

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850



Medicaid Benefits and Health Programs Group

June 30, 2023

Jacey Cooper
Chief Deputy Director, Health Care Programs
California Department of Health Care Services
1501 Capitol Avenue, 6th Floor, MS 0000
Sacramento, CA 95814

Dear Director Cooper:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting California **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) and 441.710(a)(1). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on February 23, 2018, 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 March 9, 2023 and May 3, 2023, CMS provided additional feedback on March 21, 2023 and May 9, 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 June 21, 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,

Melissa Harris, Deputy Director

Attachment

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF CALIFORNIA
AS REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL
(Detailed list of clarifications made to the STP since March 9, 2023)**

Site-specific Assessments

- Clarified validation data by moving settings from the “not yet compliant” category to settings that “cannot or were unwilling to comply” or “could comply with modifications,” categories. For those settings that could not or were unwilling to comply, the state included the dates for final notices sent to the provider for final compliance dates before notifying participants of the provider non-compliance. (pgs. 30-33)
- Clarified individuals receiving services in non-compliant settings or not yet compliant settings as of March 17, 2023, had been informed prior to this date with enough time to transition to a compliant setting or locate an alternative funding source. (pg. 31)
- Clarified there was one setting in the 1915(i) State Plan and Developmental Disabilities (DD) Waiver that could not comply or was unwilling to comply and therefore was closed and individuals transitioned to an alternative setting. (pg. 41)
- Clarified the validation charts so the categories of setting compliance are as follows:
 - Fully compliant
 - Complaint with modifications
 - Cannot or unwilling to comply
 - Will submit evidence for the application of heightened scrutiny (pgs. 34-36)

Ongoing Monitoring of Settings

- Clarified all HCB settings criteria are being included in ongoing monitoring processes for all settings, including settings presumed compliant with the regulatory criteria, such as private residences. (pgs. 44-48)

Public Comment

- Clarified the details of the public notice process to include a description of the two forms of public notice, how an individual could make a comment, the option for both electronic and non-electronic comments, how an individual was able to request a non-electronic copy of the STP, and how individuals were informed of these options. (16-19)
- Clarified a public comment response to address the appeal process for both HCBS consumers and providers that include clear timelines and targets and to address enhanced notice requirements and incorporated the information into the STP. (pg. 52)
- Clarified a public comment response to address how the state is ensuring new providers are compliant with the settings criteria and incorporated the information into the STP. (pg. 53)

Other Feedback

- Fixed a broken link to Attachment XI. (pg. 41)