

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Baltimore, Maryland 21244-1850



Disabled & Elderly Health Programs Group

November 3, 2016

Christian Soura
State Medicaid Director
South Carolina Department of Health and Human Services
PO Box 8206
Columbia, SC 29202

Dear Mr. Soura:

I am writing to inform you that CMS is granting the state of South Carolina **initial approval** of its Statewide Transition Plan (STP) to bring settings into compliance with the federal home and community-based services (HCBS) regulations found at 42 CFR Section 441.301(c)(4)(5) and Section 441.710(a)(1)(2). Approval is granted because the state completed its systemic assessment, included the outcomes of this assessment in the STP, and clearly outlined remediation strategies to rectify issues that the systemic assessment uncovered, such as legislative changes and changes to policy documents, and is actively working on those remediation strategies. Additionally, the state submitted the August 2016 draft for a 30-day public comment period, made sure information regarding the public comment period was widely disseminated, and responded to and summarized the comments in the STP submitted to CMS.

After reviewing the August 2016 draft submitted by the state, CMS provided additional feedback on September 20th and again on October 31st requesting that the state make several technical corrections in order to receive initial approval. These changes did not necessitate another public comment period. The state subsequently addressed all issues, and resubmitted an updated version on November 3, 2016. These changes are summarized in Attachment I of this letter. The state's responsiveness in addressing CMS' remaining concerns related to the state's systemic assessment and remediation expedited the initial approval of its STP. CMS also completed a spot-check of 50% of the state's systemic assessment for accuracy. Should any state standards be identified in the future as being in violation of the federal HCBS settings rule, the state will be required to take additional steps to remediate the areas of non-compliance.

In order to receive final approval of South Carolina's STP, the state will need to submit an updated STP that includes the following updated components:

- Complete a thorough, comprehensive site-specific assessment of all HCBS settings, implement necessary strategies for validating the assessment results, and include the outcomes of this assessment within the STP;

- Draft remediation strategies and a corresponding timeline that will resolve issues that the site-specific settings assessment process and subsequent validation strategies uncovered by the end of the HCBS rule transition period (March 17, 2019);
- Outline a detailed plan for identifying settings that are presumed to have institutional characteristics including qualities that isolate HCBS beneficiaries, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- Develop a process for communicating with beneficiaries that are currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings rule by March 17, 2019; and
- Establish ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

While the state of South Carolina has made much progress toward completing each of these remaining components, Attachment II to this letter outlines additional changes that must be resolved to CMS' satisfaction before the state can receive final approval of its STP. Upon review of this detailed feedback, CMS requests that the state please contact Patricia Helphenstine at 410-786-5900 or Patricia.Helphenstine1@cms.hhs.gov or Michelle Beasley at 312-353-3746 or Michelle.Beasley@cms.hhs.gov at your earliest convenience to confirm the date that South Carolina plans to resubmit an updated STP for CMS review and consideration of final approval.

It is important to note that CMS' initial or final approval of a STP solely addresses the state's compliance with the applicable Medicaid authorities. CMS' approval does not address the state's independent and separate obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act or the Supreme Court's *Olmstead* decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the *Olmstead* decision is available at http://www.ada.gov/olmstead/q&a_olmstead.htm.

I want to personally thank the state for its efforts thus far on the HCBS statewide transition plan. CMS appreciates the state's completion of the systemic review and corresponding remediation plan with fidelity, and looks forward to the next iteration of the STP that addresses the remaining technical feedback provided in the attachment.

Sincerely,

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

ATTACHMENT I.

SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF SOUTH CAROLINA TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 11-3-16

- **Identification of Compliance Levels for State Standards:** CMS requested that South Carolina provide excerpts and/or summaries from each state standard in the systemic assessment crosswalk that illustrates the compliance status of each standard with the federal HCBS settings rule (i.e., fully comply, do not comply, or silent).

State's Response: The state has provided a revised STP that provides the language (or a summary of the language) from each state standard that illustrates its compliance status with respect to each federal requirement.

