its STP to CMS on March 11, 2015. CMS is requesting additional detail with regard to assessment processes and outcomes, remedial action processes, and monitoring. According to the STP, New Hampshire will complete an updated and revised STP by March 31, 2016, which provides a three year period for the state to achieve full compliance. CMS agrees that this is an adequate amount of time for New Hampshire to comply, but requests further clarification regarding the issues that are summarized below.

Covered Settings:

Please include all settings that are covered by the state's waivers in the STP, to ensure a comprehensive accounting of locations in which home and community-based services are provided.

Systemic Assessments:

New Hampshire describes the process by which the systemic assessment of the state standards is being conducted. The schedule indicates that some outcomes of that assessment are available. However, the state did not include outcomes of its assessment in the STP, specifically the list of providers and the state standards inventory completed in December 2014. Please include this information, along with the specific state regulations that were analyzed, and the specific aspect of each regulation found to be compliant, non-compliant or silent. Please indicate any changes that must be made to each regulation to bring it into compliance. The STP also included a third party legal

review as part of the assessment. Please describe how that review is done. New Hampshire should provide the outcomes to date and the additional details of the systemic assessment, including a crosswalk for each quality of the federal settings regulation against the sections of the state regulations to inform the state's assessment.

Site-specific Assessments:

- The state does not provide estimates of how many residential and non-residential settings fully comply with the settings requirements, could comply with modifications, cannot comply, or are presumed to be institutional. The STP does not include any details on the site-specific assessment process or composition of the Transition Framework Team and the Advisory Taskforce. The Taskforce will review the assessment activities, including the development of the provider and participant assessment tools, and the sample validation plan. Please include information that will substantiate that the composition of these groups is free from conflict of interest concerns. And please include details in the STP on how site-specific assessments will be conducted.
- Please include information regarding how the state will respond if a provider does not complete a self-assessment.
- Please explain how the participant assessments are linked to specific settings/sites.
- Please provide additional information on the field validation process, including how the process will be conducted and the entities which will complete the validation.

Monitoring and Oversight:

- Please provide more details on the specific oversight and monitoring process, including a timeline with milestones and a description of the staff who will conduct the monitoring.
- The STP indicates that it will provide training and education for providers during enrollment and orientation; please explain how the state will address training for existing providers.
- Please provide information on the Advisory Taskforce monitoring process and the Taskforce's role and meeting frequency.
- Please explain how the state will ensure that any consumer satisfaction surveys used for monitoring are linked to individual provider settings/sites.

Remedial Actions:

- Please include a specific remediation strategy for the state's rules and regulations found to be out of compliance with the federal settings requirements.
- Please clarify whether licensing, credentialing, and policy revisions will be completed by the time the state submits the revised STP in March 2016. If the systemic remediation will not be complete, please include the timeframe when it will be complete. Please include a specific remediation strategy for those settings and sites found to be out of compliance. In the absence of an estimate of the possible number of non-compliant settings, it cannot be determined whether the state will have adequate time to complete its remedial actions. Therefore, please clarify the site-specific remedial actions, including interim milestones for the three year period from April 2016 – March 2019 for the settings to transition into compliance.

Relocation of Beneficiaries:

There is no reference to relocation of beneficiaries as a possible outcome of New Hampshire's assessment and transition plan. In the absence of an estimate of possible non-compliant settings, it cannot be determined whether the state will have adequate time to relocate beneficiaries if necessary. Therefore, 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 will the state 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 should clearly lay out its process and timeframes for identifying settings that are presumed to be institutional in nature. 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 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 must describe the process for informing and transitioning the individuals involved either to compliant settings or settings not funded by Medicaid HCBS.

Settings presumed to be institutional 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.

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. The state may need to revise and resubmit its STP, which may necessitate the STP being re-posted for public comment. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Colleen Gauruder at 410-786-4137 or Colleen.Gauruder@cms.hhs.gov, with any questions related to this letter.

Sincerely,

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

cc. R. McGreal, ARA