

## **CMS response to CO Statewide Transition Plan (STP.4), the revised crosswalk, and related materials**

February 2017

### **Public Notice and Comment**

- The state should submit an updated summary of public comments that reflects its current responses to the public comments received and decisions as to whether to make changes to the STP, including regarding the state's intention to change any areas of state standards that were found to be silent. Currently the state is planning to submit this document by 3/16/17. The state has added clarifying information to the STP in response to many of the comments but for the comments and state responses specific to the systemic assessment, they must be added to STP before initial approval can be granted.
- CMS requested additional details regarding how the state is addressing comments received from the public in regards to: *Use of restraints, Management of resident funds, Restrictive egress, Assessment and Validation of Providers that have not Responded to the Self-Assessment Surveys, Provider Scorecards and the State's Remediation Activities, Distribution of the Survey for Individuals Receiving services and Family Members* and *Stakeholder Communication*. CMS found the State's responses sufficient but the state should add the details provided in the response letter to the STP and to an updated version of the summary of public comments that they plan to submit by 3/16/17. This information should be made available to the public and should be incorporated into the state's official STP in order to provide clarity on the state's approach.
- The state should clarify its position on co-located settings in the updated response to public comment document it is planning to submit by 3/16/17.
- CMS notes the state indicated it has outstanding questions for CMS on legally enforceable resident agreements and requests guidance from CMS before proceeding on this issue. We look forward to speaking with you regarding this issue on our pending call.

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

- The state has addressed this issue of which waivers cover which setting types in the revised STP and response letter. However, the state has deleted "assisted living residences" as a setting in the "type of setting" column in the crosswalk. The crosswalk does retain references to the assisted living residence statute; however, it is unclear why this change has been made, please clarify.

### **Systemic Assessment & Remediation**

- CMS expressed concern with the state's determination that the regulations for Child Residential Habilitation settings are in compliance with the federal requirement that a setting ensures an individual's rights of privacy, dignity and respect, and freedom from

coercion and restraint. The state proposes to address this concern by adding a reference to new Rule AAA in the Children’s Habilitation Residential Program (CHRP) regulations, and by making revisions to its CRHP regulations (page 16 of response letter; pages 4-5 of crosswalk). The state proposes remediation of its CRHP setting regulations (CCR 2505-10 8.604.1 and 8.604.2) to align them with the federal requirement that the setting ensure an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint. However, any modification of the HCBS regulation conditions must be supported by a specific addressed need and justified in the person-centered service plan following the criteria in 42 CFR 441.301(c)(viii)(A) through (H).

- CMS asked the state to provide more detailed timelines for the remediation of state standards, including interim milestones with due dates. The state’s deadline for finalizing revised state regulations, statutes, and waivers was listed as 3/15/19, and CMS expressed concern that this deadline does not allow enough time for the state and CMS to ensure that the revised standards are in place and effective, and that all settings are in compliance with those revised standards, before the end of the transition period.

The state added more detailed timelines to the STP for the systemic remediation process (page 17 of response letter; pages 14-16 of revised STP). These detailed timelines clarify each step in the process of remediating state standards, and explain how the state will ensure all revised standards are effective before the end of the transition period.

However, there remains some concern that the state’s timeline does not leave enough time to assure compliancy prior to 3/19/19.

- The STP includes detailed steps for requesting any changes to state statute or budget, beginning 1/1/2017 and ending with bills being passed and signed by 5/30/2018 (page 14).
  - The process for drafting, publicly noticing, submitting, and receiving approval for substantive waiver amendments is laid out step-by-step. The state plans to begin this process on 3/1/2017, submit proposed waiver amendments by 10/15/2017, and receive approval by 1/15/2018 (pages 14-15).
  - For any changes contingent on legislative approval, such as changes to rate methodology in waivers, the state plans to draft the amendments by 7/1/2018, publish public notice by 8/10/2018, submit amendments to CMS by 10/15/2018, and have changes effective with CMS approval by 1/15/2019 (page 15).
  - The STP outlines a detailed timeline for changes to state regulations. The process will be initiated 3/1/2018, initial drafts will be completed by 7/1/2018, public comment and hearings will be conducted 7/2/2018 through 12/3/2018, rules will be filed by 1/31/2019, and rules will become effective by 3/2/2019 (page 16).
- CMS requested that the state ensure and confirm it is addressing all components of each federal requirement. For example, in the “integrated” category (Column A in the crosswalk), the crosswalk only mentions whether the state standard addresses integration broadly. The state has addressed this issue in its response letter to CMS, but should clarify in the crosswalk itself that the column headers in Tables 1 and 2 each serve as an abbreviation for one of the full federal requirements.

- CMS requested that the state assess the state standards governing all types of settings with regards to the federal requirements that individuals have the freedom and support to control their own schedules and activities, and have access to food at any time; that individuals are able to have visitors of their choosing at any time; and that the setting is physically accessible to the individual. The state did not directly address this request.

The state should clarify whether its assessment of standards for those that are not provider-owned or controlled residential settings included consideration of whether those standards ensure that settings provide individuals with freedom and support to control their own schedules and activities, access to food at any time, access to visitors of the individual's choosing, and physical accessibility. These settings in questions are mentioned in pgs. 13-19 of the crosswalk, Set 2 of federal criteria under type of setting, but are not assessed as other than "N/A- this type of setting is not residential."