



Disabled & Elderly Health Programs Group

December 27, 2022

Amanda Cassel Kraft
Assistant Secretary,
MassHealth Executive Office of Health and Human Services
1 Ashburn Place,
Boston MA 02108

Dear Ms. Cassel Kraft:

This letter is to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Massachusetts **initial 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 has completed its systemic assessment, included the outcomes of this assessment in the STP, clearly outlined remediation strategies to rectify issues that the systemic assessment uncovered (such as legislative/regulatory changes), and is actively working on those remediation strategies.

Massachusetts submitted the STP to CMS on April 20, 2022 and received feedback from CMS on May 23, 2022. The state responded to CMS' feedback on July 12, 2022 and CMS provided feedback on July 28, 2022. Again the state responded on August 9, 2022 and CMS provided feedback on September 2, 2022. Massachusetts submitted the STP on November 1, 2022 and CMS provided feedback on November 17, 2022 requesting that the state make several technical corrections to receive initial approval. Massachusetts subsequently addressed all issues and resubmitted an updated version of the STP on December 2, 2022. These changes did not necessitate a public comment period and are summarized in Attachment I to this letter.

In order to receive final approval, all STPs must include:

- A comprehensive summary of completed site-specific assessments of all HCBS settings, validation of those assessment results, and inclusion of the aggregate outcomes of these activities;
- Draft remediation strategies and a corresponding timeline for resolving issues that the site-specific settings assessment process and subsequent validation strategies identified, by the end of the home and community-based settings rule transition period (March 17, 2023);
- 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;

- 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 HCBS settings criteria by March 17, 2023; and
- A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the federal settings criteria in the future.

While the state of Massachusetts has made much progress toward completing each of these remaining components, there are several technical issues that must be resolved before the state can receive final approval of its STP. CMS will be providing detailed feedback about these remaining issues shortly. Additionally, prior to resubmitting an updated version of the STP for consideration of final approval, the state will need to publish the updated STP for a minimum 30-day public comment period.

Upon review of this detailed feedback, CMS requests that the state please contact Ondrea Richardson (Ondrea.Richardson@cms.hhs.gov) at your earliest convenience to confirm the date that Massachusetts plans to resubmit an updated STP for CMS review and consideration of final approval.

It is important to note that CMS' initial approval of an 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.

I want to personally thank Massachusetts for its efforts thus far on the HCBS Statewide Transition Plan. CMS appreciates the state's completion of the systemic review and corresponding remediation plan with fidelity, and looks forward to the next iteration of the STP that addresses the remaining technical feedback that is forthcoming.

Sincerely,

Ryan Shannahan, Deputy Director
Division of Long-Term Services and Supports

Enclosure

Attachment I.
SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF MASSACHUSETTS TO ITS
SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN
UPDATED HCBS STATEWIDE TRANSITION PLAN DATED AND SUBMITTED
DECEMBER 2, 2022

Public Notice and Comment

The state posted the STP for public comment beginning July 8, 2016 for 30 days using at least two methods, one of which was non-electronic. A summary of public comments and responses was included in the STP, with a description of changes the state made in response to the comments (pgs.6-7).

Settings Included in the STP

The state updated Table 2: Analysis of Settings on page xv of the STP, to include:

- Placement Service Settings as a setting for Residential Habilitation under the Intensive Supports waiver (Table 2: Analysis of Waiver Settings, pgs. xxiii-xxiv).
- Provider owned or controlled and non-24-hour residential settings (Table 2: Analysis of Waiver Settings, pgs. xxiii-xxiv).
- Settings which the state is presuming compliance with the rule, along with an explanation regarding how this determination was made (pg.28).
- Individual and group employment services (pg.12).
- Homes of unrelated caregivers in which Adult Foster Care, a state plan service, is provided, and in which HCBS (i.e., adult companion, chore service, peer support, skilled nursing, etc.) can also be provided are confirmed to be provider owned/controlled settings that will be assessed/validated (pgs. 11-12).
- Day Habilitation Supplement service, which provides additional support for individuals who require one-on-one assistance in order to utilize the Day Habilitation State Plan Service, is being removed from the DDS Adult waivers. This service is being incorporated into the Day Habilitation State Plan service with a modernized rate structure that includes individualized staffing supports. Individualized Staffing Supports allow individuals with substantial clinical needs to access and benefit from Day Habilitation services and participate in the community (pg. 14).

Systemic Assessment:

- The state has added a remediation action for each regulation identified in the Table 1 Regulatory Crosswalk in the newly added Compliance Status column. The state included the correct compliance statuses and plans for remediation, and added a column noting the date by which remediation has or will be completed for each regulation, policy manual, sub-regulatory guidance, or other document included in the Regulatory Crosswalk Table 1 (pgs. i-xxiii).
- Provided web links for regulations, policy manuals, sub-regulatory guidance and other documents listed in the Regulatory Crosswalk Table 1 (pgs. i-xxiii).

Systemic Remedial Actions:

- Developed sub regulatory guidance and clarified that DDS ensures compliance with an individual’s right to have visitors through the individual support planning process (person-centered service plan) and provider monitoring. Any modification to visitation must be supported by a specific assessed need and supported in the person-centered service plan. 42 CFR 441.301(c)(4)(vi)(F). Further, DDS sub-regulatory guidance requires service coordinators to document and address if there are any restrictions on the individual’s right to visitation in their home (pg.34).
- Clarified that any modifications of the additional conditions under section 441.301(c)(4)(vi)(A) through (d), are supported by a specific assessed need and justified in the person-centered service plan (pg.20).
- Developed sub regulatory guidance (DDS 2022 Guidance on Locks) to provide context consistent with the regulatory criterion to have locks on bedroom doors (pgs.9-11).
- Clarified that a statement in the DDS 2022 Guidance on Locks (“The DDS ISP manual addresses individual circumstances that may affect an individual’s right to have a lock on their bedroom door while living in settings operated, certified, licensed, or contracted for, or otherwise funded by the Department.”) refers to the fact that the ISP Manual provides the person-centered planning framework in which to address circumstances that may affect an individual’s right to have a lock on their bedroom door. It is not intended to mean that the ISP Manual lists specific circumstances that warrant such a restriction but rather that the ISP process is the mechanism by which these circumstances are assessed, discussed and addressed.