

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

November 21, 2017

Ms. Gretchen Hammer
Medicaid Director
State of Colorado, Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

Dear Ms. Hammer:

This letter is to inform you that CMS is granting Colorado **initial 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). Approval is granted because the state has completed its systemic assessment; included the outcomes of this assessment in the STP; clearly outlined remediation strategies to rectify issues that the systemic assessment uncovered, such as legislative/regulatory changes and changes to vendor agreements and provider applications; and is actively working on those remediation strategies. Additionally, the state submitted the June 2016 draft of the STP for a 30-day public comment period, made sure information regarding the public comment period was widely disseminated, and responded to and summarized the comments in the STP submitted to CMS.

After reviewing the June 2016 draft submitted by the state, CMS provided additional feedback on August 30, 2016 requesting that the state make several technical corrections in order to receive initial approval. These changes did not necessitate another public comment period. The state subsequently addressed all issues in updated versions on December 16, 2016 and November 8, 2017. These changes are summarized in Attachment I of this letter. The state's responsiveness in addressing CMS' remaining concerns related to the state's systemic assessment and remediation expedited the initial approval of its STP.

In order to receive final approval of Colorado's STP, the state will need to complete the following remaining steps and submit an updated STP with this information included:

- Complete comprehensive site-specific assessments of all home and community-based settings, implement necessary strategies for validating the assessment results, and include the outcomes of these activities within the STP;
- Draft remediation strategies and a corresponding timeline that will resolve issues that the site-specific settings assessment process and subsequent validation strategies identified

by the end of the home and community-based settings rule transition period (March 17, 2022);

- Outline a detailed plan for identifying settings that are presumed to have institutional characteristics as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under Heightened Scrutiny;
- Develop a process for communicating with beneficiaries that are currently receiving services in settings that the state has determined cannot or will not come into compliance with the home and community-based settings rule by March 17, 2022; and
- Establish ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

While the state of Colorado has made much progress toward completing each of these remaining components, there are several technical issues that must be resolved before the state can receive final approval of its STP. CMS will be providing detailed feedback about these remaining issues shortly. Additionally, prior to resubmitting an updated version of the STP for consideration of final approval, the state will need to issue the updated STP out for another minimum 30-day public comment period.

Upon review of this detailed feedback, CMS requests that the state please contact Michele MacKenzie (410-786-5929 or Michele.MacKenzie@cms.hhs.gov) or Jessica Loehr (410-786-4138 or Jessica.Loehr@cms.hhs.gov) at your earliest convenience to confirm the date that Colorado plans to resubmit an updated STP for CMS review and consideration of final approval.

It is important to note that CMS' initial approval of an 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 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.

I want to personally thank the state for its efforts thus far on the HCBS Statewide Transition Plan. CMS appreciates the state's completion of the systemic review and corresponding remediation plan with fidelity, and looks forward to the next iteration of the STP that addresses the remaining technical feedback provided in the attachment.

Sincerely,

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

ATTACHMENT I.

SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF COLORADO TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED DECEMBER 16, 2016

- **Changes in Response to Public Comments:** CMS expressed concerned that the state had not fully responded to the public comments received. CMS asked the state to consider whether changes to the STP were warranted based on the public’s comments and provide a summary of the comments and the state’s responses.

State’s Response: The state submitted the detailed public comment review in its latest submission, dated November 8, 2017.

- **Systemic Assessment Crosswalk:** Within the crosswalk, for each state statute, regulation, and waiver identified, CMS asked the state to provide the title and code, a general description of the policy and its relevance to the home and community-based settings rule, and an active web link to the current version of the policy.

State’s Response: The state added this information to the crosswalk.

- The state included abbreviated titles and codes, such as “C.R.S. 25.5-6-303(1)” and “10 CCR 2505-10 8.491.14(F)” which are specific enough to allow the reader to locate the state standard.
 - The state added descriptions of all state standards in the first column of the updated crosswalk (pages 2-21 of crosswalk).
 - The state added links to the web pages at which readers can locate the state’s statutes, regulations, and waivers at the beginning of the updated crosswalk (page 1).
- **Systemic Assessment Findings:** For each statute, regulation, and waiver identified, CMS asked the state to clearly indicate the state’s determination of whether is the provision was in compliance, partially in compliance, out of compliance, or silent with regard to the settings criteria and where appropriate, include the remediation plans.

