

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Disabled & Elderly Health Programs Group

March 29, 2017

Jennifer Tidball
Acting Director
MO Department of Social Services
615 Howerton Court, P.O. Box 6500
Jefferson City, MO 65102

Dear Dr. Parks:

This letter is to inform you that CMS is granting Missouri **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 responded to and summarized the comments in the STP submitted to CMS.

After reviewing the October 2016 draft submitted by the state, CMS provided additional feedback on December 29, 2016 and February 28, 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 March 24, 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 spot-check of 50% 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 Missouri'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 ;
- 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 the end of the transition period; 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 Missouri 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) or Amanda Hill (410-786-2457 or Amanda.Hill@cms.hhs.gov) at your earliest convenience to confirm the date that Missouri 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 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 MISSOURI TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 3/24/2017

Public Notice and Engagement: While the state included detailed information on the public comment period from July 29, 2016-September 30, 2016, CMS had the following concerns:

- The state’s systemic assessment crosswalks were not included in the STP itself or on the same webpage in which the STP was posted for public comment, however the state included links to two crosswalks on p. 8 of the STP. CMS asked the state to confirm that fulfilling a request for a non-electronic copy of the STP would have also included the separate crosswalks.
- The *STP Public Comments Summarized* document stated that “Public comment was taken from June 29, 2016 through July 29, 2016”. However, it also indicated that notice of the STP was published in several newspapers on July 29, 2016, allowing a 30 day comment period. Additionally, the STP said that stakeholders were contacted directly to inform them of the opportunity to provide public comment, which began on July 29, 2016 and was completed on September 30, 2016. CMS asked the state to clarify in the *STP Public Comments Summarized* document if the comments received after July 29, 2016 are included within the document. If they were not included, CMS asked the state to add a summary of those comments. CMS also asked the state to resubmit the public comment document with the updates with the next submission of the STP.

State Response: The state confirmed in its *MO_Systemic_Assessment_Feedback response* document submitted on 2/1/2017 with the STP that a request for a non-electronic copy of the STP would have included the separate crosswalks. The state also noted that the *STP Public Comments Summarized* document submitted in October 2016 contained an error in the statement “Public comment was taken from June 29, 2016 through July 29, 2016”. The actual dates for the public comment period were July 29, 2016 through August 28, 2016. The comments received through September 30, 2016 were included in the *STP Public Comments Summarized* document. The state corrected the *STP Public Comments Summarized* document and resubmitted the document as requested.

Settings Included in Analysis: CMS asked the state to explain the omission of Group Home, Shared Living, and Day Habilitation from the STP. CMS further requested the state to include its clarification from the *MO_Systemic_Assessment_Feedback response* document that Residential Habilitation settings include Group Home, Individualized Supported Living, and Shared Living in the STP and include the clarification that non-residential settings includes Day Habilitation in the STP itself. CMS also asked the state to clarify the settings in which services are provided in the Partnership for Hope Waiver.

State Response: The state clarified that for the Department of Mental Health (DMH) waivers, residential habilitation settings include Group Home, ISL, and Shared Living. The state also clarified that non-residential settings include Day Habilitation. This information was included in the STP.

Additional Settings: CMS asked the state to clarify that out of home respite provided in an intermediate care facility for individuals with intellectual disabilities (ICF/ID) or State Habilitation Center cannot exceed 30 days consecutively and to describe the exception process, if applicable, that would allow for an extended stay if allowed by the state. CMS also asked the state to clarify that temporary residential care that is provided in an ICF/ID or State Habilitation Center cannot exceed 30 days consecutively and to describe the exceptions process, if applicable, for an extended stay if allowed by the state.

State Response: The state clarified in the STP that out of home respite and temporary residential services provided in an ICF/ID or State Habilitation Center cannot exceed 30 days consecutively.

Non-functioning Links: CMS noted that some of the links in the crosswalks were not functioning (e.g., the links to the Medically Fragile Adult Waiver Manual and Aged and Disabled Waiver Manual). The links in the HCBS Policy Crosswalk to access copies of proposed regulations (9 CSR 45-7.040 in row 17 and 9 CSR 45-7.030 in row 16) were to the wrong page on the state's website. CMS requested that the state correct these issues.

