

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

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November 5, 2015

Daniel Tsai  
Assistant Secretary for MassHealth  
Commonwealth of Massachusetts  
Department of Health and Human Services, Office of Medicaid  
1 Ashburn Place, 11th Floor Room 1109  
Boston, MA 02108

Dear Mr. Tsai,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Massachusetts' Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Massachusetts submitted an STP to CMS on February 27, 2015. The STP consisted of multiple documents and appendices. The Executive Office of Health and Human Services (EOHHS) and each of the three operating agencies in the state (the Department of Developmental Services (DDS), the Massachusetts Rehabilitation Commission (MRC), and the Executive Office of Elder Affairs (EOEA)) all had separate transition plan documents. Subsequently, on September 4, 2015, the EOHHS and the three agencies submitted addendums for non-residential services and additional appendices. CMS requests additional detail regarding the structure of the STP and addendums for non-residential services, waivers and settings included in the STP, systemic assessment, site-specific assessments, monitoring of settings, remedial actions, heightened scrutiny, and the relocation of beneficiaries. These issues are summarized below.

### **Structure of the STP and the Addendums for Non-Residential Services:**

- The structure that the EOHHS has chosen for the state and the agency-specific STPs lacks clarity and cohesion because there are multiple documents that contain some common features, yet some distinct details about how the state will comply with the home and community-based settings requirements. CMS recommends that Massachusetts streamline the documents and/or create a detailed index document that cross-references the information across the three agencies' STPs and addendums and the overall EOHHS STP and addendum.
- CMS also recommends that the state eliminate duplicative language wherever possible across the documents. For instance, the addendums that address non-residential services repeat introductory language from the agency-specific STPs for residential services.
- The central role of the EOHHS as the authority providing oversight of the statewide actions is not well-defined. Massachusetts mentions a cross-agency workgroup, but its role in the development and implementation of all STP documents is not described. Please further describe EOHHS' oversight role.

- The timeline included in the EOHHS STP was not complete and did not include interim milestones or details on the non-residential services. Please create a more detailed timeline than is currently provided on page five of the EOHHS STP.

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

The three agency-specific STP documents each reference residential and non-residential settings for home and community-based services, but do not list the same setting types as those listed in CMS' Waiver Management System (WMS) for each of the state's specific waivers. For example, residential settings that are listed in the WMS as provider-owned/leased facilities, or provider or state operated group residences, are all simply referred to as 24-hour residential settings by DDS and the Massachusetts Rehabilitation Commission (MRC). In order to ensure that all settings that are required to comply are addressed in the STP, CMS requests that Massachusetts list all setting types by the names identified in the WMS within the STP documents.

### **Systemic Assessment:**

- The STP documents include some high-level information on the systemic assessments undertaken by DDS and MRC. Please provide more detail on the outcomes of the assessments, including a crosswalk to the federal requirements that lays out citations for all state regulations or other documents that are found to be compliant, noncompliant, or silent on the relevant portions of the federal requirements.
- The STP did not include a systemic assessment of the regulations and policies under EOEAA. Please also provide a crosswalk for this agency as described above.
- In addition, EOEAA's addendum states that the Aging Services and Access Points (ASAP) program will rely on its contract or procurement process to achieve compliance of non-residential services, but no details on the program policies or their compliance status are provided. Please provide these details in the STP.

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

- For each agency, please clarify the site-specific assessment process used, and who was responsible for conducting the site-specific assessments.
- Massachusetts' three operating agencies do not provide complete estimates of how many residential and non-residential settings fully comply with federal requirements, do not comply but could with modifications, cannot comply and will require beneficiary relocation, or are presumptively institutional in nature. The following details were missing for each agency. Please provide this information in a revised version of the STP, along with the following detail:
  - DDS reports that its 24-hour residential settings were compared with the assessment tool the agency developed, but it does not report complete outcomes of this review. In particular, no details are provided regarding the 14 providers whose 58 settings will require substantial changes to become compliant.

