

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**

August 14, 2018

Kathy Stiffler  
Acting Medicaid Director  
Michigan Department of Community Health  
400 South Pine Street  
Lansing, MI 48913

Dear Ms. Stiffler:

In follow-up to the 8/11/17 initial approval granted to Michigan's Home & Community Based Services (HCBS) Statewide Transition Plan (STP), CMS provided additional detailed feedback to the state to assist with final approval and implementation of its STP. CMS acknowledges that since this technical assistance was provided, work has continued within the state to bring settings into compliance and further develop the STP; however, a summary of this feedback is attached for reference to assist in the state's efforts as it works towards final approval.

In order to receive final approval, the STP should include:

- A comprehensive summary of completed site-specific assessments of all HCBS settings, validation of those assessment results, and inclusion of the aggregate outcomes of these activities;
- Draft remediation strategies and a corresponding timeline for resolving issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the HCBS settings transition period (March 17, 2022);
- A detailed plan for identifying settings presumed to have institutional characteristics, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- A process for communicating with beneficiaries 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, 2022; and
- A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the federal settings criteria in the future.

Prior to submitting the updated version of the STP for consideration of final approval, the state will need to issue the STP for a minimum 30-day public comment period. I want to personally thank the state for its efforts thus far on the HCBS STP, and look forward to the next iteration of the STP that addresses the feedback in the attachment.

Sincerely,

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

## ATTACHMENT

### **Additional CMS feedback on areas where improvement is needed by the State of Michigan in order to receive final approval of the HCBS 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.***

#### **Public/Stakeholder Input**

Please update the chart on pg. 181 to include the public comment period dates for STP version 4.0. CMS appreciates the inclusion of all stakeholder comments submitted during public comment periods and the corresponding state responses.

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

##### ***Assessment & Validation Process:***

- The state has included the preliminary results from the statewide assessment process for its MI Choice Waiver (p. 82, 111-113). No results from the site-specific assessments for settings under the Managed Specialty Services & Supports Waiver (MSS&S) or Habilitation Supports Waiver (HSW) have been included in this version of the STP. Once the state has completed the site-specific assessments and validation process, please provide how many settings fall into each compliance category (fully comply, do not comply but could with modifications, cannot comply, and will be submitted for heightened scrutiny review). Please ensure final estimates are provided by each setting type.
- The state must ensure that all home and community-based settings comply with the HCBS settings criteria. At least one validation strategy should be used to confirm provider self-assessment results and can include but are not limited to on-site visits; beneficiary and family feedback; external stakeholder engagement; and desk reviews.
  - Provider self-assessment surveys are not part of the site-specific assessment for settings under the MI Choice Waiver. Alternatively, the waiver entities will complete a survey tool for each setting as a result of discussions with setting staff and observation of the settings. Please describe how the state will oversee the assessment process, and how this process intersects with the quality assurance reviews.
  - For the MSS&S Waiver, the state intends to validate provider self-assessments using onsite assessments conducted by trained reviewers. On page 75, the state indicates that all active enrolled HCBS providers and MSS&S Waiver Pre-paid Inpatient Health Plan (PIHP) coordinators will submit the data from the assessment tool to the Behavioral Health and Developmental Disabilities Administration (BHDDA). The STP does not explicitly say that all providers will complete a self-assessment nor that all self-assessments will be validated by onsite assessments or in an alternative way. Please include this information in the STP.
  - For the Habilitation Supports Waiver, the state utilized the Developmental Disabilities Institute of Wayne University (DDI) to validate the results of a survey of a sample of settings conducted via onsite assessments by trained reviewers. This was a pilot project used by the state to obtain preliminary data on the settings in this

waiver program. It also appears that the state is planning to survey all residential and non-residential settings in two phases (pp. 62, 69). Please provide more details regarding these surveys including if they are desk reviews or onsite reviews. Please also confirm that all settings will be assessed and validated, not just a sample of settings.

- Please review the timeframes for the MSS&S Waiver and clarify the action dates for setting assessment and remediation.
  - For example, in Section 2: Remediation and Ongoing Monitoring Process on page 94, the state says, MSS&S “waiver entities will notify providers who are found to not meet and are unable to meet the Federal requirements” by 9/01/18. However, in Section 1c: Setting Assessment table, the STP indicates MSS&S “waiver entities will compile the data from providers to determine those HCBS services providers who meet, do not meet, and could come into compliance with HCBS guidance” by 9/30/18 (p. 80). Please correct this timeline
  - Additionally, the state intends to develop and implement all provider corrective action plans by 9/30/18 (p. 93). Please clarify how the state will meet this timeline if the end date for its assessment of these settings has the same end date.
- For all three waiver programs, please include details of how the state plans to address discrepancies between provider, waiver entity and beneficiary survey results.

***Individual, Private 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 regulatory criteria over time. Note, settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual), are considered provider-owned or -controlled settings and should be evaluated as such.

***Group Settings:***

- As a reminder, all settings that group or cluster individuals for the purposes of receiving HCB services 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.

***Reverse Integration Strategies:***

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 into 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 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.

### **Site-Specific Remediation**

CMS requests the state add details to the STP regarding site-specific remediation, including the types of technical assistance the state is providing to providers to help them come into compliance with the federal settings rule. Please ensure the state's timelines for activities are consistent throughout the STP. For those settings that are not able to be brought into compliance, please provide a detailed plan the state will use for communicating and assisting beneficiaries currently receiving services in settings that are determined not to be able to come into compliance prior to the end of the transition period that includes:

- A description for how participants will be offered informed choice and assistance in locating a new residential or nonresidential setting in which HCBS are provided or accessing alternative funding streams.
- An estimated number of beneficiaries who are in settings that the state anticipates will not be in compliance by the end of the transition period and may need to access alternative funding streams or receive assistance in locating a compliant setting.
- Confirmation of the state's timeline for supporting beneficiaries in exploring and securing alternative options should a transition out of a non-compliant setting be necessary.
- An explanation of how the state will ensure that needed services and supports are in place in advance of the individual's transition.

### **Ongoing Monitoring**

Please clarify which processes will be used to continually assess settings versus processes used only to screen settings prior to enrollment as a provider. Each waiver program should have a process to ensure settings are continuing to comply with the settings rule.

### **Heightened Scrutiny**

- Please include further details about the criteria or deciding factors that will be used consistently across reviewers to make a final determination regarding whether or not to move a setting forward to CMS for heightened scrutiny review.
- Tier 4 of the heightened scrutiny flow chart does not currently include a comprehensive evaluation of whether a setting has characteristics that are home and community-based, including the identification of settings that would fall under the category of settings that are presumptively institutional due to isolation of HCBS beneficiaries.
  - The criteria that identify MI Choice residential settings as presumed institutional are based on whether the setting is: 1) diagnosis specific or 2) clustered. This criteria does not address programmatic issues that might make a setting presumptively institutional under the third category; for instance, the clearing questions do not mention autonomy of schedule and integration into the broader community (p. 120).
  - In regard to the non-residential settings, please indicate whether the state's only criteria for an "isolating" setting is if it is specific to a particular diagnosis/disability.

- CMS suggests that the state include questions and criterion based on assessing whether individuals have real choice and options for accessing the broader community.