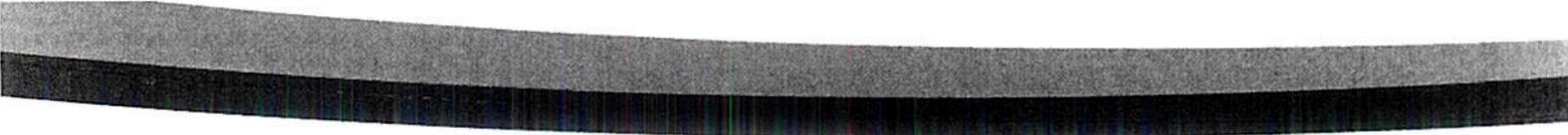




# Assessment of State Systems

For compliance with  
the HCBS settings rule





## Purpose of this Presentation

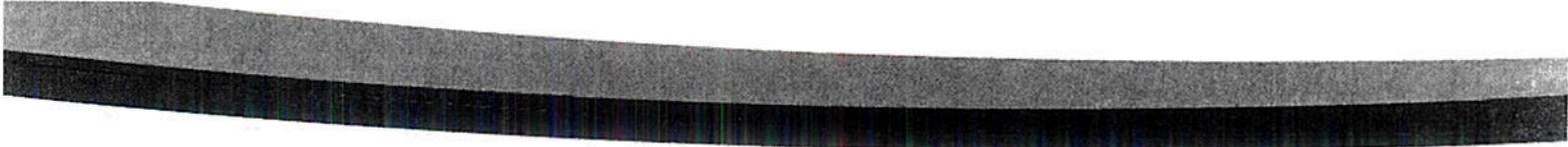
- Review foundations of useful, comprehensive assessment that will satisfy CMS HCBS settings rule requirements
  - Review CMS sub-regulatory guidance and recommendations for assessment of state systems and settings
  - Review current status of assessments across the statewide transition plans
  - Answer questions
- 



# Assessment Components

## STEP ONE

- Review of rules, regulations, policy, the administrative foundation for a state's system
- 



## What does the Toolkit Say?

“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 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 laws or regulations or revising existing ones;
- Revising provider requirements;
- Conducting statewide provider training on the new state standards;
- Adjusting reimbursement rates, definitions, or provider qualifications”

Many states have gaps <sup>or barriers</sup> in policies that don't comply with settings requirements.



## Two Results:

“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.”

OR...



## A Good Process

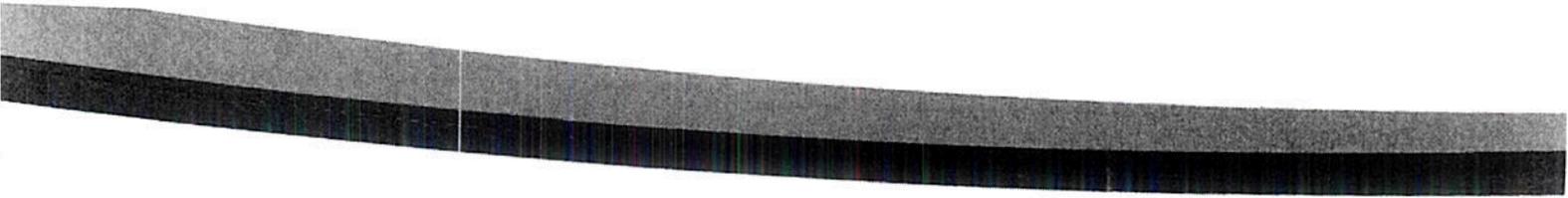
- State conducts an exhaustive review of all the code sections, waivers, provider manuals, etc., describing service settings and practices
- Identifies where their rules and regulations conflict with the HCBS Rule, or are silent and should be amended to more explicitly support the Rule
- Propose changes; identify the process needed; (regulatory change process, legislation, provider manual policy change for example); sets a deadline for changes

This process should be well on its way.



## Best Examples

- STP included an active link to the code sections so any consumer could open it and see how it compared with the rule
  - States that did a thorough job early on – you can't change provider practice unless the rules allow it
  - Some states passed overarching HCBS policy that became the framework for implementation (see next slide)
- 



“This rule will specify the settings in which HCBS may not be provided and will include a requirement that individuals be offered the opportunity to choose among services or a combination of services and settings that address the individual's assessed needs in the least restrictive manner, promote the individual's autonomy and full access to the broader community, and minimize the individual's dependency on paid support staff. This rule will also outline the elements required in written agreements for individuals choosing to receive services in provider-owned or controlled settings.”



