

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

September 20, 2019

Maureen Corcoran  
Director, Ohio Department of Medicaid  
50 West Town Street 4<sup>th</sup> Floor  
Columbus, OH 43215

Dear Ms. Corcoran;

I am writing to inform you that the Centers for Medicare and Medicaid Services (CMS) is granting Ohio **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 June 2, 2016, the state worked diligently in making a series of 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, 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 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 who 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 August 16, 2019, CMS provided additional feedback on September 11, 2019 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 September 16, 2019. 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 categories of presumed institutional settings<sup>1</sup> have been identified, 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 been 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 F. 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.

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF VIRGINIA AS REQUESTED  
BY CMS IN ORDER TO RECEIVE FINAL APPROVAL  
(Detailed list of technical changes made to the STP since August 16, 2019)**

**Site-Specific Assessment & Validation**

- Updated language in the STP to reflect the currently approved waivers and identified/listed the specific services within each waiver. The state also noted when the Transition Carve Out and Transition DD waivers were terminated. (p. 2)
- Incorporated details for the site-specific assessment and validation process for ICF/IDD level of care (LOC) settings. (p. 86-87)
- Verified and included language in the STP to clarify that all ICF/IDD LOC settings were assessed and validated. (p. 86)
- Updated reference to Section XIII to the intended reference of Section VIII. (p. 86)
- Provided the aggregation of settings compliance (fully compliant; did not comply but could with modifications; cannot or will not comply; and are presumed to have the qualities of an institution but for which the state will submit evidence for the application of heightened scrutiny) by setting type. (p. 88-89)
- Updated the chart to be representative of the final validated sample, providing additional clarification and details in the STP to explain the difference in the number of settings reported after the initial assessment and the number of settings captured in the final validation and aggregation of settings. (p. 95)
- Updated the definition of variance to capture the entirety of the number of settings in variance. (p. 87)
- Updated the language from “parent-owned homes” to “privately-owned residential settings” as sites that should not have been identified as HCBS settings for the purpose of the site-specific surveys. (p. 88-90)

**Site-Specific Remedial Actions**

- Updated Appendix 4 to reflect the date when all NF-LOC settings remediation will be completed.

**Communication with Beneficiaries of Options When a Provider Will not be Compliant**

- Provide additional clarification on the outcome of the four providers identified as not being able to meet the HCBS settings characteristics and the status of the identified individuals, to include a description of the process that was used to assist these individuals to locate and transition to settings that meet the HCBS settings criteria. (p. 90)
- Verified that all individuals receiving services in the non-residential settings that terminated contracts in the NF-LOC service system received the necessary support to switch providers. (p. 90)

**Heightened Scrutiny**

- Updated the STP to clarify the number of settings identified for heightened scrutiny with additional explanation for settings that may have been originally identified but were later determined not to meet any of the institutional presumptions. (p. 91-93)