

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

March 3, 2017

Jen Steele
Medicaid Director
State of Louisiana, Department of Health and Hospitals
628 North 4th Street
Baton Rouge, LA 70802

Dear Ms. Steele:

This letter is to inform you that CMS is granting Louisiana **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 October 2016 draft of the STP for a 30-day public comment period, made sure information regarding the public comment period was widely disseminated, and included information for the public input process in the STP submitted to CMS.

After reviewing the October 2016 draft submitted by the state, CMS provided additional feedback on January 13, 2017 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, and resubmitted an updated version on February 10, 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. CMS also completed a 50% spot-check of the state's systemic assessment for accuracy. Should any state standards be identified in the future as being in violation of the federal HCBS settings rule, the state will be required to take additional steps to remediate the areas of non-compliance.

In order to receive final approval of Louisiana'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, 2019);
- Outline 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;
- 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, 2019; 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 Louisiana 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 Amanda Hill (410-786-2457 or Amanda.Hill@cms.hhs.gov) at your earliest convenience to confirm the date that Louisiana 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 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 LOUISIANA TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 02/10/2017

- **Public Input:** CMS requested additional details regarding the most recent public input period, to include the date and the information for the public notice in the newspaper, which newspapers it was published in, and what techniques the state employed, such as stakeholder emails and forums to inform people of the public input period.

State's Response: The state updated the STP to include the additional details requested by CMS regarding the most recent public input period.

- **Compliance Determinations for State Standards:** CMS asked the state to address the determination of compliance for the following areas:
 - For the Office for Citizens with Developmental Disabilities (OCDD) crosswalk (residential), for the requirement that the setting optimizes, but does not regiment, individual autonomy and independence in making life choices, the state cited the Supports Waiver Manual, but did not include a compliance determination.
 - For the requirement that the setting facilitates individual choice regarding services and supports and who provides them, the state cited the Children's Choice Rule (Title 50, Part XXI, Subpart 9, Chapter 111) but did not include a clear compliance determination.

State's Response: The state updated the crosswalk to include a clear compliance determination for each assessment area.

- **Analysis to Support Compliance Determinations:** CMS asked the state to include an analysis to explain how they reached compliance determinations of several state requirements, particularly in the OCDD crosswalk. The state was given the following examples: the outcomes for Title 50, Part XXI, Subpart 11, Chapters 137 and 139, Sections 13901, 13905, 13907, 13909, 13929, 13931, 13935, and 13937 are merely listed as "partially compliant," "compliant," or "silent," with no explanation. Additionally, on p. 136, various sections of the New Opportunities Waiver (NOW) Manual are listed as "Compliant" with the requirement that the setting facilitates individual choice regarding services and supports and who provides them, but the explanations provided are limited to a few words.

State's Response: The state included an analysis for how they reached each compliance determination.

- **Assessment of All Federal Requirements:** The state was asked to address the OCDD crosswalk for residential settings not including the requirement that for provider-owned

or controlled residential settings, each individual has privacy in their sleeping or living unit.

State's Response: The state amended the OCDD crosswalk to include the requirement that for provider-owned or controlled residential settings, each individual has privacy in their sleeping or living unit.

- **Systemic Assessment for Non-Residential Settings:** In the crosswalk sections for OCDD non-residential, the Office for Adult Aging Services (OAAS) and the Office of Behavioral Health (OBH), the state indicated the following requirements were not applicable or were only partially addressed: the requirements that individuals have the freedom and support to control their own schedules and activities and have access to food at any time; individuals' ability to have visitors of their choosing at any time; and the setting is physically accessible to the individual. CMS requested the state fully address these requirements in their respective crosswalks.

State's Response: The state included the assurance that individuals in non-residential settings have the same access to the community as those not receiving HCBS including access to visitors, food, and controlling their schedules and activities. The state also amended the crosswalk to include the requirement that the settings are physically accessible. Additionally the state clarified in their OBH crosswalk that the services are provided in the community and amended the language to reflect this.

- **Timelines for Systemic Remediation:** The STP did not include timelines for the remedial actions in the OBH crosswalk or interim milestones and timelines for the OAAS and OCDD crosswalks. The state was asked to add these.

State's Response: The state included milestones and timelines to complete the remedial actions for the OBH, OAAS, and OCDD systemic assessment crosswalks.

- **Systemic Remediation:** CMS asked the state to address all of the federal regulations the state will be amending their regulations and policies to align with on pg. 7 of their STP. CMS indicated the following requirements were missing: the setting supports opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS; the setting is selected by the individual from among setting options including non-disability specific settings and have the option for a private unit in a residential setting; the settings options are identified and documented in the individual's person-centered service plan and are based on the individual's needs preferences, and for residential settings, resources available for room and board; lastly, in provider owned or controlled residential settings, only appropriate staff have keys to individuals' lockable doors. The state was also asked to specify that the state will be using the language in this section in their remediation of their regulations and policies to avoid having to make updates to the language used in the proposed remediation throughout the crosswalk.

State's Response: The state updated the STP to include all of the federal requirements they must take action to comply with. The state also included a statement to clarify they will be using the language of this section in the remediation of their regulation and policies.

- **Additional items from the crosswalk spot check:** CMS requested the state correct the link for Section 4239.D.9 in regards to the regulation requirement, “Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact,”

State's Response: The state updated the link.