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Sent: Tuesday, February 20, 2018 11:56 AM
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Subject: Colorado Statewide Transition Plan - CMS feedback for final approval

Hi Leah,

I would like to take this opportunity to introduce myself and to inform you that I will be working with you on the STP moving forward.

As a follow-up to the call held with the state on 1/29, please see below the feedback we discussed for final approval of the STP. If you have any questions or concerns, please feel free to call or email. Also please share this email with any other members of your team who may need it.

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. Please also provide an estimate for when the state expects to resubmit for final approval.

Site-Specific Settings Assessment

Self-Assessment Surveys: The state completed a two-phased self-assessment survey process in January 2016 to assess provider compliance with the HCBS Settings Criteria. The STP indicates that 613 providers completed surveys for 1,602 provider/waiver/service combinations; 145 providers did not complete the survey. Results with the number of providers that fall into various compliance categories based on a scoring algorithm are made available through a [Provider Scorecard](#) on the state website. Note that a subsequent state analysis identified 3,811 settings that are subject to the criteria. The state noted on a call with CMS that as a result of the limitations of the survey, the Provider Transition Plans (PTP) will serve as the basis for its analysis and compliance efforts.

- Please clarify the continued role of the provider self-assessments, and confirm that when utilized, the self-assessment includes questions specific to all HCBS requirements of provider-owned and controlled settings.
- **Individual, Privately-Owned Homes:** The state indicates that “private homes belonging to clients or their families” are presumed to be compliant with the federal HCBS Settings Criteria (Page 2).
- 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 HCBS settings criteria if they are integrated in typical community neighborhoods where people who do not receive HCBS 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.

Validation of HCBS Settings

To validate findings of the self-assessment survey, the state developed an on-site visit process, a PTP process, and Individual and Family Assessment (IFA) surveys. Please describe how the state is determining what validation strategy(ies) apply to each setting to assure that each setting is properly validated.

On-site visits: According to the milestone template, the state completed on-site visits to a representative sample of 314 out of 1602 settings in June 2017.

- Please provide an overview of the site visit protocol in the STP, indicating whether the protocol is responsive to the various criteria of the HCBS rule.
- Clarify the process for how the state will work with providers to address discrepancies identified between the self-assessment surveys and the on-site visit findings.
- Provide results of the onsite visits originally conducted to validate the findings of the self-assessment survey, and confirm that these were completed on a sample of providers across all waivers and setting types.
- Include information in the STP on the additional site visits being conducted in response to IFA and PTP findings, as well as efforts to provide settings with technical assistance.
- Include details on the sampling methodology, an update on the number of completed site-visits as well as the validation process for all other settings that did not receive on-site visits.

Provider Transition Plan (PTP): The state indicated that all settings (unduplicated count of approximately 3,000) must complete a Provider Transition Plan (PTP), which is currently an Excel template and will soon be an online form. For each major category of compliance, settings indicate compliance issues, strategies that will be taken to address the issues (related to policy changes and education and training), and proposed timeline for completing the remediation actions. Settings must also include substantiating evidence, such as policies and photographs.

- Please describe the state's process to review completed PTPs and substantiating evidence.
- Please update the Projected End Dates in the STP to reflect the most current PTP state activities.

Individual and Family Assessment (IFA) surveys: The state is collecting data from "individuals and families to provide input on settings by type and location."

- The STP indicates that "many" of the 389 surveys completed by April 2016 can be linked to a setting because respondents "elected to identify the relevant setting" (Page 7). Please clarify how many of these surveys can be linked to a setting.
- The state indicates that they will "directly interview individuals and their families during site visit" (Page 7). Please describe what triggers an onsite visit to interview individuals and families at a specific setting (for example, whether this is based on an initial staff desk review of the provider self-assessment and other supporting materials). Indicate whether the interview questions will be the same as those in the survey and consolidated with the survey findings.
- Please clarify how the IFA survey and interview responses will be used in the site-assessment process, and how the state will address discrepancies between interview responses and provider self-assessment results.

Reporting of Setting Validation Results: Once the state's validation activities have been completed, please provide an updated chart of the number of sites falling into categories of compliance (fully compliant with the settings criteria, could come into full compliance with modifications, cannot comply with the federal settings criteria, or are presumptively institutional in nature).

Remediation Strategies

Site-Specific Remediation: The PTPs serve as the primary mechanism to support settings in complying with the federal HCBS Settings Criteria.

- Please clarify the remediation timeframes for providers.

- Please describe the process that the state will take to assure that any discrepancies across the IFA surveys, PTPs, and site visits are adequately addressed.
- Please update Project End Dates for each of the remedial strategies listed. Page 8 of the Department Responses to Public Comments document indicates that providers must be compliant by March 2020.
- Please verify the state’s process for confirming that providers have successfully completed all remediation activities outlined in a setting’s PTP by the end of the transition period.

Communication with Beneficiaries of Options when a Provider Will Not Be Compliant: The state provides detailed information on the plan to transition individuals from non-compliant settings. In addition, the state indicates in a comment response (Page 6 of the Department Responses to Public Comments document) that the state will develop the Individual Transition Plan (ITP) process further in January 2018. Please update activities and timelines to reflect this planning.

Caution Regarding Reverse Integration: 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 to the broader community. States cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries in the facility-based setting is not considered by CMS by itself to be a sufficient strategy for complying with the community integration criteria outlined in the regulation

Non-Disability Specific Settings: Please provide clarity on the manner in which the state will ensure that beneficiaries have access to services in non-disability specific settings among their service options for both residential and non-residential services. The STP should also indicate the steps the state is taking to build capacity among providers to increase access to non-disability specific setting options across home and community-based services.

Ongoing Monitoring of Settings

The STP indicates various strategies to include the HCBS Settings Criteria in its HCBS quality framework, including outcomes measures in the 1915(c) waiver quality improvement system, reporting of compliance issues by case managers and “others,” and review of National Core Indicators (NCI) data (Page 19). In addition, the state indicates it is working with the state agency responsible for certifying and licensing providers to “modify survey requirements and to review survey cycles” (Page 12).

- Please provide additional details on the related 1915(c) measures.
- Please explain how NCI data will be linked to individual settings to monitor compliance of each setting.

Heightened Scrutiny

As a reminder, the state must clearly lay out its process for identifying 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, the institutional presumption will stand and the state must describe the process for determining next steps for the individuals involved. Please only submit those settings under heightened scrutiny that the state believes will overcome any institutional characteristics and can comply with the federal settings criteria. 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. There are state examples of heightened scrutiny processes available upon request, as well as several tools and sub-regulatory guidance on this topic available online at <http://www.medicaid.gov/HCBS>.

For every setting, the state indicated that it will complete a form on Compliance Indicators for Overcoming Institutional Presumption (tab within the PTP). According to the milestone template, the list of settings subject to heightened scrutiny review will be submitted to CMS with the updated STP in January 2019.

- Please describe the sources that will inform the state’s completion of the heightened scrutiny form. Settings must complete a section on institutional characteristics as part of the PTP process, but it is unclear whether the self-assessment survey, on-site visits, or IFA surveys will trigger heightened scrutiny review.

Milestones

Thank you for submitting your completed milestone template in November 2017. It appears that the dates do not reflect current processes and planning. The milestone template indicates that the PTPs will be submitted by January 2018 and all providers will be compliant by September 2018. Please update these dates as appropriate in the STP and the milestone reporting form. The state can either submit an updated milestone template or update the dates directly in the online system, making a request for delay to CMS.

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