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

October 21, 2016

Kate McEvoy
State Medicaid Director
State of Connecticut, Department of Social Services
25 Sigourney Street
Hartford, CT 06106

Dear Ms. McEvoy:

This letter is to inform you that CMS is granting Connecticut **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 modifications to vendor agreements and provider applications; and is actively working on those remediation strategies. Additionally, the state submitted the September 29, 2016 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 July 25, 2016 draft submitted by the state, CMS provided additional feedback on August 18, 2016 requesting that the state make several technical corrections in order to receive initial approval. The state subsequently addressed all issues, and resubmitted an updated version on September 29, 2016. These changes are summarized in Attachment I of 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 of Connecticut's STP, the state will need to submit an updated STP based on the following actions:

- Complete comprehensive site-specific assessments of all home and community-based settings, implement necessary strategies for validating the assessment results, and include the outcomes of these activities within the STP;
- Describe remediation strategies and a corresponding timeline that will resolve issues identified in the site-specific settings assessment process and subsequent validation strategies, by the end of the home and community-based settings rule transition period (March 17, 2019);

- Outline 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 those settings the state believes overcome the presumption;
- Develop 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 rule by March 17, 2019; and
- Establish ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

While the state of Connecticut has made much progress toward completing each of these remaining components, there are several issues that have been outlined in Attachment II of this letter that must be resolved before the state can receive final approval of its STP. Additionally, prior to resubmitting an updated version of the STP for consideration of final approval, the state will need to issue the updated STP out for a minimum 30-day public comment period.

Upon review of this detailed feedback, CMS requests that the state please contact Pat Helphenstine (410-786-5900 or patricia.helphenstine1@cms.hhs.gov) or Michelle Beasley (312-353-3746 or michelle.beasley@cms.hhs.gov) at your earliest convenience to confirm the date that Connecticut 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 the state 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, and looks forward to the next iteration of the STP that addresses the remaining technical feedback provided in the attachment.

Sincerely,

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

ATTACHMENT I.

SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF CONNECTICUT TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 9/29/16

- **Public Notice and Engagement:** A public notice located by the Centers for Medicare and Medicaid Services (CMS) indicates that the February Statewide Transition Plan (STP) was issued for public comment in March 2016. However, the draft STP submitted on July 27, 2016 does not include any additional public comments from the March public comment period and it does not appear that the most recent version is on the state's website. CMS requested that the state issue the STP for a 30-day electronic public notice period and include a summary of all public comments received from both public notice periods with the state's response in the STP.

  State's Response: The state conducted a public comment period following the August 16, 2016 feedback call with CMS and this was confirmed by email on August 23, 2016. The STP was posted on August 19, 2016 and the link to the website is included in the STP (p. 53). A summary of the comments received is included. In addition, on the second feedback call on September 23, 2016, the state indicated that it would like to attach all written comments to the draft. It is included as Attachment B of the state's STP.

- **Waivers and Settings Included in the STP:** Connecticut's July STP included all of the state's waivers and settings with the exception of Foster Care, which is listed as a setting for the Personal Care Assistance Waiver in the Waiver Management System (WMS). CMS asked the state to clarify if Foster Care should be listed in the STP as a separate category of setting.

  State's Response: Connecticut clarified that the correct category is Adult Family Living/Foster Care and is referenced as Adult Family Living in the STP.

- **Identification of Compliance for State Standards:** CMS requested that the state update its STP to ensure that the following information was included in the systemic assessment crosswalk: the title, code, and web link for each policy identified; a general description of each policy and its relevance to the home and community-based settings rule; the key aspects of the home and community-based settings rule that should be taken into consideration when reviewing the specific policy; and each section of the policy that either aligns with, conflicts with, or is silent on the requirements of the home and community-based settings rule. CMS also requested that each regulation or policy document is labeled as compliant, non-compliant or silent with respect to each federal

requirement. CMS also requested that Connecticut review the Department of Developmental Services (DDS) regulations.