State Response: The state updated links in the crosswalks, including the links to the Medically Fragile Adult Waiver Manual and Aged and Disabled Waiver Manual.

Missing Language in Crosswalks: CMS also noted that state did not include sections or page numbers for many of its standards, and did not clearly identify the specific language in its standards and policy documents that it found compliant.

State Response: The state updated the policy crosswalks to include additional sections and page numbers with the specific language they found compliant.

Systemic Assessment Results: A spot check of Missouri's crosswalk was completed by CMS. As a result, a number of instances where CMS did not agree with the state's findings were identified. CMS asked the state to revisit its systemic assessment as a whole to ensure that all determinations were accurate with regard to each component of each federal requirement. Specific examples from the spot check were sent to the state:

Department of Health and Senior Services (DHSS) State Standards Crosswalk

- CMS requested the state replace 19 CSR 30-90-30 with 19 CSR 30-90-50 in its DHHS crosswalk for the Adult Day Care Waiver (ADCW) and Aged and Disabled Waiver (ADW)/Adult Day Care Setting. The referenced Participants' Rights regulation, 19 CSR 30-90-30 was expired. The copy of 19 CSR 30-90 that was accessed through the link in the crosswalk was dated 11/30/01 and was out-of-date. Chapter 90 was amended in March 30, 2005. Under the current version of Chapter 90, the text of section 30-90-030 is now in 30-90-050 and 30-90-030 no longer exists.

State Response: The state updated the crosswalk accordingly.

- State of Missouri MO HealthNet Medically Fragile Adult Waiver Manual: CMS did not agree with the state’s finding of compliance for the following federal regulations:
 - The setting is integrated in and supports full access to the community – CMS found that the regulation was partially compliant because it needed more specificity. The manual cited did not speak to integration and full access to the community.
 - The setting facilitates individual choice regarding services and supports and who provides them – CMS found that the regulation was partially compliant because this provision concerns procedures for obtaining prior authorization for services. It didn’t necessarily facilitate choice.

State Response: The state reported that it is in the process of revising all MO HealthNet Waiver Provider Manuals, including the Medically Fragile Adult Waiver Manual to include the requirements of the final rule. The state indicated that this process should be completed by July 1, 2017. The state updated the crosswalk to indicate partial compliance and added the date to be completed in the “Changes Needed and Remediation/Milestone” column.

- Crosswalk for the ADW, AIDS Waiver, and Medically Fragile Adult Waiver (MFAW): CMS did not agree that 19 CSR 15-7 was compliant regarding the requirement that “The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting,” rather it was silent. CMS asked the state to propose remediation.

State Response: The state updated the crosswalk accordingly.

DMH State Standards Crosswalk

- Directive 5.060, Enrollment of New Providers: CMS indicated that the updated directive and provider enrollment application was not included as indicated. CMS asked the state to provide the documents referenced.

State Response: The state clarified in the *MO_Systemic_Assessment_Feedback_response* document that the directive will be revised to include a provider enrollment application link on page 2, Section 1.A.1 for applicants seeking a contract with the division. The state indicated that the provider enrollment application includes the HCBS settings requirements and requires providers to attest that their organization will be in compliance with the HCBS rule (Page 10 – 11, Sections 1.45 and 1.46; Page 13, Sections 2.3 – 2.7; and Page 20, Section 7.1). According to the state, the revised directive will also be updated to include provider requirements for “Attending all sessions of the DMH approved provider enrollment process training and orientation to include training on the HCBS final rule” on page 3, Section 9a. The state updated the HCBS policy crosswalk to include this information.

- MO HealthNet Provider Waiver Manual: CMS informed the state the manual did not provide for individuals to choose from among non-disability specific settings and suggested it could be remediated by affirming in the remediation section that the overarching rule will apply.

State Response: The state has made the correction by adding the following sentence to the crosswalk in this section: “Additionally, the proposed 13 CSR 70 will require choice from among setting options, including non-disability specific settings.”

- Guideline #55 Provider Relations Review; the state had indicated that Guideline #55 Provider Relations Review, was determined to be no longer applicable to the systemic assessment. CMS asked the state to remove it from the crosswalk since it was not applicable.

