

Statewide Transition Plan Alignment with HCB Settings Regulation Requirements

Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services



Overview

- Introduction to the Statewide Transition Plan
- Assessment Process
- Remedial Strategy
- Public Input Process
- Other Components
- Summary

Introduction to the Statewide Transition Plan

Regulatory Requirement

When to Submit

What is a Statewide Transition Plan

Snapshot of Main Components

Regulatory Requirement

- Each state that operates a 1915(c) waiver or a Section 1915(i) state plan benefit that was in effect on or before March 17, 2014 is required to file a Statewide Transition Plan.
- The regulatory requirement can be found at 42 CFR Section 441.301(c)(4)(5) and Section 441.710(a)(1)(2).

When to Submit

- Triggered by the state's first 1915(c) waiver or 1915(i) SPA that is renewed or amended between March 17, 2014 and March 16, 2015.
 - A Statewide Transition Plan must be submitted within 120 days after the submission date of the first renewal or amendment.
 - If a state does not submit an amendment or renewal between March 17, 2014 and March 16, 2015, the state must submit a Statewide Transition Plan no later than **March 17, 2015**.

What is a Statewide Transition Plan

- The vehicle through which states determine their compliance with the regulation requirements for home and community-based settings in 42 CFR Section 441.301(c)(4)(5) and Section 441.710(a)(1)(2).
- Describes to CMS how the state will comply with the new regulations.
- States must be in full compliance with the federal requirements by the time frame approved in the Statewide Transition Plan but no later than **March 17, 2019**.

Snapshot of the Main Components

- ***Assessment Process:*** Includes the state's assessment of the extent to which its regulations, standards, policies, licensing requirements, and other provider requirements ensure settings comport with the regulation.
- ***Remedial Strategy:*** Describes actions the state proposes to assure initial and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and deliverables.
- ***Public Input:*** Subject to public input, as required in 42 CFR Section 441.301(6)(B)(iii) and 42 CFR Section 441.710(3)(iii).

Assessment Process

Systemic Review

Site Specific Assessments

Provider Assessments

Settings Presumed Not to be HCB

Summary

Assessment Process

- To determine whether state transition actions are needed for compliance, states must first determine their current level of compliance with the settings requirements.
- A written description of the assessment should be submitted to CMS, which includes:
 - The state's assessment of the extent to which its standards, rules, regulations, or other requirements comply with the HCBS settings requirements.
 - A description of the state's oversight process to ensure continuous compliance.
- The state may also assess individual settings/types of settings to further document their compliance.

Systemic Review

- Upon conducting its compliance assessment, a state may determine that:
 - Existing state standards meet the federal settings requirement, and
 - The state's oversight process is adequate to ensure ongoing compliance,
 - therefore, any settings currently approved under the state's standards meet the federal settings requirement.
- The state describes its process for conducting the compliance review and the outcomes of that review.

Systemic Review (cont'd)

- The state determines that its standards may not meet the federal settings requirements.
- The state includes in its Statewide Transition Plan:
 1. Specific remedial action(s) to come into compliance, which may include:
 - a) Proposing new state regulations or revising existing ones
 - b) Revising provider requirements
 - c) Conducting statewide provider training on the new state standards.

Systemic Review (cont'd)

2. Time frame for completing these actions, and
3. estimate of the number of settings that likely do not meet the federal settings requirement.

Site Specific Assessment

- In situations where the state standards do not coincide with the federal standards, it is possible that specific settings are in compliance with the federal requirements.
- In this case, a state may choose to assess individual sites to determine which are/are not in compliance with the federal standard.
- Such an assessment may impact the time frames proposed to bring settings into compliance; if so, the Statewide Transition Plan should include these additional actions and timeframes.

Site Specific Assessment (cont'd)

- States may conduct specific site evaluations through standard processes such as licensing reviews, provider qualification reviews, support coordination visit reports, etc.
- States may engage individuals receiving services and representatives of consumer advocacy entities (long-term care ombudsman programs, protection and advocacy systems, etc.) in the assessment process.

Site Specific Assessment (cont'd)

- Evaluations may be conducted by entities such as:
 - state personnel
 - case managers that are **not** associated with the agency operating the setting providing services
 - Licensing entities.
 - Managed Care Organizations.
 - Individuals receiving services themselves and/or
 - Representatives of consumer advocacy entities such as long-term care ombudsman programs and/or protection and advocacy systems.