- **Additional Details Regarding State's Systemic Remediation:** CMS requested that South Carolina provide more detail to the descriptions of the changes to be made to its state standards to bring them into full compliance with the federal requirements in the STP. In instances when the reported regulations and policies are non-compliant, partially compliant, or silent with regard to the federal HCBS requirements, the systemic assessment did not fully describe how the current language will be remediated in the new regulations and policies to address the requirement. CMS asked the state to include proposed draft language for each instance. For example, CMS asked the state to indicate that the South Carolina Department of Disabilities and Special Needs (SCDDSN) Residential Habilitation Standards will ensure that no waiver providers are exempt from complying with the Americans with Disabilities Act (ADA). CMS also asked the state to include language showing how they remediated areas of non-compliance for Community Residential Care Facilities (CRCFs) related to resident access to lockable doors, and the development of house rules that may be more restrictive than the federal settings requirements.

State's Response: In response to CMS' request, South Carolina added the language that the state expects to use to modify existing state standards or that already exists in state standards for compliance with the federal requirements throughout the systemic assessment. For example, the state has indicated that SCDDSN Residential Habilitation Standards and SCDDSN Directive 700-02-DD require all settings to comply with the federal ADA regulations. Additionally, the state has clarified that CRCFs are not allowed to implement house rules that are more restrictive than the federal settings requirements. Residents of CRCFs will also have access to lockable doors per SCDDSN Residential Habilitation Standards. The state has also indicated that CRCFs have their own house transportation which is used by beneficiaries if they do not have their own vehicle. These vehicles are used in the same manner as any other private residence with private transportation, (i.e., to run errands, attend various appointments, participate in community events, go out to eat, etc.)

- **Provider Owned and Controlled Non-Residential Settings:** CMS asked the state to ensure individuals experience these settings in the same manner as individuals who do not receive Medicaid HCBS in provider-owned and controlled non-residential settings.

State's Response: In response to CMS' request, South Carolina included remediation language indicating that individuals receiving HCBS in non-residential settings should experience all provider owned controlled settings in the same manner as individuals that do not receive Medicaid HCBS in these provider-owned and controlled settings.

- **Coercion and Restraint:** CMS asked the state to clarify which codes and standards apply to which settings for the federal requirement that individuals are free from coercion and restraints in Chart 2. CMS also requested the state include language in the systemic assessment crosswalk indicating that individuals are free from coercion for Pediatric Medical Day Care settings. Additionally, CMS asked the state to provide citations and language from state standards indicating individuals have the right to freedom from coercion and restraint and that any use of restraints or restrictive interventions will be documented through the person-centered planning process.

State's Response: The state has indicated in the systemic assessment that they will update SCDDSN Directive 600-05-DD and the SCDDSN Day standards to include the requirements that individuals have freedom from coercion and restraints. These changes will ensure that individuals have freedom from coercion and restraints and the rights to privacy, dignity and respect in all applicable settings. Additionally, the state indicated that state code section 44-26-160 applies to all settings and participants served by SCDDSN, which states that any use of restraints or restrictive interventions will be documented through the person-centered planning process. The systemic assessment also indicates that each Pediatric Medical Day Care setting must have a statement on behavior management that includes the prohibition of emotional and physical abuse, of the use of threats and of chemical or physical restraint (SC Code Regs 114-506 (B)).

- **Personal Resources and Employment in Competitive Integrated Settings:** CMS asked the state to provide language from state standards demonstrating that all HCBS settings must comply with the federal requirements that individuals have control over their personal resources and have access to employment in competitive integrated settings.
 - CMS asked the state to provide language clarifying how adults in day care settings have access to employment in competitive integrated settings and control over personal resources. Beneficiaries who wish to be supported in pursuing employment must have access to such supports via HCBS setting offerings, though it is recognized that many aging beneficiaries do not wish to seek employment. Non-residential settings serving aging beneficiaries are still expected to serve as a conduit between the HCBS beneficiaries and resources in the broader community that can support individual preferences related to volunteerism and employment. These non-residential HCBS settings are not expected to be providers of employment services, but rather support individual HCBS beneficiaries identify resources that may help facilitate volunteer or work

opportunities in the broader community should the individual express an interest or desire to pursue volunteerism or paid work.

