

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**

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September 4, 2015

Ms. Kay Ghahremani  
Associate Commissioner for Medicaid/CHIP  
State of Texas, Health and Human Services Commission  
11209 Metric Blvd, Building H  
Mail Code H100 – PO Box 85200  
Austin, TX 78758

Dear Ms. Ghahremani,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Texas' Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Texas submitted its initial STP to CMS on December 19, 2014 and then an amended STP on March 17, 2015. CMS finds Texas' STP to be a comprehensive document that addresses many of the requirements. However, CMS is requesting some additional specificity in the STP to ensure that the assessment and remediation activities are sufficient to meet the settings requirements. The key items and related questions for the state are summarized below.

### **Public Comment:**

The STP indicated that the state had completed the systemic assessment, but the outcomes of the assessment were not included in the STP. The STP indicated the findings were located on the Department of Aging and Disability Services (DADS) and Department of State Health Services (DSHS) websites and included the website addresses. Please incorporate the results of the systemic assessment in the STP, to ensure that future public comment is informed by a comprehensive view of the systemic findings.

### **Assessments:**

- **Systemic assessment.** The systemic assessment results (as listed on the DADS and DSHS websites) did not identify all of the settings in which home and community-based services are provided. The settings analysis did not provide a clear indication of what will be modified in the state regulations to ensure compliance with the federal home and community-based setting regulations. The DADS and DSHS website links included key components (e.g. waiver specific settings analysis, the setting types and related compliance status, etc.). However, the information did not appear to be complete. For example, the Youth Empowerment Services (YES) systemic assessment document did not include foster care

settings as part of the Supportive Family-based Alternatives. The foster care settings did not appear to be evaluated from a regulatory perspective.

When the STP is updated to incorporate the detailed systemic assessment outcomes, the state should provide the following:

- A crosswalk of what needs to be modified in the specific state regulations to ensure settings will comply with the federal regulations. The state should indicate which state standards were analyzed, which settings they apply to, the specific aspect of each standard found to be compliant, non-compliant or silent in relation to the criteria specified in the regulation and the changes that must be made to each standard to bring it into compliance with the federal regulation;
  - Estimates of the number of settings that fully comply, do not comply but will with modifications, cannot comply with the federal settings requirements, or are presumed to have institutional characteristics; and
  - Results of the systemic assessment for the 1115 Demonstration Program, targeted for completion in July 2015.
- **Site-Specific Assessment.** The STP indicated that the state will utilize provider self-assessments in a representative sample of providers. The state should explain the methodology it will use to accomplish this process. The STP stated that the provider self-assessments will be verified by a representative sample of participant surveys. The participant survey sampling and validation methodologies were not detailed in the STP. Please explain this process. CMS would like to further understand the relationship between the provider self-assessments and the participant surveys, including how these assessments will be linked to specific sites.

The STP indicated that in Phase III DADS will survey a representative sample of day/habilitation/prevocational providers for compliance. DSHS will also survey a representative sample of any other non-residential providers for compliance. This representative sample should also be random. Further, these assessments will be verified by a representative sample of participant surveys. There is concern about the timing of this validation process for the DADS day rehabilitation/prevocational providers and DSHS non-residential provider surveys. The amended STP had the provider surveys being conducted between January 2015 and May 2016, and the participant surveys being conducted between July and December 2015, which does not align consistently with the provider surveys. Please explain the difference in the timelines.

### **Heightened Scrutiny:**

The state should clearly lay out its process and timeframes for identifying settings that are presumed to have institutional qualities. The state should 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 for 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 to other settings that are either compliant or are not funded by Medicaid HCBS.

Settings that are presumed 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.

The state should provide information on when it anticipates submitting evidence for heightened scrutiny, along with the list of settings that will require heightened scrutiny.

### **Remedial Actions:**

- The STP did not include detailed remedial strategies to bring settings into compliance after the site specific assessments are completed. Without the benefit of knowing the potential site-specific assessment outcomes, it is difficult to validate the scope of remediation, particularly given the number of remediation related action items scheduled for completion in 2018.
- The STP did not include very much detail about the state's monitoring activities. The monitoring activities are currently limited to developing and incorporating contract monitoring tools for the waivers with proposed initiation and completion dates as noted in the amended STP. The waiver-specific monitoring activities would benefit from additional detail to ensure that sufficient resources will be allocated for monitoring activities.

For its remediation and monitoring activities discussed in the STP, please provide additional information regarding the following:

- Remediation strategies, even if the assessment outcomes are not yet available;
- Each of the waiver-specific monitoring methods;
- Identification of the specific entities responsible for monitoring each of the sites;
- Estimated sites that will require monitoring;
- Relevant enforcement activities;
- Start and end dates for monitoring the required settings; and
- Key remediation and monitoring milestones and associated dates.

### **Relocation of Beneficiaries:**

The STP indicated that should the state require relocation of beneficiaries, the state would ensure there is reasonable notice, due process, person-centered planning and that the critical supports are in place. The STP did not include specific details about a plan for relocation of beneficiaries. The STP indicated that the state does not anticipate that relocation of beneficiaries will be required. The state is encouraged to re-evaluate this assumption after the completion of the detailed settings analysis, as it may find there are some non-compliant settings that may necessitate relocation of beneficiaries.

**Other Areas of Concern:**

- The Home and Community-Based Services Program (HCS) and Medically Dependent Children Program (MDCP) waiver specific transition plans previously approved by CMS were found to have systemic remediation date discrepancies when compared to the STP. Remediation timeframe discrepancies included the following:
  - The HCS Waiver on page 22 of the amended STP indicated that the state will amend HCBS program rules and Chapter 49 contracting rules governing residential and employment services between January 2016 and May 2017, and day habilitation services between June 2017 and July 2018. In contrast, the HCS waiver specific plan information indicates that it will complete similar activities between November 2014 and May 2016.
  - Another example is the program rule amendments on page 21 of the amended STP. The STP indicated that it will amend the MDCP program rules and Chapter 49 contracting rules governing employment services and host home services from December 2015 and September 2016. In contrast, the MDCP waiver specific plan information indicates that it will complete similar activities between November 2014 and April 2016.
- As the state updates the STP to include the required elements discussed in this letter, please include the following:
  - Given the discrepancies with the HCS and MDCP waiver transition plans, the state should clarify the dates and, if applicable, justify the reasoning and feasibility of extending these remediation activities as articulated in the amended STP.
  - The state should clarify if the 13 State Supported Living Centers impacted by the Olmstead consent decree are institutions and therefore not covered by the STP.

CMS would like to have a call with the state to discuss these questions, and concerns and answer any questions the state may have. The state should submit a revised STP and re-post it for public comments for 30 days prior to resubmission to CMS. Please include the aforementioned revisions in the STP and resubmit no later than 75 days after the receipt of this letter. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Sara Rhoades, the CMS central office analyst taking the lead on the STP, at 410-786-4484 or at [Sara.Rhoades@cms.hhs.gov](mailto:Sara.Rhoades@cms.hhs.gov), with any questions.

Sincerely,

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

cc: Bill Brooks, ARA