

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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November 4, 2016

Maryanne Lindeblad  
State Medicaid Director  
State of Washington, Health Care Authority  
626 8th Avenue PO Box 45502  
Olympia, WA 98504-5050

Dear Ms. Lindeblad:

This letter is to inform you that CMS is granting the state of Washington **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 completed a 30-day public comment period, made sure information regarding the public comment period was widely disseminated, responded to and summarized the comments in the STP submitted to CMS in February 2016.

The state completed several technical changes in the updated August, 2016 STP based on CMS feedback. CMS provided additional feedback requesting that the state complete additional technical corrections in order to receive initial approval. The state subsequently addressed all issues, and submitted updates in October and November 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 facilitated the initial approval of its STP. CMS also completed a spot-check of 50% of the state's systemic assessment for accuracy. Should any state standards be identified in the future as being in violation of the federal HCBS settings rule, the state will have to take additional steps to remediate the areas of non-compliance.

### **In order to receive final approval of Washington's STP, the state will need to complete the following remaining steps and submit an updated STP:**

- Complete comprehensive site-specific assessments of all HCBS 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 HCBS 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 where the state has determined the setting overcomes 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 HCBS 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 Washington has made much progress toward completing each of these remaining components, there are several technical 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 30-day public comment period.

Upon review of this detailed feedback, CMS requests that the state please contact Susie Cummins (206-615-2078 or [Susan.Cummins@cms.hhs.gov](mailto:Susan.Cummins@cms.hhs.gov)) or Michele MacKenzie (410-786-5929 or [Michele.MacKenzie@cms.hhs.gov](mailto:Michele.MacKenzie@cms.hhs.gov)) at your earliest convenience to confirm the date that Washington state plans to resubmit an updated STP for CMS review and consideration of final approval.

It is important to note that CMS' initial or final 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 THE STATE OF WASHINGTON TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN THE UPDATED HCBS STATEWIDE TRANSITION PLAN DATED NOVEMBER , 2016.**

In its May 17, 2016 email and letter to the Washington Health Care Authority, the Centers for Medicare and Medicaid Services (CMS) requested more details regarding Washington's Statewide Transition Plan (STP). There were also subsequent phone conversations between CMS and the state where further clarification of the feedback was provided. The items, related questions, and state responses are summarized below.

#### **Waivers and Settings Included in the STP**

**Remove Settings Covered by 1915(k):** CMS requested that the state remove all settings covered by 1915(k) from the Statewide Transition Plan (STP), including those submitted for heightened scrutiny. CMS also requested that the state add a note to the narrative explaining why these settings were not included in the STP.

*State's Response:* The settings that have been approved under Community First Choice (CFC) and the Residential Support Waiver (RSW) have been determined to comply with the new Home and Community Based Settings (HCBS) rules and have been removed from the STP. However, Adult Day Services continue to be available through the COPES waiver. The state assumed that the settings comply because they were evaluated under 1915(k) and via the new Residential Support Waiver (post 2014). The state has included information in the narrative of the STP explaining why these settings were not included in the STP so that the public can clearly follow along.

**Adult Day Services Approved in 1915(c):** CMS requested that the state provide an explanation of the adult day service settings approved in the RCW 1915(c) waiver and the settings that still need to be assessed in the STP.

*State's Response:* The Adult Day Health Centers were approved in the RCW amendment in June 2016. These settings are also settings in the COPES waiver and the state attested that the approved settings are the same as the settings approved in the RCW waiver. The Adult Day Care settings have been distinguished as settings that have not been approved and will be assessed and remediated through the STP.

**Supported Living Services in Provider-Owned or Controlled Settings:** CMS requested that the state clarify whether any individuals receiving supported living services receive their services in a provider-owned or controlled facility. If any do, CMS requested that these settings be included in the STP.

*State's Response:* Among the HCBS settings in the state providing supported living services, there are 15 provider-owned homes that support 43 individuals. The names of the provider-owned facilities have been added to the STP in Appendix A (Analysis by Setting), and will be assessed and validated for compliance with the federal HCBS requirements.

