



## DDSN Executive Memo

**TO: EXECUTIVE DIRECTORS OF DSN BOARDS and CEOS OF CONTRACTED SERVICE PROVIDERS WITH DAY PROGRAMS  
EXECUTIVE DIRECTORS OF DSN BOARDS AND CEOS OF CONTRACTED SERVICE PROVIDERS WITH RESIDENTIAL SERVICES**

**FROM: SUSAN KREH BECK, ED.S., LPES, NCSP, ASSOCIATE STATE DIRECTOR, POLICY** *SKB*

**DATE: JULY 1, 2020**

**RE: Update and Continued Efforts to Reach Compliance with the HCBS Settings Regulation**

The purpose of this correspondence is to provide an update on the status of compliance with the Home and Community Based Settings Regulation (Regulation) and to encourage continued progress toward submission of necessary evidence. As a reminder, the Regulation was issued by CMS in March 2014 with compliance required by March 2022. The Regulation generally describes the characteristics and conditions that waiver settings must have/meet.

### **Compliance Action Plans**

All HCBS settings (n=1321) in the state were reviewed by the Public Consulting Group (PCG) and the providers (n=54) operating those settings were required to submit a Compliance Action Plan (CAP). Providers were required to submit CAPs for DDSN approval in the Fall of 2018.

### **Update**

Each submitted CAP has been reviewed by DDSN and a determination made as to whether the CAP was thorough and complete. When not thorough and complete additional information has been requested from the provider. To date, approximately 70% of providers have thorough and complete CAPs. DDSN is keenly aware of the priority focus on day-to-day activities and COVID 19 prevention and response. Please focus available time and effort to submit required CAPs at the earliest possible time.

### **Evidence Packages**

The Regulation defines characteristics of settings that, when present, means the setting is presumed to have institutional qualities. When a setting is presumed to have institutional qualities, the state must take a closer look at the setting to determine if that presumption has been overcome. There are 115 settings in the state that are presumed to have institutional qualities.

The state has formed a State Level Review Team to take a closer look at those 115 settings presumed to have institutional qualities. The State Level Review Team will review evidence submitted by the provider and DDSN (*e.g., CAP, Licensing Review results, CCR results, Observation results*) to determine if the setting:

- Has overcome the presumption **and**
- Is (*by 7/1/20*) or will be (*by 3/2022*) compliant with the characteristics / conditions described in the Regulation.

### **Update**

Of the 115 settings for which evidence to refute the presumption that institutional qualities are present is required, 17 (15%) evidence packages have submitted evidence to DDSN. Four (4) settings have been

reviewed by the State Level Review Team and have been found to overcome the presumption and be compliant with the conditions described in the Regulation. Two (2) additional settings are slated for review in the next few weeks. DDSN is requesting the continued and prioritized focus of providers on preparing evidence packages and their timely submission.

## **Dates and Deadlines**

In November, 2019, the providers who operate settings presumed to have institutional qualities were asked to submit evidence for each of their identified setting to DDSN no later than March 31, 2020. Using that evidence, the State Level Review Team intended to complete reviews of all the identified settings (n=115) by July 31, 2020. These deadlines were established by the State, so the following determinations could be made and the findings reported to CMS by their deadline of October 2020:

- Each Category 2 (grounds of adjacent to and ICF) settings are is or will be compliant by 3/2022;
- Each Category 3 (effect of isolating) setting is:
  - Compliant on or before 7/1/2020; or
  - Not compliant on 7/1/2020 but will be compliant by 3/2022.

NOTE: For Category 3 settings, being determined compliant on or before 7/1/2020 meant that the setting would not be subjected to review by CMS.

## **Update**

In March 2020, in response to COVID-19, DDSN recognized the need for providers to focus their attention on the protection of the health and wellbeing of those served and their staff. As such, DDSN has refrained from initiating communications with providers regarding CAPs or evidence packages. Likewise, SCDHHS has recognized that during this difficult time, each provider's focus should be on those served versus CAPs or evidence packages. As a result, the established deadlines shared in November 2019 were not enforced. While the deadlines have not been enforced, both the dates established by CMS and the process and dates included by the state in its Statewide Transition Plan *have not changed*. CMS has not provided states with any guidance regarding compliance deadlines nor have they indicated how Category 3 settings are to be managed. CMS officials have only indicated that discussions are being held to modify published deadlines.

## **Next Steps**

Attention to this matter is greatly appreciated at this time while providers continue to balance every day activities with COVID19 prevention and response.

1. While no specific deadlines have been re-established by the state, DDSN is specifically requesting that providers whose CAPs are not thorough and complete make every effort to clarify any outstanding issues and submit to DDSN at their earliest convenience.
2. Likewise, DDSN is encouraging providers who operate settings presumed to have institutional qualities to gather and submit evidence for each of their identified settings at their earliest convenience.
3. To ensure providers are aware of where they are in this process, over the next several weeks, DDSN will be sending to each Executive Director/ CEO an update about specific evidence/documentation needed so it can be submitted in a timely fashion.

Thank you for your continued efforts toward compliance. Please contact Janet Priest ([jpriest@ddsn.sc.gov](mailto:jpriest@ddsn.sc.gov)) with questions.