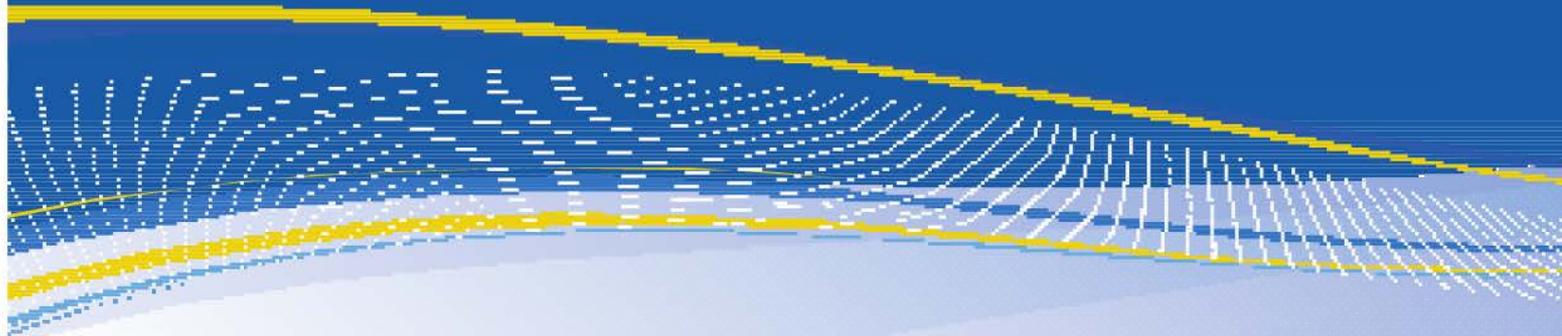




The Process for Final Approval of the Statewide Transition Plan

**Division of Long-Term Services and Supports
Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services**



Objectives for Today's Session

- Clarify CMS' expectations in order to grant final approval
- Describe requirements for site-specific assessment, validation, outcomes and remediation strategies
- Discuss the process for heightened scrutiny
- Consider processes for monitoring and quality assurance to ensure ongoing compliance

Review of the Criteria for Initial Approval

- Identification of all settings subject to the rule in the Statewide Transition Plan (STP);
- Systemic assessment completed, including outcomes;
- Remediation strategies outlined, with timelines, and actively worked on;
- Draft STP widely disseminated for 30-day public comment period; comments responded to, summarized and submitted to CMS.

Criteria For Final Approval

- Summary of completed and validated site-specific assessments, including aggregated outcomes completed;
- Draft remediation strategies with timelines for resolution by the end of the transition period (March 17, 2022);
- Detailed plan for identifying and evaluating those settings presumed to have institutional characteristics;

Criteria For Final Approval

- Process for communicating with beneficiaries who are currently in settings that cannot or will not come into compliance by March 17, 2022;
- Description of ongoing monitoring and quality assurance to ensure all settings remain in full compliance with the settings criteria;
- Updated version of the STP is posted for minimum 30-day public comment period.

Criteria For Final Approval

What is CMS looking for in each of these criteria to verify that the state is ready for final approval?

First Criterion For Final Approval

The first criterion for final approval includes 3 components:

- State completes comprehensive summary of site-specific assessments for all settings in which HCBS are provided;
- Provides validation of those assessment results, as necessary;
- Includes the aggregate outcomes of those activities.

Site-Specific Assessments

Identify:

- ✓ Your state's comprehensive, state-wide approach to assessing compliance;
- ✓ All services under all HCBS authorities and all settings in which service (s) are provided;
- ✓ Methods used to identify all types of settings in the state;

Site-Specific Assessments

- ✓ Distinguish between settings under the rule:
 - Group settings
 - Individual privately owned home
 - Non-Disability Specific Settings

Reverse Integration

- Reverse integration is a model of intentionally inviting individuals not receiving home and community-based services into a facility-based setting to participate with individuals receiving home and community-based services.
- It is not considered by itself to be a sufficient strategy for complying with the community integration criteria outlined in the settings rule.

