

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 9, 2015

Margaret Brodie
Director, Health Care Services
State of Alaska, Department of Health and Social Services
4501 Business Park Boulevard Building L
Anchorage, AK 99504

Dear Ms. Brodie,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Alaska's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Alaska submitted its STP to CMS on March 17, 2015. CMS notes several areas where the STP needs additional information regarding systemic assessment, setting assessments and remediation, the oversight process, relocation of beneficiaries, and the heightened scrutiny process. These concerns and related questions for the state are summarized below.

Covered Settings:

- The state needs to include all settings that are covered by its waiver and demonstrations. Adult Family Living/Foster Care, Adult Day, and Licensed Group Homes were not included in the STP. All settings, even those otherwise mentioned throughout the STP must be included in a list of settings along with the corresponding waivers/demonstrations.

Systemic Assessment

- HCBS Requirements. The state needs to include two federal HCBS requirements in its systemic review: 1) "the setting ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint" and 2) "the setting facilitates individual choice regarding services and supports, and who provides them." Please incorporate these two requirements in the revised systemic review.

- Assessing All Regulations. The state examined regulations for Assisted Living Homes and Foster Homes. CMS needs additional information about the regulatory evidence for all other setting types such as non-residential settings providing supported employment or day habilitation. Please revise the systemic review so that state regulations for all settings types are clearly included in the assessment.
- Regulation Remediation. Alaska Statute 47.33.060 allows an assisted living home to propose house rules to address “visitors,” “movement of residents in and out of the home,” and “use of personal property.” Similarly, Alaska Statute 47.33.300 grants residents the right to have visitors “subject to visiting hours established by the home.” Any restrictions or modifications to home and community-based settings requirements must be a component of the individual’s person-centered plan of care and not determined by the provider. Please clarify how these statutes will be remediated to comport with standards regarding house rules, and how providers will be trained on the new federal requirements.

Settings Assessment

- Internal Review. The state noted in the STP that it conducted an “internal review of SDS [the Division of Senior and Disability Services] certification and compliance activities,” which assisted the state in identifying settings types that are potentially isolating. The state should describe the process, tools, and criteria used during the internal review to make these settings determinations.
- Provider Review. The state developed and implemented a provider survey that 21% of providers responded to. CMS needs the following details:
 - How it intends to gather information from the remaining 79% of providers;
 - What the validation process is to verify the information on the surveys; and
 - Outcomes of the surveys linked to specific providers so they are available for public input.

Monitoring and Oversight

- While the state noted that it will enhance the current recertification checklist by including a review of the home and community-based characteristics and require providers to respond to a questionnaire similar to the Provider Survey, CMS needs to have a clearer understanding of all oversight activities and the state should add a section that clearly outlines how it intends to monitor sites (steps and activities) including what entities are responsible for conducting oversight activities.

Setting Remediation

- **Remediation Activities.** CMS needs to clearly understand all assessment activities, including how many and what types of settings do and do not comport with federal requirements, and how the state intends to bring sites into compliance and subsequently monitor them.
- **Resubmission.** The state must also include a date, within the STP, for when it intends to submit an amendment to the Statewide Transition Plan to CMS containing information from the site specific reviews.

Relocation Plan

- CMS needs to understand the state's relocation plan for beneficiaries in settings identified by the state that will not comport with the federal requirements after the transition period including details describing how the state will deliver adequate advance notice, which entities will be involved, how beneficiaries will be given information and supports to make an informed decision, and how it will ensure that critical services are in place in advance of the transition.

Heightened Scrutiny

As mentioned above in the Settings Assessment section, the state must clearly lay out its process for identifying settings that are presumed to be institutional in nature. 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 into compliant settings or into non-Medicaid funding streams.

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.

Alaska has included a brief description of the findings for each site visit but will need to provide substantially more detailed information related to each site it wishes to bring forward for heightened scrutiny.

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. The state will need to revise its STP and re-post it for public comment prior to resubmission. Please include the aforementioned revisions in the STP and resubmit no later than 75 days after receipt of this letter. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Daphne Hicks at 214-767-6471 or at Daphne.Hicks@cms.hhs.gov, the CMS CO analyst taking the lead on this STP, with any questions related to this letter.

Sincerely,

Ralph Lollar, Director
Division of Long Term Services and Supports

cc. David Meacham