State's Response: The state has provided a revised STP with a systemic assessment crosswalk, Attachment A, which labels each state standard as compliant, partially compliant, non-compliant, or silent with respect to each federal requirement, including the DDS regulations. The state's crosswalk also indicates that it is developing new regulations to remediate issues of non-compliance or silence that were identified.

- **Systemic Assessment Results:** CMS asked the state to review its proposed template language to remediate noncompliance with the federal regulation. Specifically, the state needed to ensure its language was sufficiently aligned with all aspects of the federal regulation.

  State's Response: The state revised its proposed template section to fully align with the federal setting rules. The introduction states that "Connecticut plans to include the following "template section" in its Acquired Brain Injury (ABI), Home Care Program for Elders (HCPE), Personal Care Assistance (PCA), and Assisted Living Services Agency (ALSA) regulations, standards for Adult Day Care (ADC), as well as the Residential Care Home (RCH) licensing regulations and the DDS standards to bring the state into compliance with all applicable federal requirements." The template consists of six sections, (a)-(f), that can be inserted into the state regulations to achieve alignment with the federal requirements. For example, Section (a) addresses integration and full access to the community and will be inserted into the Home Care Program for Elders regulations to guarantee the right to "(D) Receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS." (pp. 65-67)

ATTACHMENT II.

ADDITIONAL CMS FEEDBACK ON AREAS WHERE IMPROVEMENT IS NEEDED IN ORDER TO RECEIVE FINAL APPROVAL OF THE STATEWIDE TRANSITION PLAN

PLEASE NOTE: The state will need to go out for public comment once these changes are made and prior to resubmitting to CMS for final approval. The state is requested to provide a timeline and anticipated date for resubmission for final approval as soon as possible.

Site-Specific Assessments

Please address the following concerns in the STP regarding site-specific assessments.

- ***Settings:***
    - Facility-Based Respite Care: On page 5, the STP states, "The final service, facility-based respite, is excluded from review since this service is provided in institutional settings." Please insert a statement that clarifies that respite is a time-limited service capped at 30 days and therefore does not require an assessment of the settings in which it is provided. It is not the institutional nature of the setting that excludes the setting from site-specific assessment; it is the nature of the time-limited respite service.

    - Clarification of Compliance Levels across Setting Categories: Please confirm the final estimated number of settings that are in each of the following compliance categories: (a) fully comply; (b) do not currently comply but could with modifications; (c) cannot comply; and (d) are presumed to have the qualities of an institution, but for which the state will submit evidence for the application of heightened scrutiny. CMS acknowledges that for many of the state's HCBS setting categories, the state initially analyzed a combined set of data based on provider self-assessments, participant experience surveys, and case manager surveys. This analysis was broken into three categories, which evaluated the status for each setting in complying with the requirements under the federal HCBS rule, as well as evaluating other areas the state feels are critical and important for HCBS settings to possess. CMS supports states in building tiered standards for improving the quality of HCBS over time; for the purposes of the STP, the state needs to demonstrate that all settings were assessed, validated and remediated to assure compliance with each of the federal HCBS settings requirements. As such, CMS requests that the state provide more specific clarity regarding compliance levels across setting categories for each of the specific federal HCBS requirements.

- ***Site Visits:*** Please include the following information in the STP.

- Provide outcomes for each type of setting within the STP (e.g., Adult Day Health, Adult Family Living, Assisted Living, Residential Care Homes, etc.). Please provide context as to any results that are significantly different from the original surveying/analysis that was conducted by the state in previous assessment activities.
    - Adult Day Health: On page 9, the state included updated language that DSS will, "utilize HCBS unit staff to conduct in person surveys of all of the certified Adult Day provider settings. HCBS clinical staff will also engage in conversations with waiver participants attending the day programs to ascertain their opinion of the services provided. DSS expects to complete this survey process by July 15, 2016. We will include participant comments in the STP." In the following paragraph, the STP includes previous language that states that the "DSS has concluded that Adult Day Health are compliant with the HCB settings requirements". Please complete the following: (a) verify whether the HCBS unit staff in-person surveys were completed in July 2016; (b) include the participant comments in the STP as the state indicates on page 9; and (c) reaffirm the accuracy of DDS' original conclusions that all ADH settings are in full compliance with the federal HCBS rule, or provide an update on any settings that were determined not to be in full compliance.
    - Residential Care Homes: In previous feedback to the state, CMS expressed concerns with regards to the state's original approach of developing a composite score that reflected the survey responses of providers, consumers, and care managers. The state responded that it is planning to conduct onsite visits to each of the 45 RCHs. However, CMS would like to understand what the state's process is for addressing areas where there is a discrepancy between initial survey responses of a provider about specific requirements outlined in the federal HCBS rule and the state's original analysis conducted.
- Describe the nature of the site visits for each type of setting that will receive or has received such reviews. For example, all Adult Day Health, Prevocational, Supported Employment, Group Supported Employment, ABI Group Day, Community Living Arrangements, Community Companion Homes, Continuous Residential Supports, and Group Day Support settings will receive an onsite visit. Please clarify how these reviews will be conducted, (i.e., how the results from the review will be recorded, who they will interview onsite, what documents/procedures they will review, etc.)