- The STP contains the following language from SC Code Ann. § 44-20-490: “When the department determines that a client may benefit from being placed in an employment situation, the department shall regulate the terms and conditions of employment, shall supervise persons with intellectual disability, a related disability, head injury, or spinal cord injury so employed, and may assist the client in the management of monies earned through employment to the end that the best interests of the client are served.” CMS requested that the state include an additional remediation strategy clarifying that this provision does not mean that the state/provider must serve as the employer of record or direct supervisor of individuals in their employment situations as a condition for HCBS beneficiaries to receive supported employment services.

State’s Response: For all settings in the systemic assessment crosswalk, the state has provided language showing how the current state standards allow individuals to have control over their personal resources and can seek employment in competitive integrated settings. For Day services settings and Residential Habilitation settings, SCDDSN Directive 700-07-DD indicates that individual employment services is the first and preferred Day Service option to be offered to working-age youth and adults, and state code section 44-26-90 and SCDDSN Day Standard 14 indicate that individuals can control their own personal resources.

- The STP also indicates that Adult Day Health Centers must provide individuals assistance with community and personal referral activities if they indicate a preference for employment. The person-centered plan would also be updated to include adjustments to facilitate an individual seeking employment.
 - The STP also clarifies that SCDDSN directive 510-01-DD Supervision of People Receiving Services states that, “People should live and work in the most natural and normal environments that support and respect their dignity and rights. Any support system that enables the person to be in those environments must be structured to manage the risks while facilitating self-determination, personal choice and responsibility [...]. Supervision that is more restrictive than warranted is a violation of the person’s right to freedom of movement.” However, the State will seek to further define and explain the meaning of “supervision” as it applies to employment through sub-regulatory guidance which will clarify that individuals are not mandated to have the provider serve as their employer of record or supervisor. This will be accomplished by Jan. 31, 2017.
- **Provider Owned and Controlled Residential Settings:** CMS asked the state to include 42 CFR 441.301(c)(4)(vi)(F) in the systemic assessment crosswalk, which pertains to the process the state must follow in order to modify any of the conditions under the federal settings rule that apply to provider owned and controlled residential settings. CMS also asked the state to ensure the remedial language for Residential Habilitation Service settings always allows individuals to have choice regarding services and supports, and who provides them. The state also needed to include remedial language indicating that only appropriate staff have access to keys for Residential Habilitation Services settings.

The state's remedial language also should indicate that individuals have access to visitors and food at all times for Residential Habilitation Services settings.

State's Response: The state included 42 CFR 441.301(c)(4)(vi)(F) in the systemic assessment, and indicated they will remediate this issue in policy. The state has documented where the SCDDSN Residential Habilitation Standards clearly indicate that individuals preferences/wishes/desires for how, where, and with whom they live are learned from the person prior to entry into a residential setting and continuously. The SCDDSN Residential Habilitation Standards also indicate that individuals have access to visitors and food at all times, and only appropriate staff have access to keys.

- **Citations:** CMS asked the state to ensure that the systemic assessment contains citations for each instance where the state references a state standard. Specifically, CMS asked the state to provide citations for Adult Day Health, Pediatric Medical Day Care and Day Service Facilities showing compliance with the federal requirement that the setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options must be identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. Additionally, the state was asked to provide citations showing individuals have the right to privacy for Day Services and Residential Habilitation Services settings. The state also needed to provide the correct citation for Adult Day Health Care for the federal requirement that the setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. Citations were also needed for Adult Day Health Care and Pediatric Medical Day Care settings for the requirement that individuals have choice regarding services and supports, and who provides them.

State's Response: The state has provided the appropriate citations throughout the systemic assessment for each of the federal requirements listed above. Please see pages 17-29 of the STP for each state standard's citation.

- **Assuring all HCBS Beneficiaries Reside in Settings that Meet the Federal HCBS Requirements:** Section 4.1.5 of the STP indicates that there are other residential settings in South Carolina that may be utilized by HCBS waiver participants as their primary residence that are also utilized by individuals not receiving Medicaid HCBS in the community. The STP also indicates that waiver participants are not receiving HCBS in these settings. These settings also need to comply with the settings rule, as individuals receiving non-residential HCBS in the community must also live in settings complying with the regulatory requirements. The state was asked to include the state standards that apply to these settings in the systemic assessment crosswalk and indicate their compliance level with the federal requirements. The state was also asked to include any remediation plans the state has for the state standards applicable to these settings.

