

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 3, 2018

Matt Wimmer

Administrator

State of Idaho, Department of Health and Welfare

450 West State Street PTC Building, 10th Floor

Boise, ID 83705

Dear Mr. Wimmer:

I am writing to inform you that CMS is granting Idaho **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). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on September 23, 2016, the state worked diligently in making a series of technical changes requested by CMS in order to achieve final approval.

Final approval is granted due to the state completing the following activities:

- Conducted a comprehensive site-specific assessment and validation of all settings serving individuals receiving Medicaid-funded HCBS, and 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.
- 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 these 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 that the state has determined cannot or will not come into compliance with the home and community-based settings criteria by March 17, 2022; 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 30, 2018, CMS provided additional feedback on August 16, 2018 and requested several technical changes be made to the STP in order 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 on October 2, 2018. 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 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 the final approval.

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 home and community-based services regulations.

Sincerely,

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

¹ CMS describes 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.

SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF IDAHO AS REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL

(Detailed list of technical changes made to the STP since July 30, 2018)

Public Comment

- The state amended the final response to public comment to more fully address the concerns expressed by the commenters. (Attachment 5)

Site-Specific Assessment & Validation Activities

- Clarified the compliance headings in the chart (by adding a key) and revised columns for corrective action plans (CAPs) to reflect accurate totals. (p. 45)
- Included information on the additional trainings and materials the state shared with families about the settings rule. (p. 40-41)
- Included additional information clarifying that supported employment is individualized; is not provided in groups, and will be monitored every six months to three years to ensure compliance. (p. 41)
- Clarified that the state doesn't offer pre-vocational services through their Medicaid 1915(c) waivers. (p. 41)
- Clarified the 113 Residential Assisted Living Facilities that are mentioned on pg.4 were included in the total 237 Residential Assisted Living Facilities that were visited and reviewed for validation. (Transition Plan Summary Preface)
- Provided information on how the state will assure sufficient access to non-disability specific settings options and how the state plans to build capacity in the state. (p. 42-43)

Ongoing Monitoring

- Clarified that ongoing monitoring strategies included monitoring for individual private homes where HCBS are being delivered. (p. 47-48)
- Clarified that ongoing monitoring will continue beyond the STP transition period end date. (p. 48, 59)
- Clarified that all settings will be monitored for all of the HCBS settings criteria. (p.48)

Site-Specific Remedial Actions

- Described the validation process used by the state following submission of documentation by the provider supporting the completion of the CAP. (p.46)