

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

July 10, 2019

Beth Kidder
Deputy Secretary for Medicaid
Florida Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 8
Tallahassee, FL 32308

Dear Ms. Kidder:

In follow-up to the 3/29/2019 initial approval granted to Florida's Home & Community Based Services (HCBS) Statewide Transition Plan (STP), below is additional detailed feedback to assist the state with final approval and implementation of its STP.

In order to receive final approval, all STPs should include:

- A comprehensive summary of completed site-specific assessments of all HCBS settings, validation of those assessment results, and inclusion of the aggregate outcomes of these activities;
- Draft remediation strategies and a corresponding timeline for resolving issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the HCBS settings transition period (March 17, 2022);
- A detailed plan for identifying settings presumed to have institutional characteristics, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- A process for communicating with beneficiaries currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings criteria by March 17, 2022; and
- A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the federal settings criteria in the future.

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

It is important to note that CMS' feedback on an STP solely addresses the state's compliance with the applicable Medicaid authorities. CMS' review of the STP does not address the state's independent and separate obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or the Supreme Court's Olmstead decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the Olmstead decision is available at http://www.ada.gov/olmstead/q&a_olmstead.htm.

I want to personally thank the state for its efforts thus far on the HCBS STP, and look forward to the next iteration of the STP that addresses the feedback in the attachment.

Sincerely,

/S/

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

ATTACHMENT

Additional CMS feedback on areas where improvement is needed by the State of Florida in order to receive final approval of the Florida HCBS Statewide Transition Plan

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. The state is requested to provide a timeline and anticipated date for resubmission for consideration of final approval as soon as possible.

HCBS Programs Subject to the HCB Settings Requirements

- The STP includes a list of 1915(c) Waiver programs on page 4 and a list of the settings in which enrolled waiver participants may receive services on page 6, however, page 6 also indicates that three of the referenced waivers (Adults with Cystic Fibrosis, Projects AIDS Care, and Traumatic Brain and Spinal Cord Injury Waivers) have been closed (terminated). Please revise the STP to specify the currently approved HCBS waivers.
- In the Florida STP, the state lists the settings in which HCBS recipients may receive services on pages 6 and 7; however, two of the setting types listed (residential habilitation centers and foster care homes) are missing both from the list of settings assessed on page 11 and from the provider self-assessments in Attachments III-VI (the Residential and Non-Residential Review Tools for the LTC and iBudget Waivers). Please ensure that all provider-owned or controlled settings in which HCBS recipients receive services are included in the list of HCBS programs subject to the HCB settings requirements within the STP and that they are also included in site-specific assessment, validation, and classification processes.
- Please clarify what services are provided at the Adult Training Centers.

Site-Specific Assessment, Validation and Classification of Results:

Because the state has not yet completed its site-specific assessments, the STP does not include any setting compliance determinations. Please ensure that all settings in which individuals receive home and community-based services, including all provider-owned or controlled settings, are assessed and validated across all of the HCB Settings Rule requirements. In the next iteration of the STP, please include:

- ***Site-Specific Assessment Process:***
 - Page 12 of the STP indicates that “the State reviewed the DOEA’ 2014 HCB characteristics onsite monitoring data for the LTC Waiver, and annual compliance monitoring results from the Agency for Persons with Disabilities and the contracted Quality Improvement Organization for the iBudget Waiver. Additionally, the State reviewed the results of provider self-assessments conducted using the new and revised assessment tools.”
 - Please explain how the referenced data was used to assess or validate settings for all the HCB requirements.
 - The state indicates that the iBudget Waiver settings are also monitored for numerous elements of the HCB settings rule; please clarify whether the settings are monitored/assessed for all settings criteria.
 - Page 13 of the STP states, “The results of the electronic survey were reported electronically to the State in real time, whereas paper surveys were emailed to the State when a provider self-identified as presumptively institutional. Managed care plans received access to the results of the electronic surveys and the subsequent validation assessments to determine if HCB settings in plan networks were compliant with the federal requirements.”
 - Please provide additional information to clarify which settings completed electronic surveys and which settings completed paper surveys.
 - Please clarify the role of the managed care plans in the assessment and validation process.
 - Page 19 indicates, in regard to planned residential settings, that an assessment will be completed “within a year of accepting residents to ensure the waiver recipients are integrated into the broader community,

are actively involved in their person centered planning and are making life choices that include which services they receive and which entity provides them.”

