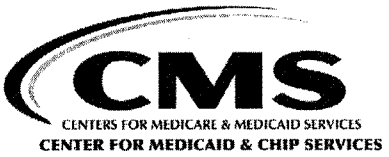
DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850



Disabled & Elderly Health Programs Group

September 23, 2016

Matt Wimmer, Administrator
Division of Medicaid
Idaho Department of Health and Welfare
Post Office Box 83720
Boise, Idaho 83720-0009

Dear Mr. Wimmer:

This letter is to inform you that CMS is granting the State of Idaho initial approval of its Statewide Transition Plan (STP) to bring settings into compliance with the federal home and community-based services (HCBS) regulations found at 42 CFR Section 441.301(c)(4)(5) and Section 441.710(a)(1)(2). Approval is granted because the state completed its systemic assessment, included the outcomes of this assessment in the STP, clearly outlined remediation strategies to rectify issues that the systemic assessment uncovered, such as legislative changes and changes to contracts, and is actively working on those remediation strategies. Additionally, the state submitted the July 2016 draft of the STP for a 30-day public comment period and made sure information regarding the public comment period was widely disseminated through electronic and non-electronic means.

After reviewing the July 2016 draft submitted by the state, CMS provided additional feedback on August 9th, requesting that the state make several technical corrections in order to receive initial approval. These changes did not necessitate another public comment period. The state subsequently addressed all issues, and resubmitted an updated version on September 20, 2016. These changes are summarized in Attachment I of this letter. The state's responsiveness in addressing CMS' remaining concerns related to the state's systemic assessment and remediation expedited the initial approval of its STP.

In order to receive final approval of Idaho's STP, the state will need to complete the following remaining steps and submit an updated STP with this information included:

- Complete comprehensive site-specific assessments of all HCBS settings, identifying necessary strategies for validating the assessment results, and include the outcomes of these activities within the STP;
- Draft remediation strategies and a corresponding timeline that will resolve issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the HCBS rule transition period (March 17, 2019);

- Outline a detailed plan for identifying settings that are presumed to have institutional characteristics, including qualities that isolate HCBS beneficiaries, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- Develop a process for communicating with beneficiaries that are currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings rule by March 17, 2019; and
- Establish ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

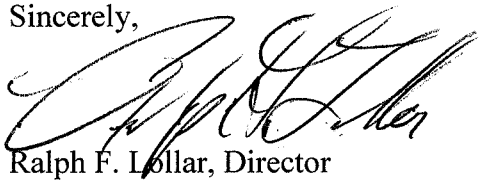
While the State of Idaho has made much progress toward completing each of these remaining components, there are several technical issues that have been outlined in Attachment II of this letter that must be resolved before the state can receive final approval of its STP. Prior to resubmitting an updated version of the STP for consideration of final approval, the state will need to issue the updated STP out for another minimum 30-day public comment period.

Upon review of this detailed feedback, CMS requests that the state please contact Susie Cummins (206-615-2078 or Susan.Cummins@cms.hhs.gov) or Michele MacKenzie (410-786-5929 or Michele.MacKenzie@cms.hhs.gov) at your earliest convenience to confirm the date that Idaho plans to resubmit an updated STP for CMS review and consideration of final approval.

It is important to note that CMS' initial or final approval of an STP solely addresses the state's compliance with the applicable Medicaid authorities. CMS' approval does not address the state's independent and separate obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act or the Supreme Court's Olmstead decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the *Olmstead* decision is available at http://www.ada.gov/olmstead/q&a_olmstead.htm.

I want to personally thank the state for its efforts thus far on the HCBS statewide transition plan. CMS appreciates the state's completion of the systemic review and corresponding remediation plan with fidelity and looks forward to the next iteration of the STP that addresses the remaining technical feedback provided in the attachment.

Sincerely,



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

ATTACHMENT I

SUMMARY OF TECHNICAL CHANGES MADE BY THE STATE OF IDAHO TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN THE UPDATED HCBS STATEWIDE TRANSITION PLAN DATED SEPTEMBER 20, 2016.