- MRC reports that its site-specific review was completed, but does not report any details on the number and types of settings that were assessed.
- DDS and MRC's employment and pre-vocational settings are being assessed and remediated under the statewide Blueprint for Success. However, neither agency describes the assessment process or timeline for the Community-based Day Services.
- EOEА reports the number of waiver participants in Congregate Housing (87) but does not report on the number of houses or their compliance status.
- Additionally, EOEА does not describe its assessment of the sites where Supportive Day Services are provided.
- Only DDS describes how it will validate the results of the provider self-assessments. Please describe the validation process for any self-assessments that MRC and EOEА are conducting/has conducted as part of their site-specific assessments, and what action the state took when a provider did not submit an assessment.

### **Monitoring of Settings:**

- The state does not describe the role of EOHHS in coordinating monitoring activities. Please include information clarifying how EOHHS will work across agencies to monitor ongoing implementation and compliance.
- CMS notes that the monitoring process must include the activities that will occur beyond the transition period to ensure the settings remain in compliance. Please clarify in the STP how this will be accomplished.
- Additionally, please add more detail on MRC and EOEА's agency specific monitoring plans.
  - DDS' documents reference a detailed monitoring process. However, it is not clear if this process will be applied to the other agencies. This is particularly important for settings that serve both DDS and MRC waiver participants. Please clarify the monitoring process for MRC.
  - EOEА noted that it will use its ASAP contractors to monitor providers. However, the state does not provide detail on how this monitoring will occur. Please clarify how EOEА will conduct its monitoring process.
- The three agencies all indicate that they will rely on existing monitoring and quality assurance activities. Please clarify the issues below in the revised STP.
  - DDS mentions that it uses National Core Indicator surveys as part of its quality assurance process that will monitor its home and community-based settings. Please describe how this consumer input can be linked to the individual sites for monitoring purposes.
  - The three agencies indicate that some monitoring of either residential or non-residential services will occur through their service contractors. However, the state does not clarify whether organizations responsible for providing direct services to participants are part of the state's ongoing monitoring process and how the state will address conflicts of interest.

### **Remedial Actions:**

- None of the three state agencies provide complete information on the changes to state licensure and regulations that are necessary to achieve full compliance with the federal regulation. Based on the crosswalks described above under systemic assessment, CMS requests that each agency provide details and timeframes for making any needed changes to any regulations or other documents applicable to the HCBS settings under their jurisdiction to achieve full compliance.
- The individual agency documents lack details about remediation of the sites that were found to be noncompliant.
  - DDS does not describe the specific steps it will take to bring the 58 settings it determined were out of compliance into compliance, or if it will eliminate these setting from the HCBS Medicaid program. CMS requests that the state add this information to its documents.
  - MRC generally described some remediation actions taken after its site-specific assessment, but it is unclear if any further remediation is needed and there is no reporting of the interim milestones. Please add additional detail regarding remediation and clarify interim milestones within the STP documents.
  - EOEI does not describe the remediation process that will follow its assessments. Please add this to its STP and addendum.
- The Blueprint for Success' remediation strategy for sheltered workshops is discussed in DDS' Addendum for Non-Residential Services, but the details are not included in MRC's document, although its waiver participants receive services in the same settings. Please ensure that this information is also included in the MRC document.

### **Heightened Scrutiny:**

It was helpful that Massachusetts attached its Blueprint for Success, which describes how it will transition all participants out of sheltered workshops by 2019, thereby eliminating the need for a heightened scrutiny review of these settings. However, the state should clearly lay out its process for identifying all residential and other non-residential 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 such 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 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.

**Relocation of Beneficiaries:**

- Massachusetts' three agencies did not provide a timeline or details regarding transitioning individuals receiving services in non-compliant residential or non-residential settings, with the exception of those receiving employment services addressed in the Blueprint for Success. Please include in the revised STP a clear process with milestones and timelines to describe how the state will relocate beneficiaries if needed. This process should include: how reasonable notice and due process are provided to these individuals, a timeline for the relocation process, the number of beneficiaries impacted, and a description of the state's process that beneficiaries, through the person-centered planning process, are given the opportunity, the information, and the supports to make an informed choice of an alternate setting that aligns, or will align, with the regulation, with critical services/supports in place in advance of the transition.

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, no later than 90 days from the telephone conversations in follow up to this letter. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Ciera Lucas in the CMS Central Office at 410-786-0832 or at [Ciera.Lucas@cms.hhs.gov](mailto:Ciera.Lucas@cms.hhs.gov), with any questions related to this letter.

Sincerely,

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

cc: R. McGreal ARA