

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850



Medicaid Benefits and Health Programs Group

March 11, 2024

Stuart Portman, Executive Director
Medical Assistance Plans
Department of Community Health
2 Peachtree Street, NW, Suite 36450
Atlanta, GA 30303

Dear Director Portman:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Georgia **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 § 441.301(c)(4)-(5). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on October 25, 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 on March 17, 2023;
- 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 the 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, 2023; 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 July 12, 2022, CMS provided additional feedback on August 9, 2022, February 27, 2023, April 3, 2023, May 24, 2023, June 21, 2023, August 10, 2023, September 14, 2023, December 7, 2023, December 20, 2023, and March 4, 2024, and requested several technical changes be made to the STP 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 of the STP on March 8, 2024. 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.

Additionally, CMS recognizes the state’s request for a corrective action plan (CAP) to allow for additional time for the assessment of remaining community residential alternative services settings (host homes) to assure compliance with the settings criteria. The state will report to CMS on progress with activities outlined in the CAP.

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 HCBS regulations.

¹ Medicaid regulations at 42 CFR § 441.301(c)(5)(v) describe 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.

Sincerely,

Curtis Cunningham, Director
Division of Long-Term Services and Supports

Attachment

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF GEORGIA
REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL
(Detailed list of clarifications made to the STP since July 12, 2022)**

Site-Specific Assessment & Validation Process:

- Corrected inconsistent numbers reported for the types of settings (residential and non-residential) (pg. 36; Table 8, pg. 40).
- Corrected inconsistent numbers reported for the compliance status of each setting type within each compliance category (Table 9, pg. 42).
- Revised the HCBS Provider Survey - Residential Site (Appendix C-1) and the HCBS Provider Survey - Non-residential Site (Appendix C-2) to include all of the settings criteria.
- Updated the types of settings in which community residential alternative services can be provided, which are host homes, and provided additional details on those settings (pg. 12).

Site-Specific Remedial Actions

- Updated the timeline by which the state made determinations about whether a provider was in compliance or if the state planned to disenroll them and relocate participants (pg. 48).
- Updated information on providers under a state-level corrective action plan by replacing Table 12 with a status update statement (pg. 48).
- Included specific information on the process to ensure members can interact with the broader community and are provided opportunities to participate in activities designed for the broader community so that settings do not rely on reverse integration as a means for community integration and participation (pg. 51).
- Provided information on initiatives taken by the state to develop non-disability specific settings options for members receiving Medicaid HCBS (pg. 53).
- Updated Appendix A, Milestones, to reflect the status and dates of completion of site-specific remediation milestones.

Heightened Scrutiny:

- Clarified language regarding the criteria that would necessitate the state submitting settings to CMS for heightened scrutiny review (pg. 49).
- Updated Section 5 to include information on the state's process for continually reviewing settings that may be subject to heightened scrutiny utilizing the parameters detailed in the STP (pg. 51).

Ongoing Monitoring of Settings:

- Included details around ongoing monitoring for private homes to ensure they continue to meet the settings criteria (pg. 54).
- Included the frequency of the audits conducted by the Georgia OIG to determine if programs continue to meet the requirements in the section labeled “HCBS guidance incorporated into program integrity audits” (pg. 54).

Other Feedback:

- Provided a hyperlink to the “Best Practice Guide” referenced in a public comment response (pg. 26).
- Clarified the total number of waivers is four and not five as noted on pages 29 and 30.
- Fixed broken links throughout the document:
 - GAMMIS (pg. 30)
 - Georgia’s landlord-tenant law handbook (pg. 31)
 - HFRD link (pg. 40)
 - Landlord-tenant handbook, Compliance Review of State Regulations and HCBS Program Policies, GA Remediation Strategy Flow, HCBS Final Rule Regulatory Recommendations, HCBS Policy Remediation Final, Lease Protection GHPC WR (pg. 58)
 - Personal Care Homes, Chapter 111-8-62 and GAMMIS web portal (Appendix B).
- Updated Table 5 to reflect approval dates of waiver renewals (pg. 32).
- Clarified language in the “Site-specific monitoring process flow” to differentiate between member actions and provider actions (pg. 43).
- Updated Appendix A, Milestones, to reflect the status and dates of completion of all milestones listed.
- Revised language in the Personal Care Home Agreement, Appendix D, to align with the HCBS settings rule requirements, particularly around the “no notice” exception and defining “inappropriate behavior.”
- Updated Appendix F, GA HCBS Survey for Individuals, to include all HCBS criteria.
- Corrected the page numbers of the appendices in the document.
- Outlined areas in the STP that will be clarified through the HCBS Settings CAP work (pgs. 30 and 34), including the following statement:
 - DCH will work with CMS to address outstanding compliance elements through the Corrective Action Plan development and implementation process. Those elements include the following:
 - Activities related to the amendment of the state rule 111-8-62-16 (h) and the provider guidance to come into compliance with the settings rule, and the timelines associated with those activities.
 - Activities related to assessment, validation, and remediation (including timelines) for Host Homes settings.