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

August 7, 2015

Christian Soura
Director
South Carolina Department of Health and Human Services
P.O. Box 8206
Columbia, SC 29202-8206

Dear Mr. Soura,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of South Carolina's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. South Carolina submitted this Plan to CMS on March 3, 2015. CMS notes a few areas where additional details are needed regarding assessment processes and outcomes, remedial action processes, and monitoring processes. These concerns and related questions are summarized below.

Public Comment:
The revised STP must include a summary of the issues which arose through public input and the state's disposition of those comments beyond the statement that the state will "take the comments under advisement".

Systemic Assessment Processes:
South Carolina describes its assessment of the state standards and the outcomes of that assessment. CMS requests that the state submit additional detail in the following areas:

- Please identify the settings that apply to each regulation reviewed;
- Please identify which regulations, policies, and procedures fall into each of the following three categories: conflicts with federal requirements for home and community-based settings (if any), remains silent on the specific qualities required (including those for provider owned and controlled), and fully complies with the requirements in the federal regulation.

Site-Specific Assessment Processes:
CMS requests that the state submit additional detail in the following areas:

- What validation process will the state use to verify the information submitted by providers in the self-assessment process? Some examples of provider self-assessment

validity checks include linking the waiver participant surveys to specific sites to determine if the provider's self- assessment is consistent with the individual's experience, having case management review a statistically valid sample of the assessments to determine if their observations concur with the provider's self-assessment, and/or using a licensing entity in a similar fashion.

- Please clarify how the state will address providers who did not respond to the C4 assessment and/or the C5 assessment.
- Please clarify if the "representative sample" of residential settings for which the state asks providers to submit assessments will be a random sample, determined by the state. If not what type of sampling methodology will the state use?
- Please clarify how the state will ensure that the representative sample of the provider site assessments is statistically valid and how the state will ensure that it's identified expectation that providers assess all settings is verified.
- Please clarify how the state will respond to a provider's identification of a setting as failing to meet the settings requirement as well as the settings that are identified as presumed to be institutional in nature. For purposes of clarification, CMS notes that heightened scrutiny only applies to settings presumed institutional in nature.

Assessment Outcomes:

Please provide estimates of settings that fall into the following compliance categories:

- Fully comply with the federal requirements;
- Do not comply with the federal requirements and will require modifications;
- Cannot meet the federal requirements and require removal from the program and/or relocation of individuals; and
- Are presumed to have the characteristics of an institution, but for which the state will provide justification that these settings do not have the characteristics of an institution and do have the qualities of home and community-based settings.

Systemic remedial actions:

- Please describe the changes the state will make to ensure the specific qualities of a home and community-based setting are delineated in the state's own policies, procedures, and regulations;
- Please provide more detail about the process and timelines for the systemic remedial actions, for example, when regulatory changes would normally be completed and what milestones the state will use to ensure that the change is on track to be completed according to the timeline.

Site-specific remedial actions:

- Please provide a description of the remedial action plan that the state will use to ensure providers become compliant with the settings requirements. The plan should include milestones and corresponding timelines to allow the state to monitor whether it is on

track to complete the actions. CMS notes that the assessments are not yet complete, and thus the state is not able to link remedial actions to specific providers. However, the state should provide a general overview of what the process that will apply to providers will look like.

Monitoring Plan:

- Please provide a more robust description of the state's plan for ongoing monitoring of settings during and after the transition period. CMS notes that the state can use its own system of monitoring through licensure, credentialing, or case management to determine how settings achieve and maintain compliance.

Relocation of beneficiaries:

- Please provide an overview of the state process for assisting beneficiaries in choosing and transitioning to new providers if necessary. This process should include the elements specified in the federal regulations.
- Please provide a timeline for when the state will assist beneficiaries in choosing new providers and relocating, if necessary.

Heightened Scrutiny

The state must clearly lay out its process for identifying settings that are presumed to have the characteristics of an institution. 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 meeting the scenarios described in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved either to compliant home and community-based settings or to non-Medicaid funding streams.

These settings 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;
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

The state must submit a revised STP no later than 45 days from receipt of this feedback letter that addresses CMS' concerns. In this revised STP the state must identify a date when an amended STP will be provided that describes the findings of the state's systemic and site-specific assessments, all final outcomes and the remediation actions specific to each compliance issue. This amended STP should be posted for public comment for a period of 30 days prior to being submitted to CMS. Based on the state's current STP timeline, CMS would expect this amended STP to be submitted in the spring of 2016.

CMS would like to have a call with the state to go over these questions and concerns and to answer any questions the state may have. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. In the meantime, please do not hesitate to reach out to Amanda Hill at 410-786-2457 or at Amanda.Hill@cms.hhs.gov, the CMS central office analyst taking the lead on this STP, with any questions related to this letter.

Sincerely,

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

cc J. Glaze, ARA Region 4