

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

September 4, 2015

Susan Mosier, MD
Medicaid Director
State of Kansas, Department of Health and Environment
900 SW Jackson Avenue Suite 900
Topeka, KS 66612

Dear Dr. Mosier,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Kansas' Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Kansas submitted its STP to CMS on March 17, 2015. CMS confirmed with the state that the two documents entitled "Kansas Department for Aging and Disability Services Plan for Assessing Compliance with the CMS Final Rule for Home and Community Based Settings" (KDADS Plan) and "KDADS Supplemental Document to the Proposed HCBS Transition Plan for Assessing Compliance" (KDADS Supplement) are to be evaluated jointly as the STP.

While the STP includes a lot of information, it would benefit from the development of a single cohesive detailed narrative and project plan that describes and clarifies the current STP materials. CMS is also requesting additional detail on areas including the systemic assessment, site-specific assessments, remediation and monitoring. These issues are described below.

Systemic Assessment:

- While Kansas provided a brief description of the plan for conducting a systemic assessment, the state did not provide interim milestones for this assessment and did not identify the specific state regulations and policies the state plans to review. The STP does not identify the specific aspect of each regulation found to comply, conflict or be silent with regard to provisions of the federal regulation. The STP does not describe the changes that must be made to each regulation to bring them into compliance. CMS requests that Kansas provide this information so CMS is able to understand the state's assessment.
- Additionally, the state provided a different timeline in the KDADS Plan for a systemic assessment from the timeline provided in the KDADS Supplement. CMS requests that

Kansas provide a detailed timeline for systemic assessment, including a beginning and ending timeframe.

- The STP should provide a description of the process for its systemic assessment of standards that includes:
 - Identification of the components of the systemic assessment that have been completed, with a statement of the outcomes of the review;
 - An expected completion date for the systemic assessment process, which includes justification if the completion date is beyond the six-month from STP submission timeframe;
 - Clarification of the beginning and ending dates for the systemic review, to resolve the timeframe discrepancy noted on page 3 of the KDADS Plan and page 7 of the KDADS Supplement; and
 - A detailed crosswalk between the specific policies, regulations and statutes for each of the waivers and identify what portion of the regulation, policy, etc., corresponds to each of the qualities required for a home and community-based setting in the federal regulation.

Site-Specific Assessments:

- The KDADS Plan and KDADS Supplement referenced the state's plans to conduct site-specific assessments. However, the state provided inconsistent information in each document regarding the assessment processes and the timeframe for conducting the assessments. CMS requests that the state clarify which assessment methods will be utilized (e.g. self-assessments, policy and record reviews, beneficiary and provider interviews, observations, and other tools etc.), the settings that will be assessed, the specific beginning and ending timeframes and key milestones for these assessment activities. The STP also did not include the state's sampling methodology and validity checks for each of the assessment processes. Please provide this information, along with a description of how the state will validate the self-assessments.
- The STP should include additional detail on the site-specific assessment process including:
 - Information and outcomes for the completed site-specific assessments and those pending completion to determine compliance with the federal regulation;
 - Clarification on the site-specific assessment process, including use of self-assessments, policy and record reviews, beneficiary and provider reviews for the target provider population;
 - A detailed explanation of the state's rationale for assessing the various provider settings, its sampling methodology, and how it will conduct validity checks;
 - A description of what the on-site assessments will entail and who will conduct them;

- An estimate of the number of on-site assessments the state plans to conduct;
- Beginning and end dates and key milestones for completion of the site-specific assessment activity; and
- Outcomes for any completed site-specific assessments.

Outcomes:

- The KDADS Supplement document page 7 indicated KDADS would produce an inventory and description of all home and community-based settings by April 1, 2015, although this settings analysis was not submitted with the STP, and was not made available for public comment. The high level settings analysis now located on the state’s website groups common setting types into one of the four compliance categories: “settings presumed fully compliant, settings that may be compliant, or with changes will comply, settings presumed to have institutional qualities, but for which the state may present evidence to CMS for heightened scrutiny, and settings that do not comply”. Please incorporate this settings analysis into the STP, along with an estimate of the number of settings for each category. Please also identify which settings apply to each of the waivers.

Monitoring:

- The STP did not include comprehensive information about the state’s oversight and monitoring processes for ensuring continuous compliance of settings and reflected different monitoring timelines between the KDADS Plan and the KDADS Supplement. For example, the compliance plan section of the KDADS Plan stated on page 3 that “Within 12 months of approval of the STP it will notify all HCBS settings of their compliance with the new Final Rule.” In addition it stated, “For the settings that will need additional time for compliance, they will be notified of non-compliance areas and be provided timelines and benchmarks for achieving compliance.” In contrast, the KDADS Supplemental document on page 7 stated that “By January 2016, KDADS will notify all HCBS settings and providers of their compliance with the new Final Rule... HCBS settings that need additional time to come into compliance will be notified of non-compliance areas, timelines for compliance, and benchmarks to achieve compliance within the shortest timeframe possible.” Please address this discrepancy.
- Additionally, the state indicated in the KDADS Plan that non-compliant settings will be monitored by the quality assurance and program integrity group, although there was no additional detail provided on these oversight and monitoring activities. Please describe.
- The STP should include additional detail on the oversight and monitoring process, including:
 - Identification of the parties responsible for the state’ monitoring activities as well as the specifics on the methodologies and frequency the state’s monitoring activities;

- Clear linkages between the identified oversight and monitoring actions, tools and resources; and
- The timeframe and milestones for ensuring continuing compliance of settings.

