

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**

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August 22, 2018

Nate Checketts  
Director, Division of Medicaid and Health Financing  
Utah Department of Health  
PO Box 143101  
Salt Lake City, UT 84114

Dear Mr. Checketts:

In follow-up to the 4/5/17 initial approval granted to Utah'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.

As a reminder, 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 rule 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 Utah 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 final approval as soon as possible.***

### **HCBS Settings Site-Specific Assessment/Validation**

Thus far, the state has provided an estimated level of compliance with the settings criteria based on a “preliminary categorization” of settings by services. Please provide the following additional information in the STP:

#### ***State Categorization of Setting Compliance:***

- Please provide more details on the state's site-specific assessment and its categorization of settings by services.
  - With respect to the self-assessment process, please assure that all settings that group two or more people together for the purposes of receiving Medicaid-funded HCBS are assessed (p. 4).
  - The state references in the STP a “preliminary categorization” of broad setting categories such as “naturally occurring setting in the community”. Please describe the naturally occurring settings in the community where services are provided and verify that any of these settings that were presumed fully compliant were done so based on beneficiaries receiving services on an individualized basis, such as individualized supported employment.
  - The state should make clear all of the settings by type that are being assessed; for example, the systemic assessment lists administrative code for Adult Foster Care, but this setting is not represented in the state’s breakdown of compliance by services. Please make sure that all setting types are reflected in the state’s categorization of compliance.

#### ***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 Utah 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.

***Provider Self-Assessment Process:***

- Please confirm the percentage of providers that completed the provider self-assessment.

***Validation of Settings***

- ***Onsite Reviews:*** The state is currently validating provider self-assessments through on-site reviews using a stratified random sample of settings including adult day care, day support services, residential facility, supported living, and supported employment. These reviews will include observation, participant and staff interviews, and document reviews.
  - Please confirm whether the sample was statistically significant, and if not, please include the percentage of settings (by category of setting) that received an onsite review.
- ***Validation Activities for Settings not included in the Site-Specific Onsite Review***  
***Sample:*** The state should include in the STP how it intends to validate the results of the provider self-assessments for those settings not chosen to receive on-site reviews.
  - Although the state indicates in the “preliminary categorization” of settings that state staff will also be conducting desk reviews of the provider self-assessments (pg. 5), it is not clear whether all settings not receiving an onsite review will be validated. To ensure that all provider self-assessments are validated, states may use a combination of various strategies (including but not limited to state onsite visits; data collection on beneficiary experiences; desk reviews of provider policies, consumer surveys, and feedback from external stakeholders; leveraging of existing case management, licensing & certification, and quality management review processes; partnerships with other federally-funded state entities, including but not limited to DD and aging networks, etc.).
  - Please describe the process for conducting desk reviews, including the activities included in the desk review process.
- ***Beneficiary/Consumer Feedback:***
  - The state indicates that any settings receiving onsite reviews will also include interviews and surveys with participants. Please include a timeline for the interviews/surveys in conjunction with the onsite reviews of the sampled settings, and how the state will assure the consumer feedback is tied directly back to a specific setting.

- Please confirm whether all consumer feedback will be collected in-person as part of the onsite review, and/or whether other options will be provided (i.e. online, by mail, or over the phone).
  - The state should also include any information on who can help consumers with the interviews/surveys and what steps are being taken to assure a conflict-free process.
  - Given the numerous public comments received by the state advocating for greater consumer/beneficiary involvement in the HCBS statewide transition plan, if the state is not extending its consumer feedback process to include all settings, please include information on additional steps the state will take to assure greater beneficiary participation in the implementation of the HCBS settings criteria.
  - Please outline the process through which the state will work with providers to rectify any discrepancies between provider self-assessments and feedback from beneficiaries.
- ***Aggregation of Final Validation Results:*** Please update the initial findings of setting compliance across 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
    - Are presumptively institutional in nature.

### **General Provisions related to State Progress in Implementing the HCBS Settings Criteria**

- ***Reverse Integration:*** CMS wishes to remind the state that states cannot comply with the home and community-based settings criteria simply by bringing individuals without disabilities from the community into a setting. Compliance requires a plan to integrate beneficiaries into the broader community. 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 requirements outlined in the regulation. Under the rule, settings should ensure that individuals have the opportunity to interact with the broader community of non-HCBS recipients and provide opportunities to participate in activities that are not solely designed for people with disabilities or HCBS beneficiaries that are aging but rather for the broader community.

- **Assuring Provider Choice:** CMS requests the state describe how it facilitates individual choice regarding services and supports, and who provides them.
- **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.

### **Site-Specific Remedial Actions**

Please provide more detail on the state's proposed process and timeline for remediation of settings. Specifically, please clarify the following:

- The state's approach to addressing discrepancies between provider's assessments and validation findings.
- The plan for bringing settings into compliance (e.g. corrective action plans, ongoing data submission requirements, etc.), including the state's plan for following up with providers to assure that all remediation of areas of non-compliance are completed by the end of the transition period.
  - Under the state's existing approach to provider remediation in the STP, CMS is concerned that without further specifics on how the state will work with providers that have settings out of compliance, there may be an overreliance in introducing modifications within beneficiary person-centered plans (PCP). The state included language regarding assuring that any modifications of conditions are supported by a specific assessed need and justified in the individual's person-centered service plan, but CMS requests the state provide additional details about how it intends to instruct providers on the requirements for how/when to introduce modifications within individual PCPs, as well as the process the state is implementing to work with providers to remediate areas of non-compliance with settings criteria.
- How feedback from the monitoring process is communicated to the provider. Include timelines for this feedback process.
- How compliance will be monitored by the state and completion confirmed by the end of the transition period.
- A depiction of timelines for the remedial actions to address any compliance issues.
- For those settings that are not able to be brought into compliance, please provide a detailed plan the state will use for communicating and assisting beneficiaries currently receiving services in settings that are determined not to be able to come into compliance prior to the end of the transition period that includes:

- A description for how participants will be offered informed choice and assistance in locating a new 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.

### **Monitoring of Settings**

Please provide additional information about the monitoring of settings.

- Please describe how the state will use the existing quality assurance system for ongoing compliance monitoring to ensure that settings continue to comply with the HCBS setting criteria.
- Please provide additional details about the timeline for ongoing monitoring including how settings will be re-evaluated through any given method and how frequently participant experience surveys will be conducted.

### **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 presumption will stand and the state must describe the process for communicating with 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 HCBS rule. 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>.