

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**

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May 21, 2019

Adam Proffitt, Medicaid Director  
State of Kansas, Division of Health Care Finance  
Department of Health and Environment  
900 SW Jackson Avenue, Suite 900  
Topeka, KS 66612-1220

Dear Mr. Proffitt:

This letter is to inform you that CMS is granting Kansas **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 changes to vendor agreements and provider applications, and is actively working on those remediation strategies. Additionally, the state issued the March 2017 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 September 2017 draft submitted by the state, CMS provided additional feedback on December 01, 2017 requesting that the state make several technical corrections in order to receive initial approval. These changes did not necessitate another public comment period. The state subsequently addressed all issues, and resubmitted an updated version on May 14, 2019. 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, all STPs should 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 HCBS settings 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 Kansas 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 issue the updated STP for a minimum 30-day public comment period.

Upon review of this detailed feedback, CMS requests that the state please contact Amanda Hill ([Amanda.hill@cms.hhs.gov](mailto:Amanda.hill@cms.hhs.gov)) to confirm the date that Kansas 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](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 with fidelity, 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 KANSAS TO ITS SYSTEMIC ASSESSMENT AND REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN MAY 14, 2019

#### Systemic Assessment Charts:

- CMS asked the state to complete a systemic assessment of state statute, rules, regulations, policies, contracts and/or manuals against settings criteria found in the regulation itself rather than the Final Rule Requirement Review Questions tool developed by the state.  
*State's Response:* The state provided a modified systemic assessment based on the federal settings criteria in the systemic assessment section of the modified STP and appendix A of the revised transition plan.
- In the systemic compliance charts located throughout the STP, the state only included assessments of the state's regulations. CMS asked the state to also include assessments of any of its statutes, MCO contracts, or policy documents for all HCBS programs and settings. CMS also asked that the state consider completing the systemic assessment prior to 2021 to allow sufficient time for remediation.  
*State's Response:* The state revised all systemic compliance charts for all HCBS programs and settings (Foster Care Settings, Adult Care Homes, Adult Day Care, Home Plus, Individuals with Developmental Disabilities Residential and Day Services, Sheltered Employment, KanCare) to include all statutes, policies, regulations, contracts and program manuals to verify HCBS provider compliance with federal settings requirements at 42 CFR § 441.301(c)(4). The systemic assessment is complete.
- CMS asked the state to clarify if the Systemic Assessment Remediation Strategies and Timelines found in Appendix A are recommendations or if they have been approved by Kansas Department for Aging and Disability Services (KDADS).  
*State's Response:* The state clarified that the remediation strategies and timelines have been approved by KDADS and incorporated into the Systemic Assessment.
- CMS asked the state to add to the systemic assessment crosswalk remediation consisting of the specific changes the state will make in order to assure the state's regulation complies with the settings criteria. The state was asked to provide more detail to explain how the state will remediate instances of non-compliance, partial compliance, and silence with regard to the federal criteria in the systemic assessment crosswalk.  
*State's Response:* The state addressed this information in the modified systemic assessment.
- CMS asked the state to include in the systemic assessment remediation strategy all contracts and manuals specific for the Kaw Valley Center (KVC) and St. Francis contracts.

**State's Response:** The state provided a link to the Kansas Department for Children and Families Prevention and Protection Services Manual in the main body and systemic assessment sections of the STP.

**Provider Manuals:**

- CMS asked the state to apply recommended remediation strategies consistently for the various provider manuals, regulations, policies and contracts and to include this information in the systemic assessment crosswalk.

**State's Response:** The state included a review of the Physical Disability and Serious Emotional Disturbance Manuals and provided a link to the HCBS Provider Manuals page in the STP.

- CMS asked the state to provide information in the STP where the public can receive a copy of the Serious Emotional Disturbance (SED) Manual, and to confirm if the gap analysis was completed for this manual.

**State's Response:** The state provided information where the public can receive a copy of the SED Manual, confirmed the gap analysis is complete and included it in the crosswalk.

**Modifications to Settings Criteria:**

- CMS asked the state to ensure each Systemic Compliance Chart included the compliance status with the federal settings provision at 42 CFR 441.301 (c)(4)(vi)(F), which indicates that any modification of the additional conditions, under 42 CFR 441.301(c)(a)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan.

**State's Response:** The state included this information in each Systemic Compliance Chart.

**Settings:**

- CMS asked the state to clarify in the STP if supported employment can be delivered in groups of two or more.

**State's Response:** The state clarified that supported employment is an individualized (1-1) service.

- CMS asked the state to align the intellectual and developmental disabilities (IDD) settings found in the STP with the settings identified in the systemic assessment section Appendix A.

**State's Response:** The state clarified and aligned the IDD settings found in the STP and in the systemic assessment found in Appendix A, and provided links to licensing standards for IDD settings in the main body of the STP.

- CMS asked the state to include foster family homes in the systemic assessment, evaluate these settings for compliance as provider owned or controlled settings, and include all regulations, manuals and/or contracts that apply to these settings.

**State's Response:** The state addressed foster family homes in the modified systemic assessment and included a link to the Kansas Department of Children and Families

(DCF) Prevention and Protection Services Manual and remediation plan for the DCF Prevention and Protection Services Manual in the systemic assessment.

