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**Statewide Transition Plan Toolkit for Alignment with the Home and Community-Based Services (HCBS) Final Regulation's Setting Requirements**  
*September 5, 2014*

The following information is intended to suggest alternative approaches and considerations for states as they prepare and submit Statewide Transition Plans as required by the HCBS final regulation published January 16, 2014 (available at <http://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf>). This toolkit relates specifically to the Federal requirements for residential and non-residential home and community-based settings. These regulatory requirements can be found at 42 CFR Section 441.301(c)(4)(5) and Section 441.710(a)(1)(2).

**What is a Statewide Transition Plan?**

The Statewide Transition Plan is the vehicle through which states determine their compliance with the regulation requirements for home and community-based settings at 42 CFR 441.301(c)(4)(5) and 441.710(a)(1)(2), and describe to CMS how they will comply with the new requirements. A Statewide Transition Plan includes the state's assessment of the extent to which its regulations, standards, policies, licensing requirements, and other provider requirements ensure settings that comport with the requirements outlined at 42 CFR 441.301(c)(4)(5) and 42 CFR 441.710(a)(1)(2). The Statewide Transition Plan also describes actions the state proposes to assure full and on-going compliance with the HCBS settings requirements, with specific timeframes for identified actions and deliverables. The Statewide Transition Plan is subject to public input, as required at 42 CFR 441.301(6)(B)(iii) and 42 CFR 441.710(3)(iii).

**Who Submits?**

Each state operating 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.

**When to Submit?**

The trigger for filing a Statewide Transition Plan is the state's first 1915(c) waiver or 1915(i) SPA 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. States must be in full compliance with the Federal requirements by the time frame approved in their Statewide Transition Plan, not to exceed March 17, 2019.

### **How can states determine alignment with the new Federal requirements on HCBS settings?**

The purpose of the Statewide Transition Plan is to describe how the state will bring all pre-existing 1915(c) and 1915(i) programs into compliance with the home and community-based settings requirements at 42 CFR 441.301(c)(4)(5) and Section 441.710(a)(1)(2). To determine whether state transition actions are needed for compliance, CMS expects that states must first determine their current level of compliance with the settings requirements and provide a written description to CMS. Included in the written description should be the state's assessment of the extent to which its standards, rules, regulations, or other requirements comply with the Federal HCBS settings requirements and the 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.

Possible scenarios might include:

- 1) Upon conducting its compliance assessment, a state may determine that existing state standards meet the Federal settings requirement, the state's oversight process is adequate to ensure compliance, and, therefore, any settings currently approved under the state's standards meet the Federal settings requirement. In this scenario, the state describes its process for conducting the compliance review and the outcomes of that review; or
- 2) The state conducts its compliance review and determines that its standards may not meet the Federal settings requirements. In this scenario, the state includes in the Statewide Transition Plan the specific actions to be taken to come into compliance. These actions might include proposing new state regulations or revising existing ones; revising provider requirements; and conducting statewide provider training on the new state standards. The Statewide Transition Plan should also include the time frames for completing these actions, an estimate of the number of settings that likely do not meet the Federal settings requirement and the time frame necessary to bring individual settings into compliance.

In situations where the state standards do not coincide with the Federal standards, it is possible that specific settings are still 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.

States may conduct specific site evaluations through a variety of standard processes including, but not limited to licensing reviews, provider qualification reviews, and support coordination visit reports. States may also engage individuals receiving services as well as representatives of consumer advocacy entities (such as long-term care ombudsman programs and protection and advocacy systems) in the assessment process.

States may conduct – or develop a tool for qualified entities to conduct – site specific evaluations of settings using the Federal requirements as a basis for the evaluation. Such evaluations may be conducted by entities including, but not limited to state personnel, case managers that are not associated with the agency operating the setting in which services are provided, licensing entities, Managed Care Organizations, individuals receiving home and community-based services, representatives of consumer advocacy entities such as long-term care ombudsman programs and/or protection and advocacy systems. States may also 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 on-site reviews.

States may also administer surveys to providers to determine whether the settings in which those providers operate meet the home and community-based settings requirements. In this instance, providers could “self-assess” their compliance with the Federal requirements or provide information required by the state to make a determination of compliance. In either situation, states could perform assessments of individual settings to verify compliance. If providers indicate they do not meet the new requirements, states should include remediation strategies in the Statewide Transition Plan, including actions and associated time frames for bringing the programs/settings into compliance.

It should be noted that 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. In addition, 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.

