

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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January 20, 2023

Lisa Olson  
Director  
State of Wisconsin, Department of Health Services  
1 West Wilson Street, Room 350  
P.O. Box 309  
Madison, WI 53701

Dear Director Olson:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Wisconsin **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 Section 441.301(c)(4)(5) and Section 441.710(a)(1)(2). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on July 14, 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.\*
- 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.

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\* 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.

After reviewing the STP submitted by the state on December 16, 2021, CMS provided additional feedback on January 13, 2022 and June 6, 2022 and requested several technical changes be made to the STP in order for the state to receive final approval. These changes necessitated another public comment period held October 10, 2022 through November 18, 2022. The state subsequently addressed all issues and resubmitted an updated version on December 22, 2022. A summary of the technical changes made by the state following the public comment period 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 settings<sup>1</sup> 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](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 home and community-based services regulations.

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<sup>1</sup> CMS describes 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

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Sincerely,

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

Enclosure

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF WISCONSIN  
AS REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL  
(Detailed list of clarifications made to the STP since the public comment period concluded on  
November 18, 2022)**

Site-Specific Validation

- Clarifying language was added to pages 10-11 of the STP regarding the qualifications and training of 3<sup>rd</sup> party reviewers. The compliance review work done with 3<sup>rd</sup> party contracted staff was done in-house under DHS training, direction, and supervision.

Ongoing Monitoring

- Information about which residential settings are HCBS compliant, and standard or abbreviated surveys completed in the past three years are listed on the Division of Quality Assurance (DQA) [Provider Search](#). This link has been added to the STP and the input will be considered in the development and modification of resources available to the public to learn more about HCBS and compliant community-based settings. (pg. 13)
- Language has been added to the STP to clarify that Medicaid Agency contract staff are providing ongoing assessment and monitoring of non-residential settings that are not otherwise regulated. (pg. 16)

Building capacity to assure non-disability specific options

- Expanding, enhancing and strengthening the direct care workforce is one of the additional capacity-building initiatives included in the HCBS Funding Plan submitted to implement section 9817 of the American Rescue Plan (ARP): [Medicaid HCBS Direct Care Workforce Reform](#). Reference to the state's ARP funding for home and community-based services has been added to the STP. (pg. 17)