**Number of Each Setting Type per Waiver:** The subheadings for different types of settings do not all list the number of settings within that type. Some setting types list the number of individuals in those settings (e.g. supported employment), while others describe the number of settings (e.g. ARCs and EARCs). CMS asked for the number of settings of each type by waiver and asked if the state would list both the number of settings and the number of individuals in those settings for each type.

**State's Response:** The State has amended the headings in the manner requested.

**Non-Disability Specific Settings:** The STP should include a mechanism to ensure that all individuals are provided an option for a non-disability specific setting. The state's systemic assessment grid addresses the issue of documenting that individuals have a choice from different HCBS options, but does not address the federal requirement that these options include a non-disability specific setting.

**State's Response:** The State has added the following information in the section titled *State HCBS Settings*: "Participants may choose from an array of settings in which LTSS can be provided and all participants may choose to receive supports in their own homes, which is a non-disability specific setting." The section provides further explanation that 40,233 (>75%) are served in their own home and 12,362 (23%) are in provider owned residential settings.

**Capacity Building for Non-Disability Specific Setting Options:** CMS requested that the STP include detailed information about any steps the state is taking to invest in additional capacity building to assure that all beneficiaries have non-disability specific setting options across HCBS categories, regardless of their geographic location in the state.

**State's Response:** The state has added information in the section entitled *State HCBS Settings* that describes steps the state has taken to increase capacity of non-disability specific settings. The state also provided the following summary in their response to the CMS feedback. "In order to assist participants with access to in-home care providers capable of meeting their support needs, Washington has extensive and well developed training and certification for long term care workers. In addition, the State is engaged in workforce development strategies for Individual Providers through advanced training opportunities, wage increases based on cumulative career hours, health care and retirement benefits. These efforts contribute to a more professional and stable workforce." These efforts are statewide. This section of the plan also describes the many initiatives underway to increase affordable housing for Washingtonians with low incomes.

## **Public Engagement**

**Outreach to Participants:** The state has developed plans for training providers on the new rules and requirements, but should also do more to reach out directly to participants. The state included a notice sent to all participants regarding their new rights, but should include in the STP more specific details on any additional plans to broaden the outreach effort and to minimize misunderstandings on the part of participants.

**State's Response:** Participant Outreach has been added to the STP's "Milestones" section. This section describes the state's continued outreach efforts to ensure that participants have access to full information about the HCBS settings rules.

## Systemic Assessment

**Identify Setting Compliance:** CMS requested the state to review the systemic assessment and ensure that state regulations either fully demonstrate compliance with the federal requirements or are otherwise identified as *silent, conflicting, or partially compliant*.

**State's Response:** A column has been added into the tables titled "Compliance Level". Information in this column identifies whether each regulation is fully compliant, silent, conflicting, or partially compliant.

**Silent and Conflicting Regulations:** For those regulations that are silent or conflicting, CMS requested remediation steps and language that clearly indicates how the state will ensure that the federal requirements are addressed through state regulation.

**State's Response:** The "State Evaluation" column explains the evaluation of state rules and how they relate to the characteristic or requirement under the HCBS rules. Remediation steps for regulations that are silent or conflicting have been added to the systemic assessment section as well as to the "Milestones" section of the transition plan.

The "Oversight Process" column of the setting evaluations explains how the state regulates each provider type to ensure that the federal requirement is addressed. These columns have been updated to provide additional information.

**Determination of Compliance:** CMS requested that the state provide specific details explaining how it determined whether a state standard was compliant, not compliant, partially compliant or silent. In this explanation, the state was requested to even cite or identify specific language within the existing state's standards that support each of the state's determinations.

**State's Response:** In the "State Evaluation" column, the state cites the specific rules and regulations that they used to evaluate compliance for each of the characteristics or requirements under the HCBS rules. Where the rules and regulations are silent or not in compliance, remediation was added and detailed in the "Milestones" section of the transition plan.

**Compliance Findings:** In its spot-check of approximately 50% of the state's systemic assessment, CMS identified several examples of regulations that the state provided as evidence of regulatory compliance that do not align with the federal requirements. The following are areas where CMS did not agree with the state's assessment of compliance:

- **Adult Day Services (starting p. 33), WAC 388-71-0766:** This section of the regulation describes the spatial requirements for Adult Day settings. While this regulation addresses privacy and dignity of participants, it does not provide any protections for freedom from coercion and restraint. CMS would consider this regulation only partially complying with the federal requirements and therefore needs to be remediated.
  - **State's Response:** The State has begun the process to revise the Adult Day Services WAC to add the prohibition of restraints in adult day settings. This information is noted in the "Milestones" section of the STP.

