

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

July 23, 2015

Darin Gordon
Deputy Commissioner,
State of Tennessee, Department of Finance and Administration
Bureau of TennCare
310 Great Circle Rd.,
Nashville, TN 37243

Dear Mr. Gordon,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Tennessee's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based setting requirements. Tennessee submitted this STP to CMS on January 26, 2015. CMS finds Tennessee's STP to be a well-organized document that addresses most of the requirements. CMS notes areas where the STP should be supplemented to include key details regarding the assessment processes and outcomes, remedial action processes, and monitoring. These concerns and related questions for the state are summarized below.

CMS also requests additional information on several key aspects of Tennessee's STP, to be completed and submitted within 30 days of receipt of this letter.

Systemic assessments:

The STP indicates that Tennessee has completed its systemic assessment. CMS commends the state's proactive action on this assessment. However, CMS requests that the state provide additional detail on the assessment process.

- Specify what the state assessed (e.g., specific statutes, regulations, policies, etc.);
- Provide specific outcomes of the assessments (e.g., what was found to be in compliance, what was identified as requiring amendment, what specifically is the amendment that must be made, etc.);
- Provide remedial actions that must occur to address any non-compliance findings from the systemic assessment (e.g., begin regulatory revision process); and
- Provide milestones and corresponding timelines that the state will use to track its timely progress towards remediation (e.g., submit draft change to agency review committee by June 30, 2015).

Provider/site assessments:

CMS requests that the state also provide additional information and clarification on the state’s proposed provider self-assessment process, including additional details on:

- **Validation process:** CMS is concerned that the state has not outlined any validation processes to ensure that the responses from providers, for each specific site, represent complete and accurate interpretations of the requirements. Please specify the validation process for these self-assessments. For example, will the state cross-check the individual experience assessments to the provider assessments on a site-specific basis to verify that the information provided from both perspectives agree?
- **Settings assessed:** The current version of the STP notes that “[a]t a minimum, all HCBS residential, employment and day program providers contracted to provide services under any of the State’s Section 1915(c) waivers or the CHOICES MLTSS program will be required to complete a self-assessment.” Given the state’s timeline for receiving provider self-assessments (by March 31, 2015), please provide additional details on the information received on these settings. . Please provide a complete list of the assessed service settings.

Heightened Scrutiny:

CMS notes that, in public presentations, Tennessee requested input from providers and consumers/families on what kind of evidence should be required to prove that a setting does have the qualities of a home and community-based setting and not the qualities of an institution and the state said that it will be judicious about making such requests. However, the STP does not include information pertaining to how the state will identify settings presumed to have institutional characteristics.

- The state should clearly lay out its process for identifying settings that are presumed to have institutional characteristics. 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 these types of settings, 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-Medicaid 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 HCBS from the broader community of individuals not receiving Medicaid HCBS.

Additional Issues:

CMS also requests that the state amend the STP to clarify that all three relevant 1915(c) waivers are aligned with the Statewide Transition STP. Though CMS recognizes this to be the case, the STP should clarify this point to ensure that this fact is clarified for the public and stakeholder community. Currently the STP only mentions amendments to two of the waivers.

Revised STP, expected submission December 2015:

CMS looks forward to receiving the revised STP in December 2015 (as noted by Tennessee in the STP) which will include remedial action plans related to site-specific compliance outcomes. CMS notes that, by regulation, this revised STP, as well as any other substantive decisions or actions impacting the STP, will be subject to the same public notice and comment requirements as this STP. We expect the revised December STP to address the following:

Settings-specific outcomes:

- All outcome decisions should be included in the revised December STP, with ample time to post the STP for public comment. For example, services such as intensive behavioral residential services, and supported living services, among others, are listed as having been subject to waiver definition changes, but the STP does not include any additional detail related to the service settings for each of these services, or whether all of these settings will be subject to assessment. For both the public as well as CMS to fully understand and comment on the STP, the state should include more detail with respect to the settings for each service.

Remedial Actions:

The state's revised STP should include a realistic timeline for providers to implement changes that the state identifies as necessary to achieve compliance with the rules by March 17, 2019.

- Relocation of beneficiaries, if necessary: The STP includes an assurance that the state will provide reasonable notice and due process to beneficiaries who must be relocated, and includes the timeline for the relocation processes. However, CMS requests that the December, 2015 version of the STP will include:
 - The number of beneficiaries impacted;
 - A description of the actual processes for assuring that beneficiaries will be given the opportunity, the information, and the supports necessary to make an informed choice of an alternate appropriate setting; and
 - How the state will ensure that critical services/supports are in place in advance of the individual's transition.

Ongoing Monitoring

- CMS would like the state to clarify that how their ongoing monitoring process will work. CMS notes that in order to use individual experience assessments the state must be able to crosswalk the assessment to a specific site, rather than assessing compliance only at a global level.

Next Steps:

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. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. In the meantime, please do not hesitate to reach out to Patricia Helpenstine at 410-786-5900 or at Patricia.Helpenstine1@cms.hhs.gov, the CMS central office analyst taking the lead on this STP, with any questions.

Sincerely,

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

cc. J. Glaze