

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Baltimore, Maryland 21244-1850



Disabled & Elderly Health Programs Group

October 24, 2017

MaryAnne Lindeblad
State Medicaid Director
State of Washington, Health Care Authority
626 8th Avenue PO Box 45502
Olympia, WA 98504-5050

Dear Ms. Lindeblad:

I am writing to inform you that CMS is granting Washington **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 3, 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 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 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.

In the November 4, 2016 letter conveying initial approval of the STP, CMS requested a set of changes to be made to the STP in order for the state to receive final approval¹. The state released an amendment to the STP addressing these changes for public comment during the public notice period beginning on March 15, 2017 and submitted to CMS on June 27, 2017. CMS provided additional feedback on August 24, 2017 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 submitted an updated version on October 13, 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 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 it identifies all sites meeting the regulation's categories of presumed institutional settings², reflects how the state has assessed settings based on each of the three categories, and describes 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 or will be submitted by the state under heightened scrutiny will be reviewed and a determination made separate and distinct from the final approval.

¹ Attachment II: <https://www.medicaid.gov/medicaid/hcbs/downloads/wa/wa-initial-approval.pdf>

² 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.

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

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

(Detailed list of technical changes made to the STP since March 15, 2017)

Public Input

- Provided CMS copies of the notices for solicitation of the most recent round of public input for the March 15, 2017 public comment period. (pgs. 262-272)

Setting Identification

- Verified the setting types of Group Foster Care, Child Group Care Facilities, and Group Care Facilities were all references to the same setting type. The state streamlined the STP to refer to this setting as Group Care Facilities (pgs. 3, 9, 10, 16, 49-58, 161-163, and 242).

Site-Specific Assessment & Validation Activities

- Clarified that Case Managers visited Supported Living Provider-Owned settings, counties monitored all Group Supported Employment settings operated by county-contracted employment vendors and the Developmental Disabilities Administration (DDA) Employment Specialists monitored all Group Supported Employment settings operated by counties directly during the assessment and validation process. (p. 161)
- Clarified in their responses to CMS that the DDA Quality Assurance staff (DDA QA) visited settings a second time when the initial assessment indicated the setting could have the effect of isolating individuals receiving HCBS from the broader community.
- Clarified that all of the provider-owned Supported Living settings were visited and compliance was validated by the DDA QA staff. (pgs. 165)
- Clarified the state's process for conducting participant interviews; the monitoring process for each site can be found on pgs. 159-167.
- Clarified how the Residential Care Services Division (RCS) assessed settings to include all of the HCBS settings criteria. (pgs. 158, 160)
- Incorporated the dates and activities in the State's Remedial Work Plan and Timelines chart associated with training. (pgs. 176-190)
- Incorporated the dates and activities in the State's Remedial Work Plan and Timelines chart associated with setting assessment and validation activities. (pgs. 176-190)
- Clarified the timeline for the second round review by DDA Residential Quality Assurance staff and clarified that the clustered provider-owned residences are Supported Living residences. (p.179)
- Included a statement that when the state identifies a discrepancy between a beneficiary assessment and information received from a provider, an investigation will be conducted by the RCS or DDA to ensure beneficiary safety and wellbeing, and adherence to all

HCBS settings criteria. If an issue is identified a corrective action plan would be required. (p. 167)

Aggregation of Final Validation Results

- Included the Adult Day Care overall compliance results and described the process through which the state completed the initial assessment. (pgs. 158, 163-164)
- Revised the compliance chart to reflect the most recent compliance status of setting types, including the one setting the state has submitted for heightened scrutiny. (pgs. 166-167)

Site-Specific Remedial Actions

- Included information regarding the database that will be used to track all reported instances of sites that are not in full compliance with the HCBS settings criteria and the timeline in which the database will be fully updated and utilized. (pgs. 167-171, 178)
- Described the timeline and process for the remediation of any site found to be non-compliant. (pgs. 159-160)

Heightened Scrutiny

- Provided clarity on how the final decision will be made on whether or not to move a presumptively institutional setting to CMS for heightened scrutiny review, including determining factors that result in the decision to move information on a particular setting forward. (pgs. 169-171)
- Clarified the state used the *CMS Guidance on Heightened Scrutiny Process*³ document to inform their heightened scrutiny review process (p. 169) and that staff were trained on the review tool. (p. 175)
- Confirmed that the state has not identified any settings that fall under the first two categories of settings requiring heightened scrutiny and described the process the state will use to submit information for heightened scrutiny if any should be discovered in the future. (pgs. 170-172)

³ <https://www.medicare.gov/medicaid/hcbs/downloads/settings-that-isolate.pdf>