- **Private Bedrooms:** While the state has clarified that all Supported Living residents have private bedrooms, the state did not specify a code or regulation that mandates such room specification. It is unclear how the state enforces this requirement with providers. Documentation of a regulation was requested that ensures an individual’s choice of a private bedroom for residents in Supported Living facilities, in support of the state’s private bedroom standard.
  - *State’s Response:* The “Milestones” section has been updated to reflect that contracts will be modified to include language that providers will assist participants to select housing with a private bedroom or the bedroom configuration of the participant’s choice.
- **Community Crisis Stabilization Services (CCSS):** The state notes that these services are temporary, but care provided in these facilities can last up to 180 days, according to CCSS websites. The state claims that the lease rule should not apply because it is not a residence, but CMS indicated that eviction protections should be in place for stays of such potentially long duration.
  - *State’s Response:* The “Milestones” section has been updated to reflect that contracts will be modified to include protection from eviction for residents of CCSS. The state also clarified that these services are provided by licensed medical professionals, i.e. RNs, LPNs, Nursing Assistants Certified and Registered, and ARNPs. Furthermore, the minimum length of stay has been 95 days; maximum length of stay has been 286 days; the average length of stay is 180 days. There are currently protections to prevent the individual from being displaced from the setting and preventing a compromise in the individual’s health and welfare in the Client Rights WAC 388-823-1095 and DDA Policy 4.07.
- **Group Training Homes:** The systemic assessment notes that the two grandfathered group-training homes are not licensed as Adult Family Homes (AFH). Nonetheless, the chart cites AFH regulations to support the assertion that choice of roommate, freedom to decorate and visitation access are guaranteed. Moreover, the physical accessibility component refers only to general rights, which do not appear to mention physical accessibility specifically. The necessary protections may already be part of the individual contracts with these settings, but CMS requested that the STP clarify this inconsistency. Elsewhere in the STP the state notes that lockable door requirements *do* apply to group training facilities.
  - *State’s Response:* The “Milestones” section has been updated to reflect that DDA will revise WAC 388-823-1095 “My rights as a DDA client” to include explicit protections for all HCBS settings standards for all participants. Additionally, “Milestones” section has been updated to reflect that DDA will revise the group training home contract to include provisions regarding lockable doors.

**Nonresidential Settings:** CMS requested that the state add language to the STP to enforce that the experience of individuals receiving HCBS in nonresidential settings is consistent with the experience of others, who are not HCBS recipients.

*State’s Response:* The state added to Appendix C a planned remediation to the WAC 388-71 for the requirement that Day services adhere to all aspects of the federal requirements for non-residential settings. This includes ensuring that individuals receiving HCBS Adult Day Services have the opportunity

to receive services in the community with the same degree of access as individuals not receiving Medicaid HCBS.

**Provider Manuals and other Sources:** CMS appreciated that the state has included additional references to provider manuals and other sources to support its systemic assessment. However, the state did not provide specific citations or links for these manuals and sources. The state was requested to note which sections of these materials align with the federal requirements and provide citations and links within the systemic assessment tables. Also requested was a link to the Licensed Staffed Residential contracts for Licensed Staffed Residential, Child Foster Care and Group Care Facilities, so that CMS may cross-check these regulations against the federal requirements.

**State's Response:** The State has provided additional information to be more specific regarding citations and sources including links to the contracts.

**Reasonable Facility Policies:** CMS requested that the state provide further explanation of how the state interprets "reasonable facility policies" to ensure consistent enforcement and assure that such language does not significantly undermine the rights and freedoms guaranteed under the federal HCBS regulations.

- With regard to visitation rights, control of schedule, access to food, ability to decorate a room, etc., the STP repeatedly refers to "reasonable rules" that could circumscribe a participant's freedoms. CMS requested that such exceptions be clearly explained to avoid creating loopholes in implementation.

**State's Response:** The State has begun the process to revise WAC. The revision will define and clarify the process for modification to a client's rights to outline that any modification to a resident's rights must follow and document the process outlined in 42 CFR 441.725(b)(13).

See the "WAC Changes" section of the "Milestones" section.

### **Systemic Remediation**

**Regulatory Revisions:** CMS requested that the state ensure any necessary regulatory revisions will be made to come into full compliance with the federal HCBS requirements. A plan for systemic remediation was requested that is clearly defined in the timeline and includes any specific changes that will be made to state regulations within the systemic assessment table to address the aforementioned issues.

**State's Response:** The "WAC Changes" portion of the "Milestones" subsection in the STP document includes this requested information.

**Adequate Oversight:** CMS noted that the summaries of stakeholders' comments raise repeated concerns about having adequate oversight in place to ensure that the qualitative "rights" discussed in the regulations (integration in community, privacy, control over schedule, autonomy) are meaningfully enforced. Additional detail was requested on how the state plans to address these concerns within its systemic remediation strategies.

***State's Response:*** The majority of comments pertaining to the settings which remain in this version of the statewide transition plan, address the DDA Pre-Vocational Services. DDA eliminated new admissions to Pre-vocational Services effective September 1, 2015, through approved waiver amendments in the Basic Plus, Core and Community Protection waivers. All people receiving pre-vocational employment supports will be supported to transition into integrated service options within four years. The State has added a draft plan into the "Milestones" section of the STP work plan to address helping impacted beneficiaries find compliant non-residential settings by the end of the transition period.

Concerns about adequate oversight of qualitative rights in Supported Living and Group Home settings are addressed in the "Milestones" section of the work plan. The State has enacted legislation to implement a new DDA Ombudsman program and a High Risk caseloads program to ensure that the rights of vulnerable participants are protected. Excerpt from HB6564 has been included in the STP.

As a component of DDA's Strategic Plan, the State has also developed a Residential Quality Assurance Review based on a randomly selected statistically significant sample (of approximately 350 participants) in Supported Living and Group Homes. A questionnaire for a specified period (not known in advance by providers) asks questions regarding the frequency, duration, and type of integration participants experienced as well as social interactions.

**Revised WAC 388-823-1095:** It was unclear to CMS what providers will be affected by the revised WAC 388-823-1095, and the state was asked to clarify this information.

***State Response:*** The state clarified in the "Monitoring and Ongoing Compliance" section that "the DDA client rights draft revised WAC 388-823-1095 specifically includes references to HCBS settings rights and applies to all DDA participants (in Appendix E Attachments). Revised WAC will be implemented by July 1, 2017, and is listed in Appendix C: State's Remedial Work Plan and Timelines".

## ATTACHMENT II.

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

*PLEASE NOTE: It is anticipated that the state will need to go out for public comment once these changes are made and before 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 Assessment & Validation Activities

CMS requests that the state provide the following additional information regarding the site-specific assessment process.

*Clarifying Approach to Assessment/Validation of Settings:* The STP does not clearly describe an individualized assessment process that determines levels of compliance and identifies areas of non-compliance for individual sites within each setting type.

- While the state noted that settings under the category of Adult Day Services and Group Training Homes received onsite visits to assess and validate setting compliance with the HCBS rule, it is unclear how the state assessed compliance in the following setting categories:
  - Developmental Disabilities Administration (DDA) Companion Homes
  - Supported Living (15 provider-owned and controlled supported living units that need to be assessed)
  - Group Home Licensed Staffed Residential, Child Foster Care, and Group Care Facilities
  - DDA Individual Employment work sites
  - DDA Group Supported work sites
  - DDA Community access
  
- Please clarify how these setting categories were assessed, including whether the assessments involved site visits, whether other assessments were applied, and what validation activities are being or have been completed to date. Also provide details about the training of the individuals who are involved in the assessment and validation activities for each category of settings. Finally, please summarize the results of any assessment and corresponding validation activities, including any trend information identified by the state in terms of major areas of non-compliance across setting category.

*Onsite Reviews:* The current STP states that every site “will have received” an on-site review before September 2016 as part of the state’s existing licensing and complaint investigation infrastructure and its ongoing compliance monitoring process.