- ***Participant Surveys:***
    - ***Staff Training:*** Please describe the staff who will be conducting the site visits and the training staff will receive on the federal settings requirements prior to completing the site visits.
    - ***Assisted Living:*** The STP indicates that DSS will conduct a survey with a representative sample of persons living in communities where Assisted Living Services are provided (p. 7). Please provide more details around the content of the survey, including whether the survey has questions reflecting all aspects of the federal requirements, how the state assures confidentiality of participants' responses, and how the state will ensure that the individual is completing the survey outside of the presence of staff impacted by the results. Also, please provide additional clarification on what the state is considering as a "representative sample" in each AL setting.
    - ***Residential Care Homes:*** The state lays out a robust survey process of three distinct partners (the participant, care manager, and provider) on pages 10-11. Please confirm whether all HCBS residents inside RCHs took part in the survey process. Also, CMS notes that the state is planning to train the care managers on the federal HCBS requirements and then have them both administer the survey to participants as well as complete a similar survey themselves. CMS is concerned about a potential issue with survey bias given that the care managers are both completing the survey but also administering it to participants. Please provide additional details about how the state plans to mitigate this concern.
- ***Individual, Privately-Owned 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 home and community-based settings requirements if they are integrated in typical community neighborhoods where people who do not receive home and community-based services also reside. A state will generally not be required to verify this presumption. However, please outline what the state will do to monitor compliance of this category of settings with the federal home and community-based settings requirements over time. Also, as with all settings, if the setting in question meets any of the scenarios in which there is a presumption of being institutional in nature and the state determines that presumption is overcome, the state should submit to CMS necessary information for CMS to conduct a heightened scrutiny review to determine if the setting overcomes that presumption. In the context of private residences, this is most likely to involve a determination of whether a setting is isolating to individuals receiving home and community-based services (for example, a setting purchased by a group of families solely for their family members with disabilities using home and community-based services).

Site-Specific Remedial Actions

Please include the following information in the STP.

- ***Addressing Discrepancies between Provider Self-Assessments and Participant Experience Surveys:*** CMS requests the state develop an approach for addressing earlier discrepancies *at a site-specific level* between provider self-assessments and participant experience surveys (or case manager surveys) on any areas related to specific federal HCBS settings requirements. This is particularly important for setting categories where there were large disparities between provider and consumer responses (i.e., residential care homes, ABI provider-controlled or owned residential settings, etc.). For example, the state could implement a process that provides feedback (not tied to a specific client) to a provider on areas where individuals reported that they did not believe the setting was in compliance with the federal HCBS settings requirements.
- How will the state determine that DSS providers have satisfactorily addressed all issues requiring remediation (p. 36)? For example, will the state complete a site visit or desk review to confirm all remediation strategies have been implemented appropriately or will the state address this through regular licensing/certification activities? Please address this in the STP.
- Please confirm that all DDS providers will have come into compliance through the use of the Quality Service Review (QSR) onsite tool by March 17, 2019. Please also explain how the QSR tool has been updated to incorporate the federal settings requirements.
- What additional efforts will the state be taking to address issues of major systemic non-compliance that were identified as areas of concern by the state during initial assessment activities?

