

CMS Guidance on Statewide Transition Plan to Align with HCB Settings Regulation Requirements

Each state which operates a Section 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 to describe how the state will bring all pre-existing 1915(c) or 1915(i) programs into full compliance with the home and community-based (HCB) settings requirements in 42 CFR Section 441.301(4)(5) and Section 441.710(a)(1)(2). The trigger for filing a Statewide Transition Plan is the state's first 1915(c) waiver or 1915(i) SPA that is renewed or amended between March 17, 2014 and March 16, 2015. With that first renewal or amendment, states must include a Transition Plan for the specific 1915(c) waiver or 1915(i) State Plan Amendment (SPA). A Statewide Transition Plan must then be submitted within 120 days after the submission date of the first renewal or amendment. The Statewide Transition Plan must delineate how the state will bring all 1915(c) and 1915(i) programs in that state into alignment with the regulation requirements. 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.

A Transition Plan, whether for the initial renewal or amendment or for the subsequent statewide plan, must contain an assessment of whether settings in which Home and Community-Based Services (HCBS) are delivered under these authorities meet the requirements outlined in 42 CFR Section 441.301(c)(4) and (5) and 42 CFR Section 441.710(a)(1) and (2). The Transition Plan must also detail what actions the state proposes, with specific timeframes for identified actions and deliverables, to assure full and ongoing compliance with the standards. The Transition Plan is subject to public input, as required in 42 CFR Section 441.301(6)(B)(iii) and 42 CFR Section 441.710(3)(iii). This paper provides guidance on CMS expectations regarding the critical elements of any Transition Plan.

Assessment of Current Settings:

A state's Transition Plan should report on the results of the state's review and analysis of settings in which Medicaid HCBS are delivered and settings in which beneficiaries receiving Medicaid HCBS reside.

A state can conduct its assessment in a number of different ways. For instance, a state may already have information based on established setting requirements for Money Follows the Person (MFP), which can be easily incorporated into the assessment process and allow the state more time to address the other settings in the waiver. A state could organize its assessment by provider type and conduct an analysis of applicable standards (e.g. licensure or certification requirements) to determine if they support the HCB settings requirements (in part or whole), conflict with the requirements in any area, or remain silent on the requirements. Conflicts would indicate areas where a transition strategy would need to be identified; silence could suggest areas where a more focused assessment might be required to determine if a further transition strategy is needed. To more economically and efficiently evaluate settings where the standard is silent or unclear, a state could explore the impressions/findings of individuals with on-site experience, such as licensing staff, case management staff, individuals receiving

services themselves, representatives of consumer advocacy entities such as long-term care ombudsman programs and protection and advocacy systems. States might find it beneficial to solicit public input from stakeholders during the assessment process as this will provide additional resources to the state earlier in the process. In some cases, states may choose to do site visits based on sampling procedures within categories of service, provider, type of setting, etc. Importantly, the assessment process should include public input and engagement with stakeholders as described below.

We recommend use of a template such as the Toolkit template to assist in organizing and reporting the results of the assessment, identifying: which settings fully align with the regulatory requirements; which settings will align, with changes; which settings are presumptively non-HCB but for which the state will provide justification/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); and which settings do not/cannot meet the HCB settings requirements. In the Transition Plan, the state should outline the process the state used for the assessment, as well as the findings.

Proposed Remedial Strategies and Timeline:

In the Transition Plan, the state should describe the actions it will take or require providers to take to assure the settings fully meet the requirements for HCB settings.

At the state level, these actions might include, but are not limited to, new requirements promulgated in licensing standards or provider qualifications, service definitions and standards, training requirements or programs, and a description of the state's oversight processes. At the provider level, these 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, and access to activities of his/her choosing in the larger community, including the opportunity to seek and maintain competitive employment.

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 state will be expected to present evidence sufficient to demonstrate the setting does not have the characteristics of an institution and does meet the HCB setting requirements. This may require the state to conduct site visits. 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.

The remedial strategy might also include relocation of Medicaid beneficiaries to other settings that meet the HCB settings requirements. When relocation is part of the state's remedial strategy, the state must include in the Transition Plan the following:

- 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,
- an assurance that impacted beneficiaries will be relocated to settings that fully align with the HCB settings requirements, and
- a description of the state's process to assure that relocated 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, and that critical services/supports are in place in advance of the individual's transition.

Public Input Process:

The state must first ensure that the Transition Plan is available to the public. A state must seek input from the public for its proposed Transition Plan, providing no less than a 30-day period for that input. CMS encourages states to seek input from a wide range of stakeholders, including but not limited to: self-advocates and individuals receiving services, protection and advocacy systems, DD Councils, Long-Term Care Ombudsman programs, Centers for Independent Living, disability advocacy organizations, aging advocacy organizations, provider associations and family organizations or family members through networks like Parent to Parent, LEND projects, or Family to Family Projects. The process for individuals to submit public comment should be convenient for stakeholders. CMS requires states to post the Transition Plans on their website in an easily assessable manner. CMS suggests considering different options such as public forums as well as a website address for comments.

The state must include in the Transition Plan evidence of two statements of public notice, the timeframe for public input which verifies that a minimum of 30-days was afforded for public review and comment and the public input process. To accomplish this, the state could include in the Transition Plan the actual date of the public notice, the process used for providing the public notice (e.g., publication in newspapers, announcement via websites, etc.) and how public input was received (e.g. testimony, web response, etc.). When filing its Transition Plan with CMS, the state must provide a summary of public comments, including comments that agree/disagree with the state's determinations about whether types of settings meet the HCB settings requirements; a summary of modifications to the Transition Plan made in response to public comment; and 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). At the time the state files the Transition Plan with CMS it must simultaneously post the submitted plan on the state website and ensure that the URL for that posting is included in the Transition Plan document submitted to CMS.

The state must also provide an assurance that the state's 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.¹

¹ 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.