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State/Territory Name: Washington

State Plan Amendment (SPA) #: 16-0024

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Seattle Regional Office
701 Fifth Avenue, Suite 1600, MS/RX-200
Seattle, WA 98104



Division of Medicaid & Children's Health Operations

March 10, 2017

Dorothy Frost Teeter, Director
MaryAnne Lindeblad, Medicaid Director
Health Care Authority
PO Box 45502
Olympia, WA 98504-5010

RE: Washington State Plan Amendment (SPA) Transmittal Number 16-0024

Dear Ms. Teeter and Ms. Lindeblad:

The Centers for Medicare & Medicaid Services (CMS) has completed its review of the enclosed State Plan Amendment (SPA), Transmittal Number 16-0024. This SPA amends State Plan Attachment 4.35-H, to add alternative sanctions for Intermediate Care Facilities for Individuals with Developmental Disabilities (ICF/IIDs) that have deficiencies in meeting the applicable conditions of participation, as long as those deficiencies do not pose immediate jeopardy to residents' health and safety. This SPA aligns the ICF/IID compliance actions with the state's Nursing Facility compliance actions authorized by state statute, and are less onerous than closure of or suspending payment to the facilities.

This SPA is approved effective October 1, 2016.

If there are additional questions please feel free to contact me, or your staff may contact Kendra Sippel-Theodore at kendra.sippel-theodore@cms.hhs.gov or 206-615-2065.

Sincerely,

Digitally signed by David L.

A solid black rectangular box used to redact the signature of David L. Meacham.

Date: 2017.03.13 12:42:32 -07'00'

David L. Meacham
Associate Regional Administrator

Enclosure

cc:

Ann Myers, HCA
Loida Baniqued, DSHS

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

1. TRANSMITTAL NUMBER:
16-0024

2. STATE
Washington

FOR: HEALTH CARE FINANCING ADMINISTRATION

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
October 1, 2016

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN

☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN

☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:
Section 1905(a) of the Social Security Act

7. FEDERAL BUDGET IMPACT:
a. FFY 2017 \$0
b. FFY 2018 \$0

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

~~Numbered Pages 79c, 79c.4 (new) (P&I)~~
Att. 4.35-H page 1, 2 (new), 3 (new) (P&I)

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable)

~~Numbered Pages 79c (P&I)~~
Att. 4.35-H page 1

10. SUBJECT OF AMENDMENT

Intermediate Care Facilities for Individuals with Developmental Disabilities (ICF/IID) Sanctions

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT

☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☒ OTHER, AS SPECIFIED: Exempt

12. SIGNATURE OF STATE OFFICIAL:

13. TYPED NAME:
MARYANNE LINDEBLAD

14. TITLE:
MEDICAID DIRECTOR

15. DATE SUBMITTED:

12-22-16

16. RETURN TO:

Ann Myers
Office of Rules and Publications
Legal and Administrative Services
Health Care Authority
626 8th Ave SE MS: 42716
Olympia, WA 98504-2716

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

12/22/16

18. DATE APPROVED:

3/10/17

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:
10/1/16

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME:

David L. Meacham

22. TITLE:

Associate Regional Administrator

23. REMARKS:

12/22/16: State authorized P&I change to box 8 and 9
1/27/17: State authorized P&I change to box 8

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State WASHINGTON

ELIGIBILITY CONDITIONS AND REQUIREMENTS

ENFORCEMENT OF COMPLIANCE FOR ICF/IIDS

Additional Remedies: Describe the criteria (as required at §1902(i)(1)(B) for applying the additional remedy. Include the enforcement category in which the remedy will be imposed (see categories 1, 2, and 3 described in 42 CFR 488.408 as examples of categories the state will use).

I. Termination of agreement when the immediate jeopardy is not abated/removed

If there is immediate jeopardy to resident health or safety, the state terminates the ICF/IID's provider agreement within 23 calendar days from the date of notice to the facility. (Enforcement category 3).

