DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850

Disabled & Elderly Health Programs Group

September 24, 2015

Calder Lynch
Director, Division of Medicaid & Long-Term Care
State of Nebraska, Department of Health and Human Services
301 Centennial Mall South, 3rd Floor
PO Box 95026
Lincoln, NE 68509-5026

Dear Mr. Lynch,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Nebraska's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Nebraska submitted its STP to CMS on March 9, 2015. CMS is requesting some additional information on the assessments, remedial actions, ongoing monitoring, heightened scrutiny, relocation of beneficiaries and other areas. These items are detailed below.

Public Comment and Public Notice:
The state did not include the URL for the location of the STP. Please include this information in the next version of the STP.

Setting Types:
Please identify in the STP the setting types that are impacted by the new federal requirements. CMS notes the state provided website links to HCBS waiver documents that include information about its current waiver services and related rules and regulations. However, CMS requests that the state add this information to the STP itself in a more clear and concise fashion.

Systemic Assessment:

- Please describe the findings regarding the systemic assessment of the state's standards in relation to the federal settings requirements for the nine systemic activities completed prior to the STP submission. In addition, update the STP to clearly indicate which systemic activities were completed. The updated STP should also provide outcomes for those completed activities.
- Please include a crosswalk of the specific regulations, policies, etc. reviewed as part of the state's systemic assessment, to each specific setting criterion in the federal regulation, for each of the settings. Ensure that the STP identifies whether these rules, regulations, and policies complied with the federal regulation, did not comply or were silent.

Site-specific Assessments:

- Please include the state's best estimate of the number of settings that fully comply with the regulation, do not comply but could with modifications, cannot comply, or are presumptively institutional in nature.
- Please include a narrative description of the scope and methodology of Nebraska's planned site-specific assessments.
- The STP should be updated when site-specific assessments have been completed including an estimate of how many on-site assessments the state plans to conduct, the sampling and validation methodologies used to complete them, and the findings from these assessments.
- The HCBS Transition Plan Matrix-Comprehensive section of the STP listed some action items related to the analysis of setting types, including the identification of settings that are likely "not community like" that may meet the requirements for Heightened Scrutiny. Please provide more detail regarding this category, as well as the processes the state uses to identify these settings.
- Please identify the timeframe for the completion of the site-specific assessments, including when the STP will be updated with these findings, posted for public comment, and resubmitted to CMS.

Remedial Actions:

- For the systemic remedial strategies, the state identified remedial actions and timeframes in the "HCBS Transition Plan Matrix-Comprehensive" section of the STP (Action items #13, 19-24, 30, 50-53, 57-63). Please confirm these actions are related to remediation.
- It appears that Action Item #56 is a systemic activity with a target completion date of 3/31/2016. The expected outcome for this Action Item is that regulations "comply with the new CMS HCBS rules related to residential settings and support DDD activities to ensure compliance." CMS would like specific information about this action item clarifying what the state expects to see that will confirm this outcome.
- For the site specific remedial strategies, the state identified remedial actions and timeframes in the "HCBS Transition Plan Matrix-Comprehensive" section of the STP (Action items #18, 27, 29, 31, 33, 49, 55, 64-74), though some of these activities were classified as "Analysis" and "Outreach" tasks. Please confirm these actions are related to remediation.
- Please include in the STP key milestones for the remedial action process, as well as monitoring processes to ensure timelines and milestones are met.
- The remedial activities in the Gantt chart on p. 91 have a completion timeframe of December 2017. If this is applicable to the systemic remediation activities, is this timeline based on the state's legislative session cycle, or other reasons? Please explain.
- Many action items in the STP indicate "ongoing" as the end date. CMS recognizes that ongoing remediation activities are appropriate. However, please identify specific end dates for remediation activities to ensure the state is making a timely determination within the transition period of whether a particular setting will be able to comply with the rule.

Ongoing Monitoring
Seven of the 75 action items in the "HCBS Transition Plan Matrix-Comprehensive" section of the STP (pp. 10-34) are related to state's monitoring processes for assuring full and ongoing compliance. The lack of a narrative around the state's monitoring plans and frequency of oversight for compliance makes it difficult to understand and assess the adequacy of the state's monitoring objectives. Please specify the milestones, the monitoring tools and resources, and clarify the specific processes to monitor ongoing compliance.

Heightened Scrutiny:
The state should clearly lay out its process for identifying settings that are presumed to be institutional in nature. These are settings for which the state must submit information for the Heightened Scrutiny process if the state determines, through its assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution. If the state determines it will not submit information on settings that match the scenarios in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved to compliant settings or to other funding streams.

Settings that are presumed to be institutional in nature include the following:

- Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- Settings in a building on the grounds of, or immediately adjacent to, a public institution; and
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

Relocation of Beneficiaries:

- Nebraska references relocation of beneficiaries in the STP under Action Items #27, #31, #49, #55, and #65. However, the state did not detail its plans for transitioning individuals to alternate settings. Either a sizeable number of beneficiaries will need to relocate, or the state will be pursuing Heightened Scrutiny for a sizeable number of settings based upon the state's response to public comments that "many existing settings are institutional in nature and do not meet the compliance standards identified in the HCBS rule."
- The STP should provide additional information on the process for relocation of beneficiaries, including:
    - An estimate of the number of settings and beneficiaries that may be subject to relocation;
    - A detailed description of the relocation plan that includes beginning and ending timeframes;
    - An assurance that the state will provide reasonable notice and due process to beneficiaries, along with all the information and supports that beneficiaries need to make informed choices about alternate settings; and
    - An assurance that all the services and supports needed will be in place at the time of relocation.

Additional Concerns:

- Action item #75 indicated that the state will provide an annual update regarding the STP in the Division of Developmental Disabilities Update provided to the Nebraska Legislature and available to stakeholders. This activity appears to be for the DD Waivers only, and the completion date is "ongoing". There was not a similar update activity for the Aged and Disabled Waiver and the Traumatic Brain Injury Waiver. Please clarify how the state will address the updates in these other waivers.
- CMS has some concerns with the state's incorporation of a "severability" provision on p. 8 of the STP. The state further noted that "As no substantive changes to the transitions plans resulted from the public comment activities, the severability issue is not relevant to the final transition plan(s). Thus, this section can be disregarded." Please remove the severability issue from the application as the state has indicated it should be disregarded. CMS confirms that each Department can move at different rates for ensuring compliance within specific waivers, although the STP must be submitted and approved as one plan.
- CMS suggests that the state consider adding more narrative text, or an executive summary section to the STP that compliments the detailed matrix that the state has created. This additional explanation will ensure that both CMS and the public are able to adequately understand the details of the STP.

CMS would like to have a call with the state to go over these concerns and to answer any questions the state may have. The state needs to identify a date when it will be resubmitting an amended STP that includes the results of the planned assessments and more specific remedial actions to be undertaken as outlined above. These updates will necessitate the STP being re-posted for public comment. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. At that time the timeframe for the submission of the amended STP will be discussed. Please contact Claire Hardwick, the CMS Central Office Analyst taking the lead on this STP, at (410) 786-6777 or at Claire.Hardwick@cms.hhs.gov, with any questions related to this letter.

Sincerely,

Ralph F. Lollar,
Director, Division of Long Term Services and Supports

cc. J. Scott