

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

December 15, 2022

Suzanne Bierman
Medicaid Administrator
Division of Health Care Financing and Policy
Las Vegas Medicaid District Office
1210 S. Valley View, Suite 104
Las Vegas, NV 89102

Dear Director Bierman:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Nevada **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 August 23, 2019, the state worked diligently in making a series of technical changes requested by CMS in order to achieve final approval.

Final approval is granted to the state after 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 the settings and preparing for submission to CMS for review under heightened scrutiny;
- Developed a process for communicating with beneficiaries who are currently receiving services in settings the state has determined cannot or will not come into compliance with the home and community-based settings criteria by March 17, 2023; 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 September 30, 2022, CMS provided additional feedback on October 11, 2022, November 10, 2022, and November 23, 2022 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 November 23, 2022. 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 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 settings¹ have been identified, reflects how the state has assessed settings based on each of the three categories and assures 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 been or will be submitted by the state under heightened scrutiny will be reviewed and a determination made separate and distinct from final STP approval.

*Additionally, CMS recognizes the state's request for a corrective action plan (CAP) to allow for additional time for the continued assessment of settings that fall under the institutional presumption to assure compliance with the settings criteria. The state will report to CMS on progress with activities outlined in the CAP.

¹ 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.

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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,

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

Enclosure

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF NEVADA AS
REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL
(Detailed list of clarifications made to the STP since September 30, 2022)**

Identification of Settings

- Amended “Residential” listed in the settings description to read, “Residential Habilitation” to match how it is used throughout the remainder of the STP (pgs. 2, 51).

Site-Specific Assessment and Validation Results

- Aligned the language throughout the STP to reflect the final process for how the Aging and Disability Services Division (ADSD) completed the site-assessments of the Jobs and Day Training (JDT) settings (pgs. 10 and 51).
- Provided clarity around the process for non-residential provider self-assessments (pg. 11).
- Provided details of the on-site and in-person validation process (pg. 19).
- Clarified the use of the member surveys (pg. 18).
- Clarified how the state addressed and resolved discrepancies between the individual interviews and provider self-assessments (pg. 18).
- Clarified how the state determined who to interview while on-site, and how many people to interview (pg. 18).
- Included Day Habilitation in the validation results (pg. 20).
- Clarified “Total Settings Reviewed” at the beginning of each chart reflected the total number of settings in the delivery system (pgs. 19-21).
- Included all four categories of settings compliance in the charts (pgs. 19-21).

Other Setting Assessment, Validation and Remediation Changes

- Included what the state is doing to provide non-disability specific settings options to individuals as well as expanding the capacity for those settings (pg. 17).
- Clarified that all of the HCBS settings criteria will be incorporated into ongoing monitoring of settings the state has presumed compliant, the frequency by which these ongoing monitoring activities will occur, and who will complete these activities. (pg. 60-61).
- Clarified how the state is ensuring providers are not only using reverse integration as a strategy for complying with the community integration requirement outlined in the settings criteria, and how the state has informed providers of the requirements and monitored strategies for compliance (pg. 94).

Site-Specific Remediation

- Clarified that providers are given 30 days to rectify any deficiencies, including a date by which all settings must complete remediation with enough time to transition individuals or locate alternative funding sources for those living in settings that cannot or will not comply with the settings criteria. (pg. 57).
- Provided an estimate of the number of individuals who may need assistance in this regard and assure the individual will be given sufficient notification (pg. 19).

Monitoring of Settings

- Clarified how each of the settings, both provider-owned or controlled, and settings the state presumed compliant, will be incorporated into ongoing monitoring, who will be completing the monitoring, the frequency the monitoring will be completed for all settings, and that all of the HCBS settings criteria are accounted for in ongoing monitoring procedures (pgs. 59-61).

Heightened Scrutiny

- Clearly laid out its process for identifying settings that are presumed to have the qualities of an institution. (pg. 54).
- Included in the STP the three prongs of heightened scrutiny for the settings identified as needing heightened scrutiny reviews and clarified under which category each falls (pg. 54).
- Removed the following statement: “The home and community-based rules changes will not allow for Medicaid reimbursement of any type of provider who is located on the same property or campus, or within the same building as any of the settings identified above.” Added the following statement “HCBS settings that are in the same building as a public or private institution or on the grounds of a public institution, can overcome the institutional presumption through heightened scrutiny if all of the settings criteria are met by the HCBS setting” (pg. 3).
- Clarified how the state identified settings that may have the effect of isolating HCBS members (pg. 52).
- Clarified how the final decision is made on whether or not to move a setting to CMS for heightened scrutiny review. Clarified the threshold and determining factors that bring the state to a yes or no for moving the packet forward (pg. 53).
- Clearly delineated milestones and associated dates as they apply to heightened scrutiny.
- Clarified dates by which packets will go out for public comment and when the state intends to complete and submit their heightened scrutiny packets to CMS directly into the STP (pg. 55).
- Clarified the settings have been fully assessed and validated for compliance with all of the federal settings criteria by the state (pg. 15).

Public Comment

- Clarified that there weren't any public comments received during the most recent public comment period, outside of those received during the September 22, 2022 public workshop (pg. 29).

Additional Feedback

- Removed the footnote on page 1 that indicated the state dissolved committees and sub-committees in 2015, but intend to form working groups and included information regarding committee activity (pg. 1).
- Removed the initial descriptions for the charts on pgs. 4-10 which no longer reflected the information provided in the charts.
- Clarified any concern listed on page 16 in the General Analysis of Provider Surveys for all Programs were addressed at the site-specific level (pg. 16).