II. Termination of agreement or non-renewal when there is no immediate jeopardy or the immediate jeopardy is abated/removed

- A. If, prior to the termination date, the facility removes the serious and immediate threat, but a condition of participation is still not met, the state may extend the compliance deadline for up to 90 days.
- B. When immediate jeopardy does not exist, the state terminates an ICF/IID's provider agreement no later than 90 calendar days from the finding of noncompliance, if the facility does not meet the conditions of participation. (Enforcement category 3)

III. In lieu of termination of agreement

In lieu of termination of agreement, the state may consider imposing one or more of the following sanctions if deficiencies do not immediately jeopardize the health and safety of individuals. The application of the alternative sanctions are in accordance with current state laws.

With the exception of denial of payment for new admissions, the timing and notice of the alternative sanctions begin on the date the facility receives the written notice and Statement of Deficiencies, as documented by the Certified Mail Return Receipt. The facility has 45 days (state licensed ICFs) or 60 days (Residential Habilitation Centers) from the date the facility receives formal verbal notice of the state's findings (known as the "exit date") for the correction to be accomplished.

A. A Directed Plan of Correction (DPOC) (enforcement category 1)

- 1. The state may impose a DPOC when the conditions of participation or repeat citations of standard level regulations are out of compliance. The state chooses a DPOC when it determines the facility needs to make specific systemic changes in order to gain compliance and it has (or will be) unable to do so.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State WASHINGTON

Enforcement of compliance for ICF/IIDS (contd)

2. A DPOC is a plan of correction that contains all the elements of a traditional Plan of Correction. It differs from a traditional POC in that the state develops the DPOC, not the facility. The facility must take action or accomplish the DPOC within specified time frames.
3. If the facility fails to achieve substantial compliance after complying with the DPOC, the state may impose another alternative sanction or sanctions until the facility achieves substantial compliance or it is terminated from the Medicaid program. The state measures substantial compliance when it determines the facility has complied with the DPOC and meets the requirements of the Conditions of Participation (CoPs) and standard level deficiencies.

B. Directed In-Service Training (enforcement category 1)

1. The state may impose directed in-service training when CoPs or repeat citations of standard level regulations are out of compliance. The state chooses directed in-service training when it determines the facility needs the acquisition of specific knowledge in order to make specific systemic changes in order to gain compliance and it has (or will be) unable to do so.
2. The state may choose directed in-service training when it concludes that education is likely to correct the deficiencies. This remedy requires the staff of the ICF/IID to attend in-service training program(s). The purpose is to provide knowledge required to achieve compliance and remain in compliance with the CoPs.
3. The state measures substantial compliance when facility staff successfully complete the directed in-service-training and the facility meets the requirements of the Conditions of Participation (CoPs) and standard level deficiencies.

C. State Monitoring (enforcement category 1)

1. The state may impose state monitoring when CoPs or repeat citations of standard level regulations are found to be out of compliance. The state chooses state monitoring when it determines the facility needs close monitoring of the implementation of its PoC or the DPOC to ensure the Plan is fully implemented and the systemic changes required are progressing and occur as needed in order to gain compliance, and the facility has (or will be) unable to do so.
2. A state monitor oversees the correction of cited deficiencies in the facility as a safeguard against further noncompliance when a situation with a potential for jeopardizing health and safety has occurred, but has not risen to the level of immediate jeopardy.
3. The state measures substantial compliance when it receives assurance from the state monitor that the facility has completed the PoC or DPOC and meets the requirements of the PoC or DPOC and standard level deficiencies.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State WASHINGTON

Enforcement of compliance for ICF/IIDS (contd)

D. Deny payment for new admissions (enforcement category 2)

1. When a facility has failed to meet one or more conditions of participation, the state gives the facility 60 days from the survey date to meet the conditions. If the facility does not correct the conditions by the specified date, and if the state chooses to impose a Denial of Payment for new admissions, the state gives the facility notice of intent to impose the remedy.
2. The state may impose a Denial of Payment for up to 11 months. If the state finds serious violations during this 11-month period, it may terminate the facility while the Denial of Payment is in effect.
3. The state may lift the Denial of Payment earlier if a facility is in compliance or is making a good faith effort to comply. (42 CFR 442.118)
4. The state must terminate the agreement if the facility is not in substantial compliance at the end of the 11 months. The state measures substantial compliance through a follow-up survey process related to compliance with cited CoPs and cited Standard level regulations. The facility is entitled to an Evidentiary Hearing. (42 CFR 442.119)