General Feedback

The following information provides Idaho's responses to the general feedback received in an email from CMS on August 9, 2016. It also describes actions taken as a result of the phone conversations held between CMS and the state where discussions were held about the regulations, policies and processes for evictions from certified family homes.

Provide links to the A&D Waiver Provider Training and the Idaho Medicaid Provider Agreement: Since these documents are referenced in the Systemic Assessment, it would be helpful to have links to them.

State response: Links to the A&D Waiver provider training modules and the Medicaid Provider Agreement have been added to the STP introduction.

Describe who is covered by the 1915 authorities: The Overview on page 1 explains what waivers and 1915(i) programs are under the state's authority. However, there is no quick reference to know who is covered by each of the 1915 authorities and the only way to find out was to dig into each of the links. It would be helpful if the state could add a brief description of who is covered by the waiver or 1915(i) program in the overview.

State response: The State has provided additional information to the introduction describing the individuals covered by the HCBS waivers and the 1915(i) authority.

Systemic Assessment and Remediation

The August 9, 2016 feedback email from CMS noted two overarching issues within the systemic assessment that affect several areas, including provider choice and exceptions to the prohibition on restraints. The following is a list of the issues and the responses the state provided.

Exception to Restraint Prohibition: Regarding the federal requirement that participants have freedom from restraints, there are exceptions allowed but only if specific requirements are followed and documented in the person-centered plan. Idaho's exception requirements in IDAPA 16.03.10.315 follow the federal regulations; however, these requirements only pertain to provider-owned or controlled settings (i.e. Idaho allows restraints in other settings). CMS has issued 1915(c) policy guidance clarifying that if restraints are allowed in settings other than provider-owned or controlled settings, the same requirements described in 42 CFR 410.301(c)(2)(xiii) must be applied. The following sections are affected:

- *Non-Residential Service Settings: Children's Developmental Disability:* Page 15 #7, 21.905.01 only says: Be free of mechanical restraints, unless necessary for the safety of that person or for the safety of others; and 16.03.21.915 does not include the exception requirements. Restraints must be documented in the person-centered plan and only implemented after all of the exception requirements are met.

- *Non-Residential Service Settings Gap Analysis: Adult Developmental Disabilities and Aged and Disabled Services, Adult Day Health:* Page 19 #7, 16.03.21.915 (for DDAs) does not list all of the requirements for the exceptions to the restraint prohibition. Also, it appears the adult day health centers do not address restraints.
- *Community Crisis Supports (Adult DD 1915i):* Page 22 #7 16.03.21.915 and 16.04.17.405.08 do not meet all of the requirements for the exceptions to the restraint prohibition. 16.03.10. is referenced as a remediation strategy. However, we note that 10.313 is also applicable and does not allow exceptions for restraints. Therefore there needs to be an appropriate regulation that meets all of the exception requirements.
- *Adult DD 1915(i):* Page 27 #7, several IDAPA regulations are provided as support to state's standard's complying with the regulation. However they are only partially compliant as they do not include all of the requirements for allowing an exception to the restraint prohibition.
- *Residential Habilitation Supportive Living (A&D and DD waivers):* Page 29 #7 IDAPA 16.04.17.405 and 402.d along with 16.03.21.915 are referenced as supporting the federal regulation. However, they are only partially compliant as they do not include all of the restraint exception requirements.
- *Supported Employment (A&D and DD waivers):* Page 31 #7, the adult DD waiver, Appendix G, describes the process for implementation of restraints. However, the waiver is an agreement between the State of Idaho and CMS. It is not an agreement between the State of Idaho and their providers. There needs to be another authority for this provision. The state also references the Idaho Medicaid Provider Agreement, but CMS does not have access to this document, therefore was unable to verify if it meet the federal requirements.

