

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 14, 2018

Marie Matthews  
State Medicaid Director  
Montana Department of Public Health and Human Services  
111 North Sanders, PO Box 4210  
Helena, MT 59604

Dear Ms. Matthews:

In follow-up to the 12/23/16 initial approval granted to Montana's Home & Community Based Services (HCBS) Statewide Transition Plan (STP), CMS provided additional detailed feedback to the state to assist with final approval and implementation of its STP. CMS acknowledges that since this technical assistance was provided, work has continued within the state to bring settings into compliance and further develop the STP; however, a summary of this feedback is attached for reference to assist in the state's efforts as it works towards final approval.

As a reminder, in order to receive final approval, the STP should include:

- A comprehensive summary of completed site-specific assessments of all HCBS settings, validation of those assessment results, and inclusion of the aggregate outcomes of these activities;
- Draft remediation strategies and a corresponding timeline for resolving issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the HCBS settings transition period (March 17, 2022);
- A detailed plan for identifying settings presumed to have institutional characteristics, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- A process for communicating with beneficiaries currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings rule by March 17, 2022; and

- A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the federal settings criteria in the future.

Prior to submitting the updated version of the STP for consideration of final approval, the state will need to issue the STP for a minimum 30-day public comment period. I want to personally thank the state for its efforts thus far on the HCBS STP, and look forward to the next iteration of the STP that addresses the feedback in the attachment.

Sincerely,

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

## ATTACHMENT

**Additional CMS feedback on areas where improvement is needed by the state of Montana in order to receive final approval of the HCBS Statewide Transition Plan**

*PLEASE NOTE: It is anticipated that the state will need to go out for public comment again once these changes are made and prior to resubmitting to CMS for final approval. The state is requested to provide a timeline and anticipated date for resubmission for final approval as soon as possible.*

### Site-Specific Assessments

CMS requests that the state provide the following information regarding the site-specific assessment process:

- ***Provider Self-Assessments:*** Please confirm whether a self-assessment was completed for each discrete setting operated by a provider, or whether the self-assessments were limited to a provider-level.
- ***Onsite Validation Sample Selection:*** Please outline how the state validated the results of the provider self-assessments for any setting that was not selected for an onsite review. The STP discusses a process for remediation with respect to the findings of the provider self-assessment, but not a method for validating those findings for settings that do not receive an onsite review.
- ***Participant/Member Surveys:***
  - Please verify whether member/participant surveys are being used as part of the initial validation process of setting compliance or rather as part of the state's longer-term monitoring process for ongoing compliance and member satisfaction.
  - Please confirm the number or percentage of participants in each setting who will have the opportunity to complete the member survey and how the individuals will be selected to participate.
  - Please provide additional details regarding (a) the modes by which the survey will be provided (online, in person, in writing, etc.); (b) who will be available to assist members in completing the participant survey; and (c) how the state will assure confidentiality of the individuals' responses.
  - Please explain how the state will address any discrepancies in provider compliance with the settings criteria between what is reported in the provider self-assessment responses and participant/member survey responses.
- ***Group Services:*** As a reminder, any setting in which individuals are clustered or grouped together for the purposes of receiving HCBS must be assessed and validated by the state for compliance with the rule. This includes all group residential and non-residential settings (including but not limited to prevocational services, group supported employment and group day habilitation activities). The state may presume that any setting where individualized services are being provided in typical community settings

comport with the rule. Please confirm that the STP accurately includes all group residential and non-residential settings in its assessment and validation activities.

- ***Non-Disability Specific Settings:*** Please provide clarity on the manner in which the state will ensure that beneficiaries have access to services in non-disability specific settings among their service options for both residential and non-residential services. The STP should also indicate the steps the state is taking to build capacity among providers to increase access to non-disability specific setting options across home and community-based services.
- ***Individual, Private Homes:*** The state may make the presumption that privately owned or rented homes and apartments of people living with family members, friends, or roommates meet the home and community-based settings criteria if they are integrated in typical community neighborhoods where people who do not receive home and community-based services also reside. A state will generally not be required to verify this presumption. However, the state must outline what it will do to monitor compliance of this category of settings with the regulatory criteria over time. CMS requests that Montana provide additional details about its strategy for compliance monitoring of these settings. Note, settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual), are considered provider-owned or -controlled settings and should be evaluated as such.
- ***Reverse Integration Strategies:*** As CMS has previously noted, states cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting. Compliance requires a plan to integrate beneficiaries into the broader community. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries is not considered by CMS by itself to be a sufficient strategy for complying with the community integration requirements outlined in the HCBS settings rule. Under the rule, with respect to non-residential settings providing day activities, the setting should ensure that individuals have the opportunity to interact with the broader community of non-HCBS recipients and provide opportunities to participate in activities that are not solely designed for people with disabilities or HCBS beneficiaries that are aging but rather for the broader community.

### **Site-Specific Remedial Actions**

In Section 6 of the STP, the state indicates that provider manual revisions will be completed July 1, 2018. CMS requests clarification in regard to how providers are being trained on the settings criteria in a timely manner to ensure compliance.

### **Monitoring of Settings**

Please provide the following additional information about the monitoring of settings:

- The state notes it is making amendments to the monitoring process; however, it is unclear when these amendments will occur. The state indicates the monitoring process began on 6/01/2016 and is ongoing for all settings; the state should clarify when the amendments will be finalized within this timeframe.

### **Heightened Scrutiny**

As a reminder, the state must clearly lay out its process for identifying settings that are presumed to have the qualities of an institution. These are settings for which the state must submit information for the heightened scrutiny process if the state determines, through its assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution. If the state determines it will not submit information on a presumptively institutional setting, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved. Please only submit those settings under heightened scrutiny that the state believes will overcome any institutional characteristics and can comply with the federal HCBS rule. Please include further details about the criteria or deciding factors that will be used consistently across reviewers to make a final determination regarding whether or not to move a setting forward to CMS for heightened scrutiny review. There are state examples of heightened scrutiny processes available upon request, as well as several tools and sub-regulatory guidance on this topic available online at <http://www.medicaid.gov/HCBS>.