State Response: The state deleted this from the crosswalk.

- State Contracts: The contracts had not been updated per the link provided. CMS requested the state either provide the correct link for the contracts or amend language in the remediation section to align with current actions.

State Response: The milestone dates for state contracts have been revised to align with actions taking place.

- Missouri 9 CSR 45-3.090 Behavior supports: CMS asked the state to clarify how this regulation relates to individuals receiving HCBS, and why it had not been included in the crosswalk.

State Response: The state explained Missouri 9 CSR 45-3.090 is a draft regulation setting forth requirements for providers of home and community-based waiver services. It assures the rights of individuals to receive best practice behavior strategies that lead to greater independence and enhanced quality of life. This rule describes the Division’s oversight of behavior supports, establishes behavior supports review committee, and describes the role and function of behavior support committees. Currently, these requirements are set forth in Division Directive 4.300 which is included in the crosswalk. The draft regulation was also added to the crosswalk.

Systemic Remediation Milestones: Missouri included remediation actions in its systemic assessment crosswalks and STP. CMS requested that the state include dates for each of the remediation activity milestones to include information regarding how and when training will be provided to appropriate DMH and DHSS staff members.

State Response: The state informed CMS that Missouri Code of State Regulation (CSR) Filing and Provider Manuals, Policies, and Procedures Revisions milestones include specific milestone dates in the HCBS Policy Crosswalk and general begin and end dates in the STP. The state updated the Incorporate Education and HCBS Waiver Compliance Understanding into Provider Enrollment milestone on page 24 in the STP to include milestone dates, which began on August 17, 2015 and continue on an on-going basis. The state revised the Provider Update Meetings and Trainings milestone on page 25 of the STP to include a link to the website for education and trainings which includes a full list of all training dates.

Systemic Remediation-Proposed Overarching Rule: CMS also noted that within the STP and the DHSS crosswalk, the state said that it was developing an “overarching HCBS Waiver Administration rule that details the CMS HCBS settings characteristics required for all HCBS

settings and to which settings it will apply.” However, CMS indicated that it was not clear if the overarching rule applies to all HCBS settings or only those settings utilized by the waivers under the DHSS authority. CMS asked the state to clarify if the rule applies to all HCBS waivers, indicate in the remediation when the overarching rule applies, and to provide a copy of the draft language for the rule. CMS reviewed the draft copy and provided the feedback that the state’s definition of provider owned or controlled residential setting outlined only one of the requirements that must be met by a provider owned or controlled residential setting and was not by itself a definition. The state was asked to correct this issue.

State Response: The state proposed adoption of an overarching rule 13 CSR 70-XX, Home and Community-Based Services Waiver Settings, and attached a draft of this proposed rule to its response to CMS’ feedback letter submitted on 2/1/2017. The proposed rule includes the exact text of the federal setting rules. According to p. 6 of the state’s *MO_Systemic_Assessment_Feedback_response* document, the proposed regulation is applicable to all HCBS waiver settings. Therefore, the proposed overarching rule is sufficient to remediate all of the state’s partially compliant and silent standards across all waivers. The state updated The Regulation and Policy Crosswalk to include the proposed overarching rule. They also amended the overarching rule to redefine provider owned or controlled residential settings as, “a setting in which the individual resides is a specific physical place that is owned, co-owned, and/or operated by a provider of HCBS.”

Systemic Remediation-Adult Day Care Settings: CMS noted that the STP and DHSS crosswalk indicated that the Policy and Procedure Manual Adult Day Care Centers: Child and Adult Care Food Program (CAFP) are considered non-compliant and indicates for remediation DHSS will continue to work with partners to address the inconsistencies. CMS asked the state to provide more details as to how and when the state would ensure that all of the adult day care settings complied with regulatory requirements. CMS asked the state to include this information in the remediation section of the crosswalk as well as a reference to the state’s new overarching rule to complete the remediation section.

State Response: The state clarified that Child and Adult Care Food Program Manager, DHSS and MMAC are meeting to develop a collaborative plan to address the issues of non-compliance and remediation. The state indicated that programs will work together to provide education by December 2017 to Adult Day Care Centers on how to address participant choice while still meeting CAFD guidelines. The state updated the crosswalk accordingly.