

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 11, 2016

Thomas Betlach
Director
State of Arizona, Arizona Health Care Cost Containment System
801 East Jefferson, MD 4100
Phoenix, AZ 85034

Dear Mr. Betlach:

The Centers for Medicare & Medicaid (CMS) is responding to Arizona's initial submission of Statewide Transition Plan (STP) to bring home and community-based settings into compliance with federal requirements, as well as the state's request for a transition period extending until March, 2021.

The Home and Community-Based Services (HCBS) settings rule provides a five-year transition period until March 2019 to give states adequate time to ensure that federally-funded HCBS are fully compliant with the new requirements. CMS remains committed and is continuing to work toward the goals of this important regulation. However, we also recognize that Arizona's circumstances are unique in that it has never used a 1915(c), 1915(i), or 1915(k) authority, and has always used an 1115 Demonstration for its authority to provide home and community-based services. Further, your state, unlike other states with an 1115 Demonstration for home and community-based services, did not have Standard Terms and Conditions outlining the HCBS requirements and was not formally informed of HCBS requirements under the 1115 Waiver Demonstration until May 20, 2015. In light of these facts, CMS is granting an extension of the transition period for the HCBS settings requirements for Arizona until May 20, 2020. Due to the State's unique circumstances and consistent with the transition period afforded other states, the extension to this date will give Arizona a five year transition period beginning with the date of official notification by CMS of the applicability of the HCBS Final Rule requirements to settings in your state. While we are granting this extension, CMS stands ready to assist the state in whatever way possible to accelerate this time frame and achieve full compliance by an earlier date. Moreover, in the interim we would like to work with you and your staff to facilitate the

state's completion of its systemic assessment with the goal of achieving initial approval in the current calendar year.

As mentioned in a letter to the state dated November 25, 2015, the person-centered service planning (PCP) requirements were effective March 17, 2014. All current providers and settings receiving HCBS funding from the state must already be adhering to these requirements as of the rule's effective date. Thus, the state needs to remove from the STP the section (pgs. 43-45) pertaining to the roll-out and implementation of the PCP requirements.

CMS would like additional details regarding a number of topics, including settings currently identified as providing home and community based services under the state's 1115 demonstration authority, systemic assessments, site-specific assessments, monitoring of settings, remedial actions, heightened scrutiny, and communication with beneficiaries. These issues are summarized below.

Settings Included in the STP:

CMS reviewed Arizona's section 1115 demonstration Special Terms and Conditions (STCs) and noted that rural substance abuse transitional agencies are a setting type listed in the STCs as a home and community-based setting, but are not included in the STP. CMS requests that the state include rural substance abuse transitional agencies as a setting type in the STP, address the requirements for these settings (e.g. licensure, certification, etc.) in the systemic assessment and include these settings in the state's site-specific setting assessment process.

Systemic Assessment:

With respect to the state's systemic assessment, CMS requests additional clarification on the following issues:

- The state needs to apply the requirements of the rule consistently as it reviews state standards specific to different types of settings. For example, the state applies criteria related to how integration in the community is described in the state policies related to Assisted Living versus Group Home settings differently. Please correct this discrepancy.
- Please provide clarification for the analysis around how the state's existing standards either fully comply, partially comply or do not comply with the integration requirements outlined in the HCBS rule (see pages 48 and 74 of the state's crosswalk).
- The STP includes tables with timelines (pgs. 4 and 10) identifying when the state's workgroup met to conduct a review of the statutes and policies associated with each setting type. Based on these tables, it is unclear if the systemic review was completed in May or June 2015. Please confirm the date when the systemic review and analysis was completed.
- The STP describes four compliance levels used to assess each rule requirement: compliant, compliant with recommendations, partial compliance, and not compliant. Please add language to the compliance level definition(s) to clarify how the state

categorized state standards that were silent on aspects of the federal requirements. It appears that where state standards were silent on a federal requirement, the state determined the standards to be “partially compliant,” but CMS would like confirmation.

Site-Specific Assessments:

Estimate of Setting Compliance: Based on the systemic assessment, please include in the STP the state’s best estimate of the number of settings that: fully comply with the federal requirements, will require modifications in order to fully comply, are presumptively institutional and have been flagged for heightened scrutiny, or do not and will not comply with the rule by the end of the state’s HCBS transition period.

