

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

August 2, 2017

Shannon McMahon
Deputy Secretary, Health Care Financing
Maryland Department of Health
201 West Preston Street, Room 525
Baltimore, MD 21201

Dear Ms. McMahon:

This letter is to inform you that CMS is granting Maryland **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 September 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 September 2016 and May 2017 drafts submitted by the state, CMS provided additional feedback on February 7, 2017 and June 20, 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 July 26, 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 Maryland'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, 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, 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 Maryland 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 Amanda Hill (410-786-2457 or Amanda.Hill@cms.hhs.gov) at your earliest convenience to confirm the date that Maryland 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 MARYLAND TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 07/26/2017

- **Public Notice and Comment:** CMS requested that the state ensure they fully responded to the summary of all public comments received on the STP, and to clearly- indicate whether the state made any changes to the STP based on each group of comments.

State's Response: The state updated their responses to public input to fully respond and indicate if changes were made as a result of the comment, or why no changes were made.

- **Links:** CMS asked the state to provide the links to the POS Development Manual (online training Resource Guide), SPA Solicitation 2014, 3.3 Self-Direction, and the CFC Questionnaire-LTSS Tracking System that are referenced in the systemic assessment.

State's Response: The state included the links in the systemic assessment. They also indicated the POS Development Manual is being updated and the CFC Questionnaire was uploaded to the state website.

- **Systemic Assessment:** CMS requested the state complete the following as it worked to finalize its systemic assessment:
 - Include the web link for each standard identified in the crosswalk.
 - Include an assessment of all statutes applicable to home and community-based settings in the crosswalk or in a narrative section of the STP.
 - Explain the analysis of the waiver applications for compliance with the federal setting criteria, as waiver provisions are contract terms between the state and CMS, not state standards that can be used to regulate provider conduct.
 - Remove the portions of the crosswalk titled "Person Centered Planning Process," regulations # 1-9 as they are not regulations that pertain to the transition of settings.
 - Maintain the items of the crosswalk titled "Person-Centered Service Plan- Modifications for Restrictive Techniques," regulations # 16-16i, as these regulations do pertain to the transition period and therefore need to be assessed for compliance within the statewide transition plan.
 - Clarify if the reference to the Developmental Disabilities Statute- General Health Article falls under COMAR on page 50 of the STP.

State's Response: The state included the web links for each standard identified and the assessment of the statutes. The state removed the waiver application portions of the crosswalk and also removed the person-centered planning portions of the systemic assessment that do not apply. The state also clarified that the Developmental Disabilities Statute- General Health Article does not fall under COMAR but the statute is from the state legislature and provides agencies the authority to implement detailed regulations that apply to state programs which are bound by COMAR.

- **Service Settings:** CMS asked the state to identify in each of their crosswalks under “Service Setting,” and “Provider Owned or Controlled Settings,” which settings the assessment pertains to.

State’s Response: The state included Shared Living in their crosswalks as a setting and further clarified the setting in their narrative. They also moved Shared Living in the narrative to the section of settings that will need further review for compliance. The state also more clearly defined in their narrative section the settings in which Therapeutic Integration, and Intensive Therapeutic Integration, and Community Learning Services can be delivered.

- **Systemic Remediation:** CMS requested the state include additional details on the specific steps the state proposed to take and what language changes to standards were being proposed to rectify/address each of the relevant standards that the state identified as either being in conflict with, partially compliant with, or silent on required elements of the home and community-based settings criteria.

State’s Response: The state is in the process of developing an overarching regulation, COMAR 10.09.36 that will comply with all of the settings criteria listed out on pg. 3- 4 of the STP and will apply to all providers and settings in their HCBS programs.

- The state found that COMAR 10.07.14.35A(8), an assisted living program regulation that requires a setting to ensure freedom from physical and chemical restraints, was compliant with the settings criterion of “ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint”. CMS found the regulation to be partially compliant. The state was asked to propose additional remediation.

State’s Response: The state clarified the overarching regulation will remediate the issue. Additionally the state plans to send all waiver providers policy guidance reminding them that individuals have the right to be free from restraint and reiterate “restraint” includes mechanical, physical and chemical restraints. The state plans to complete this on or before September 1, 2017.

- **Appendix G, Home and Community-Based Options Waiver:** CMS requested the state indicate how they are compliant with several settings criteria based on the cited standards of the SPA Solicitation 2014, 3.3 Self-Direction; 3.4 Services to Applicants, and CFC Questionnaire- LTSS tracking system.

State’s Response: The state clarified they included these items because they show how the state is measuring and verifying compliance with certain aspects of the settings criteria and were not intended to be the remediation strategy; rather, the overarching rule, COMAR 10.09.36, would apply as the demonstration of compliance.