State’s Response: The state made revisions throughout the systemic assessment crosswalk to provide more detailed descriptions of state standards, more clearly identify where state standards are in compliance with, out of compliance with, or silent on the federal requirements, and clarify what revisions are planned to bring them into full compliance. The state revised all cells that formerly said “input is invited” or “input is requested” to more clearly indicate the state’s determination of compliance and proposed remediation (pages 2-21 of crosswalk).

- **Services Excluded from New Regulations:** CMS requested that the state provide clarification that respite is a short-term service.

State’s Response: The state provided the following clarifying information:

- *Brain Injury and Supported Living Services waivers:* The state specified that under the Brain Injury waiver regulations, respite care is limited to no more than thirty days unless otherwise authorized by the Department of Health Care Policy & Financing. The Supported Living Services waiver specifies that respite is to be provided on a short-term basis. The state noted that it plans to add the modifiable 30-day time limit to both of these waivers (page 21 of revised crosswalk).
- *Children with Life-Limiting Illness waiver:* The state explained that it has determined that palliative/support care services provided in a hospice or hospital are similar to respite because they are provided “only on a temporary, intermittent basis.”
- **Systemic Assessment Results (Restrictive Egress):** In the June 2016 version of the STP, the state had determined that C.R.S. 25.5-6-313(1.5), regarding “Adult Day Services Centers,” was compliant with the regulatory criterion that the setting is integrated in and supports full access to the community. However, CMS noted that this regulation allowed the use of restrictive egress alert devices. CMS asked the state to explain how these devices were being used and how the state planned to ensure that the use of such devices does not limit an individual’s access to the community.

State’s Response: In response to this concern, the state proposed to remediate its adult day services statute, C.R.S. 25.5-6-313(1.5), by adding a provision to new Rule AAA that states that any restrictive egress measures must be consistent with certain criteria (pages 2-3 of crosswalk), which complies with the parameters for HCBS setting criteria modifications found at 42 C.F.R. 441.301(c)(4)(F)

- **Systemic Assessment Results (Lockable Doors):** The state determined that 10 CCR 2505-10 8.495.4, pertaining to Alternative Care Facilities/Assisted Living Residences (ACFs/ALRs), was compliant with the federal criterion that units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. However, CMS noted that the regulation conflicts with the federal rule.

State’s Response: The state proposed to add a reference to new Rule BBB that would require that units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. The state also proposed to remediate its ACF regulation, 10 CCR 2505-10 8.495.4, to provide that “individuals shall have personal quarters with entrance doors lockable by the individual and shall control access to their quarters, unless otherwise specified in their person-centered care plan. Only appropriate staff shall have keys to private quarter doors, as specified in the person’s plan” (pages 13-15 of crosswalk).

- **Timeline for Systemic Remediation:** CMS asked the state to provide more detailed timelines for the remediation of state standards, including interim milestones with due dates.

State’s Response: The state added more detailed timelines to the STP for the systemic remediation process (pages 14-16 of revised STP). These detailed timelines clarified each

step in the process of remediating state standards, and explained how the state will ensure all revised standards are effective before the end of the transition period.

- **Systemic Assessment:** CMS requested that the state ensure and confirm it is addressing systemic compliance with all components of settings criteria.

State's Response: The state clarified the STP and added the full text of the settings criteria from the federal regulation to the beginning of the crosswalk (pages 1-2).

- **Remediation of Silence in State Standards:** CMS asked the state to clarify the state's approach to regulations and statutes that are silent on one or more federal requirement.

State's Response: The state explained that the state plans to remediate silence in state standards through new regulations AAA and BBB rather than in the statutes or regulations that are silent themselves.

- **Remediation through Waiver Documents:** CMS noted that in statutes the state finds to be silent on or partially compliant with the federal regulation, remediation in a waiver document alone may not be appropriate.

State's Response: The state clarified on pages 2 and 14 of the revised crosswalk that new regulations AAA and BBB will enforce the federal requirements for all applicable settings.

- **Finalization of Systemic Assessment Results:** CMS noted that according to the STP, the state was in the early stages of developing revised state standards, and aimed to put the revised language out for public notice by 7/31/17. CMS asked that the state provide a timeline for when the state's systemic assessment results (i.e., final compliance determinations for each state standard and a decision as to whether and how each will be remediated) would be completed and updated in the STP.

State's Response: The state made updates throughout the crosswalk to clarify compliance determinations and proposed remediation.