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## Good example

- **The first two pages of the transition plan contained links to all relevant rules, regulations and policies for the waiver programs, making it very easy for the public to go behind the plan and read the state's existing policies.** The administrative and regulatory review proceeds component by component of the federal rule, and then for each setting by waiver; identified the current status, identified the gaps between the Rule and the current status and proposed remediation.

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Terrific crosswalk.

## Good example 2

- It includes brief descriptions of the state's processes in place and how they will be employed toward continual assessment and assurance of compliance. The coverage includes:
- Licensure and certification process
- Area Office Oversight
- Service Coordinator Supervisor Tool:
- Incident Reporting:
- Human Rights System:
- Site Feasibility:
- Quality Councils:
- National Core Indicator Surveys



# STEP 2

## ASSESSMENT OF INDIVIDUAL SETTINGS



## What Did the Toolkit Say?

“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.”

- Providers could “self-assess” their compliance with the Federal requirements or provide information required by the state to make a determination of compliance.
- States could perform assessments of individual settings to verify compliance.



## Tools for Assessment

“States may conduct – or develop a tool for qualified entities to conduct – site specific evaluations of settings using the Federal requirements

- May be conducted by entities including,
    - 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
    - protection and advocacy systems.”
- 

## Surveys

Most states proposed provider self-assessments. The following elements are necessary for this to be a valid method of assessing a state's settings:

- Ensure that the instructions are clear. Provide an electronic template that can be reproduced for each setting.
- The self-assessment should track the requirements of the rule very closely; using the exploratory questions is a good approach
- ALL providers should complete an assessment on ALL the settings under their control
- The survey should be available in multiple formats - electronic and paper
- The surveys must contain an identifier unique to that provider and each setting – only a couple states were explicit about this in their assessment plans

ALL  
Provider  
All settings

analysis  
is for individual  
setting

## Continued...

- Each question or indicator should measure only one element of the rule.
- Yes / No responses are not adequate. States must require providers to submit evidence to support their responses. The best surveys give a list of acceptable data or documents that the provider can use to support their claim that the setting is compliant.
- An inventory of settings for each category should accompany the surveys so they can be double checked.
- The surveys should identify settings that will need to come under heightened scrutiny

## Good Example 1

One survey goes through each element of the rule and instructs the provider on the types of evidence necessary to document that their setting meets HCBS requirements. A survey has to be completed for EACH setting the provider operates or co-operates. This evidence includes:

- Provider Policies/ Procedures
- Plan of Care
- Resident Handbook
- Lease/Residency Agreements
- Staff training curriculum and materials
- Training Schedules
- Licensure/certification

Providers unwilling to complete assessment and submit plans for remediation within the five year period are subject to terminations.

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## Good Example 2

The plan included separate and complete tables and deadlines for residential and non-residential settings. Each setting type will undergo an administrative and regulatory review, a provider self-assessment, a participant assessment, an analysis and validation process, and mandatory site visits for settings whose survey results indicate they may be isolating. The state explicitly details a survey matching procedure for validation purposes.

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## Good Example 3

The plan lays out in the very beginning each waiver program and an assessment of the adherence of the regulations to the rule. An extensive appendix included the specific regulation citations for each program, referenced the rule requirements that were missing and specified what needed to be added or amended.



## In contrast:

The providers developed the survey and then they responded to it.

Response was not mandatory, so < 30% of providers did respond.

The instructions requested information on ALL settings on one form, were not consistent throughout the survey and did not account for any non-residential settings.

Here is one item:

- **Do all settings in which the agency provides waiver services have a process for protecting the privacy, dignity, and respect of recipients?**
  - **Yes**
  - **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.
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# STEP 3

## VALIDATION OF ASSESSMENTS





Another look by another entity to verify the regulatory and/or provider self-assessment

Validation options are participant surveys; site visits; documentation from the public; GIS maps or site schematics; photographs; testimonials collected by neutral parties.



Don't have to  
visit every site.  
If there is a  
reason, you can go  
onsite.

## Site visits

"States may conduct specific site evaluations through a variety of standard processes including, but not limited to

- licensing reviews
- provider qualification reviews
- 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."



## What does the Toolkit say?

“If the state has chosen to assess individual sites to determine whether or not they are in compliance with the federal home and community-based settings requirements, the state includes a description of how the state conducted, or plans to conduct, its site-specific assessments and a list of specific settings that were, or will be, assessed.”



## Toolkit

- “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.”
- Statistically valid sampling means the number of providers selected for review is proportionally representative of the total number of settings OF THAT TYPE in the state (see next)
- And, be random among rural, suburban, urban, etc.

