

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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August 10, 2017

Ms. Becky Pasternik-Ikard  
Director  
Oklahoma Health Care Authority  
4345 North Lincoln Boulevard  
Oklahoma City, OK 73105

Dear Ms. Pasternik-Ikard

I am writing to inform you that CMS is granting Oklahoma **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 December 28, 2016, the state worked diligently in making a series of technical 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, and 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, 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 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 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 February 1, 2017 and the June 20, 2017 STPs submitted by the state, CMS provided additional feedback on May 8, 2017 and July 18, 2017, respectively, and requested several technical changes be made to the STP in order for the state to receive final approval. These changes did not necessitate another public comment period. The state subsequently addressed all issues and resubmitted an updated version on August 07, 2017. 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 its proposed milestones;
2. Discussing challenges and potential strategies for addressing issues that may arise during the state's remediation processes;
3. Adjusting the state's process as needed to assure that all sites meeting the regulation's categories of presumed institutional settings<sup>1</sup> have been identified and that it reflects how the state has assessed settings based on each of the three categories and 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](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 or will be submitted by the state under 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.

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<sup>1</sup> CMS describes heightened scrutiny as being required for three types 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.

Sincerely,

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

## **SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF OKLAHOMA AS REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL**

**(Detailed list of technical changes made to the STP since February 1, 2017)**

### **Inclusion of State's HCBS Settings in Assessment & Validation Activities**

- Clarified the nine distinct settings utilized among Home and Community Based Waiver members across the six waiver programs, not including the member-owned or family-owned home. Each category was listed and defined and represents a separate setting, to include nursing facility level of care (NFLOC) waiver's Assisted Living and Adult Day Health Centers and for the intermediate care facility/intellectual disability level of care (ICF/ID) Waiver's Agency Companion, Specialized Foster Care, Daily Living Supports, Group Home Services, Adult Day Health, Supported Employment and Prevocational Services. (pgs. 4, 5)

### **NFLOC Waiver Site-Specific Setting Assessment & Validation Activities**

- Provided additional details on sampling for the member survey and verified the sample reflects members from each setting being reviewed and that the feedback can be linked back to specific settings. (p. 8)

### **ICF-ID Waivers Site-Specific Setting Assessment & Validation Activities**

- Based on communications with CMS, affirmed confidence on the initial high compliance rates reported on provider surveys during the initial assessment process in 2015.
- Confirmed the new case management assessment review tool includes questions pertaining to all of the HCBS settings criteria and further explained its use. (pgs. 21-22)
- Clarified that even though the performance review is conducted at a provider agency level, the review includes all individual settings and locations in the review process and that all HCBS settings criteria are included during onsite visits. (pgs. 22, 24)
- Amended response to comment #4 to include a more robust response to the commenters' concerns. (p. 97)

### **Group Settings**

- Confirmed in the ICF/ID waivers that all settings that group or cluster individuals for the purposes of receiving HCBS are assessed by the state for compliance and the process is outlined in the Assessment Methodology & Continued Monitoring section. (pgs. 21- 22)

### **Reverse Integration**

- Confirmed that the state is educating providers regarding their requirements for assuring access of beneficiaries to the broader community to avoid reverse integration being considered a sufficient strategy for community integration. (p. 10)

### **Individual, Private Homes**

- Added information to the staff training and protocol to review a beneficiary's living situation to determine if the beneficiary is living in a home owned by an unrelated paid caregiver, which if discovered will be evaluated as a provider-owned or controlled setting by the Department of Human Services (DHS) for the NFLOC waiver. (p. 10) For the ICF/ID waivers, case managers ensure all service recipients' living arrangements are monitored and also updated when changes occur. The annual performance survey conducted by quality assurance (QA) will include individual private homes. (p. 23)

### **Aggregation of Final Validation Results**

- Updated the information in Appendix E & G with final validation results for SFY 16. (pgs. 81 and 88)
- Included additional clarification with the *ICF/ID Settings & Compliance Grid* (p. 87) that confirms the chart includes results for all settings for 2016, and that all of the settings criteria were included in the survey tool.

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

- Included additional information regarding the remediation plan for settings under the ICF/ID waivers requiring modifications to fully comply with the federal HCBS rule waivers. (pgs. 23-25)
- Added a timeline for completion of the Oklahoma Health Care Authority (OHCA) and DHS processes for communication with NF LOC waiver beneficiaries, including interim milestones. (pgs. 13, 17-18)
- Included an explanation of the process for the Department of Health Services Developmental Disabilities Services (DHS DDS) division for the ICF/ID waivers that explains how individuals will have informed choice among qualified providers and settings. (pgs. 24, 26)
- Included additional detail of the interim steps/milestones for DHS DDS for the ICF/ID waivers transition processes to ensure individuals are identified and supported. (pgs. 24, 26, 30)
- Clarified the options available for beneficiaries currently receiving HCBS in any assisted living facility or adult day care center that cannot come into compliance with the federal requirements by the end of 2022, and reinforced that alternative community-based residential and non-residential options will be available to HCBS recipients. (pgs. 13, 14)

### **Non-Disability Specific Settings**

- Provided 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. (p. 25)
- Described how the state has enhanced capacity of existing providers and also developed new providers to establish non-disability specific settings, as well as outlined any

incentives or strategies the state developed to encourage the development of additional non-disability specific setting options across relevant service categories. (p. 25)

### **Monitoring of Settings**

- Provided more specific details regarding the ongoing training and technical assistance the state has provided to various personnel that are involved in monitoring ongoing setting compliance with the HCBS settings criteria. (p. 9, 10, 12, 22, 25, and Appendix J)

### **Heightened Scrutiny**

- Clarified the method the state used to identify settings that are institutional in nature based on location (prongs 1 and 2), as well as settings that have the qualities of isolating HCBS beneficiaries (prong 3). (pgs. 19, 32)
- Clarified the state does not intend to submit additional settings for heightened scrutiny, aside from the previously submitted six settings listed in Appendix F on p. 83.
- Provided clarification on how the final decision will be made on whether or not to move a setting to CMS for heightened scrutiny review, including the determining factors that result in the decision to move the packet forward. (pgs. 19-20, 32-33)
- Provided a brief description of the individuals that participate in the Long Term Care Quality Improvement Committee (LTCQIC) meetings when settings are being reviewed to determine if they should move to CMS for heightened scrutiny. (p. 19, 32)
- Provided additional information to identify the setting type for each setting listed for heightened scrutiny and included a confirmation of which settings have been validated by the state as being fully compliant with the HCBS settings criteria and which settings are still working on the remediation plan to come into compliance. (Appendix F, p. 83-84)
- Updated the “reason” column in the *Locations Identified to Have Institutional Qualities* chart in Appendix H to make clear the locations identified, that upon further review, did not in fact meet the second or third prong of heightened scrutiny and therefore are no longer being considered for submission under heightened scrutiny. (Appendix H, p. 90)
- Included a description with the heightened scrutiny chart in Appendix H that describes (a) how the state initially identified settings as potentially meeting the characteristics of an institutional setting; and (b) the rationale behind how all of the settings initially flagged as falling under one of the three prongs that would trigger heightened scrutiny were later determined by the state to not meet the criteria under any of the three prongs, therefore not necessitating heightened scrutiny. (p. 33 and Appendix H, p. 90)