

## Final Rule Stakeholder Call

### Topic: CMS Feedback on the STP

06/ 20/2018

#### Noon call (40 participants on the line)

1. **Question/Comment:** My question is, how soon will you be going through the public notice process fall, or winter, just kind of a general guess?
  - a. **KDADS:** Once we get initial approval we will continue our implementation work. What will happen is, we will continue to make various edits and changes to the plan. When we get to a place where we feel we have completed, and we've hit every milestone, then we would submit it for final approval. At that point we put out for public comment. It's hard to predict, but we're establishing Oct 2020 as the point in time that we will probably be going out for public comment in anticipation of requesting final approval.
  
2. **Question/Comment:** I was wondering if we have an idea of how many state plans have received initial approval and how many received final approval.
  - a. **KDADS:** I haven't checked the CMS website in a while I could try to do that while we are on the phone here, and report out in a second. I know that a fairly small number have final approval. I can consult the website and give everyone in a second.
  - b. Thanks, my link is broken, when I looked for it.
  - c. **WSU:** The CMS website made some updates recently that has shifted things around and made it more difficulty to find things. KDADS will let us know when they have that number and report that out. While she is looking we will go ahead and take the next question or comment.

(Current STP status for all states can be found on the CMS website:  
<https://www.medicaid.gov/medicaid/hcbs/transition-plan/index.html>)
  - d. (Later in the call): **KDADS:** I have final approval by rough count 8 states, 11 states are in the same position as Kansas. Which is clarification, modification, identification, and amendment. It means you don't have final approval, you don't have initial approval, and you're still in the process of clarifying and modifying, which is where Kansas is. We're among those 11. 39 have initial approval. A good share of states have initial approval. A smaller handful that have final approval, and a small group that are like Kansas and still in the process of getting to initial approval.
  
3. **Question/Comment:** Prior to the beginning and implementation to the sites final rule, a number of families and communities expressed dismay to CMS regarding some of the worried presumptions of isolation, versus integrated of community settings. So, since CMS has persisted/insisted that the facility here is isolating, I am an independent advocate and I work with families whose children are a danger to themselves or others. I have to tell you that they are absolutely isolated and yet I'm not able to find anywhere that CMS acknowledges that people they presume living in a home, that is presumed isolating, and that's due to many factors including the inability to hire direct staff to assist, for example, mothers to go to the grocery

store for shopping for basic needs because their child is dangerous, and they have to keep deadbolt locks. The fact of the matter is that there is a subgroup in this population that is being ignored and marginalized in the final rule. I would like to know, is there any documentation that CMS has acknowledged, where there can and is pervasive isolation for children with behavioral challenges? Is there information like that available regarding the final setting rule?

- a. **KDADS:** At this point in time I can't say off the top of my head what kind of official or public announcement has been made in regard to that but certainly we will take down the comment and try to report out on a subsequent call. I do know that there has been some conversation or recognition along the line of, some states have been taking the issue a little bit further, trying to focus efforts around a particular issue. As far as an official notification or any acknowledgement of literature on it, I'd need a little bit of time to do some additional research.

4. **Question/Comment:** Related to the last caller. My interpretation of this is when CMS put out the interpretation of the final rule items on residential and nonresidential settings, if you read it it's really not as much about, CMS said that they set the floor, states can be more prescriptive or implement things in a more stringent way. Which I would hope Kansas does not. It's more about the persons preferred lifestyle and where the person best functions. In fact somewhere in there it says it's not about the physical location of the service, it's more about what the preferred lifestyle of the individual. It is important that analyze the persons perspective. For example, if the person is working in work center and has a lot of activities around the community but, working in the work center is there preference, CMS will allow for that because it's according to the persons preference. I think some states have interpreted that differently but CMS set floor and we don't want to set the guidelines more stringently than what CMS says so I think it focuses more on the person's lifestyle and where the person best functions rather than the physical location of the service.

5. **Question/Comment:** Has there been a timeline set on when the next provider self-assessment will be sent out for completion?

- a. **KDADS:** Earlier on call announced we are taking a break from that for the time being the timeline for that going out for completion is really postponed for the foreseeable future. There were two rounds of work that have been done which has been explained and discussed on previous calls. We want to make sure that work is not sufficient to stand on its own. If it is we wouldn't need to do another round of assessments at this point of time. We may need to do additional self-assessment later on if we have providers who did not complete in earlier round or, there is some gap that would lead us to believe that some additional work needs to be done. We heard from CMS while we were in the process of getting ready to field test this new tool had but we had a lot of questions about the previous work that was done and why that wouldn't be sufficient and do need to take on third round at this point. So even though we were very close to being able to launch, now we are at a very critical juncture so we are going to stop for the time being until we can ascertain for certain, that a third round is necessary. We don't want to repeat the work if don't have too. We've gone back and forth as we've talked though it

with CMS over the past several months, the most recent guidance that we have received leads us to believe that we need to take a hard look at what we've already done before we do anything else at this point.

6. **Question/Comment:** Regarding heightened scrutiny, since there are such limited resources that KDADS will have to work with, have there been any other entities that have offered to assist with addressing settings that are under heightened scrutiny and if so what agencies?
  - a. **KDADS:** There have not been any other entities or agencies that have indicated or been identified as partners to work with us on the heightened scrutiny process at this point in time.

**Adjourn**

**Evening Call (7 participants on the line)**

1. Question/comment: None

**Adjourn**