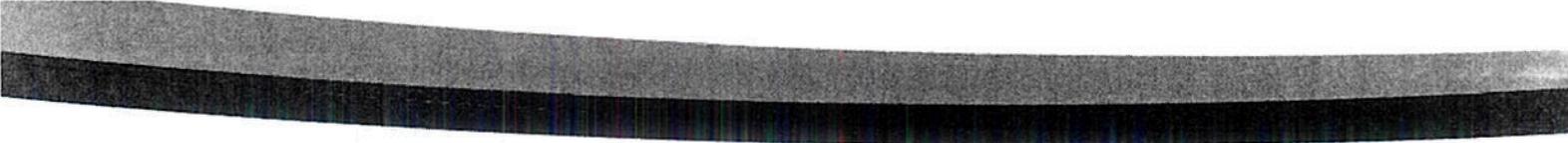
## Validating Provider self-assessments

- For states with a wide range of setting types, the sampling should be stratified – a statistically representative number of settings FOR EACH type of setting should be visited.
- Stratified sample means X% of adult foster homes, X% of group homes, X% of sheltered work facilities, X% Adult Day services, etc.
  - Site visit records need to have same identifier as provider self-assessment and participant assessment if one was done.
  - Site visit interviews or documents should have similar items to the other assessments so a comparison can be made.

Provider and individual assessments should be comparable. Example is you ask a provider if individuals have access to food at all ~~the~~ times, you need to also ask the individual the same type of question for comparison

## Participant Surveys

- Several states proposed conducting participant surveys or face to face interviews of individuals who use services as a way to validate provider self-assessment.
- In order for this approach to be validating, the participant's survey or interview must be connected to the provider survey on the setting using the same identifier; otherwise it is apples to oranges



## National Core Indicators

- Many states proposed using National Core Indicators data to validate provider self-assessments.
  - NASDDDS has done a crosswalk of the elements of the Rule with NCI indicators.
  - However, as it is currently constructed, NCI should only be used for examining trends in state SYSTEMS over time.
  - NCI is not site-specific UNLESS the state affixes a discrete identifier that is the same as the identifier on provider self-assessments.
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## Validating Provider self-assessments

- Participant / consumer surveys or interviews.
  - Must have the SAME identifier as the provider's settings identifier so they can be matched. THIS is what validates the provider's assessment.
  - Best if the items are similar or exactly the same, even if worded more simply. You cannot make a comparison if the items are different.
  - A participant survey should be done within more or less the same time frame as the provider self-assessment, so the results are comparable in time. We have seen too many plans where the participant survey is scheduled a year after the provider self-assessment, and sometimes after when state submits the plan to CMS again. This discounts the participant results as validating.



## What does the Toolkit say?

“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.”





# STEP 4

## SORTING SETTINGS



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## Sorting Settings

Once survey is completed, state should sort settings into the following “buckets.”

- 1) Setting is compliant;
  - 2) Setting will be made compliant with remediation;
  - 3) Setting cannot meet the federal requirements and must be removed from HCBS program
  - 4) Settings is presumptively non-HCBS and state will submit evidence to overcome the “presumption” of institutional or isolating qualities
  - 5) Setting is institutional (SNF, ICF/DD, IMD, H)
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## What does the Toolkit Say?

“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.”

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- Without a complete settings assessment, states cannot:
    - Identify which settings are/are not in compliance or could transition to compliance
    - Identify settings *Presumed Institutional* in nature
    - Submit evidence for *Heightened Scrutiny*
    - Provide specific remedial actions
    - Provide more than general milestones/timeframes
  - Concerns with the amount of time some states are projecting to complete the assessment phase and leaving adequate time for the actual transformation
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# STEP 5

## REMEDIATION





## What does the Toolkit say?

“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.”



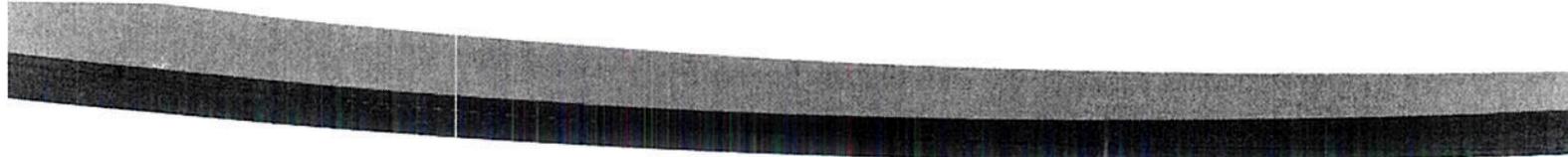


## How CMS is Reviewing the STWPs

- HCBS Basic Element Review Tool for Statewide Transition Plans and HCBS Content Review Tool for Statewide Transition Plans
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## Current Status

- CMS is reviewing the plans against basic element and content review tool. States are beginning to get letters detailing next steps for completion of their assessments, and deadlines for returning the plan to CMS.
- See <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/statewide-transition-plans.html>



Questions?