Checklist/Site-Specific Assessment: What Is CMS Looking For in the STP Review?

- ___ Did you accurately and clearly lay out all of the settings in each authority in which home and community-based services are delivered?
- ___ Did you clearly lay out details of the state's approach to conducting the assessment process including methods, timelines, tools, and who will conduct the process?
- ___ Are you using provider self-assessments?
- ___ If yes, did you address the process for handling non-respondents to the provider self-assessment?

Checklist/Site-Specific Assessment: What Is CMS Looking For in the STP Review?

- ___ Did you engage individuals receiving services and/or consumer advocacy entities in the assessment process? In what role? How did you rectify discrepancies with provider self-assessments, if any were found?
- ___ How are specific categories of settings structured in the state?
- ___ Did you distinguish between settings under the rule (e.g., group settings, individual's own home non-disability specific settings) and address reverse integration issues?

Checklist/Site-Specific Assessment: What Is CMS Looking For in the STP Review?

- ___ Are there any categories of settings which you are presuming to automatically meet all of the criteria of the settings rule?
 - ___ Are there any categories of settings that you are automatically determining will require modifications to comply?
 - ___ Are there any categories that automatically rise to the level of heightened scrutiny?
 - ___ Did you summarize assessment results in an easily understood manner based on the requirements of the rule?
- Consider some examples from your colleagues. . .

Validation Strategies

- ✓ Validity check required for provider self-assessments;
 - ✓ Identify how independence of assessments is ensured when a Managed Care Organization (MCO) validates provider self-assessments;
 - ✓ Validation strategies varied across states;
 - ✓ Describe process for following up with non-responders;
 - ✓ More robust validation processes increase success factors in helping settings assure compliance.

Aggregate Outcomes

- ✓ Aggregate outcomes included for these activities:
 - ✓ Identify the type of settings and the number of settings determined to be in each of the compliance categories:
 - Fully compliant;
 - Does not comply, but could with modifications;
 - Cannot comply;
 - Presumed to have the qualities of an institution but for which the state will submit evidence for the application of heightened scrutiny.

Checklist/Validation and Outcomes: What Is CMS Looking For in the STP Review?

- ___ Did you identify in the STP the methods or processes used to validate the findings from the site-specific assessments?
- ___ Are the strategies sufficient?
- ___ Was the process adequately described, including the role of beneficiary feedback?
- ___ Did you ensure the independence of assessments?
- ___ If provider self-assessments were used, did you provide at least one validation strategy to confirm results?

Checklist/Validation and Outcomes: What Is CMS Looking For in the STP Review?

- ___ Did you effectively combine various validation strategies to mitigate any perceived concerns?
- ___ Did you clearly differentiate and explain any differences in the validation processes across systems?
- ___ Did you sufficiently train state staff, external contract entities, and providers on what is required for a setting to be compliant with the rule?
- ___ Did you report the aggregate results/outcomes from these activities?

Consider some examples from states. . .

Second Criterion for Final Approval: Remediation Strategies

- ✓ Invest in statewide training and technical assistance as a strong option for states for any system-wide remediation;
- ✓ Draft remediation strategies with milestones and timelines for issue resolution by March 17, 2022;
- ✓ Design setting-specific remediation and corrective action plans;
- ✓ Develop tiered standards as appropriate;
- ✓ Build capacity of providers to comply with the rule.

Checklist/Remediation: What Is CMS Looking For in the STP Review?

- ___ Have you clearly identified both the issues and the strategies designed to remediate specific settings in order to comply with the rule?
- ___ Have you developed corresponding milestones and timelines for each step in the remedial process?
- ___ Are they realistic to ensure compliance by March 17, 2022, given the remedial action the state is planning to accomplish?

Checklist/Remediation: What Is CMS Looking For in the STP Review?

- ___ How have you proposed working with providers of settings that are not currently compliant with the rule, but could be with appropriate modifications?
- ___ Have you initiated a process for corrective action plans?
- ___ Have you identified those settings that cannot or will not comply with the rule by the end of the transition period, and therefore will no longer be home and community-based settings at that time?
- ___ Have you identified what investments you are making to provide technical support to help providers come into compliance?