State response: The state provided further clarification with regard to restraints in the following response. "As indicated in the STP (page 2), a reference to identified support for an HCBS regulation in the systemic assessment does not necessarily mean the requirement was fully supported by the rule cited. Many of the HCBS requirements were only partially supported by existing rules and statute, provider agreements, etc. Consequently, Idaho drafted comprehensive HCBS administrative rules (IDAPA) based on the federal regulation language and early guidance from CMS. Neither indicated that all of the exception requirements described in 42 CFR 441.301(c)(2)(xiii) must be applied to the setting qualities described in 441.301(c)(4)(i)-(v).

The process of risk mitigation has been incorporated into IDAPA under 16.03.10.313 in order to address those circumstances in which those setting qualities that apply to ALL HCBS settings (including the use of restraints) pose a risk to a participant. This process will operationally incorporate elements of the exception requirements."

Provider Choice: Regarding the federal requirement for individual choice of services and supports, and who provides them, Idaho has promulgated rule 16.03.10.313 that partially complies with this federal regulation. It does not fully comply because, the requirement for the individual to have the choice of their provider is not included. The following sections of the systemic assessment are affected:

- *Non-Residential Service Settings: Children's Developmental Disability*

- *Day Habilitation (A&D Waiver)*
- *Developmental Therapy (Adult DD 1915i)*

State response:

- The State added the correct citation (IDAPA 16.03.10.526.06) for the Children's Developmental Disability assessment.
- The state explained that explicitly stating participants have free choice of providers in IDAPA was not necessary to ensure that participant right, as Idaho Medicaid participants already have free choice of providers. This is assured in the Idaho Medicaid Provider Agreement for all Medicaid providers, and within all of Idaho's HCBS programs.
- The state also noted that, "the new IDAPA rules specific to HCBS, 16.03.10.313.b strengthen the existing participant choice of providers and services – specifically, the selection of where those services are provided."

Provider-owned or controlled residential settings: CMS expressed concerns about parts of the systemic assessment with regard to provider-owned or controlled residential settings. The following is a list of those concerns and how the state responded.

- *Opportunities the same as non-HCBS individuals:* Page 8 #5. Support that the state adheres to this regulation should be listed as 16.03.19.200.11 (not .08) because rule (IDAPA 16.03.19.200.08) does not address "free access to religious and other services" as indicated by the state; only health services. Rather, "Right to participate in social, religious and community activities" is addressed under (IDAPA 16.03.19.200.11 (d)). State should extend the referenced regulation to include (11).

  Page 8, #5 continued… Rule (IDAPA 16.03.22.320.07) State indicates that this supports participant's rights to participate in the community. However, it sounds more like choice of services offered at facility. The use of "external vendors" is unclear.

  - ***State response:*** As suggested by CMS, the State has added the citation IDAPA 16.03.19.200.11 to the support column in the systemic crosswalk for the above requirement. The state has also provided clarification that IDAPA 16.03.19 and 16.03.22 established minimum standards applicable to all Certified Family Homes and Residential Care Facilities regardless of payer source. Higher standards for providers of HCBS Medicaid participants are established by IDAPA 16.03.10.
- *Restraints:* Page 8, #7, freedom from restraints is partially compliant. This would be clearer if the State also added to the remediation 16.03.10.315 and 317.
  - ***State response:*** The State added IDAPA 16.03.10.315 and 16.03.10.317 to the remediation section.
- *Optimizes, but does not regiment choices:* Page 9, #8, since 16.03.10.313.01.d mirrors this federal requirement, it would be appropriate to add reference to this rule in the remediation section.
  - ***State response:*** The State added IDAPA 16.03.10.313.01.d to the remediation section.

- *Visitors at any time:* Page 10, #16, 16.03.19.200.6 and 39-3316 both have the clause "subject to reasonable restrictions". Therefore there is a gap. How is the state going to clarify what a reasonable restriction is with regards to these regulations? Note: 16.03.10.314 does align with the federal regulation.
    - ***State response:*** The State indicated that IDAPA 16.03.10 establishes a higher standard for providers (as noted on p. 2 of the STP) and has also developed IDAPA 16.03.10.314 to ensure full alignment with the federal rule.