- Please clarify if the settings are new setting types not currently in the HCBS delivery system.
 - Please clarify if these planned residential settings fall into any of the three categories of settings that are presumed institutional.
 - Please clarify that all settings including residential and non-residential settings will be assessed to determine whether or not they meet the settings criteria.
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- **Individual, Privately-Owned Homes:** 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. 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.
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- **Group Settings:** As a reminder, any setting in which individuals are clustered or grouped together for the purposes of receiving HCBS must be assessed and validated by the state for compliance with the rule. This includes all group residential and non-residential settings (including but not limited to prevocational services, group supported employment and group day habilitation activities). The state may presume that any setting where individualized services are being provided in typical community settings comport with the rule. Please confirm that the STP accurately includes all group residential and non-residential settings in its assessment and validation activities.
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- **Validation of Settings:** CMS requests the state provide the following additional detail regarding how all HCBS settings are independently validated in the updated STP:
 - Please confirm how the state will assure that each setting providing Medicaid HCBS will be assessed and validated, using at least one independent validation strategy.
 - Please explain how the state validated other settings that were not included in the sample for onsite visits for compliance.
 - Please describe the files/documents reviewed during the site visits.
 - Page 14 of the STP indicates, “During the first validation cycle, the State used State employees or State contracted assessors who conduct annual monitoring activities, or otherwise perform functions pertaining to the applicable HCB program.” Page 15 of the STP indicates, “The State will continue to conduct on-site surveys of settings that were not assessed during the initial validation assessment phase to determine compliance with the HCB Settings Rule.” Please clarify the state’s plan for the remaining validation, including who will conduct the on-site surveys.
 - States may use a combination of various strategies to assure that each setting is properly validated (including but not limited to state onsite visits; data collection on beneficiary experiences and consumer feedback; leveraging of existing case management, licensing & certification, and quality management review processes; partnerships with other federally-funded state entities, including but not limited to Developmental Disability and aging networks; and state review of data from operational entities, such as managed care organizations (MCOs) or regional boards/entities, provider policies, consumer surveys, and feedback from external stakeholders), so long as compliance with each individual setting is validated by at least one methodology beyond the provider self-assessment.
 - Reporting of Setting Validation Results: Please include the initial findings of setting compliance across the respective programs with final results once all validation activities are completed. In this analysis, please delineate the compliance results across categories of settings for all programs in a manner that is easy for the public to review and understand. At a minimum, please make sure to confirm the number of settings in each category of HCBS that the state found to be: fully compliant with the HCBS settings

criteria, could come into full compliance with modifications during the transition period, cannot comply with the HCBS settings criteria, or presumptively institutional in nature.

- **Reverse Integration Strategies:** CMS requests additional detail from the state as to how it will assure that 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 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.

Site-Specific Remediation:

- On page 13 of the STP, the state indicates that providers who identified areas of non-compliance using the tool were asked to remediate prior to the State's validation visit, and to seek technical assistance from the State as necessary. However, page 15 of the STP indicates that "Providers that determine compliance gaps with the HCB Settings Rule during self-assessment are required to develop a remediation plan based on the deficiencies identified. Providers may seek technical assistance from the State in developing and implementing the plans as necessary. State assessors review the remediation plans during on-site validation assessment visits for progress towards compliance, and whether the plan adequately remediates any deficiencies found during the validation visit." Please clarify whether providers are required to remediate or required to develop a remediation plan prior to the on-site validation visits.
- Page 15 references Remediation Plan templates which are located in Attachment V, however, Attachment V is the iBudget Assessment Review Tool for Residential Settings. Please clarify.
- **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 non-disability specific setting options across home and community-based services.
- Please provide a detailed strategy for assisting participants receiving services from providers not willing or able to come into compliance by the end of the transition period. CMS asks that the state include the following details of this process in the next installation of the STP:
 - Please include a timeline and a description of the processes for assuring that beneficiaries, through the person-centered planning process, will be given the opportunity, the information and the supports necessary to make an informed choice among options for continued service provision, including in an alternate setting that aligns, or will align by the end of the transition period, with the regulation. CMS requests that this description and timeline specifically explain how the state intends to assure beneficiaries that they will be provided with sufficient communication and support including options among compliant settings, and assurance that there will be no disruption of services during the transition period.
 - Please provide an estimate of the number of individuals who may need assistance in this regard.
 - Page 18 of the STP states that "Recipients will be monitored during transition and after completing transition to ensure their new service provider maintains compliance with the HCBS Settings Rule and that their services continue to meet waiver standards and requirements." Please indicate who (or what entity) is responsible for this monitoring.

Ongoing Monitoring of Settings:

CMS requests that Florida provide more details on the monitoring process the state intends to use to ensure continued compliance of its settings with the federal criteria, including a timeframe for each specific monitoring

step listed. CMS also requests that Florida provide:

- Specific detail for each HCBS program's monitoring of settings, including the timelines that settings are subject to monitoring, and the frequency of the monitoring;
- The specific entity responsible for the annual monitoring program (referenced on page 18).

Heightened Scrutiny:

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 by the end of the transition period. 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>.

- On page 16 of the STP, the state outlines settings that are potentially isolating beneficiaries from their broader communities based on prior examples of settings that isolate released by CMS in 2016. Please clarify in the next iteration of the STP the characteristics against which the state will assess these settings to determine whether or not they will be subject to heightened scrutiny review based on most current guidance released by CMS on March 22, 2019.

Milestones:

A milestone template has been completed by CMS with timelines identified in the STP and has been sent to the state for review. CMS requests that the state review the information in the template and send the updated document to CMS. The chart should reflect anticipated milestones for completing systemic remediation, settings assessment and remediation, heightened scrutiny, communication with beneficiaries and ongoing monitoring of compliance.

508 Compliance:

Regardless of format, all Web content or communications materials produced are required to conform to applicable Section 508 standards to allow federal employees and members of the public with disabilities to access information that is comparable to information provided to persons without disabilities. We have reviewed your Statewide Transition Plan and found 508 compliance issues that need to be fixed before the document can be posted onto the CMS Website. The following is a list indicating some, but may not be all, issues identified:

- Any figures or images need alternate text to accurately describe the information. If an image or object is decorative, it should be placed in the background
- All tables need designated header rows. Six tables require headers
- There should be no merged or split cells in tables.
- Reading order should be checked, with particular attention given to tables. This ensures information is conveyed properly by a screen reader