- The STP should also explain whether the two types of settings identified as presumed to have the qualities of an institution constitute all settings believed to be presumptively institutional in the state, or whether the state expects to identify other settings presumed to have the qualities of an institution.
- The STP should also explain whether the two settings found not to be able to comply with the requirements are all the settings in the state that fall into that category.

Assessment & Validation Activities: The state describes several assessment and monitoring activities in the STP which reflect a robust approach to determining setting compliance (pg. 9 and 22-20). However, it is somewhat confusing and difficult to determine how many separate assessment and validation activities the state is undertaking for each type of setting and whether each activity is being applied across all settings in a specific category or just a sample. Validation of the provider self-assessments and MCO assessments is a critical element of success in the implementation of the HCBS rule. CMS requests the state clarify which site-specific assessments (self-assessments and MCO monitoring) will be conducted for each setting type, how results will be reported (site-specific results vs. “macro level” results not linked to a specific site), the actual sample size for activities that are not being conducted across all settings, and a timeline associated with each activity.

Macro-Level Compliance Activities: The state describes anonymous surveys of providers and members to assess the state’s overall compliance from a macro-level perspective, which will be collected during the preparation phase (October 2015 – September 2016) and in years three and five (p. 26-27). The state should report on the outcomes of these assessments in an amended STP when they have been completed.

MCO Monitoring & Case Manager Training: The state should provide more detail on how the MCOs will monitor providers annually (pg. 29-30). Will the case managers visit all settings where individuals receive services aside from the private home? Aside from case manager visits, provider self-assessment surveys, and member interviews, how will data be collected on each site to determine compliance? Additionally, CMS requests further details regarding the training of case managers and other staff who are conducting onsite assessments and/or reviewing provider self-assessment data and other supplemental information to assure fidelity in the review process.

Licensing & Certification Activities: The state's use of anonymous reporting by setting type will not identify the issues that individual sites must address. The state can assess the compliance of each setting through the licensing or certification agency, but this must be done in a timely manner.

Non-Disability Specific Settings: Please provide more specific details demonstrating how the state assures beneficiary access to non-disability specific settings in the provision of residential and non-residential services. This additional information should include how the state is strategically investing to build capacity across the state to assure non-disability specific options.

Individual, Private Homes: It is unclear whether the state is presuming one or more categories of settings to automatically comply with the rule (i.e. individually owned private homes). In a situation where the state is presuming any category of setting where an individual receiving Medicaid HCBS lives or receives services to be automatically in full compliance with the rule, the state must outline how it came to this determination and what it will do to monitor compliance of each of these categories over time.

Monitoring of Settings:

- In the state's five-year timeline, the dates associated with the full transition plan completion may only extend to May 20, 2020. Please modify the timeline to ensure the monitoring phase, in addition to all five stages, are completed by May 2020 to ensure full compliance.
- CMS appreciates that the state included oversight of the MCO in its monitoring plan and that the state is addressing the member experience. However, member experience surveys must be linked to specific sites so the state can address any issues directly with the site. Please provide additional details about the number of member experience surveys that will be completed for each setting, and how the state plans to connect the results of member experience surveys to each individual setting. Also, please explain in detail what the process will be for addressing disparities between member experience surveys and results from provider self-assessments and/or corresponding MCO survey responses.

Remedial Actions:

Systemic Remediation:

- CMS is concerned that the systemic remediation activities extend until September 2018. CMS requests that the state explain whether there are barriers to accomplishing systemic remediation earlier. How will the state ensure compliance with the revised state standards if the changes occur that late in the transition cycle? Is the state able to train providers on the new requirements before they are incorporated into the state standards?
- Please articulate the state's plan to address the following concerns about the state's proposed systemic remediation strategies for specific setting types:

- *Assisted Living Facilities and Group Homes:* For both assisted living facilities and group homes, the state is proposing to insert language into its existing Medical Policy Manual that transportation be provided by case managers so that individuals have access to seeing an assisted living facility or group home prior to making a decision on a residential setting (pg. 54, 83). However there is no mention of other kinds of transportation that might help an individual look at other options in the community that could be more individualized than these setting types.
- *Adult Day Health Care Facilities and Reverse Integration:* The state should ensure that an adult day health care facility (described on pg. 140) is integrated in the community. Under the remediation strategies, the state suggests that bringing individuals from the public without disabilities inside the day program to provide information on services/activities in the community is a viable strategy for complying with this component of the rule. However a setting cannot be considered integrated into the community solely based on bringing community members into it.
- *Center-Based Employment Programs & Reverse Integration:* As CMS has previously noted, states cannot comply with the rule 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 in the facility-based setting, by itself, is not considered by CMS to be a sufficient strategy for complying with the community integration requirements outlined in the HCBS settings rule.

