

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 10, 2023

Lorelei Kellogg, Acting Director
Medical Assistance Division
New Mexico Human Services Department
P.O. Box 2348
Sante Fe, NM 87504-2348

Dear Director Kellogg:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting New Mexico **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 January 13, 2017, 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 January 14, 2022, CMS provided additional feedback on February 23, 2022, July 13, 2022, November 1, 2022, November 29, 2022, December 7, 2022, February 24, 2023, and March 2, 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 8, 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.

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.

Sincerely,

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

Attachment

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.

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF NEW MEXICO
AS REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL
(Detailed list of clarifications made to the STP since January 14, 2022)**

Public Comment

- Included a description of the public comment process and a summary of comments and the state's response to comment. (pg. 67-68)

Site Specific Assessment and Validation

- Detailed all the settings in which Medicaid HCBS are provided for each HCBS program. (pgs. 16, 18, 25, and 26-28)
- Clarified that Community Integrated Employment may be delivered in groups or individually. (pg. 18)
- Confirmed that each provider completed a self-assessment for each individual setting where HCBS is delivered. (pg. 34)
- Confirmed that settings where beneficiaries reside with unrelated paid caregivers were provider owned and controlled and that they were assessed and validated. (pg. 39)
- Provided additional detail about how consumer/guardian feedback/surveys were administered and used in the assessment and validation processes, confirming consumer surveys contained all HCB settings criteria. (pgs. 50-51)
- Confirmed that corrective action was required if there were discrepancies between the consumer survey and the provider self-assessment. (pgs. 50-51)
- Added detail about the state's validation processes for the Centennial Care 1115 Demonstration Waiver through care coordination and confirmed that all settings where Medicaid HCBS is provided were validated outside of the provider self-assessment process. (pg. 57)
- Provided detail on how the validation methodology was determined, the number and type of settings that were validated onsite or through other means, and attested that all HCBS settings were included in the state's validation process. (pg. 39-40)
- Confirmed that all Community Benefit settings on the Centennial Care program were validated for all settings criteria. (pg. 56)
- Updated compliance findings to include the number and type of settings that fell under each compliance finding. (p. 49-50)
- Confirmed that no beneficiaries needed to be relocated due to non-compliance with the settings criteria. (pg. 48)

Site Specific Remedial Activities

- Described the development process for provider corrective action plans (CAPs) and confirmed that CAPs were verified by DDS regional staff upon completion. (pg. 54)
- Confirmed provider attestations were completed after validation activities for existing settings and new settings receive an onsite visit prior to initiation of service provision in addition to completing the provider attestation. (pg. 54)

Non-Disability Specific Settings

- Described the steps the state is taking to build capacity to increase access to non-disability-specific settings, including additional detail on how the state educated providers that reverse integration is not an appropriate strategy to achieve community integration. (pgs. 30-33 and 59)

Ongoing Monitoring

- Provided additional details about the state’s ongoing monitoring processes for each HCBS program, including the frequency of monitoring, entities responsible, oversight of monitoring entities, and the tools used. (pgs. 56-58)
- Clarified that MCOs are responsible for ongoing monitoring of all HCB settings in the Centennial Care program and described the state’s oversight of this process. (pgs. 56-58)
- Clarified that individual, privately owned residences and other presumed compliant settings would be incorporated into ongoing monitoring strategies, including the entities and tools for doing so and the frequency. (pg. 59)

Heightened Scrutiny

- Clarified that settings would have been identified as presumptively institutional through the provider validation process. (pg. 45)
- Provided more detail on how the state trained reviewers to identify settings that might isolate or that were otherwise presumptively institutional. (pgs. 41-42)
- Clarified that the state was able to require settings to remediate any attributes that may have been isolating or institutional in nature and confirmed the state did not identify any settings presumed to have the qualities of an institution including having the effect of isolating beneficiaries. (pgs. 46-47)
- Clarified that the state does not have any memory care settings in the Centennial Care program. (pg. 50)

Timeline

- Corrected STP language to confirm that the state would achieve full compliance by March 17, 2023, and corrected other timelines. (pgs. 10-15)