

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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June 29, 2018

Ms. Teri Green  
State Medicaid Agent  
State of Wyoming, Department of Health  
6101 Yellowstone Road, Suite 210  
Cheyenne, WY 82009

Dear Ms. Green:

I am writing to inform you that CMS is granting Wyoming **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 May 11, 2017, the state worked diligently in making a series of changes requested by CMS in order to achieve final approval. Attachment I serves to provide a written record of these requested changes.

**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, 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 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 STP submitted by the state on February 14, 2018 and May 4, 2018, CMS provided additional feedback on March 23, 2018 and June 1, 2018, 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 June 22, 2018. A summary of the technical changes made by the state is included as Attachment II.

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 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.

Sincerely,

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

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<sup>1</sup> 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.

## Attachment I

In follow-up to the 5/11/2017 initial approval granted to Wyoming's HCBS STP, CMS provided additional detailed feedback to the state on issues to be resolved before the state could receive final approval of its STP. Below is a summary of the feedback discussed with the state on July 6, 2017 for your records.

***PLEASE NOTE: It is anticipated that the state will need to go out for public comment once these changes are made and prior to resubmitting to CMS for consideration for final approval.***

### **Site-Specific Assessments**

CMS requests that the state provide the following information regarding the site-specific assessment process.

- Please provide additional details clarifying how the state intends to validate each provider self-assessment.
  - The state describes on-site assessments (p. 7) but does not specify whether all sites will receive these assessments. Please clarify which sites will receive on-site assessments and if it is a subset of sites, please specify how these sites will be selected.
  - Please clarify in the STP that the state will be completing validation of all self-assessments and the 99% confidence interval is no longer the state's threshold.
- ***Non-Disability Specific Settings:*** On p. 7, the STP states "Freedom of choice for the individual's setting is a State requirement and includes the choice of non-disability specific settings." Please provide additional 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. The STP should indicate the steps the state is taking to build capacity among providers to increase access to non-disability specific setting options across home and community-based services.
- ***Individual, Private Homes:*** The state may make the presumption that privately owned or rented homes and apartments of people living with family members, friends, or roommates meet the HCBS settings criteria if they are integrated in typical community neighborhoods where people who do not receive HCBS also reside. A state will generally not be required to verify this presumption. However, the state should outline what it will do to monitor compliance of this category of settings with the settings criteria over time. Note, settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual) are considered provider-owned or controlled settings and should be evaluated as such.
- ***Reverse Integration Strategies:*** CMS requests additional detail from the state as to how it will assure that non-residential settings comply with the various requirements of the HCBS rule, particularly around integration of HCBS beneficiaries to the broader community. States cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to

participate in activities with HCBS beneficiaries in the facility-based setting is not considered by CMS by itself to be a sufficient strategy for complying with the community integration criteria outlined in the regulation.

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

CMS requests more detail on the states' proposed process and timeline for remediation of settings. Please clarify the following.

- The state should include information pertaining to how it is educating providers on any changes in state standards that will require providers to make specific adjustments or modifications systems-wide in order to comply with the home and community-based settings criteria.
- The timeframe for providers to submit transition plans differs in two parts of the STP: p. 7 says that the plans were due October 1, 2015, and p. 27 says that plans are due by December 2016. Please clarify.
- Please report the estimated number of beneficiaries who are in settings that the state anticipates will not comply with regulatory criteria by the end of the transition period and may need to access alternative funding streams or assistance in locating a compliant setting.

### **Monitoring of Settings**

Additional information about the monitoring of settings is needed.

- Please provide details on the monitoring process the state intends to use to ensure continued compliance of its settings with the settings criteria, particularly with regard to ongoing monitoring beyond the end of the transition period.
- Please clarify how all of the settings criteria will be incorporated into the certification reviews. For example, will the criteria used to establish full compliance of settings during the initial setting assessment/validation process be included in future certification reviews?
- The state should also include in their monitoring plan a process that includes the ongoing monitoring of individual private homes, non-licensed settings, and any individualized day or supported employment settings for continued compliance with the settings criteria.

### **Heightened Scrutiny**

As a reminder, the state must clearly lay out its process for identifying settings that are presumed to have the qualities of an institution. These are settings for which the state must submit information for the heightened scrutiny process if the state determines, through its assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution. If the state determines it will not submit information on such a setting, the institutional presumption will stand and the state must describe the process for determining next steps for the individuals involved. Please only submit those settings under heightened scrutiny that the state believes will overcome any institutional characteristics and can comply with the federal settings criteria. Please include further details about the criteria or deciding factors that will be used consistently across reviewers to make a final determination regarding whether or not to move a setting forward to CMS for heightened scrutiny

review. There are state examples of heightened scrutiny processes available upon request, as well as several tools and sub-regulatory guidance on this topic available online at <http://www.medicaid.gov/HCBS>.

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

**(Detailed list of technical changes made to the STP since February 14, 2018)**

**Public Input**

- Provided the language of the public input notice within the STP. (p. 4-5)
- Included how someone was able to obtain a hard copy of the STP and how they were informed of this information in the narrative of the STP. (p. 4-5)
- Clarified how people were informed of the statewide public forum and indicated how many people attended the forum. (p. 5)

**Site-Specific Assessments & Validation**

- Clarified that all settings were validated through on-site assessments by the state. (p. 12-13)
- Removed reference to the 99% confidence interval as it is no longer being used.
- Included information as to how the state will ensure beneficiaries' access to services in non-disability specific settings and indicated the steps being taken to build capacity among providers to increase access to non-disability specific settings options across HCBS. (p.13, 17)

**Aggregation of Final Validation Results**

- Included validation results on p. 13 to be reflective of settings' compliance standings after validation.

**Monitoring of Settings**

- Clarified that the process outlined for ongoing monitoring will be statewide for all settings where HCBS services are provided and included details for that process. (p. 17-18)
- Clarified that the process for ongoing monitoring of private homes will be completed through the case managers as well as the review of the services through the provider certification and licensure renewal process. (p. 18)

**Heightened Scrutiny**

- Clarified each category under which settings will be submitted for heightened scrutiny and included the addresses of the facilities in the plan. (p. 16)
- Clarified how many settings the state intends to submit for heightened scrutiny and amended this number across the plan. (p. 16)
- Clarified that the information in appendix A regarding initial identification of settings on the same campus or adjacent to an intermediate care facility (ICF) was incorrect noted it as such in Appendix A. (p. 25)
- Provided information regarding the criteria and factors the state used to decrease its initial estimate of settings under heightened scrutiny from 100 to 2 settings. (p. 14-15)

- Corrected the milestone table to accurately reflect when the state intends to submit settings under heightened scrutiny to CMS. (p. 23)
- Provided a description of the factors the state will use during their internal review to decide whether or not to move a setting forward for heightened scrutiny review to CMS. (p. 16)
- Clarified that provider responses were verified during the state's on-site validation regarding whether or not a setting was located in a privately operated facility that provides inpatient institutional treatment. (p. 14)

### **General Items**

- Reorganized the STP so that it was clear what information was current and what information was outdated or kept in the plan for historical reference.