Site-specific Remediation:

- The state mentions Corrective Action Plans, which will be submitted by any provider not in compliance during year five, as a site-specific remediation strategy. Please add more detail about the site-specific remediation process and milestones/timelines associated with the process. CMS asks the state to include details such as who will review and approve the Corrective Action Plans, and if it is the MCOs, how the state will oversee this process. Please note again that the overall compliance with the rule must be achieved by May 20, 2020. Accordingly the timelines for Corrective Action Plans need to occur earlier.
- CMS has concerns about the state waiting until year five to have providers develop Corrective Action Plans. This does not provide sufficient time for providers to make needed changes and for the state to ensure compliance with the setting requirements. Please indicate how the state will address this concern.

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 for settings meeting the scenarios described in the regulation, the institutional presumption will stand and the state must describe the process for informing and transitioning the individuals involved.

- As a reminder to the state, settings that are presumed to be institutional in nature 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 home and community-based services from the broader community of individuals not receiving Medicaid home and community-based services.
- Arizona's STP does not include a description of the process the state has used or will use to identify all settings that are presumed to have the qualities of an institution. The state indicates that the identification process took place as part of the systemic assessment followed by additional information gathered during the public comment process, but this is not clearly and comprehensively described. CMS requests that the state describe in more detail the process and criteria the state used to identify settings presumed to have the qualities of an institution across all setting types. Relying on public comment to identify these settings is not sufficient.
- Once the state has implemented a robust approach to identifying all settings within the state that are presumptively institutional, the state should include the number of each type of setting that falls under each of the three prongs of heightened scrutiny that the state is reviewing to determine whether to submit to CMS for review.
- The state plans to assess a statistically significant sample of memory care assisted living facilities and farmstead group homes to prepare evidence to submit to CMS for heightened scrutiny. Please clarify whether this means a statistically significant sample of individuals in these settings by provider.
- CMS requests that the state provide more information on the state's center-based employment programs and facility-based day programs and whether they may have qualities that isolate individuals with disabilities from the broader community.

- The dates associated with the site visits to be conducted as part of the heightened scrutiny assessment process may be inaccurate (the start date is later than the end date and the date the state plans to submit evidence to CMS). Please clarify and adjust the timeline accordingly.

Assistance to Beneficiaries who are currently receiving services in settings that will no longer provide HCBS:

- CMS requests that the state include a comprehensive transition plan with a timeline and milestones to provide assistance to members residing in settings that will not comply with HCBS rules by the end of the transition period. The STP notes this plan is currently being constructed by the state to be submitted to CMS as an addendum to the STP by December 31, 2015. The state should provide reasonable notice and due process to beneficiaries and ensure beneficiaries have proper support to make an informed choice of an alternate setting that aligns, or will align, with the regulation and beneficiaries will receive the critical services that they need in advance of their transition. CMS asks the state to provide this type of information for any setting that is found not to be compliant close to the end of the transition period. Although the state does not yet know which settings will not be able to come into compliance, it should outline its proposed plan in the STP. Once the state completes this addendum, the state should redistribute the STP for public comment.
- CMS requests that the state provide further information regarding the follow-up with the 23 individuals in the group homes in Coolidge who will need to find an alternative setting (pg. 17 of the STP states that the state planned to follow up with individuals to plan for next steps).

CMS would like to have a call with the state to go over these concerns and to answer any questions the state may have. The state should resubmit its revised STP, in accordance with the questions and concerns above, within 60 days of that conversation. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Michele MacKenzie at (410) 786-5929; Michele.MacKenzie@cms.hhs.gov or Susan Cummins at (206) 615-2078; Susan.Cummins@cms.hhs.gov with any questions related to this letter.

Sincerely,



Ralph F. Lollar, Director

Division of Long Term Services and Supports (DLTSS)