

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**

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December 23, 2016

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

Dear Ms. Dalton:

This letter is to inform you that CMS is granting Montana **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 draft submitted by the state, CMS provided additional feedback on October 11, 2016 and December 15, 2016 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 December 21, 2016. 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 Montana'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 Montana 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 receiving this detailed feedback, CMS requests that the state please contact Susie Cummins (206-615-2078 or [Susan.Cummins@cms.hhs.gov](mailto:Susan.Cummins@cms.hhs.gov)) or Michele MacKenzie (410-786-5929 or [Michele.MacKenzie@cms.hhs.gov](mailto:Michele.MacKenzie@cms.hhs.gov)) at your earliest convenience to confirm the date that Montana 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](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 MONTANA TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED DECEMBER 21, 2016

**Public Comment:** The information about the most recent public comment period was provided separately, however it needs to be included in the STP.

**State Response:** This information has been added to the STP, Section 1 Public Comment.

**Waivers and Settings Included in the STP:** In the crosswalk, the state has listed settings and services as interchangeable. The state was asked to clarify in the STP what setting types were included for each waiver.

Additionally, when CMS compared the services for all of Montana's approved waivers, it was found that for the Comprehensive Home and Community Based Waiver for Individuals with Developmental Disabilities and the Home and Community Based Waiver Program for Adults with Severe Disabling Mental Illness the state did not include group employment settings. The state was asked to incorporate these settings into the STP.

Lastly, the state noted that under the Children's Autism Waiver, "A majority of services are delivered in the home." While the state has identified that private homes are presumed to be compliant, it was unclear if every service is provided in the private home. The state was asked to include all services that are provided under this waiver and where they are provided.

**State Response:** In Section 4-A Program Administration ARM, the state added in parentheses the services provided in each setting listed and/or the settings in which each service is provided, including the group employment settings. The state also added information about the Children's Autism Waiver, which is being phased out over the next three years. The state confirmed that all services under the Children's Autism Waiver are provided in the child's private home or in a community setting.

**Systemic Assessment Crosswalk:** CMS requested the state submit a crosswalk including the title, code, and web link for each policy identified; a general description of each policy and its relevance to the home and community-based settings rule; the key aspects of the home and community-based settings rule that should be taken into consideration when reviewing the specific policy; and each section of the policy that either aligns with, conflicts with, or is silent on the requirements of the home and community-based settings rule.

**State's Response:** In Section 4-B Crosswalk with Federal Regulations, the state included the assessment results for each waiver as well as the title, code, and web link for each standard identified.

**Systemic Assessment Crosswalk:** It appears that the state only assessed compliance with the first part of the federal requirement concerning leases between settings and individuals, 42 CFR §441.301(c)(4)(vi) (pp. 33-42) and not the second portion, which requires that individuals have, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city, or other designated entity. The state was asked to include an assessment of the complete requirement in its crosswalk.

It also appears that the state assessed compliance with only the first requirement of the federal rule concerning integration and access to the greater community, 42 CFR §441.301(c)(4)(i) (pp.

9-18), and omitted an assessment of the remaining requirements (i.e., opportunities to seek employment, engage in community life, control personal resources, and receive services to the same degree as individuals not receiving HCBS). The state was asked to include an assessment of the complete requirement in its crosswalk.

Additionally, the state assessed compliance with the provision that requires settings to ensure individuals have privacy in their sleeping or living unit, 42 CFR §441.301(c)(4)(vi)(B) (pp. 33-42), but it appears the state did not assess compliance with the three subsections of that regulation that pertain to lockable living unit doors, a choice of roommates, and the freedom to furnish and decorate one's living unit. These subsections establish important rights for individuals that the state must explicitly address in its standards. The state was asked to include these sections in the STP.

**State Response:** In Section 4-B Crosswalk with Federal Regulations, Montana has added to the title the statement, "Federal Regulations are summarized in headings, however all subsections of regulations are included in determination of compliance of state rules and regulations with Federal Regulations".

**Systemic Assessment Results:** While the state identified standards that are compliant, as well as standards that are silent or non-compliant with the federal settings requirements, the plan did not provide an explanation or rationale for its findings of compliance. For example, on p. 9 of the STP, the state finds that one of its residential habilitation regulations, 37.34.972, is in compliance with federal rule 42 C.F.R § 441.301(c)(4)(i). However, the state did not explain the basis on which it reached that conclusion.

In several places in the crosswalk (see pp. 13, 25, 37, and 49), the state concluded that its Children's Mental Health Bureau (CMHB) Medicaid Services Provider manual is compliant with the federal setting rules. However, the state did not reference any page or section numbers in the CMHB manual, nor did it provide any explanations for its compliance determinations. The state was asked to provide this information.

**State Response:** The state has provided the requested clarification in Section 4-B Crosswalk with Federal Regulations.

**Systemic Remediation Language:** For many of the standards that the state found to be silent, partially compliant, or non-compliant, the state's proposed remediation was to "explicitly state" the federal setting rule. It was unclear how the state will amend the standards that require remediation to meet the federal requirement.

**State Response:** During a call between CMS and the state on December 20, 2016, the state explained that the individual rules and policy will be updated to come into compliance with the federal HCBS settings regulations in addition to overarching changes that will be made in the 1915(i) policy manual and licensing requirements. The state has added a clarifying statement in Section 4-b Crosswalk with Federal Regulations that says, "The Administrative Rules which are silent, partially compliant or non-compliant will be amended to come into compliance with the applicable Federal Regulations". Furthermore, the process for making these updates is described in Section 4-C Administration ARM.