State's Response: The state has indicated that these other residential settings consist of non-SCDDSN operated CRCFs, which do not have the same level of protections and responsibilities to serve clients in accordance with the HCBS rule. The state has included language in the narrative of the STP describing how they will ensure waiver beneficiaries are truly living in home and community-based settings, and not settings with institutional qualities, SCDHHS is currently drafting a new policy which would designate these beneficiaries as "Tier 3 CRCF clients" (page 15). A Tier 3 client is a waiver beneficiary who resides in a non-SCDDSN operated CRCF. To serve a Tier 3 client, providers must comply with all of the requirements of 42 CFR 441.301(c)(4)(i-vi) and would be compensated at a higher rate. This new SCDHHS program and policy development is expected to be finalized by June 30, 2017 with an expected implementation date of June 30, 2018. The state also provided specific details indicating that clients will have access to lockable doors, transportation, etc. Additionally, the house rules will not be more restrictive than the federal requirements.

ATTACHMENT II.

ADDITIONAL CMS FEEDBACK ON AREAS WHERE IMPROVEMENT IS NEEDED TO RECEIVE FINAL APPROVAL OF THE STATEWIDE TRANSITION PLAN

PLEASE NOTE: It is anticipated that the state will need to go out for public comment once these changes are made and prior to resubmitting to CMS for final approval. The state is requested to provide a timeline and anticipated date for resubmission for final approval as soon as possible.

Site-Specific Assessment & Validation Activities

Please address the following concerns regarding the state's site-specific assessment process within the STP.

- ***Settings Presumed by South Carolina to be Fully Compliant with Federal HCBS Rule:***
Please clearly articulate whether there are any categories of settings that the state is presuming automatically comply with the rule.
 - **Other Residential Homes:** Section 4.1.5 of the STP indicates that there are other residential settings in South Carolina that may be utilized by HCBS waiver participants as their primary residence that are also utilized by individuals not receiving Medicaid HCBS in the community (page 34). The STP also indicates that waiver participants are not receiving HCBS in these settings. CMS would like to remind the state that all residential settings where Medicaid HCBS recipients reside must comport with the federal settings requirements, regardless of whether the HCBS recipients receive services in that particular setting. While the state has indicated plans in its STP for implementing new policy to apply the requirements of the HCBS rule to these location, please explain how the state will assure these settings comply with the federal HCBS rule and provide ongoing monitoring of these settings classified by the state as “other residential homes”. In particular, the Community Residential Care Facilities (CRCFs) are of particular concern and the state should articulate how it plans to work with the SC Department of Health and Environmental Control (SDHEC) to educate providers of CRCFs about the federal HCBS requirements, and then verify these homes actually do comport with the rule.
 - **Individual, Privately-Owned Homes:**
 - The state may make the presumption that privately owned or rented homes and apartments of people living with family members, friends, or roommates meet the home and community-based settings requirements if they are integrated in typical community neighborhoods where people who do not receive home and community-based services also reside. A state will generally not be required to verify this presumption. However, the state must outline what it will do to monitor compliance of this

category of settings with the federal home and community-based settings requirements over time.

- Also, as with all settings, if the setting in question meets any of the scenarios in which there is a presumption of being institutional in nature and the state determines that presumption is overcome, the state should submit to CMS necessary information for CMS to conduct a heightened scrutiny review to determine if the setting overcomes that presumption. In the context of private residences, this is most likely to involve a determination of whether a setting is isolating to individuals receiving home and community-based services (for example, a setting purchased by a group of families solely for their family members with disabilities using home and community-based services).
 - Please note that CMS is concerned by initial findings of the Technical Assistance Collaborative (Appendix I) that suggests that Community Training Homes may be intentionally leasing apartments within the same area of a complex as opposed to dispersing them throughout the complex. It is this type of pattern that the state should be concerned with also with respect to groups of homes that may be purchased separately but co-located in such a way that isolates the beneficiary from the broader community. CMS is pleased the state has invested in geo-mapping in its identification process for settings that need to be flagged for heightened scrutiny, and believes this could be used as a tool for also identifying such potential patterns.
- ***Individuals and Family Members Survey:*** As part of its initial assessment activities, the state implemented both a provider self-assessment process with a corresponding survey of waiver recipients and family members (page 37). CMS requests the state include the following additional information with respect to the corresponding participant survey:
 - Please clarify whether or not all HCBS participants were given the opportunity to complete the survey. If they were, please confirm the survey participation rate across setting categories, as well as additional details for how the state assured optimal participation (informational sessions, outreach activities, education via case managers, etc.). If not all participants were asked to complete the initial survey, please provide additional details regarding the percentage of participants surveyed in each setting and across setting categories, and how the participants were selected to take the survey.
 - Please clarify how family members were selected to complete the survey, and what the process was for surveying them independently of waiver participants.