Site Specific Assessments (cont'd)

- States may perform on-site assessments of a statistically significant sample of settings.
- When states do not have full knowledge of the settings in their system, CMS strongly encourages, at a minimum, a sampling approach to onsite reviews.
- Assessment of individual settings is not a substitute for ensuring that state standards, regulations, policies, and other requirements are consistent with federal requirements and that the state has an oversight system in place to assure ongoing compliance with the requirements.

Provider Assessments

- States may also administer surveys of providers.
- In this instance, providers of the settings could “self-assess” their compliance with the federal requirements or provide information required by the state to make a determination of compliance.
- States should include a validity check against the self evaluation
- If the assessment indicates settings do not meet the new requirements, states must include remediation strategies in the Statewide Transition Plan.

Settings Presumed Not to be Home and Community-Based

- Where the state is submitting evidence that a setting presumed not to be home and community-based is in fact home and community-based and does not have the qualities of an institution, evidence of a site visit will facilitate the heightened scrutiny process.

Summary

If the state determines on the basis of its review of current state regulations, standards, and policy that its settings are consistent with federal settings requirements, the state should describe:

- The process of the assessment,
- The basis for the conclusion(s), and
- The oversight (monitoring) process

Summary (cont'd)

- If the process of assessment is not yet complete and will require greater than six (6) months for review the state must submit justification for the additional time frame.

Summary (cont'd)

If the assessment is based on state standards, the state needs to provide their best estimate of the number of settings that:

1. Fully align with the federal requirements,
2. Do not comply with the federal requirements and will require modifications,
3. Cannot meet the federal requirements and require removal from the program and/or the relocation of individuals, and

Summary (cont'd)

4. Are presumptively non-HCB but for which the state will provide evidence to show that those settings do not have the characteristics of an institution and do have the qualities of HCB settings (to be evaluated by CMS through the heightened scrutiny process)
 - CMS would expect an on-site assessment that supports the state's assertion.

Summary(cont'd)

If the state conducts site specific evaluations, the state needs to provide the same information as required for an assessment based on state's standards.

Remedial Strategy

State Level Remedial Actions

Provider Level Remedial Actions

Settings Presumed Not to be HCB

Relocation of Beneficiaries

Remedial Strategy

- Statewide Transition Plans should include a detailed description of the remedial actions the state will use to assure full compliance with the HCB settings requirements, including timelines, milestones and monitoring process.

State Level Remedial Actions

Might include, but are not limited to:

- New requirements promulgated in statute, licensing standards or provider qualifications.
- Revised service definitions and standards.
- Revised training requirements or programs.
- Plans to relocate individuals to settings that are compliant with the regulations.

Provider Level Remedial Actions

Might include, but are not limited to:

- Changes to the facility or program operation to assure that the Medicaid beneficiary has greater control over critical activities like:
 - Access to meals
 - Engagement with friends and family
 - Choice of roommate
 - Access to activities of his/her choosing in the larger community, including the opportunity to seek and maintain competitive employment.

Settings Presumed Not to be HCB

- If the state determines it will submit evidence to CMS for the application of heightened scrutiny for settings that are presumed not to be home and community-based, the Statewide Transition Plan should include evidence sufficient to demonstrate the setting does not have the characteristics of an institution and *does* meet the HCB setting requirements.

Settings Presumed Not to be HCB (cont'd)

- Evidence of a site visit by the state, or an entity engaged by the state, will facilitate the heightened scrutiny process.
- CMS will consider input from the state, information collected during the public input process, and information provided by other stakeholders in conducting heightened scrutiny.
- CMS may conduct its own site visits as well.

Relocation of Beneficiaries

- When relocation of beneficiaries is part of the state's remedial strategy, the Statewide Transition Plan should include:
 - An assurance that the state will provide reasonable notice to beneficiaries and due process to these individuals;
 - A description of the timeline for the relocation process;
 - The number of beneficiaries impacted; and

Relocation of Beneficiaries (cont'd)

- A description of the state's process to ensure beneficiaries, through the person-centered planning process, are given the opportunity, the information and the supports to make an informed choice of an alternate setting that aligns, or will align, with the regulation and that critical services/supports are in place in advance of the individual's transition.

