

Disabled & Elderly Health Programs Group

February 27, 2019

Lori Coyner
Medicaid Director
State of Oregon, Oregon Health Authority
500 Summer Street, NE E49
Salem, OR 97301

Dear Ms. Coyner:

I am writing to inform you that CMS is granting Oregon **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 November 2, 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, 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 January 2, 2019, CMS provided additional feedback on January 18, 2019 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 February 25, 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 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 settings¹ have been identified, 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.

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 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.

Sincerely,

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

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

(Detailed list of technical changes made to the STP since January 2, 2019)

Site-Specific Assessment/Validation & Remediation Process

- Clarified the Office of Developmental Disability Services onsite employment specialist reviews those settings for compliance with all of the HCBS settings criteria. (p. 89)
- Clarified that all settings in which individuals are grouped or clustered for receiving HCBS employment services were assessed for compliance with the settings rule and that individuals receiving these services experience the settings to the same degree as those not receiving HCBS. (p. 87-89)
- Added the aggregated settings' compliance to the STP and broke them down into compliance categories by setting type; clarified the non-facility based community living supports are delivered in individual's private homes and typical community settings. (p. 45-48)
- Ensured the overall timelines and agency specific timelines are consistent throughout the STP.

Heightened Scrutiny

- Clarified the process through which a determination will be made about whether to move a setting forward for heightened scrutiny review. (p. 69)
- Clarified for those individuals who are not able to independently bypass any mechanisms of delayed egress but do not require a setting's secure measures, that their person-centered service plan would address how staff will be used to support the individuals to ensure the individual's ability to leave the setting and access the community. (p. 70)
- Clarified in the Office of Developmental Disability Services program, as in other programs, a system is in place for all interested stakeholders to report on settings that isolate. (p. 77-78)