- Please clarify whether the state collected data on or specified who could help participants complete the survey, and what steps were taken to assure the autonomy and confidentiality of participants while completing the survey.
 - Please explain in further detail how the state used the results of this survey as part of the individual site/setting review and validation procedure. Also, please describe how discrepancies between individual consumer or family survey responses and the data reported from the provider self-assessment will be addressed.
- **Validation Process:** The state has indicated that site visits will be conducted for 100% of non-residential and residential settings. Please describe in more detail the qualifications of the staff who will be conducting onsite visits and the training staff will receive on the federal settings requirements prior to completing the site visits.
 - **Pediatric Medical Day Care:** After initial review, the state determined that the Pediatric Medical Day Care setting is compliant with the HCBS settings requirements (page 40). Please clarify whether providers in this setting received an onsite visit. If not, provide further details on how the state validated the provider's self-assessment survey results.
 - **Group Settings:** As a reminder, all settings that group or cluster individuals for the purposes of receiving HCBS must be assessed by the state for compliance with the rule. This includes all group residential and non-residential settings, including but not limited to prevocational services, group supported employment and group day habilitation activities. CMS requests the state confirm that all of these settings are being included in the state's assessment and remediation strategies.
 - **Reverse Integration Strategies:** CMS is interested in seeing more detail in the STP on what steps the state is taking to assure that settings follow-through in enhancing their approach to service delivery to assure a level of optional integration for beneficiaries on par with individuals not receiving HCBS. As such, CMS requests additional detail from the state as to how it will assure that non-residential settings comply with the various requirements of the HCBS rule, particularly around integration of HCBS beneficiaries to the broader community.
 - As CMS has previously noted, states cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting. Compliance requires a plan to integrate beneficiaries into the broader community. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries in the facility-based setting is not considered by CMS by itself to be

a sufficient strategy for complying with the community integration requirements outlined in the HCBS settings rule.

- Under the rule, with respect to non-residential settings providing day activities, the setting should ensure that individuals have the opportunity to interact with the broader community of non-HCBS recipients and provide opportunities to participate in activities that are not solely designed for people with disabilities or HCBS beneficiaries that are aging but rather for the broader community. Settings cannot comply with the community integration requirements of the rule simply by hiring, recruiting, or inviting individuals, who are not HCBS recipients, into the setting to participate in activities that a non-HCBS individual would normally take part of in a typical community setting.
- CMS encourages South Carolina to provide further detail as to how it will assure non-residential settings implement adequate strategies for adhering to these requirements.

Site-Specific Remedial Actions

Please address the following issues regarding the state's site-specific remedial actions in the STP:

- ***Timeline:*** Please provide a more specific timeline for each remedial action. For example, explain how long after the initial site visits providers will receive written notice about creating a compliance action plan (page 40). Please also confirm the timing for when the state will either approve or disapprove the compliance action plans and when the state will conduct follow-up visits to monitor the settings' implementation of the plans.
- ***Non-Disability Specific Setting Capacity:*** The STP provides limited details as to how the state will sufficiently address the federal requirement that each individual has a choice of and access to a non-disability specific setting. Please provide more specific details about the state's approach to assuring beneficiary access to non-disability specific settings in the provision of residential and non-residential services. This additional information should include how the state is strategically building capacity across the state to assure non-disability specific options.
- ***Ongoing Provider Training:*** The STP indicates that all personnel across HCBS providers must have a minimum 10 hours of training a year, but does not specify what training will be required on an ongoing basis of both new and existing staff. Please provide additional information of any additional training requirements that will be expected by the state around compliance with the federal HCBS rule.
 - ***Non-Residential Setting Training & Technical Assistance:*** The global assessment results for non-residential settings suggests that additional training is needed to assure that providers understand that HCBS beneficiaries must not be limited in experiencing these settings as compared to how non-HCBS individuals

experience the settings. Please provide additional details clarifying the training that providers will receive on this topic.

