



10701 S. Eastern Avenue
Suite 1126
Henderson, NV 89052-2994
T (702) 353-6540
F (877) 209-0495
www.ltoventures.org
facebook.com/LTOVentures

LTO Ventures is a 501(c)(3)
non-profit company that develops
live / work / play intentional
communities for adults with
Autism Spectrum Disorder.

August 12, 2016

State of Nevada
Division of Health Care Financing and Policy
Attn: LTSS – State Transition Plan 6/28/16
1100 E. William Street, Suite 222
Carson City, NV 89701

Dear Acting Administrator:

Thank you for the opportunity to comment on the Nevada State Transition Plan (STP) 6/28/16. We appreciate the considerable effort and amount of work that has gone into the NV STP in the time period allotted by CMS. Our specific concerns are as follows:

Public Comment Process

We have documented our concerns about the public comment process employed by DHCFP for the development of the STP beginning with our public comment on Nov. 10, 2014 (Attachment G2 to the “STP 6/28/16”). Those concerns continue with the “STP 6/28/16.”

Example #1: On June 24, 2016, DHCFP posted a request for public comment regarding Heightened Scrutiny Submissions, with a 30-day deadline to receive comments no later than July 25, 2016. This was a very significant part of the STP process because it was the list of settings that DHCFP proposed to submit to CMS for Heightened Scrutiny review, a process that could result in settings being denied eligibility to use HCBS waiver funding, as well as be significantly burdensome to providers in staff time and expense that they otherwise might not have had to endure.

To our knowledge, none of the 56 settings included in the proposed submission to CMS received the notice of public comment directly via email, fax or US Mail. To our knowledge, none of the residents of the 56 settings and/or their families or legal guardians received the notice. The STP Advisory Council did not receive a notice, nor did the A-Team, the largest organization of adults with intellectual and developmental disabilities in the state, nor did the State of Nevada Association of Providers (SNAP). As a result, the public comment period expired without a single comment.

It should be noted that CMS has made it clear to states that the public input on settings the state has flagged for heightened scrutiny is essential to the STP process.

- CMS issued a Q&A document on June 26, 2015 entitled Home and Community-Based Settings Requirements which contained this statement under A7:
 - *“In addition, states are expected to solicit public input on settings the state has flagged for heightened scrutiny, as part of the Statewide Transition Plan.”*

- CMS held a SOTA webinar on Nov. 4, 2015 entitled Home and Community-Based Settings, Excluded Settings, and the Heightened Scrutiny Process in which it stated the following:
 - *Public notice associated with settings for which the state is requesting heightened scrutiny should:*
 - *Be included in the Statewide Transition Plan or addressed in the waiver or state plan submission to CMS*
 - *List the affected settings by name and location and identify the number of individuals served in each setting*
 - *Be widely disseminated*
 - *Include all justifications as to why the setting is home and community-based*
 - *Provide sufficient detail such that the public has an opportunity to support or rebut the state's information*
 - *State that the public has an opportunity to comment on the state's evidence*
 - *CMS expects that states will provide responses to those public comments in the Statewide Transition Plan or submission to CMS*

Example #2: On July 12, 2016, DHCFP posted a request for public comment on the "STP 6/28/16" itself, with a 30-day deadline to receive comments no later than August 12, 2016. In fact, DHCFP had already submitted the "STP 6/28/16" to CMS on June 30, 2016, two weeks prior to the publication of the notice seeking public comment. As stated in Example #1, no key stakeholders or stakeholder organizations, formal or informal, appear to have received the notice of public comment. Our organization discovered the notice serendipitously while researching another issue on the DHCFP website, and we believe this letter herein will be the only public comment received in this period. We believe that is not CMS' expectation of the public input process.

Heightened Scrutiny Assessment Tool

We are deeply concerned about assessment tool developed and used by DHCFP for determining most of the settings submitted to CMS for heightened scrutiny review.

One of the most important statements in the Final Rule CMS-2249-F/CMS-2296-F issued in January 2014 was contained in the preamble: *"These final regulations establish a more outcome-oriented definition of HCB settings, rather than one based solely on a setting's location, geography, or physical characteristics."*

We strongly support this position by CMS and worked hard through multiple Notices of Proposed Rulemaking by CMS to argue for it.

In "STP 6/28/16", Appendix D2. Provider On Site reviews/Heightened Scrutiny Questionnaire (referenced on the DHCFP website as "HCBS Residential Settings Assessments"), is a table based on the tool used by DCHFP to make its assessments and containing the findings of the on-site settings reviews using that tool. We have the following concerns:

- The tool itself was not made available for public comment or review prior to its use.
- The very first criterion is "More than 10 beds" which has no relation to the Final Rule. There is no reference anywhere in the Final Rule to specific number of beds as a criterion for heightened scrutiny, nor in any of the guidance from CMS pursuant to the Final Rule.

- DHCFP offers no explanation about how it determined that “more than 10 beds” would be a major criterion of the tool, nor does DHCFP present any evidence supporting its relevance to the Final Rule or STP.
- No other place in the “STP 6/28/16” is there even a mention of “More than 10 beds.”

Action Requested

1. We request DHCFP recall from CMS the version of the “STP 6/28/16” submitted June 30, 2016 until such time as the required stakeholder involvement and public comment can be obtained and properly included.
2. We request DHCFP re-schedule and re-open the public comment periods for settings DHCFP seeks Heightened Scrutiny review and for the “STP 6/28/16.” As part of this new comment period, we request DHCFP conduct meetings in Clark County, Washoe County and rural Nevada to explain the STP and seek direct input from stakeholders.
3. We request that DHCFP actively and deliberately notify directly all affected and interested parties about the new public comment periods.
4. We request that DHCFP remove the “More than 10 beds” criterion from the heightened scrutiny assessment tool and not include any criterion related to number of beds or number of residents.
5. We request that DHCFP evaluate and implement email and text notification systems so all parties interested in being part of the public comment process for this process and others that require stakeholder involvement can be notified in a timely fashion.
6. We request that DHCFP publish notices and explanatory information about the Final Rule, Nevada STP and the Heightened Scrutiny process in plain language and in at least English and Spanish.
7. We request that DHCFP publish all correspondence from CMS and to CMS about the Nevada STP on the DHCFP website and label it in a way that it is easy to identify what each document is and when it was received or sent.

Thank you again for the opportunity to provide this public comment. We look forward to working with DHCFP to effectively and fairly implement the Nevada State Transition Plan.

Sincerely,

A handwritten signature in black ink that reads "Mark L. Olson". The signature is written in a cursive style with a long horizontal flourish at the end.

Mark L. Olson
President & CEO: