

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

August 10, 2017

Chris Priest, Director
Medical Services Administration
400 South Pine
Lansing, MI 48909

Dear Mr. Priest:

This letter is to inform you that CMS is granting Michigan **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 submitted the March 2017 version 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 STP submitted by the state on March 31, 2017, CMS provided feedback on June 8th 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 August 9, 2017. 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 Michigan's STP, the state will need to complete the following remaining steps and submit an updated STP with this information included:

- 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;
- Draft remediation strategies and a corresponding timeline that will resolve 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);

- 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;
- 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, 2022; 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 Michigan 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 Michelle Beasley at Michelle.Beasley@cms.hhs.gov or Jessica Loehr at Jessica.Loehr@cms.hhs.gov at your earliest convenience to confirm the date that Michigan 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 with fidelity, and looks forward to the next iteration of the STP.

Sincerely,

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

ATTACHMENT I.

SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF MICHIGAN TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 8/9 /17

- **Public Notice and Comment:** CMS requested that the state update its Version History table to include the dates of public comment for Version 3.0 and 3.1 (the current version) of its STP.
State's Response: The state updated the STP to include this information (page 129).
- **Settings Included in STP:** CMS asked the state to clarify that all settings under the 1915(c) Waiver for Children with Serious Emotional Disturbances (SEDW), including therapeutic overnight camps, are presumed compliant with the federal settings rule. Additionally, CMS requested that the state define licensed specialized residential settings under the 1915(c) Habilitation Supports Waiver program.
State's Response: The state has included information in the STP indicating that all settings under the SEDW are compliant (page 6) and has also included a definition for licensed specialized residential settings (page 69).
- **Foster Family Homes:** CMS requested that the state include a statement in the narrative of the STP indicating that the licensing rules governing child foster family homes and group foster family homes ensure that the children in these settings have the same experience as any other children not receiving Medicaid HCBS and that the licensing rules fully comport with 42 CFR 441.301(c)(4).
State's Response: The state has included this information on page 6 of the STP.
- **Physical Accessibility:** CMS asked the state to include an assessment of the compliance of its standards against the federal regulatory criterion that provider-owned or controlled settings be physically accessible to the individual.
State's Response: The state has included this information on pages 11-13 of the STP.
- **Provider Owned and Controlled Residential Settings:** CMS requested that the state include 42 CFR 441.301(c)(4)(vi)(F) in the systemic assessment crosswalk, which pertains to the process that must be followed in order to modify any of the criteria under the settings rule that apply to provider owned and controlled residential settings.
State's Response: The state has included this information in the STP on page 12.
- **Non-Residential Settings:** CMS asked the state to clarify in the STP which state standards apply to each applicable setting type, particularly for adult day and prevocational services.
State's Response: The state added language to page 46 of the STP indicating the new HCBS chapter of the Michigan Medicaid Provider Manual will be the primary state standard utilized for ensuring compliance with the federal rule for non-residential settings.

- **Restrictive Practices:** CMS asked the state to confirm that any use of restraints or other restrictive practices such as seclusion are documented through the person-centered planning process.

State's Response: The state confirmed that any use of restraints or other restrictive practices are documented via the person-centered planning process. Additionally, the state clarified the safeguards the Behavioral Health Waivers and Habilitation Supports Waiver utilize for oversight of any restrictive practices. For example, the Behavior Treatment Plan Review Committee reviews the use of these practices to ensure all applicable laws, regulations, and policies are followed. The MI Choice and MI Health Link Waivers do not allow the use of restraints or other restrictive practices.

- **Systemic Assessment:** CMS requested the state include the following information in the systemic assessment crosswalk:

- A remediation plan for ensuring that the setting is selected by the individual from among setting options including non-disability specific settings.
- A remediation strategy for ensuring individuals have access to food at any time and have the freedom and support to control their own schedules and activities.
- A remediation plan to ensure that that individuals have access to visitors at any time and have access and control over their personal resources.
- A remediation plan to ensure individuals have a choice regarding their roommate(s).

State's Response: The state has added language to the Systemic Assessment Crosswalk indicating that the new HCBS Chapter of the Michigan Medicaid Provider Manual will address each of the items listed above (see Section 1a starting on page 11).

- **Systemic Remediation:** CMS asked the state to include a statement in the STP indicating that the new language that will be added to the Michigan Medicaid Provider Manual will fully comport with 42 CFR 441.301.

State's Response: The state has included this statement on page 11 of the STP.

- **Systemic Remediation:** CMS requested the state ensure that the “Remediation Required”, “Action Item”, and “Timeline” columns are completed with sufficient information for each item needing remediation.

State's Response: The state has ensured the systemic assessment crosswalk is complete.