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State of Louisiana

Department of Health and Hospitals
Bureau of Health Services Financing

December 18, 2015

Mr. Ralph Lollar
Director
Division of Long Term Services and Supports
Centers for Medicare & Medicaid Services
7500 Security Blvd, Mail Stop S2-14-26
Baltimore, MD 21244-1850

Dear Mr. Lollar:

The State of Louisiana, Department of Health and Hospitals, is submitting our revised Statewide Transition Plan (STP) to the Centers for Medicare & Medicaid Services (CMS) in order to bring state standards and settings into compliance with the new federal home and community-based settings requirements. This revision builds on our original submission to CMS on March 17, 2015, with updated versions submitted on May 28, 2015 and July 6, 2015. An updated Work Plan Master Document was submitted on August 6, 2015.

In your letter dated October 15, 2015, you requested additional detail regarding the settings identified in the STP, systemic and site-specific assessment processes and outcomes, monitoring of settings, remedial strategies, heightened scrutiny and relocation of beneficiaries. For ease of review, our responses are listed after each CMS issue. Supporting documentation is attached in specified Appendices. The revised STP dated December 18, 2015 is attached and reflects all modifications described in the narrative below and Appendices attached. We have included a tracked-changes document and one with tracked changes accepted.

Waivers and Settings Included in the STP:

1. CMS Comment:

The STP included a settings analysis at the agency level, although a number of items listed under the Office for Citizens with Developmental Disabilities (OCDD) Settings Analysis category of "Settings May Be Compliant or With Changes Will..." were services, not settings. Please update the STP to include the settings in which the services are delivered.

Louisiana Response:

OCDD revised the list of "Settings May be Compliant or with Changes will....." to specify settings, not services. This chart is attached to this correspondence and represented in Appendix A. The STP, located on the CMS Transition Plan portal, has been revised to reflect the new information on page 12.

2. CMS Comment:

Please provide clarification on the setting identified as "Participant resides in housing which is owned or leased by a family member" to ensure that it is not a congregate setting.

Louisiana Response:

Additional information is provided in the revised STP clarifying "participant resides in housing which is owned or leased by a family member" to ensure that it is not a congregate setting. Congregate settings will be identified in a number of systemic ways. These include: 1) a comprehensive provider self-assessment for residential settings; 2) a comprehensive provider self-assessment for non-residential settings; 3) a participant survey that asks questions about with whom the participant resides and their level of choice and opportunities for community inclusion; and/or 4) support coordination monitoring to assess compliance and identify potential isolation issues. Revisions will be made to protocols, policy and procedures, and monitoring tools to ensure support coordinators approach the HCBS Settings Rule with consistency and thoroughness. Person-centered planning remains an essential component to assure that persons are living where they choose to live, they are participating in activities of their choosing, they have choice in terms of which service providers will support them, they understand their rights/responsibilities, and they have access to the greater community in the same way as persons not receiving Medicaid services.

This language appears in the STP on page 6.

3. CMS Comment:

Please provide clarification on the following services and settings and identify how they will be addressed in the STP: skilled maintenance therapy, center-based respite, substitute family care/adult foster care, permanent supportive housing, host homes, transition intensive support coordination in nursing facility, and transition services to private residences.

Louisiana Response:

CMS asks for clarification on the following services and how each will be addressed in the final STP. Clarifications include: a) skilled maintenance therapy is a service which is delivered either in a community based clinic or in a participant's home based on their preference as determined during the person centered planning process. b) Center-based respite and Caregiver Temporary Support are short-term services which are temporary

services and do not come under close scrutiny; c) Substitute Family Care and Host Homes are both living situations in which a participant lives in the private residence with a primary caregiver in a community setting; d) Permanent Supportive Housing is a service that provides tenancy supports to assist participants in leasing and maintaining affordable housing in the community; e) Transition intensive support coordination in nursing facilities and Transition services to private residence are services provided to deinstitutionalize individuals and assist with transitioning into compliant HCBS settings. Host Home and Substitute Family Care will be monitored by the following process: 1) a comprehensive provider self-assessment for residential settings; 2) a comprehensive provider self-assessment for non-residential settings; 3) a participant survey that asks questions about with whom the participant resides and their level of choice and opportunities for community inclusion; and/or 4) support coordination monitoring to a assess compliance and identify potential isolation issues. Revisions will be made to protocols, policy and procedures, and monitoring tools to ensure support coordinators approach the HCBS Setting Rule with consistency and thoroughness. Person-centered planning remains an essential component to assure that persons are living where they choose to live, they are participating in activities of their choosing, they have choice in terms of which service providers will support them, they understand their rights/responsibilities, and they have access to the greater community in the same way as persons not receiving Medicaid services.

The changes to the STP are located on page 6.

