

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

February 12, 2019

Marie Zimmerman
Medicaid Director
State of Minnesota, Department of Human Services
540 Cedar Street PO Box 64983
St. Paul, MN 55167-0983

Dear Ms. Zimmerman:

I am writing to inform you that CMS is granting Minnesota **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 June 2, 2017, the state worked diligently in making a series of 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, 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 December 17, 2018, CMS provided additional feedback on January 17, 2019, and requested several technical changes be made to the STP in order for the state to receive final approval. The state subsequently addressed all issues and resubmitted an updated version on February 8, 2019. 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 proposed milestones;
2. Discussing challenges and potential strategies for addressing issues that may arise during the state's remediation process;
3. Adjusting the state's process as needed to assure that all sites meeting the categories of presumed institutional settings¹ have been identified, reflecting how the state has assessed settings based on each of the three categories, and describing 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 for 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

¹CMS 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 MINNESOTA AS REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL

(Detailed list of technical changes made to the STP since December 17, 2018)

Site-Specific Assessment & Validation

- Provided the status of next steps for the individuals who were impacted by the 43 settings that opted out of the HCBS program. (p. 35-36)
- Provided the state's actions to support next steps for beneficiaries receiving services in the 11 settings that did not respond to the initial HCBS Provider Attestation. (p. 36)
- Updated the STP to reflect that 5,937 Provider Attestations were received and desk audits were conducted for all of those Provider Attestations. (p. 34)
- Clarified that the new provider enrollment process was designed and implemented and provided additional information regarding timeframes for enrollment. (p. 68-69)
- Clarified that new providers that meet one or more of the criteria for institutional presumption will require further evaluation by the state prior to enrollment and delivery of HCBS. (p. 55)

Heightened Scrutiny

- Confirmed that onsite reviews will be conducted for all settings identified for heightened scrutiny. The number of onsite reviews to be completed was corrected to align with the number of settings presumed to not be home and community-based identified in tables 8, 9, 10 and 11. (p. 43)