

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

September 16, 2015

Leesa M. Allen
Deputy Secretary
Department of Human Services
515 Health & Welfare Building
Office of Medical Assistance Programs
Harrisburg, PA 17120

Dear Mr. Dallas,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Pennsylvania's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Pennsylvania submitted its STP to CMS on April 1, 2015. CMS is requesting additional detail regarding the state's assessment processes, outcomes, remedial action processes and monitoring. In addition, the overall timing of activities described in the STP needs to be clarified and the relationship of the various activities to one another needs to be better delineated. These items are summarized below.

Settings:

Please include all residential and non-residential settings that are covered by 1915(c) waivers in the STP.

Waiver Specific Transition Plans:

As part of CMS' review of Pennsylvania's STP, CMS reviewed the state's three approved waiver-specific transition plans: the Attendant Care Waiver transition plan, Independence Waiver transition plan, and Aging Waiver transition plan. These plans all contained action items and details on the state's assessments, remedial actions, and monitoring that did not appear in the STP. Moreover, two of these waiver-specific transition plans included important details about the state's on-site assessments and validation of provider self-assessments. These details did not appear in the STP. The timeline of activities also differed between the STP and the waiver-specific transition plans. Please align all of the information from the different operating agencies and the different waiver-specific transition plans and add to Pennsylvania's STP.

Systemic Assessment:

- Pennsylvania's STP briefly outlines an internal assessment through which the state intends to review its standards, regulations, policies, requirements, policy documents, waiver service definitions, provider enrollment requirements, and licensing requirements. However, details about this process are not provided. The methodology the state will use to review the state standards and regulations is not described and the sequencing of the review is unclear in the current STP. The systemic assessment should cross-walk the specific state provisions with each of the relevant portions of the federal regulations. For each requirement, please indicate which regulations, policies and procedures fall into one of the following three categories: conflicts with federal settings requirements (if any), remains silent on the specific qualities required and fully complies with the requirements in the federal regulation.
- **Settings Estimates:** Pennsylvania indicates that it will determine through its assessments the compliance status of each setting. After completing the assessment, the state should update its STP to describe in detail the methods and outcomes of the systemic assessment, including an estimated or actual number of settings (as opposed to providers) that fall into each of the four compliance categories the state denotes in the STP. These compliance categories are the number of settings that fully comply, do not yet fully comply, cannot comply, or presumptively have institutional qualities.

Site-Specific Assessment:

- Pennsylvania reports it has a provider self-assessment tool that will be used by providers to determine compliance. The state also indicates that based on an analysis of this and other data; it will contact providers and may conduct on-site visits to locations that appear to be non-compliant. The site-specific assessment activities are scheduled to be completed by October 2015, but according to the STP, the state does not plan to analyze and report on the results of the assessments until August 2018. Additionally, the state does not plan to identify issues created by non-compliant providers until April 2018, which may not allow enough time for remediation activities and potential beneficiary relocation. The following details of the assessment process need to be included in a revised STP:
 - Whether or not all providers will be required to complete the self-assessment for each setting they operate and how the state will respond if a provider does not complete the self-assessment.
 - A description of the state's formal validity check of the self-assessment data. The STP suggests that only settings that appear to be non-compliant based on self-assessment results will receive a site visit. However, without a validity check for providers that attest to being compliant, the state cannot know if the self-assessment is accurate.
 - Finally, the state's timeline for the conclusion of the assessment process and beginning remediation efforts is well into 2018. This may not leave enough time to ensure that

all individuals are receiving services in fully compliant settings by March 2019. Please consider a significant acceleration of this timeline in the revised STP.

Monitoring and Oversight:

- The STP includes several action items related to the state's proposed oversight and monitoring. These action items describe a process for ensuring continued compliance including: using the state's established quality improvement process, developing and enhancing participant monitoring processes and developing a tracking tool for provider compliance. However, the state's action items related to monitoring have end dates in 2016 and 2017, and even the action item entitled "on-going compliance" concludes in March 2019. Therefore, it is difficult to determine what ongoing monitoring strategies will be permanently integrated into the state's systems and processes. The STP should clarify how it will use the existing quality improvement and monitoring processes to establish ongoing oversight of compliance with the home and community-based settings requirements beyond the transition period.
- Please note that all monitoring activities involving participant surveys or input must link the results to a specific site where the participant's services were rendered. Please describe how this will be done.

Remedial Strategies:

Pennsylvania has proposed that providers with settings that are out of compliance must complete a Corrective Action Plan (CAP) or Plan of Correction (POC). The STP lacks detail regarding how the CAP/POC will be developed, what must be included, and how the state will monitor provider implementation. In addition, the STP does not state whether these plans will be developed at the provider or individual site level. Finally, the timelines for remedial actions described in the STP do not assure CMS that all settings will be fully compliant March 2019. CMS requests that the following details on the remediation plan be included in the revised STP:

- Specify who will be developing the CAP/POC; provide a date by which all of the CAPs/POCs should be submitted and a date by which they will be approved.
- Specify whether providers will need a CAP/POC for each of their settings that are not fully compliant, or whether the state will do all remediation at the provider level rather than the individual setting level.
- Detail examples of specific remedial actions that could be included in the CAPs/POCs.
- Clarify the process regarding the site visits to verify an approved CAP/POC, who will be conducting the site visits, how the state will determine whether they are necessary, and whether they are part of the state's current system for quality improvement.

Relocation Plan:

As discussed above, Pennsylvania's STP has allowed three years for the analysis and reporting of the results of its site-specific assessments, concluding in March 2018. As a result, the state has allowed only one year to relocate beneficiaries from any settings that cannot be brought into compliance. This timeline does not assure the state has allowed enough time for beneficiaries to transition out of non-

compliant settings. CMS strongly recommends an acceleration of this timeline. The STP should also include an estimate of the number of beneficiaries impacted. The STP should describe how any beneficiaries facing relocation will receive reasonable notice and due process, be given the information and support to make informed choices about alternate settings, and be assured that all needed services and supports are in place at the time of relocation.

Heightened Scrutiny:

Pennsylvania has indicated the state intends to determine which settings are "presumed non-compliant for which evidence may be presented for heightened scrutiny review". Please clearly lay out the state 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 into compliant settings or into 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 concerns and to answer any questions the state may have. At that time we will also discuss a date for the submission of the response to these comments and the revisions to the STP. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Michele MacKenzie, the CMS Central Office analyst taking the lead on this STP, at 410-786-5929 or at Michele.MacKenzie@cms.hhs.gov with any questions related to this letter.

Sincerely,

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

cc: F. McCullough, ARA