- The STP notes that the state has not conducted on-site assessments since the first STP submission last year, and will therefore complete all assessments by September 2016. Please describe how the site visits that were to have occurred by now were conducted to assess compliance for all setting requirements in the HCBS Final Rule.

- Please clarify who will be conducting the assessments in each category of settings.
  - For onsite visits, please provide more specific details regarding how many individual participants are interviewed as part of the on-site review, how the interviewees are selected, and what assurances are made to preserve the right of the participants to privacy during the interview process.
  - Please provide a status of the state’s progress to date in terms of conducting onsite visits and summarize the results of these assessments.

***Summarizing Results of Assessment/Validation Activities and Compliance Level Determinations:*** The STP identified the general setting types that either fully comply or will require remediation but did not provide the number of specific sites within each compliance category.

- Clarify how many settings are in each of the following compliance categories and explain how the estimations were determined:
  - Fully comply,
  - Do not comply but could with modifications,
  - Cannot 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.
- Please include milestones and timeframes for the site specific assessment process in Attachment C: State’s Remedial Work Plan and Timelines.

***Supported Living Settings:***

- Among the HCBS settings in the state providing supported living services, there are 15 provider-owned homes that support 43 individuals. Please include additional details about how the state will assess and validate these settings for compliance with the federal HCBS requirements.
- CMS acknowledges that the majority of supported living settings in the state (all beyond the above-mentioned 15 provider-owned and controlled) are privately-owned homes of the individuals receiving services or of a family member. Please provide more specific details around the state’s ongoing compliance monitoring activities that will be infused into the state’s regular certification and complaint investigation process.
  - The plan articulates that a 70-hour training program will be administered to all residential staff. Please confirm the status of this training being completed and how the state will ensure staff understanding of federal HCBS requirements.
  - Please confirm that both the contracted evaluators and the investigators employed by Residential Care Services (RCS) are being properly trained on the various aspects of the federal HCBS rule. Please clarify whether the RCS evaluators and investigators that are responsible for assessing the supported living settings received the 70-hour training (and if not, what training they did receive).
  - The plan currently states “Investigators conduct client observations, client and collateral interviews, service provider and staff interviews.” Will a separate assessment tool specific to the HCBS requirements be used in these activities? If not, how will the requirements of the HCBS rule be infused into the existing tools or survey instruments that the RCS staff use to conduct certification and investigation activities? Are clients interviewed separately from paid staff and providers?

- What is the process for how the state will address any discrepancies identified between beneficiary and provider assessments?
- If the role of the newly hired quality assurance researcher is to help improve the quality of person-centered planning practices as part of the ongoing development/evolution of Individual Service Plans (ISPs) for clients receiving supported living services, please clarify this point in the oversight process.

**Adult Day Services:** The category “Adult Day Services” covers adult day health settings (which were approved as part of the state’s RCW amendment in May 2016 and thus have been removed from the STP) and adult day care centers. According to page 31, there are 11 centers contracted for adult day care services. The state indicated that it conducted site visits of all adult day service centers in 2014. None of the adult day care settings (that are not adult day health) were approved as part of the May 2016 RCW amendment. Please provide additional details regarding the results of these visits:

- Please provide information about what personnel conducted the site visits, and what training and assessment tools/resources they received to support their assessment and validation activities to determine level of setting compliance.
- Please include the compliance results of the 2014 assessment activities. Appendix A currently confirms that one adult day care center was on the grounds of an institution and determined by the state not to be able to come into compliance with the rule so the contract with the provider was terminated. However, no additional information was provided regarding the results or compliance level determination of other adult day care centers in the state. Please describe what, if any, training, remediation plans or technical support the state provided to any adult day service centers that had to make modifications in order to fully comply with the rule.

**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, the state must outline what it 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).

**Group Non-Residential Settings:** As a reminder, all settings that group or cluster individuals for the purposes of receiving HCBS must be assessed by the state for compliance with the rule. This includes all group residential and non-residential settings, including but not limited to group supported employment and group day habilitation activities. CMS requests the state include details about the methods used to assess these settings for compliance and any corresponding validation strategies.

