

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**

---

October 25, 2017

Mr. Blake T. Fulenwider  
Chief, Medical Assistance Plans  
2 Peachtree Street, NW  
Atlanta, GA 30303

Dear Mr. Fulenwider:

This letter is to inform you that CMS is granting Georgia **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 March 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.

After reviewing the updated STP dated March 16, 2017 submitted by the state CMS provided feedback and requested that the state make several technical corrections in order to receive initial approval. The state submitted their updated plan on September 19, 2017 and again on October 20, 2017 which included additional technical changes. These changes did not necessitate another public comment period and 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 Georgia'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 Georgia 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 a 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](mailto:Michele.MacKenzie@cms.hhs.gov)) or Jessica Loehr (410-786-4138 or [Jessica.Loehr@cms.hhs.gov](mailto:Jessica.Loehr@cms.hhs.gov)) at your earliest convenience to confirm the date that Georgia 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](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 that is forthcoming.

Sincerely,

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

## ATTACHMENT I.

### SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF GEORGIA TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 9/19/17

- **Waivers Included in the STP**

- The Elderly and Disabled Waiver does not provide a time limit on respite services, and the time limit provided by the New Options Waiver is 39 days. CMS asked the state to clarify the time limit for this service and describe the process through which the state authorizes respite to be provided for more than 30 consecutive days.

**State's Response:** The State explained that although offered in all waiver services, respite is rarely used based on current claims data. However, Respite can be approved for more than 30 days if evidenced in a members plan of care or individualized service plan (ISP) for NOW and COMP waivers with explanation of medical necessity.

- Further, the State was asked to clarify whether Community Residential Alternatives is a service type of the New Options Waiver.

**State's Response:** The State clarified that Community Residential Alternatives (CRA) is not a part of the New Options Waiver program and updated the STP.

- **Systemic Assessment:** CMS requested that the state complete the following as it works to finalize its systemic assessment:

- CMS asked the State to provide any links to provider manuals, citations to provider manuals, regulations, or other standards cited in the crosswalk.

**State's Response:** The state has provided in the STP a Policy and Provider Manual links page, Appendix P, which references all documents reviewed and discussed within the STP on pages 31-33 and Appendix E. The state has also updated its Georgia Medicaid Management Information System (GAMMIS) web portal.

- **Systemic Assessment Results:** CMS requested that the state revisit its systemic assessment and ensure that each determination is accurate with regard to the following concerns:

- CMS did not agree with the state's finding that p. 48 Part II, Policies and Procedures for Independent Care Waivers, § 604.1 (A) was compliant with the federal criteria that the setting ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. It is partially compliant. The state was asked to propose remediation.

**State's Response:** The state added the following to its plan: “As a part of the state’s systemic remediation plan, the state will revise all waiver General Services policy manuals to include the following language: All services provided will be in accordance with the HCBS final settings rule to warrant that each setting ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint. This will be demonstrated in each members Individualized Plan of Care. However, if such autonomy present a health and safety risk, settings should be modified to ensure such safety and mitigate any and all risk to the member. All settings modifications must be identified in the member’s plan of care” (p. 34).

- CMS did not agree that Ga. Comp. R. & Regs. r. 111-8-62-.21 (1) partially addresses the federal requirement that individuals have the freedom and support to control their own schedules and activities, and have access to food at any time. CMS felt it was non-compliant because Rule 111-8-62-.21 (1) states, "A minimum of three regularly scheduled, well-balanced meals must be provided seven days a week. There must be no more than 14 hours elapsing between the scheduled evening and morning meals....Food for at least one nutritious snack shall be available and offered each mid-afternoon and evening." This conflicts with the criterion that the setting provide individuals with access to food at any time. It is also silent on the requirement that individuals have the freedom and support to control their own schedules and activities. The state was asked to propose alternative remediation to address the non-compliance of the regulation.

**State's Response:** On page 35 of the STP, the state added: “In order to ensure compliance with the HCBS final settings rule HCBS Providers (where applicable) must assure that there is a legally enforceable agreement that addresses eviction protections and that people have the right to have access to food at any time.”

- The state found that two of its manuals for the Comprehensive Supports Waiver Program (COMP) are silent concerning the criterion that individuals have access to visitors of their choosing at any time. CMS disagreed and found that the manuals conflict with the settings criteria because they permit the setting to restrict visitors without requiring the setting to comply with the modification process in in 42 CFR 441.301(c)(4)(vi)(F).

**State's Response:** On page 35 of the STP, the state added: “In order to ensure compliance with the HCBS final settings rule HCBS Providers (where applicable) must assure that there is a legally enforceable agreement that addresses eviction protections and that people have the right to have visitors at any time.