

Disabled & Elderly Health Programs Group

October 1, 2015

Valerie Harr
Director, Division of Medical Assistance and Health Services
Department of Human Services
P.O. Box 712
Trenton, NJ 08625-0700

Dear Ms. Harr,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of New Jersey's Statewide Transition Plan (STP) to bring state standards and settings into compliance with the new federal home and community-based setting requirements. New Jersey submitted its STP to CMS on April 17, 2015. CMS finds that New Jersey's STP is a progressive plan that includes key elements needed to meet the federal settings requirements. However, CMS is requesting supplemental information on site-specific assessments, remedial actions, monitoring, and relocation of beneficiaries. These items are summarized below.

Settings:

- In the STP, New Jersey identifies "private residential facility" as a setting type served under the Community Care Waiver (CCW). CMS requests that the state further explain and define "private residential facility" for individuals with developmental disabilities in its STP. CMS notes that this type of setting does not appear to be identified as an approved setting under the 1915(c) waiver and requests that the state identify the authority and/or service under which this setting is used.
- In the STP, New Jersey indicates that, "[Department of Human Services] DHS has revised the STP to extend the deadline for the relocation of programs located on the grounds of developmental centers". These settings should be identified as settings presumed to have institutional characteristics. Please provide more information about settings on the grounds of these centers.
- CMS requests that New Jersey clarify whether the Section 1115 Demonstration includes non-residential settings where services are rendered, other than adult medical care service settings covered under the Medicaid State Plan.

Systemic Assessment:

- CMS recognizes that New Jersey has completed its systemic review and appreciates the thorough assessment of standards, policies, and licensing regulations completed by the state. While New Jersey describes a detailed systemic review process, the crosswalk included with the STP does not specifically identify state regulations or policies that will require revision to

comply with the federal settings requirements. CMS requests that New Jersey identify these standards in addition to the state's step-by-step process to bring these standards into compliance.

- New Jersey plans to submit a report to CMS that includes “its best estimate of the number of settings that: 1) fully comply with the federal requirements; 2) cannot meet the federal requirements and require removal from the program and/or the relocation of individuals; 3) do not meet the federal requirements and will require modifications....” CMS requests that New Jersey provide this information in its STP once the estimates are determined.
- CMS requests that New Jersey remove discussion of person-centered planning from the STP unless it is specifically related to the settings requirements. CMS notes person-centered planning requirements were to be effective on March 17, 2014.

Site-Specific Assessments:

Section 1115 Demonstration Settings:

- New Jersey's STP identifies key site-specific assessment activities, including provider self-assessment surveys, state agency evaluations, and site inspections. These activities are crucial elements of a successful review. New Jersey has also identified a process to manage providers who are unwilling or unable to complete a self-assessment. CMS requests that New Jersey identify the residential and non-residential settings that underwent assessment and the specific assessment activities conducted for each group of settings.
- CMS requests that New Jersey describe its methodology to identify a representative sample of settings that will undergo site inspections. Please describe the activities—such as discussions with staff, interviews with beneficiaries, etc.—that will occur during the site inspections (mentioned on p. 10) and whether these inspections are synonymous to the unannounced surveys described in the state's timeline (p. 24).
- Given that settings licensed under NJAC 10:44C are covered under the Section 1115 Demonstration as well as the CCW 1915(c) HCBS waiver, please clarify if the Division of Developmental Disabilities' (DDD) assessment is being used for both the Sections 1115 authority and the 1915(c) CCW authority.

1915(c) CCW Settings:

- CMS appreciates New Jersey's efforts to engage stakeholders in the HCBS transition by including them in the development of the settings assessment tool. CMS requests that New Jersey describe in the STP the data sources and type of information that will be captured by the tool.
- Please more clearly delineate in the STP the assessment activities for 1915(c) waiver settings and which state department or division is responsible for conducting each assessment.
- Please provide more details regarding the site assessments and surveys discussed in the STP.