Systemic Assessment:

4. CMS Comment:

The STP indicated that the state completed an assessment of its licensure and certification rules, operations, and provider qualifications. Please provide detail regarding the systemic assessment process. Please update the STP to include the methodology the state used to conduct this assessment.

Louisiana Response:

While the Offices completed a full review/assessment of all its licensure and certification rules, operations, and provider qualifications during the initial stages of the STP development, additional details of the systemic assessment process and identification of the methodology used to conduct such reviews/assessments are expanded. To respond to the CMS request, the State has created a series of charts, by Office, to identify the CMS specific requirement, the document reviewed, the results of that review and action steps each Office will take to remediate the findings to assure complete compliance with the HCB setting rule. Each Office's chart is embedded revised STP on page 15 and can be viewed independently as Appendix B of this correspondence.

5. CMS Comment:

Additionally, the state did not clearly identify what standards were reviewed against each of the new federal home and community-based settings requirements. However,

Louisiana determined that "modifications to the documents were not needed." Please provide a crosswalk of the state rules and regulations that the state reviewed against each of the relevant sections of the federal requirements and clarify which components of the state documents reinforce each of the setting's requirements.

Louisiana Response:

Please see response to # 4 above. The CMS standards have been included in the Chart found in Appendix B. The revised STP reflects these changes also on page 15.

Site-Specific Assessments:

6. CMS Issue:

The STP included a settings analysis for the three agencies, Office of Aging and Adult Services (OAAS), OCDD, and Office of Behavioral Health (OBH) that categorized settings and/or services into the following compliance categories: presumed fully compliant, may comply with changes, presumed non-home and community-based, and do not comply with the new rule. The STP did not include an estimate of the number of settings in any of these categories. Please include an estimate of the number of settings falling into each of the four compliance categories.

Louisiana Response:

We developed a chart that reflects estimates for each setting. This is attached to this correspondence as Appendix C. Changes to the revised STP have been completed and a chart embedded in that document. The revised STP on page 14 and is attached to this correspondence.

7. CMS Issue:

CMS has a concern about the state's categorization of some settings that "may be compliant, or with changes will comply with home and community-based characteristics." Among those settings are (1) Apartment complexes where the majority of residents receive home and community-based services; (2) Provider owned or controlled housing of any size; and (3) Multiple locations on the same street operated by the same provider (including duplexes). If these settings are comprised of individuals that are primarily or exclusively people with disabilities, they may have the effect of isolating individuals receiving HCBS from the larger community. Please clarify why the state believes these settings are not settings that are presumed to be institutional in nature.

Louisiana Response:

Louisiana has corrected the charts embedded in the revised STP on page 12 to exclude settings which do not currently exist in Louisiana's HCBS Waivers. This chart is attached to this correspondence and represented in Appendix H.

8. CMS Issue:

The STP identified activities for initial provider self-assessments, site visits and participant surveys. The August 6, 2015 Work Plan Master Document specifies the initial provider self-assessment completion dates as: OAAS (May 31, 2015), OBH (June 30, 2015), and OCDD (September 30, 2015), followed by site visits to validate the provider self-assessments. The site visits will be conducted within the following timeframes: OAAS (July - December 2015), OBH (July - December 2015), and OCDD (May - October 2015). Participant surveys will be completed by October 2015, with the exception of surveys for OAAS, which will not be completed until February 2017. Both the STP and the August 6, 2015 Work Plan Master Document include an activity to "Identify and send letters to providers who are not compliant with the home and community-based settings rule" on June 2, 2015 for OAAS providers and August 1, 2015 for OBH and OCDD providers. Please align your timeframes to notify providers after the site assessments and participant validation processes are completed or explain how the state will notify providers who are not compliant prior to the date when the site assessments are completed via site visits and participant validation processes.

Louisiana Response

Dates have been revised by each Office and are set forth in Appendix D of this document and have been incorporated in the revised STP Appendix D Current Louisiana Work Plan Master.

9. CMS Issue:

Please provide more detail on the sampling methodologies, site visit processes, and the state's approach to data validation in the STP.

Louisiana Response:

Each Office has created its own site assessment strategy to include sampling methodologies, data validation system and monitoring activities. These are articulated in Appendix E of this correspondence. The revised STP reflects these additions on page 41.

10. CMS Issue:

Responses to public comments suggest that OBH will conduct onsite visits for a sample of residential and non-residential settings to ensure compliance with the home and community based settings regulation (p. 56). Each of the agencies mentioned using a sample for site visits, but only OCDD provided details as to the method and size of its planned sample. Please provide corresponding information for OBH and OAAS. Page 83 of the STP notes that "OCDD would like to propose utilizing National Core Indicator (NCI) data as a possible source of information. In addition to NCI data, service provider agencies conduct participant surveys as part of their internal quality processes. OCDD would like to work with service providers to assure that appropriate questions are included in these surveys and evaluate existing policy/procedures for service providers to enhance their existing surveys." Please clarify how NCI data will be cross-walked to specific sites.

Louisiana Response:

Sampling strategies for each Office are included in Appendix E as introduced in the previous CMS issue. OCDD will be evaluating data secured from the National Core Indicators (NCI Project); however, tracking this information to a specific provider agency is not possible. Information in the aggregate can be identified and will be valuable in the preliminary assessment process. To meet the CMS expectations, OCDD is developing a comprehensive participant survey that will supply the Office sufficient information to assess individual setting situations and compliance with the Settings Rule. Expectations are that the NCI data findings, the participant surveys, provider assessments, and support coordinator feedback will provide a wealth of information to extract correlations across data sets. These are reflected in the STP on page 41.

Monitoring of Settings:

11. CMS Issue:

The STP indicated the state intends to develop a comprehensive monitoring and oversight process and mentions the use of some monitoring mechanisms (e.g. monitoring instrument and random unannounced site visits). Please describe the state's monitoring plan and identify the monitoring mechanisms to ensure that settings come into compliance by March 2019 and remain compliant thereafter. We note that a number of states are planning to use licensing and certification policies that measure the federal home and community-based settings qualities required as an ongoing monitoring mechanism.

Louisiana Response:

Additional information regarding the monitoring plan to ensure compliance has been added to the "ENSURING QUALITY" Section of the revised STP. To provide the reader with a user-friendly version of this language, please reference Appendix F of this document as well as the revised STP on page 49.

Remedial Actions:

12. CMS Issues:

The STP stated that modifications to licensure and certification rules, program operations, and provider qualifications were not needed. However p. 8 of the August 6, 2015 Work Plan Master Document indicated that the state will apply continuous scrutiny to these documents to ensure compliance with the home and community-based settings rule. Please include a remediation strategy for modifying any licensing, certification, policy and procedures, and provider qualifications should the need arise.

Louisiana Response:

Louisiana has completed a comprehensive review of state statutes, licensing and certification requirements, policies and procedures, manuals, and waiver documents to identify areas which are in conflict with the HCBS Settings Rule. The Remediation

Timeline will be modified to include remediation strategies of these documents. New initiatives will come under close scrutiny to ensure each is compliant with and supportive of the HCBS Settings Rule. Additional opportunities include the development of amendments and renewals to provide the Department an opportunity to review all documents. Interagency Executive Management Committee, which meets monthly, has a standing agency item to provide oversight and monitoring of existing and new documents to ensure compliance. This information is located in Appendix B of this document and is embedded in the revised STP on page 15.

13. CMS Issues:

The STP included a chart of remediation strategies with action steps and deadlines to bring providers into compliance. The STP indicated that providers who are not compliant must submit corrective action plans. Please identify key milestones for ensuring that the providers meet the remediation objectives laid out in these corrective action plans within the prescribed timeframes. Please update the STP to include milestones for tracking the provider's remediation progress.

Louisiana Response:

A Department-wide chart has been created to describe the management of non-compliant settings. The chart is attached as Appendix G – Remediation Milestones. This chart will be embedded in the revised STP on page 48.

14. CMS Issue:

Please clarify how the single state Medicaid agency maintains the oversight over the activities conducted by OAAS, OCDD, and OBH to ensure adherence to the remedial activities identified in the STP.

Louisiana Response:

Additional information to the revised STP has been added in the Ensuring Quality Section and is attached to this correspond as Appendix F and Appendix G – Remediation Milestones. DHH is the single state Medicaid agency which administers the Medicaid Program. DHH is comprised of the Bureau of Health Services Financing (BHSF), the Office for Citizens with Developmental Disabilities (OCDD), Office of Behavioral Health (OBH), Office of Aging and Adult Services (OAAS) and the Office of Public Health (OPH). Under the general supervision of the Secretary, these principle offices perform the primary functions and duties assigned to DHH. These are found on pages 48 and 49.

Relocation of Beneficiaries:

15. CMS Issue:

The STP includes relocation of beneficiaries as part of its remediation strategy. The state indicated it will develop a plan for individuals residing in non-compliant settings and that it will give notice and a choice of alternative providers to these individuals. The state will then track these individuals to monitor the new placement. The August 6, 2015 Work

Plan Document indicated that the development of transition plans for beneficiaries needing to transfer to a compliant setting will occur for both OAAS Waivers between March 2016 and March 2017. The development of transition plans for the OBH Waivers will occur in December 2015 and for OCDD Waivers in September 2015.

a. Please identify a more detailed transition plan with timeframes and milestones once the state has identified the number of individuals impacted and the pool of compliant settings (and providers) available.

b. OBH and OCDD intend to develop the relocation transition plans for beneficiaries by the end of 2015. Please clarify how this will be accomplished the settings assessments are not yet complete.

c. Please clarify how this will be accomplished when the settings assessments are not yet complete.

d. Please examine all timelines for relocation and align, to the extent possible, planning and implementing of relocation activities across all three operating agencies.

e. Please include information in the STP that assures beneficiaries will be afforded ample time to make informed choices about alternate settings and that all services and supports they need will be available at the time of transition.