Checklist/Remediation: What is CMS Looking For in the STP Review?

___ Have you proposed the use of tiered standards?

___ Have you received any feedback from constituencies regarding your remediation strategies? Do they concur with the plan?

Consider some examples from your colleagues. . .

Third Criterion for Final Approval: Preparing for Heightened Scrutiny Review

Settings that are not home and community-based include the following:

- A Nursing Facility;
- An Institution for Mental Diseases;
- An Intermediate Care Facility for Individuals with Intellectual Disabilities;
- A Hospital; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary.

Preparing for Heightened Scrutiny Review

Settings Presumed NOT to be Home and Community-Based:

Category I: Settings in a publicly or privately operated facility that provides inpatient institutional treatment;

Category II: Settings in a building on the grounds of, or adjacent to, a public institution;

Category III: Settings with 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.

Preparing for Heightened Scrutiny Review

Requirements for Heightened Scrutiny (HS) Review:

- ✓ Settings presumed to have institutional characteristics must be identified in the STP.
- ✓ To overcome the presumption: setting does not have the qualities of an institution and does have the qualities of home and community-based settings.
- ✓ Heightened scrutiny only applies when a setting falls into one of the 3 categories of being presumptively institutional and has overcome the presumption.

Preparing for Heightened Scrutiny Review ⁴

Process for Heightened Scrutiny Review:

- ✓ If the state believes that a setting overcomes its institutional presumption and can be in compliance with the settings criteria by March 17, 2022, the state should prepare evidence to support that determination.
- ✓ CMS reviews the evidence to determine if the state's position is supported.

Preparing for Heightened Scrutiny Review ⁽⁵⁾

Tools for States to Assess Settings:

- ✓ Exploratory Questions for Residential and Non-Residential Settings;
- ✓ State's own tools for collecting and evaluating information;
- ✓ Public input on settings flagged for HS review.

Preparing for Heightened Scrutiny Review ⁽⁶⁾

Suggested State Process:

- ✓ Clearly lay out the process for identifying settings presumed to have the qualities of an institution and identify all settings that fall into the 3 categories.
- ✓ These are settings for which the state must submit information for HS if:
 - It determines, through assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution.

Preparing for Heightened Scrutiny Review (7)

- ✓ Only submit those settings under HS that the state believes will overcome any institutional characteristics and can comply with the federal settings criteria.
- ✓ If the state determines it will not submit information on a setting falling into a presumptively institutional category, the presumption stands and the state must describe the process for determining next steps for individuals involved.

Preparing for Heightened Scrutiny Review

- ✓ Establish and describe the criteria that will be used consistently across reviewers to make a final determination regarding whether or not to move a setting forward to CMS for HS review;
- ✓ Educate stakeholders on the HS review process;
- ✓ Conduct an internal review on the criteria;
- ✓ Complete review and determine which settings will be submitted to CMS in an evidentiary package;

Preparing for Heightened Scrutiny Review ⁽⁹⁾

Soliciting Public Input:

- ✓ Include in (or as an addendum to) the STP;
- ✓ Include justification why a presumptively institutional setting is home and community-based and does not have institutional characteristics;
- ✓ Provide sufficient detail for public to support or rebut;
- ✓ Use one electronic and one non-electronic form of public notice at a minimum;
- ✓ Be issued on or before the first day of the comment period to allow the public the full 30 days to review/comment;
- ✓ Review and respond to public comments and include a summary in submission to CMS.

Checklist/Heightened Scrutiny: What is CMS Looking For in the HS Review?

- ___ Did you include a description of the process for identifying settings that are presumed to have the qualities of an institution and therefore may require HS?
- ___ Did you include justification as to why a setting is home and community-based and does not have the qualities of an institution?

Checklist/Heightened Scrutiny: What is CMS Looking For in the HS Review?