Community Crisis Supports (Adult DD 1915(i)) – This service setting has the following issue: regarding *Setting Selection:* Page 21 #6;16.03.10.721.07 does not fully comply but rather it is a requirement for the person-centered planning. 16.03.10.728.07 does not fully comply, rather it describes responsibility related to conflict of interest. The state could add to the remediation section that incorporating the HCBS requirement in 16.03.10.313 will meet this requirement.

State response: The State added IDAPA 16.03.10.313 to the remediation section.

Day Habilitation (A&D Waiver) – This service setting has the following issue:
Setting Selection: Page 24 #6 –16.03.10.328.04 does not address the requirement that the participant selects the setting from options including non-disability specific settings. However, adding as a requirement to incorporate 16.03.10.313 would bring this into compliance.
State response:
The State added IDAPA 16.03.10.313 to the remediation section.

Landlord Tenant Requirements: Idaho identified a conflict around the eviction requirements for certified family homes (CFH) versus the Idaho landlord tenant laws. As a result, there were several telephone conversations held between the state and CMS to identify the best way to resolve the conflict. Specifically, the CFH regulations, policies and practices allows immediate evictions in certain circumstances where Idaho law requires 3 days' notice.

State Response: The state will change the Admission Agreement requirements in IDAPA 16.03.19 to align with Idaho landlord tenant laws and modify the current Admission Agreement to provide protections that address eviction processes and appeals comparable to those provided under Idaho landlord tenant law.

ATTACHMENT II.

ADDITIONAL CMS FEEDBACK ON AREAS WHERE IMPROVEMENT IS NEEDED IN ORDER TO RECEIVE FINAL APPROVAL OF THE STATEWIDE TRANSITION PLAN

PLEASE NOTE: It is anticipated that the State will need to go out for public comment again once these changes are made and prior to resubmitting to CMS for final approval. The state is requested to provide a timeline and anticipated date for resubmission for final approval as soon as possible.

Site-Specific Assessment

The following is a list of additional questions and recommendations from CMS to further clarify the assessment process.

- Please provide results for the baseline assessment of settings and describe how the outcomes of this work affected the goals listed on p. 39 (e.g., identify best practices for compliance, identify types of evidence to validate compliance, etc.)
-
- Please describe training that will be provided to staff to ensure adequate knowledge of the requirements of the federal HCBS Rule and consistency among the staff conducting the assessments.
- Include a description of changes to licensing and certification standards to ensure that sites are being assessed against the settings requirements in the Final Rule when assessments are conducted by these entities. Additionally, please include the following information in the STP.
    - The timeline states that additional participant feedback will be gathered and analyzed (p. 53). Describe how the participant feedback will be included in the assessment process and whether the feedback gathered here is in addition to what is described in the monitoring process (p. 46). Also, please explain how participant feedback will be linked back to specific settings.
    - The state indicated that providers will complete a self-assessment (August 2016-December 2016), but will only present the self-assessment and evidence to the state if selected for the on-site review sample. CMS is concerned by this approach, and encourages the state to require all providers to submit their self-assessments of all individual settings to the state for review, even if an alternative validation strategy is used other than an onsite visit. If the state does not do this, please clarify how the state will verify that providers who are not selected to participate in the onsite review sample have completed self-assessments and gathered evidence to support the findings. Also, describe how providers who have completed a self-assessment but are not included in the initial sample will know the next steps for completing and implementing a Corrective Action Plan (CAP).
- The state references a provider toolkit throughout the STP. On p. 38, the state describes the toolkit as, "developed for providers that includes guidelines, instructions for completing a self-assessment, review criteria and best practices for integration. The guidance will be incorporated into all trainings for staff and providers." In the state's September 2015 response letter to CMS, and in the October 2015 version of the STP, the state further details that the

following will be included in the toolkit: "HCBS requirements, Guidance for determining compliance, Best practices, Self-Assessment checklist, How to write an acceptable plan to transition to full compliance, External sources for additional information, Process descriptions for assessment, How to request support coming into compliance, and Remediation Plan details" (p. 10). These are valuable details and CMS requests that the state re-incorporate them back into the STP.

