

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**

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October 6, 2017

Claudia Schlosberg  
Director  
District of Columbia Department of Health Care Finance  
441 4<sup>th</sup> Street, NW, 900S  
Washington, DC 20001

Dear Ms. Schlosberg:

This letter is to inform you that CMS is granting the District of Columbia **initial and 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). Initial approval is granted when the state has completed its systemic assessment, has included the outcomes of this assessment in the STP, and has clearly outlined remediation strategies to rectify issues that the systemic assessment uncovered. Final approval is granted when the state has completed its site-specific assessment, has included the outcomes of this assessment in the STP, has clearly outlined remediation strategies to rectify issues that the site-specific assessment uncovered, and has laid out its heightened scrutiny, monitoring and beneficiary communication processes clearly.

The District submitted the April 2017 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. CMS provided feedback on August 15, 2017 and requested several technical changes be made to the STP in order for the District to receive initial and final approval. These changes did not necessitate another public comment period. The District subsequently addressed all issues and resubmitted an updated version on September 29, 2017. A summary of the technical changes made by the District is attached.

The District of Columbia's responsiveness in addressing CMS' remaining concerns related to the systemic and site specific assessments and remediation strategies expedited the approval of its STP.

The District is encouraged to work collaboratively with CMS to identify any areas that may need strengthening with respect to the District's remediation and heightened scrutiny processes as the District implements each of the 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 District's completion of its proposed milestones;
2. Discussing challenges and potential strategies for addressing issues that may arise during the District's remediation processes;
3. Adjusting the District's process as needed to assure that all sites meeting the regulation's categories of presumed institutional settings have been identified and that it reflects how the District has assessed settings based on each of the three categories, as well as the District'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 an STP solely addresses the state's compliance with the applicable Medicaid authorities. CMS' approval does not address the District'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](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 District's process for addressing that issue. Any settings that have or will be submitted by the District under heightened scrutiny will be reviewed and a determination made separate and distinct from the final approval.

Thank you for your work on this STP. CMS appreciates the District's effort in completing this work and congratulates the District 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

## ATTACHMENT I

### SUMMARY OF TECHNICAL CHANGES MADE BY THE DISTRICT OF COLUMBIA TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 4/28/17

- **HCBS Settings Analyzed under the STP – EPD Waiver:** CMS asked the District to clarify that all services provided under the Elderly and Persons with Disabilities (EPD) waiver are either provided in an individual’s private home or in another setting. The District was also asked to clarify the number of each of these different types of services (p. 2).

**District’s Response:** The District indicated in the STP that, with the exception of one residential service (Assisted Living) and one day program (Adult Day Health), these services are provided in an individual’s private home, which is a non-disability specific setting (p.2).

- **HCBS Settings Analyzed under the STP - IDD Waiver:** The District amended the language in its STP to now state that there are twenty-six (26) services offered through the Intellectual and Developmental Disabilities (IDD) waiver. CMS asked the District to indicate whether there are any services offered under the IDD waiver that are provided specifically within an individual’s private home. (p. 3).

**District’s Response:** The District clarified in the plan that individuals may receive services in their own private homes or homes of a family member.

- **Systemic Assessment Results:** CMS requested the District address the following comments regarding the systemic assessment.
  - In its previously submitted STP, DC included a crosswalk for Group Homes for Persons with IDD regulations. This crosswalk was removed from the April 2017 submission. The District was asked to verify that all pertinent standards are included.

**District’s Response:** The District indicated in the STP that the regulations for Group Homes for Persons with IDD fall under the revised community residence facility regulations that were promulgated in 2017. The District included this crosswalk in this STP submission as an attachment.

- CMS requested that DC clarify its statement in the crosswalk for IDD policies and procedures, which stated that, “The waiver regulation’s General Provisions require that any permissible deviation from HCBS Settings requirements is reviewed and approved as a restriction by the Provider’s Human Rights Committee.” CMS noted that review by the Provider’s Human Rights Committee is not sufficient to meet the criteria at 42 CFR 441.301(c)(4)(vi)(F), which outlines the process a setting must

follow for modifications of provider-owned or controlled residential setting criteria. CMS asked the District to propose remediation.

