

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

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September 24, 2015

Garth Splinter, MD  
Medicaid Director  
State of Oklahoma, Oklahoma Health Care Authority  
4345 N. Lincoln Blvd.  
Oklahoma City, OK 73105

Dear Dr. Splinter,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Oklahoma's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community based settings requirements. Oklahoma submitted its STP to CMS on May 14, 2015. CMS is requesting additional detail on several areas of Oklahoma's STP including settings types, assessments, ongoing monitoring, remedial actions and heightened scrutiny. These items are summarized below.

### **Settings:**

The STP included a section titled "Home and Community-Based Settings Assessment Results" which consisted of a listing of *services* for each waiver on pp. 3-23 of the STP. These matrices did not clearly specify the setting types for each of the eight 1915(c) waivers. Please include information about the specific *setting types* impacted by the new federal requirements for each waiver.

### **Systemic Assessments:**

- The state indicated on p. 2 of the STP that it reviewed Oklahoma Administrative Code, licensing rules and regulations and other policy materials. Please include a detailed crosswalk of the rules, regulations, licenses, and policies reviewed for each of the eight waivers and how they comport with each settings criterion in the federal regulation. Specifically, which components/sections of the state's rules and regulations comply, do not comply or remain silent on the qualities required in the federal regulation.
- The STP stated "The State reviewed Oklahoma Administrative Code, licensing rules and regulations and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements. For those settings which are out of compliance, the state will utilize site visits, provider surveys, and provider education training to ensure policy and manuals are in compliance with the HCBS Final Rule." Please clarify how the state intends to update the rules and regulations to bring them into compliance and how they relate to the policy and manuals referenced.

### **Site-specific Assessments:**

- Please include relevant details about the provider survey processes discussed in the STP that were conducted between August 2014 and March 2015.
- Please identify how the state addressed providers who did not comply with the survey.

- Please provide a detailed explanation of the state’s objectives and methodologies for provider surveys and/or site-specific assessments that includes sampling methodology and validity checks.
- Please provide the beginning and ending timeframes and key milestones for completing the site-specific assessments. In regard to the “Data SWTP 2015” document, please clarify whether the information in the worksheets was intended to communicate the results of the provider surveys and whether this information was available for public comment along with the STP.
- The STP indicated that “With applicable changes, HCBS settings will fully comply with CMS regulations. The state utilized a threshold of 85%, as it is the threshold from CMS as guidance for the quality assurance system”. All settings must comply with the regulation; therefore the threshold must be 100% compliance. Please describe how this threshold will be met.
- Please identify the state’s best estimate of the number of settings that fully comply with the federal regulation, do not comply but could with modifications, cannot comply, or are presumptively institutional in nature.
- It was noted in the state’s public comment responses that the state will utilize National Core Indicator (NCI) data to conduct future beneficiary and provider assessments. Please be advised that the use of NCI data will need to be linked to specific sites in order for it to be valid. Please clarify how the state will link the NCI data to specific sites.

**Monitoring:**

The "Data SWTP 2015" worksheet indicated that "The state will continue on an annual basis to review NCI data, conduct phone surveys, and periodic compliance site visits." Please provide more details on how this process will ensure ongoing compliance. In general, the state should provide more detail on the state’s ongoing oversight and monitoring activities and timelines for ensuring continued compliance.

**Remedial Actions:**

- When developing the detailed crosswalk of the rules, regulations and policies, and related outcomes of the systemic assessment mentioned above, please provide information on the state’s systemic remediation activities that include milestones and monitoring processes. The remediation activities for the provider contracts and educational materials should also include beginning and ending timeframes.
- The STP indicated that with applicable changes, all HCBS settings will fully comply. As noted above, the state needs to use a threshold of 100% for settings compliance.
- The “Data SWTP 2015” document included statements that “changes are needed...” for many of the items in the “Areas of Remediation” column. Please provide more information about the provider/site-specific remediation activities, including milestones and timelines for completing these activities.

**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 either compliant settings or other funding streams.

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.

**Relocation of Beneficiaries:**

The STP did not provide any information on plans to relocate beneficiaries. As noted above, the state's presumption that an 85% compliance threshold is acceptable is not accurate. In light of this clarification, the state may need to re-examine its relocation needs and develop a detailed relocation plan. The relocation plan should include assurances for providing reasonable notice and due process to the beneficiaries, relocation timeframes and an estimate of the number of affected individuals and settings. The STP should describe how any potentially affected beneficiaries will receive all the information and support they need to make informed choices of alternate settings if their current setting cannot be made compliant, and the assurance that all the services and supports they need will be in place at the time of relocation.

CMS requests that the state submit a revised STP no later than 75 days from the follow up telephone call based on this feedback letter. That STP must address CMS concerns and questions regarding the details of the STP highlighted in this letter. The revised version of the STP will need to be posted for at least 30 days for public comment prior to being submitted to CMS.

CMS would like to have a call with the state to review these concerns and answer any questions the state may have. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Sara Rhoades, the CMS Central Office Analyst taking the lead on this STP, at (410)786-4484 or at [sara.rhoades@cms.hhs.gov](mailto:sara.rhoades@cms.hhs.gov), with any questions.

Sincerely,

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

cc. B. Brooks