- *Validation of Site-Specific Assessments:* CMS reminds the state it is responsible for assuring that all HCBS settings comply with the final HCBS rule in its entirety. The state must assure at least one validation strategy is used to confirm provider self-assessment results, and may wish to supplement strategies where there is a conflict between the self-assessment and validation results.
    - The STP states, *"A data analyst from Medicaid will select a random sample of sites to take part in the on-site assessments. This sample size will be determined for each provider type and be statistically significant for that group. Provider types to be assessed are Residential Assisted Living Facilities, Certified Family Homes, Developmental Disability Agencies and Adult Day Health Centers. It is expected that 234 site-specific assessments will be completed."* The STP should also include what additional strategies it will deploy on the other sites that do not receive an on-site assessment. States may deploy a number of strategies to validate site-specific assessments, including onsite visits, consumer feedback, external stakeholder engagement, and state review of data from operational entities, like MCOs or regional boards/entities. Please detail what sites will receive each of the validation strategies the state opts to use.
    - Additionally, the assessment and validation strategies must assure that settings are in compliance with <u>all</u> requirements under the federal HCBS settings rule. The state may leverage existing systems or processes to complete the assessment and validation activities for HCBS settings, but has to assure that these existing processes are appropriate to assess and validate settings for all federal HCBS settings requirements. Thus, the tools that these existing systems use may need to be modified to assure settings are checked for full compliance with the rule, and staff will need to be trained on the rule in its entirety. If the state's existing infrastructure is insufficient in conducting the various validation strategies in such a way as to assure that settings are fully compliant with all requirements of the federal HCBS settings rule, then the state may need to identify additional resources or approaches to assure that the validation activities are conducted with fidelity. Please indicate how the state's validation approaches will reach all settings providing residential or non-residential services.
    - States that choose to initiate a provider self-assessment are encouraged to conduct a beneficiary/guardian assessment (or other method for collecting data on beneficiary experience) that is similar to the provider assessment in order to have a comparable set of data from the beneficiary perspective. If a consumer survey option is implemented, the STP should reflect how many consumers in each setting will be surveyed to validate the provider self-assessment results. The STP should also reflect the process that will occur for addressing disparities between consumer responses and provider assessment results at both the state and provider level.

Individual Private Homes: The state indicates (Page 34) that individual private homes are presumed to meet the requirements of home and community-based settings. The state may make the presumption that privately owned or rented homes and apartments of people living with family members, friends, or roommates meet the HCBS settings requirements if they are integrated in typical community neighborhoods where people who do not receive HCBS also reside. A state will generally not be required to verify this presumption. However, as with all settings, if the setting in question meets any of the scenarios in which there is a presumption of being institutional in nature, as discovered, for example through ongoing monitoring, and the state determines that presumption is overcome, the state should submit to CMS necessary information for a heightened scrutiny review to be conducted. In the context of private residences, this is most likely to involve a determination of whether a setting is isolating to individuals receiving HCBS (for example, a setting purchased by a group of families solely for their family members with disabilities using HCBS services). The state must also address how it tracks these settings through its ongoing monitoring process to ensure they remain complaint through the transition period and into the future. Please articulate how these settings will be monitored over time.

- CMS understands the state has a large percentage of HCBS beneficiaries living in Certified Family Homes (CFHs). In situations where CFHs are provider-owned and/or controlled (such as a host family setting), the state needs to assure that they are including an approach to assessing and validating all CFHs for compliance with the federal HCBS settings rule within the transition period.
- In discussions with the state, CMS also acknowledges the state's goals for providing additional training and technical assistance to CFHs to assure that they understand the requirements with respect to the federal HCBS rule – even those considered to be in an individual's private home – in order to assure fully compliance with the settings requirements.

