

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

August 20, 2015

Leslie Clement
Acting Medicaid Director
State of Oregon, Oregon Health Authority
500 Summer Street, NE E49
Salem, OR 97301

Dear Ms. Clement,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Oregon's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Oregon initially submitted its STP to CMS on October 13, 2014 and revised and resubmitted it on April 24, 2015. CMS notes areas where the STP needs more detail on identifying settings, the systemic assessment process, monitoring and oversight, heightened scrutiny and some of the corresponding timelines. The concerns that need to be addressed are summarized below.

Settings:

- The list of settings in Appendix C did not include Employment Services which are provided under the 1915(c) waiver. Please clarify why these settings covered under the 1915(c) waiver were not included in the STP.
- The state clearly identifies settings that correspond to the 1915(i) and 1915(k) state plan benefits. CMS requests the state also add settings that correspond to the 1915(c) waiver (see note above) as well as the number of sites within each setting type and an estimate of the number of beneficiaries in each setting.
- Please verify that the services delivered under the Behavioral, Medically Fragile, and Medically Involved Children waivers are all delivered in the individual's or family's own home and that these beneficiaries have full access to the community.

Systemic Assessments:

- **Global Scorecard:** The Global Scorecard was helpful. However, it should include regulatory compliance for non-residential settings. The Scorecard should be revised to use the same settings identified in Appendix C of the STP. Please clarify which Oregon rules correspond

to the federal regulations in regard to each of the settings. Additionally, the state notes the Scorecard was shared with stakeholders at a meeting and posted online. Please describe how the public has full access to versions of the scorecard, non-electronic as well as electronic.

- **Description of Setting Compliance:** CMS requests that information from the Global Scorecard about the regulatory compliance of each setting type (e.g. Developmental Disabilities Group Homes or Aging and Physical Disability Adult Foster Homes) is included within the narrative of the STP so readers may easily ascertain which settings:
 - fully comply with the federal requirements;
 - do not comply with the federal requirements and will require modifications;
 - cannot meet the federal requirements and require removal from the program and/or relocation of individuals;
 - are presumed to have the characteristics of an institution, but for which the state will provide justification that these settings do not have the characteristics of an institution and do have the qualities of home and community-based settings.

Site Assessment, Monitoring and Oversight:

- **Individual Experience Assessments (IEA):** Please verify a statistically significant sample of IEAs will be conducted as part of the site assessment and monitoring processes. Additionally, it would be helpful if the state noted whether IEAs can be tracked back to the specific setting of the individual. If they cannot, please explain how the evaluation of the IEA will inform the state about whether a setting is or is not compliant.
- **Provider Assessments:** While the state describes in the narrative how it will assess providers' adherence to the adaptation plans, it would help clarify the timeline if the state added these verification steps to the Key Action Item Timeline. Currently the timeline describes the adaptation plan approval process and not the more significant process of transitioning sites into compliance. Additionally, please clarify what information will be included in the provider scorecard and verify it will be comprehensive in order for the public to provide meaningful comment. Please explain why the timeframe for the scorecard and subsequent public comment is so close to the final deadline for compliance. Is this a process that could be initiated sooner to allow for sufficient and timely remediation efforts?
- **Quality Systems:** The state notes it will develop a quality management system (May 2015 – May 2018). May of 2018 leaves the state with less than a year to use this system as a tool for transition. Please clarify if the state intends to use the quality management system to facilitate compliance during the transition period or to monitor ongoing compliance after the transition period ends. Please ensure the state dialogues with CMS to determine if changes to the current monitoring system will necessitate amendments to the waivers and state plan benefits.

Relocation of Beneficiaries

Please provide a clear timeline for notification and relocation of beneficiaries after determining that a setting is unable to come into compliance. Please ensure the subsequent versions of the STP include an estimate of the number of beneficiaries who may require relocation. The STP should outline that individuals are given timely notice and due process, and that these individuals are given the

opportunity, information and supports to make an informed choice about alternate settings, and that critical services and supports are in place at the time of relocation.

Heightened Scrutiny:

The state included a process for heightened scrutiny within the STP. However, CMS will not approve any settings without the provision of information to evaluate under the heightened scrutiny process. Please amend this portion of the STP so it clearly delineates the 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, 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 regulations, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved either to compliant settings or to other 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 has questions about restrictions of residents in Adult Foster Homes for those with mental illness. Please provide evidence of their compliance with federal requirements for home and community-based settings and whether they need to be included in a request for heightened scrutiny.

The state has indicated it will submit an amended STP to CMS by July 2016 and will submit its heightened scrutiny request by September 2016. CMS requests the state align its submission dates for the heightened scrutiny request with the July 2016 date of the amended STP so it will not duplicate efforts for providing public notice and obtaining public comment. This will require the state to complete a full public notice and input process, including public comment on the amended STP and supporting documents, (e.g. global scorecard) prior to submission to CMS.

Finally, the state refers to modification of its person-centered service transition plan (p. 23). CMS notes there cannot be a transition period for the service planning processes; this should already be in compliance.

CMS would like to have a call with the state to discuss these questions, and to answer any questions the state may have. The state should submit a revised STP to CMS within 30 days from the receipt of this letter. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Daphne Hicks at 214-767-6471 or at Daphne.Hicks@cms.hhs.gov, the CMS Central Office analyst taking the lead on the STP, with any questions.

Sincerely,

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

cc: David Meacham, ARA