- ___ Did you provide sufficient detail for the public to support or rebut the state's information?
- ___ Did you use one electronic and one non-electronic form of public notice at a minimum?
- ___ Did you issue information on the first day of the comment period to allow the public the full 30 days to review and comment?
- ___ Did you review/respond and summarize comments for CMS?

Fourth Criterion for Final Approval: Communicating with Beneficiaries

- ✓ State establishes a communication strategy with beneficiaries who are currently in settings that cannot or will not come into compliance with settings criteria by March 17, 2022.

- ✓ Beneficiaries should:
 - Receive reasonable notice and due process;
 - Be given the opportunity, information and supports to make an informed choice about options.

Communicating with Beneficiaries

- ✓ Ensure that critical services and supports are in place for the beneficiary prior to implementing any changes in provider;
- ✓ Include an estimate of the number of individuals who may need assistance;
- ✓ Ensure that the entire process adheres to the timelines specified in the STP.

Checklist/Communicating with Beneficiaries: What is CMS Looking For in the STP Review?

- ___ Have you described the process you will use to communicate with beneficiaries currently receiving services in settings that the state has determined cannot or will not come into compliance by March 17, 2022?
- ___ Have you identified timelines for providing reasonable notice and due process with beneficiaries?
- ___ Have you shared how you will provide information and supports to beneficiaries to make an informed choice about alternative options?

Checklist/Communicating with Beneficiaries: What is CMS Looking For in the STP Review?

- ___ What alternatives are you making available for beneficiaries, either in compliant settings or with a funding stream other than Medicaid-funded home and community-based services when a setting cannot or will not be compliant?
- ___ Have you identified the critical services and supports that are in place for beneficiaries prior to any change in provider?
- ___ Have you included an estimate of the number of individuals who may need assistance?
- ___ Does it appear that your proposed process will be able to meet the timelines specified in the STP?

Fifth Criterion for Final Approval: Monitoring and Quality Assurance

Two key areas for monitoring:

1. Monitoring Implementation of Remedial Actions
2. Monitoring to Ensure Ongoing Compliance

1. Monitoring Remedial Actions: State-Level

- Monitoring State-Level Remedial Actions:
 - State process for meeting each STP milestone and timeline;
 - Action when milestone(s) will not be met.

1. Monitoring Remedial Action: Provider-Level

- Monitoring Provider-Level Remedial Actions:
 - Input from beneficiaries and advocacy groups;
 - Require regular reporting by providers on progress;
 - Require state review of revised policies and procedures.

1. State Verification of Provider Compliance

- State verifies provider compliance:
 - Conduct follow-up to confirm actions completed;
 - Use existing state oversight resources;
 - Consult with beneficiaries, families and advocacy groups.

Describing the State's Monitoring Process: Milestones

- Milestones are the key steps to implementing and tracking the state's STP!
- Intent: Monitor progress of implementation of elements of the STP.
- Detail the milestones for each step of the monitoring process and the timelines for each milestone.
- States are encouraged to work collaboratively with CMS to identify any areas that may need strengthening in respect to the state's remediation and heightened scrutiny processes. Optional quarterly milestone reporting may assist with this.

2. Monitoring to Ensure Ongoing Compliance

States should have a tracking system in place to:

- ✓ Monitor activities and the results for each setting;
- ✓ Describe state actions to bring non-compliant settings into compliance;
- ✓ Identify required actions for those providers that fail to maintain compliance.

2. Monitoring to Ensure Ongoing Compliance

The STP should include details about the monitoring processes that are clear to any reader. It should describe:

- ✓ Who will perform the monitoring;
- ✓ Processes and tools used;
- ✓ Frequency of the monitoring.

2. Monitoring to Ensure Ongoing Compliance

- ✓ How the settings criteria will be integrated into existing procedures;
- ✓ Monitoring process for individual, private homes;
- ✓ Processes used to continually assess settings versus processes used only to screen settings prior to enrollment.

2. Monitoring to Ensure Ongoing Compliance

Potential state activities:

- ✓ Site visits to make observations of settings;
- ✓ Licensing and certification reviews;
- ✓ Case manager visits;
- ✓ Validated provider self-assessment surveys;
- ✓ Consumer satisfaction surveys linked to specific sites;
- ✓ MCO performance monitoring.

