

Disabled & Elderly Health Programs Group

October 15, 2015

Brenda Tidball-Zeltinger
Division Director, Medical Services
State of South Dakota, Department of Social Services
700 Governors Drive Kneip Building
Pierre, SD 57501-2291

Dear Ms. Tidball-Zeltinger,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of South Dakota's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. South Dakota submitted its STP to CMS on March 12, 2015. CMS requests additional detail regarding the systemic assessment, the site-specific assessment, monitoring of settings, remedial actions, relocation of beneficiaries, and heightened scrutiny. These issues are summarized below.

Waivers and Settings Included in the STP:

The setting types listed in the STP are consistent with those listed in the Assisted Daily Living Services (ADLS) waiver. For the Community, Hope, Opportunity, Independence, Careers, Empowerment, Success (CHOICES), Family Support 360, and Adult Services and Aging (ASA) waivers, please crosswalk each setting type listed in the STP to the setting types listed in the waivers and provide the number of individual settings for each setting type as indicated below.

- CHOICES:
 - Please clarify the types of settings where residential habilitation services are provided.
 - Please define community support provider settings, group homes, and supervised apartments.
- Family Support 360:
 - Please provide details about the private homes where home and community-based services are delivered. CMS notes that if the state is operating with a presumption that an individual's private home or private family home is meeting this requirement, the state needs to confirm that none of these settings were purchased or established in a manner that isolates the individual from the community of individuals not receiving Medicaid-funded home and community-based services. Information available in the Toolkit on settings that isolate may be helpful in this regard.
- CHOICES and Family Support 360:
 - Please clarify whether supported employment is taking place in disability-specific settings and could therefore serve to isolate individuals from the larger community. Specifically, please provide more information on the settings that employ only individuals who have disabilities, and how the state will ensure that those individuals are integrated into the community.

- ASA:
 - Please provide details about the types of adult day settings that are included in this waiver.

Systemic assessments:

- Please provide more detail in the STP on the methodology the state used to conduct its state policy analysis, identifying which state standards apply to which settings and what components in those standards crosswalk to specific qualities required in the federal regulation.
- Please indicate which components of the state standards reinforce, are silent on, or conflict with the federal regulation.

Site-specific assessments:

- Please include more detail in the STP on the outcomes of the assessments, including a list of all setting types and the state’s best estimate of the number of settings that fully comply, do not comply but could with modifications, cannot comply, or are presumed to have the qualities of an institution.
- Please provide details on the assessments conducted for all non-residential settings and explain how the determination was made that the non-residential adult day settings were in compliance.
- Please clarify that site-specific assessments measure a setting against all the regulatory requirements for home and community-based settings. Please explain the sampling methodology for the site-specific assessments and clarify how many sites in each setting type received an on-site review.
- In the STP, the site-specific assessments focused on determining which settings fall above or below an “86% compliance threshold” for each of the state’s “key concept areas.” Site-specific assessments must identify any and all compliance issues, and all home and community-based settings must be assessed against 100% compliance with all of the federal requirements. Please update the assessments to use a 100% compliance threshold and indicate how this threshold will be met.
- Please clarify the state process for conducting validity checks of the provider self-assessments and the interrelationship with the state staff assessments and the HCBS individual interviews.
- Please clarify whether the state staff validation mentioned in the STP is the same as the on-site reviews by state staff.
- Please verify if the state received a response from all providers for the self-assessment, and if not, what actions the state will take or has taken to assess settings when/if providers do not respond.

Monitoring:

Please clarify the specific home and community-based settings requirements the Systemic Monitoring and Reporting Technology (SMART), National Core Indicators (NCI), and Council on Quality and Leadership (CQL) will monitor, and how the state will link the data to the federal requirements and specific settings. Please describe the state process for evaluating and responding to the data to ensure ongoing compliance with the home and community-based services requirements.

Remedial Actions:

Please clarify the process the state used to identify which remedial actions are assigned to specific settings and providers. Also, please specify a remedial action plan for all non-compliant settings, including those that the state determined to be above the 86% compliance threshold but not fully compliant.

Relocation of Beneficiaries:

Please include a plan for relocation in the event that particular settings cannot comply with the requirements and beneficiaries need to be relocated. The plan should include how potentially affected beneficiaries will be afforded the time and necessary information to make informed choices about alternate settings, and that all needed services and supports will be in place at the time of transition.

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 that are presumed to be institutional in nature 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.

If necessary, the state should determine the date of submission of evidence to CMS for heightened scrutiny and seek public comment on the amended STP to include settings for heightened scrutiny review. After seeking public comment, the state should submit the amended STP to CMS. If the state concludes that none of the community provider settings require heightened scrutiny review, the STP should include ample detail to justify such a conclusion.

CMS would like to have a call with the state to go over these issues and to answer any questions the state may have. The state needs to revise and resubmit its STP, which will necessitate the STP being re-posted for public comment. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Ondrea Richardson in the CMS Central Office at 410-786-4606 or at Ondrea.Richardson@cms.hhs.gov with any questions related to this letter.

Sincerely,

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

cc: Richard Allen, ARA