Systemic and Site-Specific Remedial Actions:

- Recognizing that the KDADS Supplement indicated that the systemic assessment will be completed in calendar year 2015, the systemic assessment outcomes may not yet be available. While the outcomes may not be available, it is important that the state develop its remediation strategies for ensuring that its policies, regulations and statutes are in compliance. For educating the providers on the new regulations, the state indicated it would update all provider manuals, consumer handbooks, and guides to incorporate the final rule requirements within 90 days of completion of the Assessment and Compliance Review activities. The state does not need to have completed remedial actions for the systemic assessment at this time. However, Kansas should identify actions it plans to take in order to address any state standards that are found to be non-compliant or silent with respect to the federal home and community-based settings requirements.
- Once the systemic remediation objectives have been clearly identified, the STP should include specific details on the remediation activities including:
 - Remediation activities and related timeframes to modify rules, regulations, and policies; and
 - The review and remediation of provider contracts and educational materials, along with the timeframes for completing these activities.
- According to the KDADS Supplement page 7, the state will be conducting the provider assessments from May 2015 through October 2015 and as a result, the state did not provide detailed information about the planned remediation. The KDADS Supplement highlighted a few high level milestones for the remedial process. For example, on page 8 it states, “December 31, 2015, KDADS will notify all providers and individuals who may be affected by the changing rules.” and “During 2016 KDADS will notify all HCBS providers of non-compliance areas, timelines and benchmarks for achieving compliance.” The state did not describe how it will ensure that the providers are doing the right things to come into compliance. Additionally, page 8 of KDADS Supplemental states, “By January 2016 for settings that are not compliant the state will ensure appropriate transitions by working with stakeholders and community partners.” and “By July 2016 the state will establish a transition policy for relocation or transition to compliant settings after public input and comment that will address the process for transition, ensure choice is provided, and identify timeframes for appropriate transition.”
- While the site-specific assessment results have not been completed or shared, the high level remediation objectives need additional description to determine the scope and effectiveness of

the remediation plans for the site-specific outcomes. The STP should include specific details on the remediation activities, including:

- Key milestones for the provider remediation processes;
- Target completion dates for proposed remedial actions;
- The scope of providers undergoing remediation;
- The providers' remediation timeframes;
- The state's monitoring mechanisms to ensure remediation activity progresses according to timelines; and
- Corrective action processes for non-compliant providers.

Heightened Scrutiny:

The state should clearly lay out its process for identifying settings that are presumed to have institutional qualities. 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 for settings meeting the scenarios described in the regulation, the presumption will stand and the state should describe the process for informing and transitioning the individuals involved, either to compliant settings or settings funded by other funding streams.

Settings presumed to be institutional 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 HCBS from the broader community of individuals not receiving Medicaid HCBS.

The STP indicated that the Quality Management Specialists, Health Facility Surveyors, and managed care coordinators will assist the state in identifying compliance related issues through normal interactions and targeted reviews when heightened scrutiny is appropriate. However, the state did not indicate whether any settings will require heightened scrutiny, nor did it indicate when it will identify settings that may require heightened scrutiny. Please include an estimate of the number of these settings that will require heightened scrutiny, along with the timeframe for identifying settings and submitting evidence to undergo heightened scrutiny. Please also provide a description of the process of validating provider self-assessments where there was a request for heightened scrutiny, as well as the process for gathering evidence for these self-identified providers.

Kansas also included the following conclusion in its Summary of Public Comments on page 6 of the KDADS Supplement, "Higher scrutiny may be necessary for individual choice to reside in a setting

deemed out of compliance with the final rule.” This statement is confusing. Heightened scrutiny is the process through which a state can present evidence that shows that settings presumed to be institutional do not in fact have the qualities of an institution and DO have the qualities of a home and community-based setting. If an individual chooses to remain in a setting that is not compliant by the end of the transition period, the setting can no longer be funded with Medicaid HCBS. Please clarify what the state means by this statement.

Relocation of Beneficiaries:

- The STP included a high-level objective to establish a transition process for beneficiaries by July 2016 that will afford education and information about a beneficiary’s rights and responsibilities prior to transition. However, the STP did not include the estimated number of beneficiaries impacted, or a description of the actual processes for assuring that beneficiaries will be given the information and supports necessary to make an informed choice of an alternate setting that aligns with the regulations.
- The state should also identify those settings that cannot be brought into compliance and for which the state anticipates using non-HCBS funding following the end of the transition period.
- Please provide additional information on the process for relocation of beneficiaries, including:
 - An estimate of the number of settings and beneficiaries that may be subject to relocation;
 - A detailed description of the relocation plan that includes beginning and ending timeframes and the process to assure that individuals being relocated have all the necessary services and supports in place at the time of the move.

Other Areas of Concern:

- The need for additional detail in the current STP may have impacted the stakeholders’ ability to comprehend the STP and provide relevant feedback. The state should identify the critical decision points and approximate timeframes whereby new public comment periods will be held.
- The summary of public comments should include more detail about the state’s disposition of public comments, rather than the state’s indication that the feedback was considered and high level conclusions were provided. The STP should include a detailed disposition of the public comments for every public comment period.
- The state should remove any reference to any assumption that the state can consider exceptions for individuals in non-compliant settings and that it can ‘grandfather’ individuals in settings that are non-compliant. As stated above, after the end of the transition period, a non-compliant setting cannot be funded with Medicaid HCBS.

- The state should include a date specific when it plans to submit an amended STP that describes the findings of the state's assessments and its specific remediation strategies with milestones.

Kansas should submit an amended STP based upon the requests outlined above by no later than 75 days from the call with the state referenced in the following paragraph. This must include a 30 day public notice and comment period prior to submission to CMS.

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. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Claire Hardwick, the CMS central office analyst taking the lead on the STP, at (410) 786-6777 or at Claire.Hardwick@cms.hhs.gov, with any questions.

Sincerely,

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

cc: James Scott, ARA