

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

March 14, 2023

Michael Randol
State Medicaid Director
Montana Department of Public Health and Human Services
111 North Sanders, PO Box 4210
Helena, MT 59604

Dear Director Randol:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Montana **final approval** of its Statewide Transition Plan (STP) to bring settings into compliance with the federal home and community-based services (HCBS) regulations found at 42 CFR § 441.301(c)(4)-(5). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on December 23, 2016, the state worked diligently in making a series of technical changes requested by CMS in order to achieve final approval.

Final approval is granted to the state after completing the following activities:

- Conducted a comprehensive site-specific assessment and validation of all settings serving individuals receiving Medicaid-funded HCBS, included in the STP the outcomes of these activities, and proposed remediation strategies to rectify any issues uncovered through the site-specific assessment and validation processes by the end of the transition period on March 17, 2023;
- Outlined a detailed plan for identifying settings that are presumed to have institutional characteristics, including qualities that isolate HCBS beneficiaries, as well as the proposed process for evaluating the settings and preparing for submission to CMS for review under heightened scrutiny;
- Developed a process for communicating with beneficiaries who are currently receiving services in settings the state has determined cannot or will not come into compliance with the home and community-based settings criteria by March 17, 2023; and
- Established ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

After reviewing the STP submitted by the state on December 30, 2022, CMS provided additional feedback on January 24, 2023 and March 3, 2023 and requested several technical changes be made to the STP in order for the state to receive final approval. These changes did not necessitate another public comment period. The state subsequently addressed all

issues and resubmitted an updated version of the STP on March 11, 2023. A summary of the technical changes made by the state is attached.

The state is encouraged to work collaboratively with CMS to identify any areas that may need strengthening with respect to the state's remediation and heightened scrutiny processes as the state implements each of these key elements of the transition plan. Optional quarterly reports through the milestone tracking system designed to assist states to track their transition processes, will focus on four key areas:

1. Reviewing progress made to-date in the state's completion of its proposed milestones;
2. Discussing challenges and potential strategies for addressing issues that may arise during the state's remediation processes;
3. Adjusting the state's process as needed to assure that all sites meeting the regulation's categories of presumed institutional settings¹ have been identified, reflects how the state has assessed settings based on each of the three categories and assures the state's progress in preparing submissions to CMS for a heightened scrutiny review; and
4. Providing feedback to CMS on the status of implementation, including noting any challenges with respect to capacity building efforts and technical support needs.

It is important to note that CMS approval of a STP solely addresses the state's compliance with the applicable Medicaid authorities. CMS approval does not address the state's independent and separate obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act or the Supreme Court's *Olmstead v. LC* decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the *Olmstead* decision is available at: http://www.ada.gov/olmstead/q&a_olmstead.htm.

This letter does not convey approval of any settings submitted to CMS for heightened scrutiny review, but does convey approval of the state's process for addressing that issue. Any settings that have been or will be submitted by the state under heightened scrutiny will be reviewed and a determination made separate and distinct from final STP approval.

Additionally, CMS recognizes the state's request for a corrective action plan (CAP) to allow for additional time for the continued assessment of settings that fall under the institutional presumption to assure compliance with the settings criteria. The state will report to CMS on progress with activities outlined in the CAP.

Thank you for your work on this STP. CMS appreciates the state's effort in completing this work and congratulates the state for continuing to make progress on its transition to ensure all settings are in compliance with the federal HCBS regulations.

¹ Medicaid regulations at 42 CFR § 441.301(c)(5)(v) describe heightened scrutiny as being required for three types of presumed institutional settings: 1) Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment; 2) Settings in a building on the grounds of, or immediately adjacent to, a public institution; 3) Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

Sincerely,

Ryan Shannahan, Deputy Director
Division of Long-Term Services and Supports

Attachment

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF MONTANA AS
REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL
(Detailed list of clarifications made to the STP since December 30, 2022)**

Site-specific Assessments and Validation

- Clarified that all providers returned the provider self-assessment (PSA) for each setting, and if they did not, how those settings were assessed. (pg. 23)
- Clarified that on-site reviews were completed for all settings and not just at the provider level. (pg. 23)
- Clarified what the video conference validation visit process entailed. (pg. 23)
- Clarified the state's process for choosing members to complete the survey when the surveys were completed onsite. (pg. 31)
- Clarified how members were assisted in taking the survey and how the state assured confidentiality for members when taking the member survey. (pg. 31)
- Clarified how the state addressed discrepancies between the member survey and the provider self-assessment. (pg. 31)
- Included in the validation data charts the number of settings that fell under heightened scrutiny for each applicable program and the assessment findings for those settings. (pgs. 25-27)
- Clarified that the validation charts encompass the full scope of all HCB provider owned- or controlled settings. (pgs. 25-27)
- Clarified the discrepancy in settings descriptions with the settings in the validation data charts and aligned the setting types. (pgs. 21-22 and 25-27)
- Clarified that work-site settings have been assessed where individuals are grouped or clustered together. (pgs. 25-26)
- Clarified the state has assessed settings for compliance where an individual lives with a paid, unrelated caregiver in the caregiver's home. (pg. 24)
- Clarified the state has included settings presumed compliant into their ongoing monitoring process and that all of the HCBS settings criteria are being monitored for. (pg. 24)

Site-specific Remedial Actions

- Provided information on what the state is doing to provide non-disability specific settings options to individuals as well as expanding the capacity for those settings. (pg. 15)
- Clarified that reverse integration is not being used by providers as a primary source of integration. (pg. 32)
- Clarified the timelines associated with the internal state provider corrective action plans (CAPs) for compliance remediation. (pgs. 28)

Heightened Scrutiny

- Described the processes the state used to identify settings that fall under any of the three prongs of settings presumed to have institutional characteristics. (pgs. 29-31)
- Categorized each specific setting flagged for heightened scrutiny by category of institutional presumption and setting type. (pg. 30)

- Clarified what is meant by “additional research performed by state staff” as it relates to heightened scrutiny. (pg. 30)
- Clarified the state’s process for identifying settings that isolate. (pg. 29)
- Clarified the state’s process and associated timelines for the submission of heightened scrutiny settings to CMS. (pg. 24, 30 and 95)
- Clarified that the two settings submitted following public comment in 2023 were two of the same settings that were submitted to CMS prior to public comment in 2023, but they were under new management and required a new review. (via response document on 3/9/2023)

Public Comment

- Clarified in the response to comments what changes were made and when no changes were required as a result of the comment. (pg. 20)
- Deleted a letter from the STP from a self-advocate that contained protected health information (PHI).
- Updated timelines including the most recent public comment period. (pg. 17)

Communication with Beneficiaries of Options When a Provider Will Not Be Compliant

- Clarified the timeline for notification of those living in a setting that cannot or will not comply with the settings criteria. (pgs. 36-37)