Ongoing Monitoring:

- Regarding settings under the 1915(c) waiver, the STP does not describe an ongoing monitoring process. Please provide additional detail describing how settings will be monitored, including the frequency, to ensure ongoing compliance with the setting requirements. This process should continue after the March 2019 deadline to ensure that settings remain in compliance.
- CMS requests that New Jersey describe in its STP how the regular monitoring process for NJAC 8:36 licensed facilities will be revised to ensure ongoing compliance with the federal requirements.
- CMS asks that New Jersey clarify in its STP whether the state intends to use the modified licensing standards and, therefore, use a licensing entity to monitor, on an ongoing basis, sites' compliance with the federal rules.
- When there is no licensing requirement, such as non-residential settings in the CCW Waiver, please delineate the state's process for ensuring ongoing monitoring of compliance.

Remedial Actions:

Systemic Remediation:

- New Jersey indicates it will adopt policies and revise standards in areas where state rules do not meet the federal setting requirements. While New Jersey describes some remedial actions for settings under the DDD, the STP does not describe the remedial actions planned to bring other state regulations under the 1115 demonstration authority into compliance. The STP indicates, "In instances for which the state was not in compliance, it will consider adjusting policies, statues and/or regulations, as appropriate." However, New Jersey must make all necessary amendments to comply with the federal requirements. Please provide more detail in the STP regarding how necessary revisions to state regulations were made or will be made, including a crosswalk of the identified regulations and policies in need of remediation to comply with the relevant portions of the federal requirements.
- CMS requests that New Jersey incorporate milestones into its timeline that describe specific step-by-step activities needed to achieve systemic remediation and compliance by March 2019.

Site-Specific Remediation:

- New Jersey indicates in the STP that its DHS will work with providers and individuals receiving services to develop specific remediation plans. Please provide more detail on the specific processes for approving these specific remediation plans including step-by-step remedial actions (and timeframes) that will be taken to bring settings into compliance, such as activities around provider education or changes to a facility or program operation.
- Please specify in the STP if remedial activities are contained within licensing standards and activities.

Relocation of Beneficiaries:

- The STP indicates that “it is premature to speak to the relocation of consumers at this time [because] the state’s findings are not yet available.” However CMS requests that New Jersey develop a process to safely relocate beneficiaries supported with a timeline for each step of the process. This should include how consumers will receive adequate time and support to make informed decisions on alternate settings, and assurance that all services and supports needed by consumers are in place at the time of transition.
- An earlier draft of New Jersey’s STP indicated that DDD would prohibit the establishment of community residences on the grounds of, or immediately adjacent to, developmental centers, and require the programs currently there to relocate to community-integrated settings by June 30, 2016. That information was not present in the current version of the STP. CMS requests that New Jersey clarify whether DDD intends to relocate individuals who reside in these settings. If so, please include this information in the STP.

Heightened Scrutiny:

The state should clearly lay out its process 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 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 must describe the process for informing and transitioning the individuals involved to other compliant settings or setting 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.

With regard to settings under the 1915(c) waiver, New Jersey indicates that it will provide a report to CMS that includes evidence/justification for presumptively institutional settings to confirm these settings do not have the characteristics of an institution and do have qualities of a home and community-based setting. Please indicate in the STP an estimated date for submission of such evidence, including for settings in the 1115 demonstration, and identify: 1) each specific setting presumed not to be home and community-based, 2) the step-by-step process for identifying these settings, and 3) a specific timeline with exact dates for each step of the process. CMS strongly suggests that New Jersey choose a date that allows adequate time for settings to come into compliance following feedback from CMS in any heightened scrutiny request, or that allows time to relocate consumers if the evidence cannot overcome the institutional presumption.

CMS would like to have a call with the state to go over these 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 Ciera Lucas in the CMS Central Office at (410) 786-0832 or Ciera.Lucas@cms.hhs.gov, with any questions related to this letter.

Sincerely,

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

cc. M. Melendez