

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 24, 2018

Patrick Tigue
Medicaid Director
Executive Office of Health and Human Services
74 West Road, 1st Floor
Hazard Building
Cranston, RI 02920

Dear Mr. Tigue:

In follow-up to the 1/5/2017 initial approval granted to Rhode Island's Home & Community Based Services (HCBS) Statewide Transition Plan (STP), CMS provided additional detailed feedback to the state to assist with final approval and implementation of its STP. CMS acknowledges that since this technical assistance was provided, work has continued within the state to bring settings into compliance and further develop the STP; however, a summary of this feedback is attached for reference to assist in the state's efforts as it works towards final approval.

In order to receive final approval, the STP 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. 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,

A handwritten signature in black ink, appearing to read "Ralph F. Lollar". The signature is fluid and cursive, with a large initial "R" and "L".

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 Rhode Island in order to receive final approval of the 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.

Site-Specific Setting Assessment & Validation Processes

Confirmation of Provider Self-Assessment Participation Rate: On page 2 of the STP, the 100% sample size for provider self-assessments is described as the state's initial goal. Please confirm whether the state was successful in assuring 100% participation in the provider self-assessment process. If not, please provide information on how the state is addressing non-respondents.

Confirmation of Specific Steps in Validation Process: On pages 2-3 of the STP, the state describes one universal process for validating setting compliance with the federal HCBS rule. The steps outlined by the state include a desk review of documentation submitted by providers in support of provider self-assessment responses; comparison of provider and consumer survey responses to identify inconsistencies; onsite reviews for any settings receiving inconsistent provider/consumer results; and onsite reviews of a random sample of settings where provider/consumer responses were consistent. CMS would like the state to clarify the following details with respect to this validation process:

- **Consumer Surveys:** For the consumer surveys, please provide the following additional details: When was the consumer survey provided? Did all consumers have the opportunity to complete the survey? How was the consumer survey offered (via email, mail, phone or in-person)?
- **Onsite Reviews:** In the settings deemed compliant with the federal HCBS rule through the desk review of provider self-assessments, please provide additional details on the sample size of settings that were selected for an onsite visit, and clarify whether the sample size is consistent across categories of settings or whether there is a variance (and if so, please share what the sample size is for each category of settings).

Assessment & Validation Results:

- As a reminder to the state, all settings where individuals receive Medicaid HCBS must be compliant with the federal HCBS criteria. Please ensure that within the state's assessment and validation activities, information is collected to review each setting's compliance with each of the settings criteria.
- In the STP, please include a summary of the compliance results for settings (preferably by setting category). At a minimum, the state should identify the number of settings

determined to be fully compliant with the federal HCBS rule; partially compliant but with modifications can be brought into compliance by the end of the transition period; presumed to have institutional characteristics and thus flagged for heightened scrutiny; or determined not to be able to come into compliance with the federal HCBS rule by the end of the transition period.

- On page 10 of the STP, the state commits to providing an analysis of areas that need remediation at the setting level by August 31, 2016. Please include this analysis within the updated STP.

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.

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 home and community-based settings criteria if they are integrated in typical community neighborhoods where people who do not receive home and community-based services 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. CMS requests that Rhode Island provide additional details about its strategy for compliance monitoring of these settings. 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.

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.

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 into 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 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 Remedial Actions:

The following additional information regarding the site-specific remedial actions is requested.

- Please add details about how the state will work with settings that may not currently be compliant but could come into compliance during the transition period by making necessary changes under a corrective action or remediation plan.
- Please specify how corrective action plans (CAPs) with providers will be developed, the date by which all CAPs will be submitted and the date by which they will be reviewed and approved by the state.
- More specific details as to how it is educating providers on any changes to state standards that will require providers to make specific adjustments or modifications systems-wide in order to comply with the federal HCBS rule.
- 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 Rhode Island include the following details of this process in the state's next installation of its STP:
 - A description for how participants will be offered informed choice and assistance in locating a compliant residential or nonresidential setting in which HCBS are provided or accessing alternative funding streams.
 - An estimated number of beneficiaries who are in settings that the state anticipates will not be in compliance by the end of the transition period and may need to access alternative funding streams or receive assistance in locating a compliant setting.
 - Confirmation of the state's timeline for supporting beneficiaries in exploring and securing alternative options should a transition out of a non-compliant setting be necessary.
 - An explanation of how the state will ensure that needed services and supports are in place in advance of the individual's transition.

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 on a presumptively institutional setting, 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>.

Monitoring of Settings: Please provide more details on the monitoring process the state intends to use to ensure continued compliance of its settings with the federal requirements, as well as a timeframe for each specific monitoring step listed. At a minimum, the state should include information regarding the entities responsible for the various monitoring activities (and whether the state is planning to incorporate ongoing monitoring activities into an existing system or review process), ongoing training and technical assistance provided to individuals responsible for monitoring activities, a timeline for monitoring activities, and the state's plan for overseeing monitoring efforts. Please include the following details in the updated STP:

- Steps the state is taking to assure that various personnel that are responsible for case management, service coordination, and assessing/validating settings against the federal HCBS rule have access to ongoing training and technical assistance to support their work;
- What other processes/entities, if any, will be used for monitoring; and
- A description of the ongoing monitoring processes that will occur beyond March 2022.

Milestones: CMS will send to the state an updated milestone chart reflecting anticipated milestones for completing systemic remediation, settings assessment and remediation, heightened scrutiny, communication with beneficiaries, and ongoing monitoring of compliance that have been gleaned from the STP. The state should review the milestone chart and return to CMS within 30 days of receiving the template.