



## Disabled & Elderly Health Programs Group

---

April 13, 2016

### **Darin J. Gordon**

*Director of TennCare*

Deputy Commissioner, State of Tennessee, Department of Finance and Administration  
310 Great Circle Road  
Nashville, TN 37243

Dear Mr. Gordon,

I am writing to inform you that CMS is granting Tennessee both initial and 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). Approval is granted because the state completed its systemic assessment, included the outcomes of this assessment in the STP, and clearly outlined remediation strategies to rectify issues that the systemic assessment uncovered, such as legislative changes and changes to contracts, and is actively working on those steps. In addition, the state has also completed its site-specific assessment, included the outcomes of this assessment in the STP, outlined remediation strategies to rectify issues that the site-specific assessment uncovered, and laid out its heightened scrutiny, ongoing monitoring and relocation processes. The state has laid out a comprehensive validation process for the site-specific assessment involving managed care organizations, the Department of Intellectual and Developmental Disabilities (the Operational Administrative Agency for the state's waivers), and the Bureau of TennCare. The STP includes a summary of the outcomes of the site-specific assessments and an overview of, and timeline for, the plans for site-specific remediation. Finally, the STP includes a detailed plan for identifying settings that are presumed to have institutional characteristics, a plan for evaluating and applying for heightened scrutiny, a plan for relocating beneficiaries in the event that a setting cannot or will not come into compliance with the federal requirements, and a plan for ongoing monitoring of continued compliance.

Please note that following this approval, the state must provide quarterly written updates and participate in quarterly phone discussions with the CMS team to review the state's progress in implementing the STP. In addition, the state must work collaboratively with CMS to identify any areas that may need strengthening with respect to the state's remediation, relocation, and heightened scrutiny processes as the state implements each of these key elements of the transition plan. The quarterly discussions and updates 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 and relocation processes;

3. Adjusting the heightened scrutiny process as needed to assure that all sites under each of the three prongs<sup>1</sup> have been identified, the rationale of why and how the state has assessed and categorized settings based on each of the three prongs under heightened scrutiny (particularly those settings under the third “prong” of heightened scrutiny, i.e. “any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS”), and the state’s progress in producing the evidence necessary for submission to CMS under 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* 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 approval is not approval of any settings submitted for heightened scrutiny but rather approval of the state process for addressing that issue. CMS will opine on any request for heightened scrutiny at the time they are submitted.

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,

/s/

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

---

<sup>1</sup> CMS describes heightened scrutiny as being required for three types, or “prongs” of 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.