

# STATE OF MINNESOTA HCBS SETTINGS RULE – DRAFT STATE TRANSITION PLAN

## CMS Feedback (April 2016)

### Systemic Assessment:

In order to provide initial approval of the STP as it relates to the systemic assessment, CMS requests the state complete the following.

- In the systemic assessment tables attached to the STP, the state included each federal settings requirement and pertinent excerpts from state statutes. CMS would appreciate additional analysis describing the compliance level of each of these statutes. The table includes a summary statement about the compliance level of the state requirements but does not make clear which of the state statutes listed comply, do not comply, are partially compliant, or are silent. Additionally, the state provides no explanation as to how it came to its determination of whether a state standard complies or does not comply. Please clarify which state statutes comply, do not comply, partially comply, or are silent as relevant to each requirement and include an analysis of the state's determinations. Finally, the state also needs to identify the steps the state will take to address any gaps or inconsistencies between the existing state standards and the federal HCBS settings rule and the anticipated remediation timelines.
- CMS completed a spot check of the state's draft systemic assessment and corresponding crosswalks. In our analysis, we identified the following concerns:
  - *Lack of detail on Prevocational Services:* Prevocational services are referenced on page 2 of the Disability Waivers Regulatory Review attachment and page 10 of the STP, but the state did not provide any details on how and where the state delivers those services. Please provide this information.
  - *Over-reliance on Generic Remediation Language regarding Person-Centered Planning and Service Coordination Processes:* CMS is concerned that there may be an overreliance on including general language around the state's person-centered planning and service coordination process to ensure compliance with the various requirements of the federal HCBS settings rule. As part of the state's analysis of compliance with the settings requirements, please explain how the person-centered planning and service coordination processes contribute to achieving compliance. Additionally, please add further remedies as needed to address gaps or inconsistencies related to specific requirements in the rule.
  - *Inconsistencies within the Regulatory Review Crosswalks – Examples Include:*
    - On pages 14-15 of the Disabilities Waiver Review for Adult Day Care and page 26 for Adult Foster Care services, the state found that the provider is not responsible for the standard as it relates to employment. However, the action recommended is: "Regulatory changes needed to assessment and support planning requirements (revise statute/rule clarifying requirements)." It is unclear what issue requires remedial actions from the state's analysis for these settings. Please include this information.
    - On page 80 of the Disabilities Waiver Regulatory Review the state assesses the requirement, "Individuals are able to have visitors of their choosing at any time," but the excerpts from state statutes provided do not align with this requirement. Please revise the state's determination and remediation action.
    - When the state assesses the federal requirement, "The setting is integrated in and supports full access of individuals to the greater community including opportunities to seek employment and work in competitive integrated settings, engage in community life and receive services in the community, to the same

degree of access as individuals not receiving Medicaid HCBS,” inconsistent methods are used to present this analysis (e.g. sometimes a phrase is bolded, sometimes it is not). For example, please see pages 2, 3, and 6 of the Elderly Waiver and Alternative Care Waiver Regulatory Review. Please use a consistent method so it is clear which aspect of this requirement is being reviewed in each section.

- Please note that CMS only completed an initial spot check, and it is important for the state to fully review the systemic assessment and corresponding cross-walks again for accuracy before resubmitting.

### **Systemic Remediation:**

Please include the following items to further clarify the state’s systemic remediation steps in the STP.

- The state says that legislative changes are necessary to remediate its systemic infrastructure, but gives no details on the specific policies that need to be changed and notes that “the bulk of the legislative changes will be proposed during the 2017 legislative session” (page 16). The detailed attachments note where the state needs regulatory changes but do not detail what changes the state plans to make to the state standards. Please detail what changes the state plans to make to individual statutes, waiver documents, and other state standards to achieve compliance with the setting requirements.
- On page 23, the state provides milestones for systemic remediation that are very broad and will need to be more clearly specified, with interim milestones for specific policies.

### **Site-Specific Assessments:**

CMS requests the following information regarding the site-specific assessment process.