Monitoring of Settings

Please include the following additional information about the monitoring of settings in the STP.

- On pages 39 and 40, DSS describes the challenges for the RCHs of remediation and compliance and indicates that the state has a workgroup with the Department of Public Health, the Long Term Care Ombudsman, Connecticut Legal Services, and the RCH Association. The workgroup created four smaller workgroups to address issues, such as Training and Challenges for Integration. The state should clarify if the overarching or smaller workgroups will be involved in ongoing RCH monitoring. If these workgroups are involved in monitoring, please explain each workgroup's role.
- In its Remediation or Monitoring Activity Table, DDS includes ongoing monitoring as part of achieving compliance by March 17, 2019, but it remains unclear in what order the Quality Service Review (QSR), remediation and then verification of full compliance occur as opposed to monitoring through the QSR process (p. 51). The state should consider removing ongoing monitoring from that specific activity of the timeline, as

ongoing monitoring is addressed elsewhere, and clarify the initial assessment steps using the QSR.

- Please provide an explanation of the training on the settings requirements that state employees or personnel within the state's existing infrastructure and assigned to completing the ongoing monitoring of settings will receive.

Heightened Scrutiny

The state must clearly lay out its process for identifying settings that are presumed to have the qualities of an institution. These settings should be submitted through the heightened scrutiny process if the state determines 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, the presumption will stand and the state must describe the process for informing and transitioning the individuals living in or receiving services in these settings.

These settings include the following:

- Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- Settings in a building on the grounds of, or immediately adjacent to, a public institution;
- Any other setting that has the effect of isolating individuals receiving Medicaid home and community-based services from the broader community of individuals not receiving Medicaid home and community-based services.

Several tools and sub-regulatory guidance on this topic are available online at http://www.medicaid.gov/HCBS.

- ***State Process for Heightened Scrutiny:*** Please provide a timeline of milestones and specific dates for completing the heightened scrutiny process by the state. Please note that CMS suggests the state utilize a staggered process for submitting settings to CMS for heightened scrutiny. For example, the state can choose to present settings for heightened scrutiny bundled on a quarterly basis.
- It is unclear if the state has identified any settings with the effect of isolating individuals. Provide the methodology for identifying such settings and the results from this review. As a reminder to the state, CMS' *Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community* states that the following two characteristics alone might have the effect of isolating individuals:
    - The setting is designed specifically for people with disabilities, or for people with a certain type of disability.
    - Individuals in the setting are primarily or exclusively people with disabilities and the on-site staff that provides services to them.

Submission of Heightened Scrutiny Evidentiary Packages: To assist states in developing an evidentiary package in support of each setting submitted to CMS for heightened scrutiny review, please refer to Frequently Asked Questions published by CMS in 2015[1]. CMS intends to update this guidance shortly.

Communication with Beneficiaries of Options when a Provider will not be Compliant

CMS requests that the state include additional information in the STP about the information and assistance provided to beneficiaries to locate and transition to compliant settings.

- The STP includes a description of the plan that individual providers will follow to transition participants, but it does not include a timeline for when the state will notify beneficiaries and begin this process to ensure transition of all members by March 2019. The state should provide a timeline for when it will begin the process to ensure that all beneficiaries are in compliant settings or receiving services funded by non-HCBS authorities by March 2019.
- Provide more detail about the steps the state will take to communicate with beneficiaries, and who will be responsible for executing each step of this process.
- Describe how the state will ensure that all critical services and supports are in place in advance of each individual's transition.
- Report the estimated number of beneficiaries that may need to be transitioned in a future revised STP, and update and tailor the state's plan and timeline accordingly.

Milestones

CMS requests that the state resubmit an updated milestone chart reflecting anticipated milestones for completing systemic remediation, site-specific assessment and remediation, heightened scrutiny, communication with beneficiaries, and ongoing monitoring of compliance. The milestone chart should be modeled on the most recent template supplied by CMS and also include timelines that address the feedback provided.

[1] https://www.medicaid.gov/medicaid/hcbs/downloads/home-and-community-based-setting-requirements.pdf