### **Site-Specific Remedial Actions**

- CMS requests that additional details be provided in describing how the state will assure that settings are fully complying with the requirements outlined in the home and community-based settings rule that a setting:
  - Is integrated in and supports access to the greater community;
  - Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources; and
  - Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS.
- The state should provide a clearer accounting of the assessment findings of individual settings, including how the state plans to develop and enforce corrective action plans when it finds violations. The STP remains unclear about how the state identifies violations (since none have been reported) and how it will ensure that necessary remedies have been implemented.
  - The STP mentions violations and corrective action plans a few times (pages 16, 113). For example, the STP notes that, “Outcomes of the licensing/certification processes include enforcement actions taken on non-compliant providers (such as plans of correction, shortened timelines for certification, fines, and certification/license revocation).” Please provide more detail to clearly describe the process for remediating non-compliant sites to ensure compliance by the end of the transition period.
  - Please provide more details on the corrective action process that identifies how often and where this process has been utilized in the HCBS setting compliance reviews (beyond just the heightened scrutiny process).
  - Please provide milestones and a corresponding timeline for the remediation of any site that may be found to be non-compliant. This may include a description of provider corrective action plans, a timeline for approval and correction, and methodology for site monitoring.
- The STP notes that RCS has a system for developing and enforcing corrective action plans, but it includes no information on the number of assessed settings where violations have been found or corrective action taken (16, 113). Please clarify.

### **Heightened Scrutiny**

***Status of Existing HS Submissions by State of Washington:*** CMS appreciates the state’s timely submission of evidence for heightened scrutiny. However, the evidence provided thus far by the state is not sufficient. CMS will follow up with a separate communication to the state regarding what additional evidence is required of the state with respect to the settings that have already been submitted under heightened scrutiny.

***Criteria for Settings that are Presumed Institutional:*** Settings that should be flagged by the state for potential heightened scrutiny review 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.

***Heightened Scrutiny & Settings that Isolate:*** Please clarify the methodology and criteria used to identify settings that have the effect of isolating individuals. The states' mechanism appears limited to identifying settings that are co-located with institutions (on campus or in same building). The state does not appear to have reviewed settings to identify clusters of group homes, residential schools, or programmatic features that are hallmarks of an institution. The state should not just rely on LTC ombudsmen, participants and stakeholders to report problems with such facilities.

As a reminder to the state, CMS has issued guidance on the [www.medicaid.gov](http://www.medicaid.gov) website that the state may find useful. It is titled *CMS' Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community*.

***State Process for Heightened Scrutiny:*** Please describe in detail the process the state intends to go through to determine whether or not to move a setting forward for CMS review under heightened scrutiny (including the steps the state is going to take to develop a robust evidentiary package on each setting). There are several tools and sub-regulatory guidance on this topic available online at <http://www.medicaid.gov/HCBS>.

***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<sup>1</sup>.

## **Communication and Assistance for Beneficiaries Receiving Services from Providers Unable to Achieve Compliance**

The state has included information in the narrative on the general process as well as information in Appendix C: State's Remedial Work Plan and Timelines on communication with participants who receive services in a site that is found not to be home and community-based. Please describe any additional steps the state is taking with regards to providing assistance to beneficiaries to locate and transition to settings that meet the requirements of the HCBS Final Rule.

CMS requests that the state include additional information about this process in the STP.

- Provide additional details that demonstrate how the state will ensure participants have:
  - reasonable notice and due process;
  - the opportunity, information, and supports to make an informed choice; and
  - critical supports in place in advance of the transition.
- Report the estimated number of beneficiaries that may be living or receiving services that do not meet the requirements of the Final Rule.

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<sup>1</sup> <https://www.medicaid.gov/medicaid/hcbs/downloads/home-and-community-based-setting-requirements.pdf>

- Include milestones and timeframes for the communication with beneficiaries in Attachment C: State's Remedial Work Plan and Timelines. Currently the work plan includes development of a draft plan but does not specify corresponding timeframes for each step.

### **Milestones**

- A milestone template will be supplied by CMS. Please resubmit the chart with any updates no later than 30 days after receiving this communication and the template. The chart should reflect anticipated milestones for completing systemic remediation, settings assessment and remediation, heightened scrutiny, communications with beneficiaries, and ongoing monitoring of compliance. It should also include timelines that address the feedback provided in this letter.