

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

July 2, 2020

Todd Richardson
Director, MO HealthNet Division
State of Missouri, Department of Social Services
615 Howerton Court, PO Box 6500
Jefferson City, MO 65102

Dear Mr. Richardson:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Missouri **final 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). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on March 29, 2017, the state worked diligently in making a series of technical changes requested by CMS in order to achieve final approval.

Final approval is granted to the state after completing the following activities:

- Conducted a comprehensive site-specific assessment and validation of all settings serving individuals receiving Medicaid-funded HCBS, included in the STP the outcomes of these activities and proposed remediation strategies to rectify any issues uncovered through the site specific assessment and validation processes by the end of the transition period.
- Outlined 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;
- Developed a process for communicating with beneficiaries who are currently receiving services in settings the state has determined cannot or will not come into compliance with the home and community-based settings criteria by March 17, 2022; and
- Established ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

After reviewing the STP submitted by the state on February 19, 2020, CMS provided additional feedback on March 18, 2020 and requested several technical changes be made to the STP in order for the state to receive final approval. These changes did not necessitate another public comment period. The state subsequently addressed all issues and resubmitted an updated version on June 22, 2020. A summary of the technical changes made by the state is attached.

The state is encouraged to work collaboratively with CMS to identify any areas that may need strengthening with respect to the state's remediation and heightened scrutiny processes as the state implements each of these key elements of the transition plan. Optional quarterly reports through the milestone tracking system designed to assist states to track their transition processes, will focus on four key areas:

1. Reviewing progress made to-date in the state's completion of its proposed milestones;
2. Discussing challenges and potential strategies for addressing issues that may arise during the state's remediation processes;
3. Adjusting the state's process as needed to assure that all sites meeting the regulation's categories of presumed institutional settings¹ have been identified, reflects how the state has assessed settings based on each of the three categories and assures the state's progress in preparing submissions to CMS for a heightened scrutiny review; and
4. Providing feedback to CMS on the status of implementation, including noting any challenges with respect to capacity building efforts and technical support needs.

It is important to note that CMS approval of a 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 v. LC* 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.

This letter does not convey approval of any settings submitted to CMS for heightened scrutiny review, but does convey approval of the state's process for addressing that issue. Any settings that have been or will be submitted by the state under heightened scrutiny will be reviewed and a determination made separate and distinct from final STP approval.

Thank you for your work on this STP. CMS appreciates the state's effort in completing this work and congratulates the state for continuing to make progress on its transition to ensure all settings are in compliance with the federal home and community-based services regulations.

Sincerely,

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

¹ CMS describes heightened scrutiny as being required for three types of presumed institutional settings: 1) Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment; 2) Settings in a building on the grounds of, or immediately adjacent to, a public institution; 3) Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF MISSOURI AS REQUESTED
BY CMS IN ORDER TO RECEIVE FINAL APPROVAL
(Detailed list of technical changes made to the STP since February 19, 2020)**

Public Comment

- Provided the summary of public comments and the state's responses from multiple comment periods after initial approval and a link in the STP of where to locate them. (pg. 44)

Site-Specific Assessment & Validation Activities

- Clarified the HCBS participant surveys covered all the criteria outlined in the federal HCBS rule and that those receiving assistance to complete a survey must receive assistance from someone free of conflict of interest. (pgs. 10-11)
- Clarified a process by which each survey is linked back to a specific setting and included a link to the findings report in the STP. (pgs. 10-12)
- Clarified the state's strategy to work with providers to address discrepancies between participant feedback and the provider self-assessment responses. (pgs. 15-16)

Site-Specific Remedial Actions

- Clarified the timeline for the provider remediation for those who received their validation through the on-going Quality Integrated Functions review. (pgs. 26, 33, and 39)

Communication with Beneficiaries of Options when a Provider will not be Compliant

- Clarified the timeline by which all individuals in settings that are non-compliant will be notified in order to allow enough time to transition to a new setting or locate a different funding stream before the end of the transition period. (pgs. 38 and 41)

Heightened Scrutiny

- Clarified that settings that were removed from the heightened scrutiny category, specifically the campus-like settings, were assessed by the state and determined not to meet the criteria of a setting that isolates individuals receiving Medicaid HCBS from the larger community. (p. 20)