Louisiana Response:

The Department has made revisions to the timelines to address CMS concerns. If relocation of beneficiaries is required as part of the remediation strategy, the Louisiana STP will insure that the State provides reasonable notice and due process to those individuals; addresses the timeline for relocation; provides the number of beneficiaries impacted; and provides a description of the State's process to ensure that beneficiaries, through the person- centered planning process, are given the opportunity, information, and supports to make an informed choice of alternate setting that aligns, or will align with, the requirements. Timelines are being adjusted in the revised STP and can be found on page 35. The Department will also ensure that critical services or supports are in place in advance of the individual's transition. Appendix G – Remediation Milestones provides additional information to this issue. This is located on page 48 of the revised STP.

Heightened Scrutiny:

16. CMS Issue:

The STP identified "settings that are presumed non-home and community-based but evidence may be presented to CMS for heightened scrutiny" for two of the agencies, OAAS and OBH. OAAS identified potential settings for heightened scrutiny as "Adult Day Health Care centers located on the grounds of, or adjacent to, a public institution, and Adult Day Health Care centers located in a publicly or privately-owned inpatient facility". OBH identified potential settings for heightened scrutiny as "Located in a

building that also provides inpatient institutional treatment, any setting on the grounds of or adjacent to a public institution, settings that isolate participants from the broader community, non-medical group homes, and therapeutic group homes". Please specify the state's processes for identifying those settings that may require heightened scrutiny.

Louisiana Response:

Louisiana will identify those settings that require heightened scrutiny using : 1) a comprehensive provider self-assessment for residential settings; 2) a comprehensive provider self-assessment for non-residential settings;3) a participant survey that asks questions about with whom the participant resides and the degree of isolation; 4) on site quality visits to a sample of providers; and 5) the person-centered planning process discussion with each participant and observations made by the support coordinator will further clarify that the setting of each participant is compliant and the participant does not live in isolation. Once a setting is identified for heightened scrutiny and evidence is documented, an on-site assessment is conducted by the State or other State entity to determine level of non-compliance. If relocations are deemed necessary to comply with the HCBS Settings Rule, the Department assures reasonable notice and due process to each participant; identification of the number of participants impacted; and a process that will assure participants, through the person-centered planning process, are given the opportunity, the information, and the supports to make an informed choices of an alternative setting that aligns, or will align, with the regulation, and that critical services and supports are in place in advance of the participant's transition. Additional specificity has been added to the revised STP in the Remediation Strategies Section and a new chart developed entitled Remediation Milestones – Appendix G of this correspondence. These changes are found on page 6 of the STP.

17. CMS Issue:

If the state is operating with a presumption that an individual's private home or private family home is meeting this requirement the state needs to confirm that none of these settings were purchased or established in a manner that isolates the individual from the community of individuals not receiving Medicaid funded home and community-based services. Information available in the Toolkit on settings that isolate may be helpful in this regard. It is not CMS' expectation that a state would presume compliance of a setting where all or the majority of services are rendered in or on the grounds of that setting, or where a group of individuals with disabilities or a specific type of disability (or their families) have purchased and reside in the setting.

Louisiana Response:

The State presumes that an individual's private home or private family home is meeting the requirement and will verify this through a systematic process that includes: 1) a comprehensive provider self-assessment for residential settings; 2) a participant survey that asks questions about with whom the participant resides and their level of choice and opportunities for community inclusion; and /or 3) support coordination monitoring to assess compliance and identify potential isolation issues. Revisions will be made to

protocols, policy and procedures, and monitoring tools to ensure support coordinators approach the HCB Setting Rule with consistency and thoroughness. Person-centered planning remains an essential component to assure that persons are living where they choose to live, they are participating in activities of their choosing, they have choice in terms of which service providers will support them, they understand their rights/responsibilities, and they have access to the greater community in the same way as persons not receiving Medicaid services.

This language is reinforced in the revised STP on page 6.

Louisiana is submitting additional information to support our work to modify our system to comply with the Settings Rule. We are willing to discuss our responses with CMS to provide further clarifications. The Department appreciates the support of CMS as we move forward with these important improvements.

Should you have questions regarding this letter, please contact Jeanne LeVelle, Medicaid Program Support and Waivers Section Chief, at (225) 342-9846 or jeanne.levelle@la.gov.

Sincerely,

J. Ruth Kennedy
Medicaid Director

Enclosures

JRK/gp

c: Janice Arceneaux
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