

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 13, 2015

David Dzielak, Ph.D  
Executive Director  
Mississippi Division of Medicaid  
550 High Street, Suite 1000  
Jackson, MS 39202

Dear Dr. Dzielak,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Mississippi's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Mississippi submitted its STP to CMS on March 6, 2015, and resubmitted, per CMS feedback, on April 27, 2015. CMS is requesting additional information on specifics of the systemic assessment processes and outcomes, methodological details in the site-specific assessment process, and remedial action processes and monitoring. These concerns and related questions for the state are summarized below.

### **General:**

Please ensure that any discussion in the STP of person-centered service plans is related to the federal regulations regarding settings, particularly the modifications section under provider controlled settings. The regulatory requirements for person-centered planning were effective March 17, 2014 and are not eligible for a transition period.

### **Assessments:**

- **Systemic assessment:**
  - Please list all settings types under each impacted waiver. For example, in what settings are services delivered under the 1915(c) Elderly and Disabled (E&D) Waiver?
  - Please provide specifics on what the state reviewed in the systemic assessment, such as specific statutes, regulations, and policies, what settings they correspond to, the specific qualities of home and community-based settings addressed, and any amendments that the state will need to make to the statutes, regulations and policies.

Please clarify which parts pertain to the 1915i benefit and 1915c waivers. In addition, please:

- i. Break out timing of the assessment process vs. the remediation process.
- ii. Clarify when the systemic assessment will be completed (noting that it should be within 6 months of the date that the STP was submitted to CMS).
- iii. Provide remedial steps that the state expects it may need to undertake to move towards compliance (for example, modifying licensing regulations), and provide the amount of time it takes for the intended modifications.

- **Setting-specific assessment:**

- Please provide estimates for the number of facilities the state expects to fall into the compliance categories (compliant, not compliant but can be compliant with remediation, and cannot become compliant. In addition, please:
  - i. Clarify whether residential and non-residential settings types are being assessed.
  - ii. Clarify that the state will provide actual numbers of facilities found to have institutional characteristics, not just an “estimate” of the number as indicated on p. 15 of the STP.
  - iii. Clarify what the state means by “private home dwellings,” including indicating whether these settings types consist of any foster home or child foster home residences or private residences that serve to isolate. It is the state’s responsibility to ensure that settings demonstrate the characteristics of a home and community-based setting. If the state is operating with a presumption that an individual’s private home or private family home is meeting this requirement, the state needs to confirm that none of these settings were purchased or established in a manner that isolates the individual from the community of individuals not receiving Medicaid funded home and community-based services. Information available in the Toolkit on settings that isolate may be helpful in this regard. CMS wants to make sure that Mississippi understands that its classification of “private home dwellings” may not automatically meet the characteristics of home and community-based settings if they are settings where all or the majority of services are rendered in that setting, or on the grounds of that setting, or where a group of individuals with disabilities or a specific type of disability (or their families) have purchased the setting and reside in the setting.
  - iv. Please provide information on the potential relocation of beneficiaries. The STP should describe how, if the assessment process determines certain settings will not become compliant, the affected individuals will be able to

- make informed choices about alternate settings that includes a person-centered planning process and ensures timely notice and due process. The STP should clarify the number of individuals potentially affected; the process to assure such individuals will have critical services and supports in place at the time of relocation, and the timelines for relocation.
- v. Clarify the beneficiary survey process:
    - o The survey should be distributed to a representative random sample, not just a random sample.
  - vi. Indicate whether the state is doing a sampling of settings across setting types for on-site visits or whether it will do on-site visits of every setting type.
- Please clarify the site-specific assessment re-validation process, and how it fits into the greater timeline.
    - i. For example, the STP indicates that the state will do a second round of on-site validations (p. 16 “following a second on-site validation visit . . .”). Will these visits be part of the assessment process or to check on progress towards remediation actions and compliance? How will these results be reported to the public and CMS?
    - ii. The STP also indicates that follow-up on-site validation visits will occur from 12/1/15-2/1/18 (p. 20 row 4 “Follow-up On-site Validation Visit”). Are these the same visits, and if not how do they fit into the overall transition plan?
    - iii. How do these validation visits correspond to the assigning of provider categories on September 1, 2015 (p. 19 row 9)?

**Remedial Actions:**

Please clarify how remediation activities relate to milestones. For example, explain how the process for validation activities will continue until December 2017, even though providers will begin getting findings letters in September 2015 (p.19). In addition, monitoring will begin in January 2016, before the assessment validation is complete.

**Monitoring:**

Please clarify how National Core Indicator data will be used (including how the data will be linked to specific facilities), and whether it will be used for ongoing monitoring, assessment validation or both. The use of this data is only valid if it can be cross walked against site-specific locations.

**Heightened Scrutiny:**

The state should clearly lay out its process for identifying settings that are presumed to have the characteristics 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 on settings meeting the scenarios described in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved either to compliant settings or to settings not funded by Medicaid HCBS.

These settings 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 state should submit a revised STP no later than 30 days from receipt of this letter that addresses CMS' concerns regarding the processes noted above. The revised STP should include a remediation plan with specific milestones and corresponding timeframes for achieving systemic and site-specific compliance. This revised STP needs to include a date when the state will submit an amended STP once all systemic and site-specific assessments are completed that includes all final outcomes and remediation actions specific to each compliance issue. This amended STP should be posted for public comment for a period of 30 days prior to being submitted 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. During this call, CMS will discuss when the state plans to submit an amended STP. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact George Failla at 410-786-7561 or at [George.Failla@cms.hhs.gov](mailto:George.Failla@cms.hhs.gov), the CMS Central Office analyst taking the lead on this STP, with any questions related to this letter.

Sincerely,

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

cc. Jackie Glaze, ARA, Region 4