The state’s determination of compliance is the first step in Statewide Transition Plan development. The next step is developing and describing to CMS the state’s actions to come into full compliance, including timelines and milestones.

### **What does CMS expect to see in a Statewide Transition Plan?**

Presence of the following items will facilitate CMS review of the states’ submitted plans:

- A detailed description of the state’s assessment of compliance with the home and community-based settings requirements and a statement of the outcome of that assessment.
  - If the state determines on the basis of the review of current state regulations, standards, and policy that settings within the state are consistent with Federal settings requirements, the state should describe the process of the compliance assessment, the basis for the conclusion and the oversight (monitoring) process that ensures this. If the process of assessment

is not yet complete and has required, or will require, greater than six (6) months for review, the state must submit justification for the additional time frame.

- 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; 4) are presumptively non-home and community-based 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 home and community-based settings (to be evaluated by CMS through the heightened scrutiny process). In instances where a system review identifies settings which are presumed not to be home and community-based (home and community-based) and the state intends to submit evidence that the setting is home and community-based and does not have institutional characteristics, CMS would expect an onsite assessment that supports the state's assertion.
- If the state conducts site specific evaluations, the state needs to provide the best estimate of the number of settings that 1) fully comply with the Federal requirements; 2) do not meet 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; 4) are presumptively non-home and community-based 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 home and community-based settings (to be evaluated by CMS through the heightened scrutiny process).
- A detailed description of the remedial actions the state will use to assure full compliance with the home and community-based settings requirements, including timelines, milestones and monitoring process. Remedial actions might include:
  - At the 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, and a description of the state's oversight and monitoring processes.
  - At the 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, and access to activities of his/her choosing in the larger community, including the opportunity to seek and maintain competitive employment.

- If the state decides to submit evidence to CMS for the application of the heightened scrutiny process 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 home and community-based setting requirements. 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 as part of the heightened scrutiny process. CMS may also conduct individual site visits as well.
- 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
  - A description of the state’s process to assure that 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.
- The 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. If the state intends to conduct an assessment after adopting new standards, the state should provide information on how, in the interim, the state 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.
- A description of the public input process, with a summary of public comments, including the full array of comments whether in agreement or not with the state’s determination of the system-wide compliance and/or compliance of specific settings/types of settings; a summary of modifications to the Statewide Transition Plan made in response to public comment; and in cases where the state’s determination differs from public comment, the additional evidence and rationale the state used to confirm the determination (e.g. site visits to specific settings).
- The URL where the Statewide Transition Plan is posted.

### **When is Public Input Required?**

Prior to filing with CMS, a state must seek input from the public on the state's proposed Statewide 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 representing consumers, providers, advocates, families, and other related stakeholders. 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.

The Statewide Transition Plan requirements set forth that states must provide evidence of two statements of public notice and requests for public input, the timeframe for public input (which verifies that a minimum of 30-days was afforded for public review and comment), and a description of the public input process. To accomplish this, the state could include in the Statewide Transition Plan the actual date of the public notice, the processes used for providing the public notice (e.g., publication in newspapers, announcement via websites) and how public input was received (e.g., testimony, web response).

When filing the Statewide 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 home and community-based 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 the determination (e.g. site visits to specific settings). At the time the state files the Statewide Transition Plan with CMS, the state must simultaneously post the submitted plan on the state's website. The URL for that posting should be included in the Statewide Transition Plan submission 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 Statewide Transition Plan are retained and available for CMS review for the duration of the transition period or approved waiver, whichever is longer.<sup>1</sup>

CMS wishes to ensure that states recognize the changes in the public notice and public input process required by this regulation. States must ensure the document is posted and, in the case of public forums, available or distributed for comment. States can use summary documents or offer explanations of contents of the Statewide Transition Plan, in addition to the document itself. However, the state must ensure the full Statewide Transition Plan is available to the

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<sup>1</sup> States filing waiver renewals or amendments to existing 1915(c) 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.

public for comment, including individuals receiving services, individuals who could be served, and the full stakeholder community. While a state may find meetings held with selected representatives of types of stakeholder useful, such meetings will not be sufficient to demonstrate adequate notification or input.

Finally, consistent with the Toolkit document “STEPS TO COMPLIANCE FOR HCBS SETTINGS REQUIREMENTS IN A 1915(c) WAIVER and 1915(i) SPA” substantive changes in a Statewide Transition Plan will require public comment. For example, when a state submits an amendment or modification to a Statewide 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. 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 Statewide Transition Plan. Therefore, states are strongly encouraged to describe their process for ensuring ongoing transparency and input from the stakeholders in the Plan.