2. Monitoring to Ensure Ongoing Compliance

- ✓ Educate stakeholders to assist in monitoring.
- ✓ Provide beneficiaries with targeted information.
- ✓ Include QA measures in the Home and Community-Based Services waivers and state plan amendments.

Checklist/Monitoring: What is CMS Looking For in the STP Review?

- ___ Have you laid out a monitoring process for all settings where home and community-based services are delivered?
- ___ Have you described the processes and tools you will use?
- ___ Did you provide a detailed description of the monitoring and remediation process you will use with milestones and timelines for each action step?
- ___ Did you indicate how licensing, certification and/or case management will be integrated into monitoring?
- ___ Have you identified who will perform the monitoring?
- ___ Did you describe the frequency of the monitoring?

Checklist Monitoring

What is CMS Looking For in the STP Review?

- ___ If stakeholders are involved, did you describe group composition and frequency of meetings?
- ___ Did you describe responsibilities of staff at government agencies?
- ___ Have you identified any delegated monitoring responsibilities?
- ___ Did you describe how the state will monitor those entities that have been delegated monitoring responsibilities?

Sixth Criterion for Final Approval: Public Comment

Reminder!

- Prior to submitting the updated version of the STP for consideration of final approval, the state will need to post the STP for a minimum 30-day public comment period.

Review of Criteria Essential to Final Approval

- Summary of completed and validated site-specific assessments, including aggregated outcomes;
- Draft remediation strategies with timelines for resolution by March 17, 2022;
- Detailed plan for identifying and evaluating those settings presumed to have institutional characteristics;

Review of Criteria Essential for Final Approval

- Process for communicating with beneficiaries who are currently in settings that cannot or will not come into compliance by March 17, 2022;
- Description of ongoing monitoring and quality assurance to ensure all settings remain in full compliance with the settings criteria;
- Updated version of the STP is posted for a minimum 30-day public comment period.

Resources

Central Office Contact—Division of Long Term Services and Supports:

❖ **Ralph Lollar, Director**

Ralph.Lollar@cms.hhs.gov

❖ **HCBS Training Series:** Webinars presented during SOTA calls are located in the link below (and see next slide):

<https://www.medicaid.gov/medicaid/hcbs/training/index.html>

Resources

HCBS Training:

- Home and Community-Based Settings, Excluded Settings and the Heightened Scrutiny Process, November 2016
- Home and Community-Based Settings Requirements: Systemic and Site-Specific Assessments and Remediation, December 2015
- Monitoring of Compliance with the Home and Community-Based Settings Requirements, March 2016

Statewide Transition Plans: Table of STP available documents:

<https://www.medicaid.gov/medicaid/hcbs/transition-plan/index.html>

Resources

HCBS Guidance/HCBS Settings:

<https://www.medicaid.gov/medicaid/hcbs/guidance/settings/index.html>

- Exploratory Questions that May Assist States in the Assessment of: Residential Settings and Non-Residential Settings
- Frequently Asked Questions Regarding the Heightened Scrutiny Review Process and Other Home and Community-Based Settings Information, June 2015

Resource

- HCBS Final Rule: Current Issues and Future Direction

<http://www.nasuad.org/sites/nasuad/files/HCBS%20Final%20Rule.pdf>

- HCBS Final Rule: Where We Were, Where We Are Now & the Path to Final Approval

<http://www.nasuad.org/sites/nasuad/files/Final%20HCBS%20Intensive.pdf>

Questions and Answers

Open the lines for Questions and Answers

Feedback

Please complete a brief survey to help CMS monitor the quality and effectiveness of our presentations.

Please use the survey link:

<https://www.surveymonkey.com/r/Pathforfinalapproval>

located in the Chat Room or on the last page of your downloaded presentation to access the survey.

(The survey link CAN'T be opened within Web-Ex)

WE WELCOME YOUR FEEDBACK!!!