The following includes examples of the technical changes completed in response to CMS's spot check of how the state categorized the compliance of their standards with the settings criteria.

- The Adult Care Home settings systemic assessment charts for the settings criterion, “Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint,” indicated 26-39-103(o) is compliant, 28-39-254 (g)(1)(F);(3)(D) is partially compliant or compliant, and 26-39-103(i) is compliant. Upon review, the regulations cited addresses privacy but do not address dignity, respect, freedom from coercion and restraint. CMS also found that 26-39-103(i), 26-41-101(k), 26-39-102(c), 26-41-202(a), 26-41-204(a) are silent rather than compliant. CMS asked the state to provide a remediation strategy in the chart.  
*State's Response:* The state amended the charts changing the compliance status to “silent” and added the remediation language “ensuring an individual’s right to privacy, dignity and respect”. Add language that reflects the individuals receiving HCBS have the right to be free from restraint and insures that any modification must be consistent with 42 CFR 441.301(c)(F) Any modification of the additional conditions, under 42 CFR 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person. The following requirements must be documented in the person-centered service plan: (A) Identify a specific and individualized assessed need, (B) document the positive inventions and supports used prior to any modification to the person-centered service plan, (C) Document less intrusive methods of meeting the need that have been tried but did not work, (D) Include a clear description of the condition that is directly proportionate to the specific assessed need, (E) Include a regular collection and review of data to measure the ongoing effectiveness of the modification, (F) Include established time limits for periodic review to determine if the modification is still necessary or can be terminated, (G) Include informed consent of the individual, (H) Include an assurance that interventions and support will cause no harm to the individual. References to K.A.R. 28-39 were removed as it was revoked in 2009.
- The Assisted Living settings systemic assessment charts for the settings criterion, “Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact,” indicated 26-39-103 (o) or 26-39-103 (h)(2) are partially compliant. Upon review, the cited regulation indicated a roommate change can be made without the person’s consent and is silent on all other aspects of the settings criteria. CMS asked the state to change to “conflict” and provide remediation in the chart.  
*State's Response:* The state changed to “conflict” and provided remediation.
- The Assisted Living settings systemic assessment charts for the settings criterion, “Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors,” indicated 28-39-254 (g)(1)(F);(3)(D) is partially compliant or complaint. CMS requested that the state clarify that only appropriate staff have access to the master key to

individual units.

**State's Response:** The state changed the applicable regulation to K.A.R 26-41-101, cited the regulation as silent, and provided remediation language of "Add language to K.A.R. 26-41-101 requiring units have entrance doors lockable by the individual, with only appropriate staff having keys to doors".

- CMS asked the state to clarify if the Enhanced Care Services Policy beginning at page 3 should be included in the Systemic Assessment, as this appears to be a service and not a setting.

**State's Response:** The state confirmed this is a service and removed the policy assessment from the systemic assessment.

- In the Family Foster Care Home systemic assessment chart, for the settings criterion "Facilitates individual choice regarding services and supports, and who provides them", K.A.R. 28-4-819 addresses only Medical and Dental choice of services and who provides them. CMS found this to be silent rather than compliant regarding access to other HCBS services and asked the state to provide remediation.

**State's Response:** The state added remediation language of "Add language that ensures either the youth if appropriate or foster family as a signing authority is afforded choice regarding HCBS services and supports, and who provides them."

- In the Family Foster Care Home systemic assessment chart, for the settings criterion "individuals are able to have visitors of their choosing at any time", the state found this criterion to be not applicable. CMS did not agree that this requirement is not applicable and asked the state to provide evidence of compliance or provide a remediation strategy.

**State's Response:** The state added remediation language of "Add language ensuring individuals have an age appropriate degree of access to visitors of their choosing at any time similar to their non-HCBS peers."

- In the Family Foster Care systemic assessment chart regarding accessibility of the setting, CMS asked the state to specify where K.A.R. 28-4-821 (b) addresses accessibility of the setting for participants.

**State's Response:** The state changed the compliance status to "silent" and added remediation of "Add language to [K.A.R. 28-4-821\(b\)](#) to ensure the setting is physically accessible to the individual."

- In the IDD Specific Services systemic assessment chart for the criterion of "Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time", the state indicated that K.A.R. 30-63-21 is compliant. Upon review, CMS found the citation is silent regarding the criterion that individuals have access to food at any time. CMS asked the state to add this to the gap analysis and provide a remediation.

**State's Response:** The state added this finding to the gap analysis and provided the remediation of "Add language to [K.A.R. 30-63-23](#) ensuring HCBS participants have access to food at any time."

- Under Assisted Living, the state indicated for the modification of additional conditions in provider owned and controlled settings at 42 CFR 441.301(c)(vi)(F), that the KanCare RFP is silent, and then indicated the PCP policy and KanCare contract are compliant. CMS asked the state to clarify and provide the remediation if the KanCare RFP is silent.  
*State's Response:* The state corrected this to indicate that the PCP policy and the KanCare contract and RFP are compliant.
- CMS asked the state to ensure all links to statutes, rules, regulations, policies, manuals and/or contracts listed in the systemic assessment are working correctly.  
*State's Response:* The state provided functioning links.