

## **Disabled & Elderly Health Programs Group**

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July 23, 2015

John B. McCarthy  
Director  
Ohio Department of Medicaid  
50 West Town Street, Suite 400  
Columbus, OH 43215

Dear Mr. McCarthy:

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Ohio's Statewide Transition STP (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Ohio submitted this STP to CMS on March 13, 2015. Overall, CMS finds Ohio's STP to be a well-organized document that addresses most of the requirements. CMS appreciates the substantial progress Ohio has made toward ensuring compliance with the new requirements and the overall level of detail of the STP. CMS notes a few areas where additional information is needed regarding assessment processes and outcomes, remedial action processes, and monitoring process. These items and related questions for the state are summarized below.

### **Assessments:**

**Site-specific assessment process.** CMS would like additional information regarding the methods used to validate the results of the provider self-assessment surveys.

- What percent of residential settings serving individuals with an ICF/IID Level of Care (LOC) were actually assessed by the county boards of developmental disabilities?
- How will the state validate the survey results of existing non-residential settings providing adult day services serving individuals with an ICF/IID LOC?
- How will the state ensure that new providers will also be in compliance?

**Outcomes of site-specific assessments.** Additional information is needed with regard to the outcomes of the completed assessments, including the provider self-assessments and participant experience assessments.

- The STP should include information on the outcomes of site-specific assessments by setting type. CMS would also like to understand the information the state used from the provider self-assessments (e.g. variables used to assess compliance and aggregated results) to determine the status of settings.
- Once the state has completed the site-specific assessments (including on-site assessments), the state must update the STP with a description of the results by setting type so the public can comment on the state's determinations.

### **Ongoing Monitoring:**

For all setting types, CMS would also like more detail regarding ongoing monitoring and provider compliance reviews such as:

- The components of the monitoring process, including how the community surveys can be tied to specific settings and what action will be taken based on the findings.
- Whether the state intends to use state licensure entities to ensure settings remain in compliance after the end of the transition period.

### **Remedial Actions:**

**Systemic remediation.** The state's systemic remediation strategies are presented in a Systems Remediation Grid for the ICF/IID Level of Care (LOC) waiver settings and for the nursing facility (NF) LOC waiver settings. The Grids "describe the impact of the federal regulation on applicable State statutes, administrative rules, administrative and operational policies" and identify the regulation, remediation required, action steps, and timeline.

**Setting remediation.** Setting remediation strategies are presented in a Settings Remediation Grid for the ICF/IID LOC settings and for the NF-LOC settings. The Grids identify the regulation, remediation required, action steps, and timeline. Providers will develop remediation strategies to come into compliance. However, at this point there is little detail as to what these remediation strategies will entail.

Please provide additional detail under the ICF/IID LOC Adult Day Waivers Service Settings for two remediation and relocation activities listed to be completed "By March 2024". These dates appear to indicate the state's plan for zero conflict of interest for this service. This information should not be included in the STP but should be reflected in the appropriate waiver(s). Please remove this reference. If this is an incorrect understanding by CMS, please provide information to clarify. CMS notes that the transition activities for settings should not exceed March 17, 2019.

The state indicates they will be using data from Quality Reviews such as the National Core Indicators. The state must demonstrate how these Reviews can be cross walked to specific setting locations.

### **Relocation:**

The remediation strategies reference relocation in Appendices 2 and 4 at a high level as part of the processes for both residential and non-residential settings in the ICF/IID and NF-LOC waivers for settings that cannot comply with the HCBS characteristics, even with modifications. Please provide more detail regarding the relocation processes to include reasonable notice, assuring critical services are in place, and timeframes for planning these activities to ensure the effective transition by March 2019.

### **Heightened Scrutiny:**

The state should clearly lay out its process for identifying settings that are presumed to have institutional characteristics. 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 these settings, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved to either 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.

CMS is concerned that the state's assessment plan will not be completed until sometime in 2017. We would urge the state to consider any timeline efficiencies that will provide them and the stakeholders with information regarding the status of settings more expeditiously. 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 will need to revise and resubmit its STP, which may necessitate the STP being re-posted for public. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. At that time the state will be given a timeframe within which to submit the updated STP addressing the concerns enumerated in this letter. In the meantime, please contact Lynell Sanderson at 410-786-2050 or at [Lynell.Sanderson@cms.hhs.gov](mailto:Lynell.Sanderson@cms.hhs.gov) the CMS CO analysts [taking the lead on the STP](#) with any questions.

Sincerely,

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