Time Frame & Milestones

- Submitted Statewide Transition Plans must include a time frame and milestones for state actions, including assessment and remedial actions.
- If state standards must be modified in order to effect changes in the state system, the state should propose a reasonable time frame for making the modifications.

Time Frame & Milestones (cont'd)

- If the state intends to conduct an assessment after adopting new standards, the state should provide information on how, in the interim, it will communicate the need for change, educate providers, inform individuals and families, and establish a time frame for the activities.
- The state must also include a complete timetable for coming into full compliance.

Summary of Comments & Modifications

- When filing its Transition Plan with CMS, the state must provide:
 - A summary of public comments, including the full array of comments whether in agreement or not with the state's determinations of the state's determination of the system-wide compliance and/or compliance of specific settings/types of settings;
 - A summary of modifications to the Transition Plan made in response to public comment;

Summary of Comments & Modifications (cont'd)

- When filing its Transition Plan with CMS, the state must provide:
 - In the case where the state's determination differs from public comment, the additional evidence and the rationale the state used to confirm its determination (e.g. site visits to specific settings).

Public Posting

- At the time the state files the Transition Plan with CMS, it must simultaneously post the submitted plan on the state website.
- The URL for that posting should be included in the Transition Plan document submitted to CMS.
- The state must also provide an assurance that the Statewide Transition Plan, with any modifications made as a result of public input, is posted for public information no later than the date of submission to CMS, and that all public comments on the Transition Plan are retained and available for CMS review for the duration of the transition period or approved waiver, whichever is longer.

Public Input

Access

Public Notice

Timeframe

Public Input Process

Summary of Comments & Modifications

Public Posting

Waiver Specific Transition Plans

Changes in Public Input Process Initiated by this Regulation

Substantive Changes

Ongoing Transparency and Public Input

Public Input (cont'd)

- Prior to filing with CMS, a state must seek input from the public for its proposed Statewide Transition Plan.
- The public input period must be no less than a 30-day period.
- CMS encourages states to seek input from a wide range of stakeholders representing consumers, providers, advocates, families, and other stakeholders.

Public Input (cont'd)

- The state must retain all public comments on the Statewide Transition Plan to be made available for CMS review for the duration of the transition period or approved waiver, whichever is longer.

Access

- The process for individuals to submit public comment should be convenient and accessible for all stakeholders, particularly individuals receiving services.
- CMS requires states to post the Statewide Transition Plans on their website in an easily accessible manner and include a website address for comments.
- At least one additional option for public input, such as public forums, is required.

Public Notice

- The Statewide Transition Plan must include evidence of two statements of public notice and requests for public input
- To accomplish this, the state could include in the Transition Plan the processes used for providing the public notice (e.g., publication in newspapers, announcement via websites, etc...)

Timeframe

- The Statewide Transition Plan should include evidence of the timeframe for public input, which verifies that a minimum of 30-days was afforded for public review and comment.
- To accomplish this, the state could include in the Transition Plan the actual date of the public notice requests for public input.

Public Input Process

- The Statewide Transition Plan should include a description of the public input process.
- To accomplish this, the state could include in the Transition Plan how public input was received (e.g., testimony, web response, etc...).

Waiver Specific Transition Plans

- States filing waiver renewals or amendments to existing 1915c waivers require a public input process in addition to the public input process for the embedded waiver specific Transition Plan.
- A state could use one public input process to meet both requirements.

Changes in Public Input Process Initiated by this Regulation

- States must ensure the document is posted and, in the case of public forums, available or distributed for comment.
- States must ensure the full Transition Plan is available to the public for public comment, including individuals receiving services, individuals who could be served, and the full stakeholder community.
- Summary statements or documents may be helpful but in and of itself will not constitute public notice.
- Meetings held with selected representatives of types of stakeholder will not be sufficient to demonstrate adequate notification or input.

Substantive Changes

- Substantive changes in a Transition Plan will require public comment.
- When a state submits an amendment or modification to a Transition Plan where additional assessment has resulted in a change in the findings or where the state adds more specific remedial action and milestones, the state must incorporate the public notice and input process into that submission.

Ongoing Transparency and Public Input

- CMS believes it would be very helpful for the states to use public input in the assessment of the state's progress on the milestones approved in the Transition Plan.
- States are strongly encouraged to describe their process for ensuring ongoing transparency and input from the stakeholders on the process of the Transition Plan.