

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

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November 5, 2015

Deidre Gifford  
Medicaid Director  
Executive Office, Health and Human Services  
600 New London Avenue  
Cranston, RI 02920

Dear Ms. Gifford,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Rhode Island's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Rhode Island submitted its STP to CMS on June 24, 2015. CMS requests additional detail regarding the waivers and settings included in the STP, systemic and site-specific assessments, monitoring, remediation, and relocation of beneficiaries. These concerns and related questions for the state are summarized below.

### **Waivers and Settings Included in the STP:**

Rhode Island's STP lists five setting types: 1) Residential Settings, 2) Shared Living Settings, 3) Day/Employment Programs, 4) Assisted Living Sites; and 5) Adult Day Programs. Please confirm that this is an exhaustive list of the home and community-based settings covered by the 1115 demonstration waiver.

### **Systemic Assessment:**

- The STP does not include a detailed crosswalk of the federal requirements against the state's rules, regulations, licenses, and policies that Rhode Island is currently reviewing as part of its systemic assessment. CMS requests that the STP identify the specific aspect of each of the state's documents found to be compliant, non-compliant or silent with respect to the relevant sections of the federal settings requirements, as well as the changes that must be made to them to bring them into compliance.
- As part of the systemic assessment and the overall STP, CMS suggests that Rhode Island discuss the Department of Justice (DOJ) consent decree regarding the state's employment settings and provide details on how it will coordinate the two sets of requirements.

### **Site-Specific Assessments:**

- Rhode Island describes the process the state used to complete the initial site-specific assessment. In order to pilot the assessment tool and conduct a preliminary review, the state assessed a 10 percent sample of sites across all five settings types. However, the state does not provide an estimate of the total number of sites for each of the settings types and whether they are compliant or not. Please provide this information.

- The state indicates that following this initial assessment, it will complete its assessment by 2016 either by looking at all sites or by using a statistically valid sample. Please clarify in the STP whether the state will use a different sample or include the same settings sampled in the initial assessment if it chooses to use a sample again. Moreover, please describe how the state will validate the results of either an assessment of all sites or the second sample.
- CMS is aware that Rhode Island's employment programs are currently under a DOJ consent decree. Given this, CMS requests an explanation of why the state feels that simply assessing a sample of these sites will be adequate to ensure compliance with settings requirements.

### **Monitoring of Settings:**

Rhode Island describes an ongoing monitoring process starting in 2015 and ending in 2019, the year the state must be in full compliance. The state's monitoring strategy includes proposed training of all providers on the requirements, the creation of an inter-departmental team to monitor compliance and work with interns to do ongoing studies of compliance. CMS wants to recognize the state for this innovative approach, however, it is important to note that the monitoring process must ensure that settings maintain the home and community-based qualities on an ongoing basis.

The monitoring process must indicate how the state will ensure, after the transition period ends, that settings continue to be in compliance with the regulation. Please describe in the STP how the state will ensure ongoing monitoring, including the involvement of specific agencies and departments. CMS suggests that Rhode Island also consider including its licensing entities as part of the monitoring process to help standardize the processes beyond the transition period.

### **Remedial Actions:**

- The STP language regarding state standards and regulations remediation had conflicting deadlines. On page 7, the STP indicated that remediation would be complete in January 2016, however some activities are planned to occur afterwards. Additionally, the state indicates that some legislative changes may occur as late as January 2019, which only allows two months for providers to make the necessary changes to achieve compliance. Please clarify the timeframes for these activities, and indicate if there are efforts underway to secure legislative updates earlier and what action the state will take to ensure compliance in the settings prior to the legislative updates.
- While the milestones and timeframes for the site-specific remediation are reasonable, CMS has concerns about the Day/Employment programs under the DOJ consent decree. CMS requests that Rhode Island provide additional details on how remediation activities will be coordinated between the STP and the consent decree.

### **Relocation of Beneficiaries:**

- Rhode Island's STP states that it will identify any remaining settings that are out of compliance by September 2018. While the state has allowed six months for relocation of beneficiaries out of non-compliant settings, please clarify the process and the timeline that provides ample time for the provision of reasonable notice and the information and support

for beneficiaries to choose alternate settings with all needed services and supports in place at the time of relocation.

- Please also include the estimated number of beneficiaries impacted in the revised STP.
- Given the DOJ consent decree and considering the number of individuals now transitioning to integrated settings, please describe how the state will ensure that they are afforded the relocation protections described above.

**Heightened Scrutiny:**

Please describe the process for identifying settings that are presumed to have the qualities of an institution. 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 matching the scenarios described in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved.

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 home and community-based services from the broader community of individuals not receiving Medicaid home and community-based services.

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 should resubmit its revised STP, in accordance with the questions and concerns above, within 30 days of receipt of this letter. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Willie Tompkins in the CMS Central Office at 410-786-1283 or by email at [Willie.Tompkins@cms.hhs.gov](mailto:Willie.Tompkins@cms.hhs.gov), with any questions related to this letter.

Sincerely,

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

cc: Raymond Hurd, Regional Administrator for New York/Boston