- The state conducted a provider self-assessment, and noted that the survey allows the state “to make generalizations regarding current practice from a provider perspective across settings surveyed” (page 15).
  - Please indicate what percentage of providers completed the self-assessment survey, and explain how the state plans to address the providers who did not complete the assessment.
- Page 11 of the STP states, “The provider self-assessment survey results were valuable to help DHS understand the extent and type of information, technical assistance and support HCBS providers need as they transition to meet the intent of the rule...”
  - Please elaborate on how both the state and providers are using survey results, and provide detail on how the state plans to validate the survey results (using multiple validation strategies).
  - The timeline indicates that technical assistance will not begin until September 2017. CMS is concerned that this may not provide adequate time for the state to ensure providers and settings are in compliance with the new federal requirements.
- As described on page 17 of the STP, the state plans to use existing monitoring processes—provider licensing and enrollment processes as well as annual beneficiary assessments and

case manager visits—to determine both initial and ongoing compliance with federal setting requirements. The state should provide additional detail about how these processes will be refined to incorporate the new requirements. Please also explain how they will be used to determine compliance with the setting requirements during the transition period and to ensure that settings have made needed remedial steps and are in full compliance by the completion of the transition period in March 2019. For example:

- Please clarify the timeline for determining initial settings compliance, including updating assessment tools/processes to include the settings requirements and carrying out the initial assessments. What data will be available at decision points to determine settings compliance?
  - On page 23, the timeline states that licensing reviews will begin in November 2017 and enrollment/re-validation of providers will begin July 2017. However, several of the proposed due dates occur after the March 2019 deadline for the conclusion of the transition period for compliance with the settings regulations. Given that the licensure process occurs every 3 years and provider revalidation process occurs every 5 years, how many settings will be assessed during the transition period?
- How many sites will receive on-site visits to assess compliance during the transition period as part of the assessment/validation activities described? How will the state assess compliance for sites not receiving an on-site visit?
- Please elaborate on how the process for identifying settings that isolate (described on page 19) will fit into the broader licensing and case manager visit processes described on page 17.
- Please describe the licensure process in greater detail. Page 17 says desk audits and onsite visits “may be used to assure initial and ongoing compliance.”
- Please clarify what entities are responsible for conducting each of the assessment activities.
- Please elaborate on how the state will use the on-site case manager reviews and the MnCHOICES comprehensive assessment described on page 17 to determine settings compliance.
- CMS would like to remind the state that all settings that group individuals together for the purposes of receiving a service must be assessed (including but not limited to group day and group employment).
- Once the state has completed its site-specific assessments, it should include estimates of the number of settings by waiver that: 1) fully comply with the federal requirements, 2) do not comply and require modifications, 3) will not comply and require relocation of beneficiaries, and 4) are presumed not to be home and community-based but that the state feels overcome the institutional presumption or isolating qualities, fully meets the HCBS rule, and thus will require heightened scrutiny.

**Site-Specific Remedial Actions:** Although the state has not completed its site-specific assessments, it should include a description of planned remedial actions. This includes how the state will work

directly with providers on the development of remedial action plans, and what plans the state has for providing additional technical assistance and ongoing support 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 under each waiver and service option statewide.

### **Heightened Scrutiny:**

Please include the following information in the STP.

- The state has added a section to the STP that explains its process for identifying settings presumed to have the qualities of an institution. The STP says that the state is developing criteria to identify settings that have the effect of isolating, which will be completed in September 2016 (page 24). Once the state has developed these criteria, please add a description of them to the STP.
- As part of its process for evaluating settings presumed not to be home and community-based, the state notes on page 20 that it will “prioritize settings that need a site specific assessment (e.g., institutional proximity first).” Please provide additional detail explaining how Minnesota will determine which sites are designated as high priority. Additionally, which settings does Minnesota believe do not require a site visit, and how will the state evaluate these settings?
- Please provide additional detail about how the state will identify settings that should be included in the third heightened scrutiny prong (settings that have the effect of isolating).
- The STP indicates that the state will begin submitting settings to CMS for heightened scrutiny beginning in August 2017 and ending in January 2019. CMS is concerned about the end date because for settings submitted at the end of this timeline, it will be difficult for CMS to review compliance before the deadline for statewide compliance in March 2019. CMS would like the state to submit all evidence for heightened scrutiny before January 2019 to allow sufficient time for CMS review.

### **Relocation of Beneficiaries:**

The state has made very good progress in developing a relocation plan, but there are still a few remaining concerns listed below.

- The date for identifying settings that are unable to take the necessary steps to comply with the HCBS requirements and the implementation of the transition protocol are not scheduled to be completed until December 2020, which is after the March 2019 deadline for statewide compliance. Please adjust this timeline to ensure that all individuals have moved to compliant settings by the March 2019 deadline.
- While the state describes a process for ensuring an informed, person-centered relocation decision, there is no discussion of supports to help with the transition during its implementation. Please describe the supports Minnesota will implement to ensure a smooth relocation process for individuals after they have made their choice of a new setting.

- There is no mention of reasonable notice or due process and this step is not discussed in the timeline on page 25. Please provide a date when beneficiaries will be given notice of relocation.
- The state should include an estimate of the number of beneficiaries that may be impacted by anticipated closures of specific settings and relocation.
- Please add milestones to page 25 to describe more of the interim steps needed to complete the relocation process.