Group Settings: As a reminder, all settings that group or cluster individuals for the purposes of receiving HCBS must be assessed by the state for compliance with the rule. This includes all group residential <u>and</u> non-residential settings, including but not limited to prevocational services, group supported employment and group day habilitation activities. CMS is concerned that the supported employment settings in the DD waiver do not appear to have been assessed because they are considered "community" and Idaho presumed that services in the community were compliant (page 35). Please describe how these settings will be determined to be compliant with federal requirements.

Reverse Integration Strategies: CMS requests additional detail from the state as to how it will assure that non-residential settings comply with the various requirements of the HCBS rule, particularly around integration of HCBS beneficiaries to the broader community. As CMS has previously noted, states cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting. Compliance requires a plan to integrate beneficiaries into the broader community. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries in the facility-based setting is not considered by CMS in and of itself to be a sufficient strategy for complying with the community integration requirements outlined in the HCBS settings rule. Under

the rule, with respect to non-residential settings providing day activities, the setting should ensure that individuals have the opportunity to interact with the broader community of non-HCBS recipients and provide opportunities to participate in activities that are not solely designed for people with disabilities or HCBS beneficiaries that are aging but rather for the broader community. Settings cannot comply with the community integration requirements of the rule simply by only hiring, recruiting, or inviting individuals, who are not HCBS recipients, into the setting to participate in activities that a non-HCBS individual would normally take part of in a typical community setting. CMS encourages Idaho to provide sufficient detail as to how it will assure non-residential settings implement adequate strategies for adhering to these requirements.

Non-Disability Specific Settings: The STP should include detailed information on the steps the state is taking to assure that all beneficiaries have access to non-disability specific setting options across home and community-based services. This could include investments the state is making to create or expand non-disability specific settings, and/or to help develop the competencies of existing providers to offer services in non-disability specific settings.

Site-Specific Remediation

The STP outlines that any issue of non-compliance with the home and community-based setting rules identified during ongoing monitoring or department complaints will trigger a request for a CAP, which must be implemented by the provider within 45 days with evidence of compliance required in 90 days. CMS request the following additional information:

- Clarify whether providers may use the 45-day window between the implementation of the CAP and providing documentation of compliance to continue to remediate. If not, does the state believe that providers will have the opportunity to complete full remediation within 45 days?
- Describe the type of evidence providers will be required to submit to demonstrate compliance.
- Describe any investments that the state is making in providing technical assistance and training to providers to help them come into compliance during the transition period.
- Describe how the state will verify that the provider has fully implemented the CAP and whether any onsite follow-up will be utilized.

Ongoing Monitoring

The following additional information is requested regarding the monitoring process.

- The state included monitoring information that it will conduct "routine surveys of Certified Family Homes, Developmental Disability Agencies and Residential Assisted Living Facilities" (pp. 47-48). The STP does not specify a time-period for how often the monitoring surveys for these three setting types occur, nor does the state include information about the monitoring process for Adult Day facilities. Please provide additional information that clarifies how often monitoring will occur and the processes the state will utilize to monitor settings.

- Ongoing monitoring is outlined through March 2019 (pages 44-45). What will the process be after this date?
- The state has provided additional descriptions of the quality assurance activities that will be conducted as part of the monitoring process. CMS requests that the state provide additional details to clarify the process:
    - The state has said that it will modify existing participant feedback mechanisms to include HCBS compliance questions. Please describe how those participant feedback surveys will be utilized to monitor or assess sites. Additionally, clarify whether all HCBS requirements will be incorporated into the participant surveys or just a portion. Lastly, please describe how the data from this feedback will be tied to specific settings?
    - The state has described how the licensing and certification staff will monitor sites utilizing "some of the HCBS requirements." Please clarify which requirements will be included and describe how the state will monitor those requirements that are not assessed by the licensing and certification staff.
    - Clarify whether any complaints identified through licensing and certification procedures will lead to a CAP or if other methods will be used to track and validate provider remediation please describe them.

Heightened Scrutiny

The state has added more details regarding the heightened scrutiny process, especially against the characteristic of isolation. Please address the following concerns to clarify the process.

