

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

May 28, 2020

Michelle Probert
Director, Office of MaineCare Services
Department of Health and Human Services
221 State Street
Augusta, ME 04333-0040

Dear Ms. Probert:

This letter is to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Maine **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. Additionally, the state issued the April 17, 2020 draft of the STP for a 30-day public comment period, made sure information regarding the public comment period was widely disseminated, and responded to and summarized the comments in the STP submitted to CMS.

After reviewing the draft submitted by the state on April 23, 2020, CMS provided additional feedback on May 13, 2020 requesting that the state make several technical corrections to receive initial approval. These changes did not necessitate another public comment period. Maine subsequently addressed all issues and resubmitted an updated version on May 26, 2020. These changes are summarized in Attachment I to this letter. The state's responsiveness in addressing CMS' remaining concerns related to the state's systemic assessment and remediation expedited the initial approval of its STP.

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, 2022);

- 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, 2022; 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 Maine 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 Maine 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 Maine 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,

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

Attachment I.

SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF MAINE TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED April 17, 2020, SUBMITTED April 23, 2020

Stakeholder Outreach and Engagement:

- Maine clarified the 2014 public comment period referred to in the STP and the 2015 public comment period referred to in Appendix II, refers to the same public comment period beginning on December 21, 2014 and ending January 2015 (STP pg. 22 & Appendix II pg. 15).

Systemic Assessment

- The state clarified language on page 30 of the STP related to qualified providers.
- The state clarified that section 18.10-12 of the MaineCare Benefits Manual is compliant with HCBS requirements (Appendix IV pg. 18).

Systemic Remediation:

- The state added specific dates in which standards will be remediated within the span of April 2020 thru December 2021 (Appendix VI, pgs. 179-180).