- ***Residential Setting Training & Technical Assistance:*** The preliminary results from the global assessment, coupled with observations and recommendations outlined by the Technical Assistance Collaborative, suggest that HCBS residential providers in the state need additional training around specific requirements in the federal HCBS rule (for example, allowing visitors, lease agreements, etc.). Please describe how the state will address this issue.

Monitoring of Settings

CMS requests additional details regarding the level of training on the federal HCBS requirements and ongoing technical assistance to be provided to any employees or contract personnel within the state's existing quality assurance infrastructure that will be responsible for the ongoing monitoring of settings for continued compliance with the federal HCBS rule.

Heightened Scrutiny

The state must clearly lay out its 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, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved either to compliant settings or to non-HCBS 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 home and community-based services from the broader community of individuals not receiving Medicaid home and community-based services.

As a reminder to the state, CMS' *Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community* along with several tools and sub-regulatory guidance on this topic are available online at <http://www.medicaid.gov/HCBS>.

- ***Community Residential Care Facilities:*** Please provide more information about the state review of Community Residential Care Facilities. The STP indicates that 12 Community Residential Care Facilities will be subject to state review to establish if they

overcome the institutional presumption (page 39) and also includes a review by the Technical Assistance Collaborative (TAC) of a very small sample of these facilities (Appendix I). However, the STP does not distinguish the 12 facilities that will be subject to this review from the other 34 that the state views as non-compliant with the regulation but likely to comply with modifications (page 39). Please provide clearer distinctions between these two categories. CMS strongly suggests the state consider subjecting all Community Residential Care Facilities to the state review as there are concerns about how these facilities can meet the federal requirements as they are currently operated. CMS is concerned with the TAC's finding that some of these settings were assessed to have institutional-like characteristics, particularly those that were converted from Intermediate Care Facilities. Please explain how the state determined that 34 of these facilities can comply with modifications.

Submission of Heightened Scrutiny Evidentiary Packages: To assist states in developing an evidentiary package in support of each setting submitted to CMS for heightened scrutiny review, please refer to Frequently Asked Questions published by CMS in 2015¹.

Communication with Beneficiaries of Options when a Provider will not be Compliant

CMS requests that the state include additional information about the information and assistance provided to beneficiaries to locate and transition to compliant settings.

- ***Beneficiary Communication Timeline:*** Please provide more detail about the steps the state will take to communicate with beneficiaries, and who will be responsible for executing each step. CMS is extremely concerned that the state is giving only a 30-day notice to beneficiaries and their families that may have to locate and transition to compliant settings if a setting cannot be compliant (for both residential and non-residential settings alike). This may not allow enough time for beneficiaries to explore additional setting options with their case managers, families and support networks. CMS requests the state re-evaluate this plan and build in longer timeframes to assist beneficiaries to complete this process.

- ***Adequacy of Available Provider & Setting Options:*** Please describe how the state will ensure that all critical services and supports are in place in advance of each individual's transition. CMS notes with concern the statement made that "If there is no other viable provider, the case manager may work to authorize other services to substitute for the service change," (see pages 39 and 42). Understanding that this may happen, it is incumbent upon the state to assure an adequate number of providers of HCBS, and as such CMS requests the state

¹ <https://www.medicaid.gov/medicaid/hcbs/downloads/home-and-community-based-setting-requirements.pdf>

provide further information about the steps it will take to assure a continuity of service delivery among affected beneficiaries.

- ***Estimated Number of Beneficiaries Impacted:*** Please report the estimated number of beneficiaries that may be living or receiving services in settings that may not meet the requirements of the Final Rule.

Milestones

A milestone template will be supplied by CMS. Please resubmit the chart with any updates no later than 30 days after receiving the template. The chart should reflect anticipated milestones for completing systemic remediation, settings assessment and remediation, heightened scrutiny, communications with beneficiaries, and ongoing monitoring of compliance. It should also include timelines that address the feedback provided in this letter.