**District's Response:** The District updated the language to read, “DDS and DHCF [Department of Health Care Finance] are updating the waiver regulation’s Home and Community Based Settings Requirements to require that any permissible deviation from HCBS Settings requirements must be supported by a specific assessed need, justified and documented in the person’s person-centered Individualized Support Plan, as well as reviewed and approved as a restriction by the Provider’s Human Rights Committee (HRC).”

- On page 6 of the District’s Governing Regulations for Assisted Living Residences, the District specified that Assisted Living Residence Law does not specifically address the provision that, “the setting provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources.” CMS asked the District to provide remediation.

**District's Response:** The District clarified in the STP that the settings criteria ensuring that the setting provides opportunities to seek employment and work in competitive integrated settings is included in the District’s regulations governing the assisted living residences and EPD waiver regulations.

- CMS requested additional information about the content of the EPD revised regulations. With respect to the requirement that individuals sharing units have a choice of roommates in that setting, the EPD waiver Assessment crosswalk, page 8, specifies that the DHCF updated its regulations governing the EPD waiver to address this requirement. EPD Waiver Regulation: 4200.6- (d) “relationship-building” “self-determination” & (g) “independence in making life choices” “personal interactions” states: “Support the beneficiary’s community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy;” (p. 8). CMS found that remediation language was not sufficient as it did not indicate that an individual has a choice of roommates when sharing a room. The District was asked to provide remediation.

**District's Response:** The District updated the chart as follows: Sub-regulatory guidance will stipulate that the setting must provide individuals who are sharing units a choice of roommates.”

- Regarding the provision that the setting is selected by the individual from among setting options including non-disability specific settings. The District assessed its current regulations as silent and included 4200.6 (a) “Be chosen by the beneficiary receiving EPD Waiver services” and (d) “Support the beneficiary’s community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy” as remediation. This did not provide that an

individual will have a choice of non-disability specific setting option. CMS requested clarification.

**District's Response:** The District updated the remedial strategy to indicate that sub regulatory guidance will stipulate that the individual will have a choice of non-disability specific setting options, whenever available.

- The District specified that it made significant changes to the proposed EPD Waiver regulations to ensure compliance with CMS' settings requirements and included the list of requirements on page 99 of the STP. The list did not include the requirement that "Individuals sharing units have a choice of roommates in that setting." CMS requested that the District please clarify.

**District's Response:** The District included the settings criterion ensuring that individuals sharing units have a choice of roommates.

## ATTACHMENT II

### SUMMARY OF CHANGES MADE BY THE DISTRICT OF COLUMBIA IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED APRIL 28, 2017 AT REQUEST OF CMS TO RECEIVE FINAL APPROVAL OF THE STATEWIDE TRANSITION PLAN

#### **Defining Key Terms related to Setting Assessment & Validation Activities**

- Provided clarity regarding the differences between the following terms in the STP: on-site assessment, site-by-site assessment, and organizational assessment; and distinguished which of these activities are conducted by the provider as opposed to state staff; whether they are all conducted onsite; and what each of the assessments includes in terms of activities (i.e. onsite visits, observations, document reviews, and/or consumer feedback, p. 9).

#### **Participant Experience Surveys**

- ***Details of Beneficiary Participation in the Participant Experience Survey Process:***
  - Clarified how participant surveys are being conducted across the HCBS waiver authorities and setting categories. This includes details on how the District is both selecting participants for the survey and also what proportion/percentage of participants per site are surveyed, who is conducting the consumer engagement, and by what media the information is captured across settings/waivers (p. 58, 60).
  - Described the changes to the District’s consumer survey tool from a Likert scale of beneficiary responses to a more uniform “yes/no” response format.
  - Provided information on the process that is taken to address discrepancies between provider self-assessment results and participant feedback with respect to the settings criteria.

