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, 2018

Marie Zimmerman
Medicaid Director
State of Minnesota, Department of Human Services
540 Cedar Street PO Box 64983
St. Paul, MN 55167-0983

Dear Ms. Zimmerman:

In follow-up to the 6/2/2017 initial approval granted to Minnesota'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,

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 Minnesota 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.

General Inquiries:

- The state includes a section entitled, ***"What additional requirements apply to residential settings";*** however, the criteria specific to provider-owned or controlled residential settings is not included. Please clarify the requirements in the STP for provider-owned or controlled settings.
- Under Tables 3 (pages 13-17) and 4 (page 18), the state outlines the state's compliance status of its HCBS by service category and program. Please clarify why group supported employment (as defined by the state on page 34) is missing from Table 4, and whether these settings (i.e. work crews, enclaves) are included under the findings for Table 3. As a reminder, all settings that group individuals together for the purposes of receiving a service must be assessed.

Site-Specific Assessment Process: *Provider Attestations*

- ***Status of Non-Responders:*** The STP states that "All providers of day programs and residential settings owned or controlled by the provider (approximately 5,732 settings) will be required to submit a provider attestation." The STP further clarifies that, "There will be a robust and focused outreach to non-responsive providers. If attempts to contact non-responsive providers are unsuccessful, Department of Human Services (DHS) will assume that the setting is not compliant and will begin to relocate the people it had served." Please indicate what percentage of providers have completed the provider attestation process and the timeframe in which non-responsive providers have to complete the provider attestation.

Site-Specific Validation Strategies: The state proposes to use a number of strategies to validate provider attestations, including desk audits, onsite visits and person's experience assessments. CMS requests the state confirm that at least one strategy will be conducted on each of the state's 5,732 provider-owned and controlled settings to validate the findings of the provider attestation

prior to a state determining a setting's compliance level. Additionally, please clarify the following questions related to the various strategies:

- ***Desk Audits/Reviews:*** Please clarify whether providers must supply a specific set of supplemental documents or whether the examples included in the STP are optional.

- ***Person's Experience Assessment:*** CMS applauds the state's infusion of an annual person's experience assessment into the new case management online support plan tool. On page 26, the STP reflects that the state expects initial assessment data to be available in late 2017. Please confirm whether this initial assessment data will include results of person's experience assessments across all settings.

- ***New Providers:*** On page 27, the STP notes that "DHS will design a process to evaluate new providers for compliance as quickly as possible upon their request to enroll as a waiver provider. This process must balance the need for providers to have up-front information with CMS's requirement that providers be operational before they can be evaluated, with HS conducted as necessary." CMS requests the state provide the timeline for beginning implementation of this process across HCBS authorities.

- ***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 if they are integrated in typical community neighborhoods where people who do not receive HCBS 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. 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.

- ***Tiered Standards – Customized Living:*** The state proposes two distinct tiered standards processes for customized living (CL) settings for the 18-54 population and the 55+ population. CMS has several questions regarding the tiered standards for Customized Living:
    - Under the Brain Injury (BI) and Community Access for Disability Inclusion (CADI) waivers, the state proposes that current CL settings (Tier 1) will continue to deliver CL services, and the state is not planning to monitor capacity (thus these providers will be able to continue serving current and new HCBS beneficiaries). Please confirm that the state is planning to assess/validate all Tier 1 current CL settings to assure they are meeting the HCBS settings criteria.

- Under the New HCBS service for BI, Community Alternative Care (CAC), CADI and Developmental Disabilities (DD) Waivers, please provide the following details:
  - Clarify/describe the following sentence: "This means a service provider has level of control over the living unit that does not meet the requirements of a residential program."
  - Under the section of the STP entitled ***"Supports across the full continuum of living arrangements"***, the STP states that, "For such living arrangements, we will develop a structured option for a person to assign specific responsibilities for support to a provider without the home being licensed." Please clarify if these will include homes in which paid caregivers that are unrelated to the beneficiary may be living with the beneficiary and/or own the residence.

- ***Onsite Visits and Outreach:*** The validation strategies listed in the STP include onsite visits and outreach, which will be embedded as part of the state's existing licensing visits protocol (as described in Table 9). Please confirm who will be conducting the site visits and confirmation that the process includes a review of all HCBS settings criteria.

- ***Results of Aggregate Assessment & Validation Activities:*** Once the state has completed all of its site-specific assessments and validation strategies, it should include the results of these activities, and distinguish the number of settings by category that: 1) fully comply with the federal requirements, 2) do not comply and require modifications, 3) will not comply, and 4) are presumed institutional but that the state feels overcome the presumption and fully meets the HCBS rule, and thus will require heightened scrutiny.

Site-Specific Remedial Actions: CMS appreciates the additional information on the state's remediation strategy for settings that require modifications in order to comply with the rule. CMS requests that as the state's approach to setting remediation evolves, it expand upon how the state will work directly with providers on the development of remedial action plans, and what technical assistance and ongoing support the state is going to offer to help providers come into compliance with the rule. CMS also recommends that the state provide information on how it will assure that beneficiaries have access to non-disability specific settings. Please provide the following information:

- For individuals receiving services in settings that the state believes cannot or will not adhere to the settings criteria by the end of the transition period, 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 sufficient communication and support including options among compliant settings, and assurance that there will be no disruption of services during the transition period.

Heightened Scrutiny:

In addition to the information the state has already included, please address the following details around the state's heightened scrutiny process:

- Final estimation of settings flagged for heightened scrutiny by each of the three presumptively institutional categories.
- Additional detail explaining how Minnesota will determine which sites are designated for onsite visits versus outreach to the providers. Please also explain, for settings that will not receive a site visit, how outreach will be conducted in a way that assures the state yields the data/evidence necessary to make an adequate determination about whether or not a setting overcomes its institutional presumption.
- 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.