- The state utilized Department of Health and Welfare staff to identify Certified Family Homes (CFHs), Residential Assisted Living Facilities (RALFs), Developmental Disabilities Agencies (DDA) settings, and Adult Day Health center settings that may be in a publicly or privately owned facility providing inpatient treatment, or on the grounds of or immediately adjacent to a public institution. It is unclear how the staff made these determinations and what criteria were used. Please provide an additional description of how the staff identified settings that were in a publicly or privately owned facility providing inpatient treatment, or on the grounds of or immediately adjacent to a public institution.
- Similarly, the state utilized Department of Health and Welfare staff to identify CFHs that have the characteristics of isolating individuals receiving Medicaid HCBS from the greater community. It is unclear how the staff made these determinations and what criteria were used. Please include a description of the assessment process used to determine the six identified settings under this prong of settings that are presumed institutional.
- The state indicates that staff were unable to make determinations on whether each RALF setting had the effect of isolating and would complete the assessment through the licensing and certification visits. Please describe this process including the assessment methodology.
- Additionally, please include the assessment process for non-residential settings; DDAs and Adult Day Health centers.
- In the milestone list, the state indicated that staff used a survey tool developed in April 2016 to make their assessments for heightened scrutiny (p. 47). Please include this information in the narrative portion of the STP and clarify whether the survey only included questions about isolation or whether it also included questions regarding the identification of settings that

were located in a publicly or privately owned facility providing inpatient treatment, or on the grounds of or immediately adjacent to a public institution.

  - Additionally, it appears as if the surveys were completed and results analyzed by June 3, 2016. Please provide a synopsis of the survey results and whether any sites were identified as qualifying for heightened scrutiny.

- The state identified the onsite methods used to assess settings for heightened scrutiny. These methods do not appear to include input from the participants, their families, or staff. Please clarify whether participants or staff will be included in the assessment process.
- In the milestone list, the state writes that it will, "gather and review the evidence providers offer to overcome the assumption of being institutional and determine which sites Idaho will move forward to CMS for heightened scrutiny and which will move into the provider remediation process." It is unclear from this statement how any settings that have been identified as possibly isolating, that have many of the characteristics of a home and community-based setting, but require additional remediation steps will be given the opportunity to remediate and then presented to CMS for heightened scrutiny. Please clarify this process by including an additional milestone for remediation prior to the submission of evidence for heightened scrutiny. All settings meeting the scenarios for heightened scrutiny must be submitted for CMS review, including those settings the require remediation. Currently, provider remediation is not expected to be complete until December 2017 and heightened scrutiny will be presented to CMS by September 2017.
- The state will need to present any settings it is bringing forward for heightened scrutiny to the public before submitting the evidence to CMS. Please include a public notice period in the milestone timeline.

Communication and Assistance for Beneficiaries Receiving Services from Providers Unable to Achieve Compliance

- The state indicated that beneficiaries will have 30 days from receipt of their notification letter to determine whether they will continue to remain with their current provider without HCBS funding or whether they choose to receive services through a compliant provider. If the beneficiary decides to choose an alternate provider, they have 30 days to make that transition. This amount of time may not be sufficient to find a new provider with availability and to relocate. Please consider a longer timeframe for transition.
- It is unclear when beneficiaries will be notified of their provider's non-compliance and inability to receive HCBS funding. Please, specify a timeframe in which beneficiaries may expect to receive notification.
- In the milestone timeline, there is no end date indicated for the milestone, "For all sites determined to be institutional, move forward with removing that provider's agreement and utilization of the participant relocation plan" (p. 48). The end date should be specified as no later than March 17, 2019. Please change the end date.
- Please provide beginning and end dates to the timeline for transitioning individuals to settings that are fully compliant with the rule. While the dates are dependent on provider non-compliance, it would be helpful to specify the earliest and latest date for each step.
- Please clarify how the state will address situations where beneficiaries receiving only HCBS-funded non-residential services reside in a non-compliant residential setting.