#### **IDD Waiver – Non-Residential (Employment & Day) Settings**

- ***Methodology for Validating Community-Based Day Programs:*** Provided clarification regarding assessment and validation of settings where groups of individuals are receiving community-based day or group supported employment activities. Clarified what data is available regarding initial estimates of compliance among community-day based programs, and where the data can be located directly by the public (p. 12-13).
- ***Facility-Based Employment Readiness:*** Provided details regarding factors the District is considering in making determinations regarding whether or not a setting has characteristics that may have the effect of isolating individuals receiving Medicaid HCBS, and for those flagged as being potentially isolating (and thus presumed institutional), what factors these settings must demonstrate in order to show compliance with the HCBS settings rule and be submitted for consideration under heightened scrutiny review (p. 13, 55).
- ***Non-Residential Settings & Size:*** Confirmed within the STP the various factors the District is using in determining compliance with the federal HCBS settings criteria related to access to the broader community, and that it is considering several factors beyond size as outlined in the organizational assessment, participant experience survey,

and provider certification review (PCR) data to further assess non-residential settings to determine if a setting is isolating (p. 13, 55).

- ***Heightened Scrutiny Identification of Non-Residential Settings:*** Updated the timeline for when the District thinks it will have made a final determination on whether or not to submit any non-residential day settings to CMS for heightened scrutiny review (p. 13).

#### **IDD Waiver – Residential**

- Explained how the District is ensuring that each residential service provider is meeting or will meet the HCBS settings criteria for any HCBS beneficiaries residing in these settings, and provided additional detail explaining how it will assure ongoing compliance of residential service providers of housing supports to individuals receiving HCBS under the I/DD waiver (p. 133).

#### **EPD Waiver – Adult Day Health**

- Clarified that the 7 Adult Day Health sites will be monitored for ongoing compliance as part of the monitoring process outlined for other settings (p.56).

#### **Site-Specific Remediation Process**

- Included more specific details which explain how the District will work with providers to develop individual remediation actions, and how the District will monitor and confirm completion of the remediation plans during the transition period (ps. 98).
- Confirmed within the STP the timeframe for establishing remediation plans with providers and confirming their completion (p. 153).
- Support to Providers to Achieve Compliance with the HCBS Settings Rule: The District provided a summary of the issues identified and the technical assistance provided to address those concerns identified through monitoring (ps. 145-6).

#### **Non-Disability Specific Settings**

- Added specific details demonstrating how the District assures beneficiary access to non-disability specific settings in the provision of residential and non-residential services as well as how the District is strategically building capacity to assure non-disability specific options (ps. 77-80, 83).

#### **Reverse Integration**

- Included additional details as to how the District will assure that non-residential settings comply with the various criteria in the HCBS rule, particularly around integration of HCBS beneficiaries to the broader community (p. 71-75, 83-84).

#### **Monitoring of Settings**

- The District added both work plans for its DDS-IDD and DHCF-EPD waiver settings transitions, which includes detailed timelines. These work plans also include a monitoring category so that CMS and the public can track the District's progress related to monitoring of settings (p. 154 STP and attached HCBS IDD Work Plan).

### **Communication with Beneficiaries**

- Described communications thus far between DDS and one provider on the anticipated need for 5 beneficiaries to find a compliant service provider by the end of the transition period. The District has worked with the provider to establish a tentative deadline of November 2018 for the transitions of these five beneficiaries to occur, and have discussed this with each person and their support team.

### **Heightened Scrutiny**

- The District clearly articulated how the final determination was/will be made on whether or not to proceed to move a setting to CMS for heightened scrutiny review (p. 13, 25-26).
- ***Lisner-Louise-Dickson Hunt:*** The District removed the draft evidentiary package on Lisner-Louise-Dickson-Hurt from the STP and explained within the STP that it is being removed because the District is not yet submitting Lisner-Louise-Dickson-Hunt to CMS for a heightened scrutiny review at this time for the following reasons:
  - The state is currently working with the provider to assure the setting currently meets all federal HCBS criteria around assuring access of HCBS beneficiaries to the broader community; and
  - It has determined that the setting is not presumptively institutional based on its location, and is awaiting additional guidance anticipated from CMS on what settings should be included for heightened scrutiny based on isolation of HCBS beneficiaries.