

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 17, 2023

Ms. Tricia Roddy, Acting Medicaid Director  
Health Care Financing and Medicaid  
201 W. Preston Street  
Baltimore, MD 21201

Dear Acting Medicaid Director Roddy:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Maryland **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 42 CFR § 441.710(a)(1)-(2). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on August 2, 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 April 29, 2022, CMS provided additional feedback on June 10, 2022, and September 26, 2022. These changes necessitated another public comment period held January 4, 2023 – February 2, 2023. CMS provided additional feedback on January 10, 2023, February 9, 2023, February 21, 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 10, 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 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.

Additionally, CMS recognizes the state's request for a corrective action plan (CAP) to allow for additional time for provider compliance with regulatory criteria including facilitating community integration, employment opportunities, and the option for a private unit and/or choice of roommate, which has been impacted by staffing shortages caused by the COVID-19 Public Health Emergency. The state will report to CMS on progress with activities outlined in the CAP.

---

<sup>1</sup> 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.

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

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF MARYLAND AS  
REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL  
(Detailed list of clarifications made to the STP since April 29, 2022)**

**Public Comment**

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

**Site-Specific Assessment & Validation Activities:**

- Provided details on how the state will monitor private homes for compliance with the settings criteria; (pgs. 55-56)
- Clarified the difference between providers and settings in the site-specific assessment process throughout the document; (pgs. 16-17, 22, 28, 30, 36-37, 40, 49)
- Clarified that Brain Injury providers are part of the Developmental Disability Administration (DDA) network and their setting types were included in the assessment and validation process; (pg. 48)
- Delineated the different setting types and numbers between Community Pathways waiver settings and Brain Injury waiver settings; (pgs. 45, 48)
- Confirmed that behavioral support services settings were included in the site-specific assessment process; (pg. 24)
- Clarified that supported employment is an individualized service provided in community-based settings; (pgs. 25, 47)
- Included Therapeutic Integration sites in assessment and validation activities and posted these sites for public comment; (pgs. 16-17, 58)
- Provided the timelines for when settings were assessed and validated, including the method for validation; (pgs. 16, 29-30, 37, 41, 47-48; Appendix P, pg. 7)
- Clarified how the Community Setting Questionnaire (CSQ) is used in the assessment and validation process for settings, including both residential and non-residential settings; (pgs. 29, 36)
- Clarified how Affordable Care Act (ACA) compliance reviews aided in the setting assessment and validation process; (pgs. 16, 29, 37, 41, 48)
- Provided details on how discrepancies between the provider self-assessments and survey results are addressed; (pgs. 16, 29, 36, 42, 48)
- Confirmed that foster-care type settings are utilized in the provision of HCBS and were included in assessment and validation activities; and (pg. 27)
- Included Shared Living settings in the assessment and validation process, including the method of validation. (pgs. 27-28)

**Aggregation of Final Validation Results:**

- Provided initial findings of setting compliance by waiver and setting type; (pgs. 16-17, 30, 37, 41-42, 49) and
- Provided a final disposition of validation results for all settings by waiver based on compliance status. (pgs. 16-17, 30, 37, 41- 42, 49)

**Site-Specific Remediation:**

- Provided details on how the state will assure non-residential settings will not rely on reverse integration to comply with community integration requirements; (pgs. 54-55)
- Described the steps the state is taking to build capacity to increase access to non-disability-specific settings; (pg. 55)
- Described how provider compliance with state-issued CAPs will be monitored and completion confirmed by the end of the transition period; (pgs. 53-54; Appendix P, pgs. 5, 8) and
- Provided a description of the process for transition, with a timeline, for communicating with beneficiaries when a setting will not be compliant. (pgs. 54, 56-57; Appendix P, pg. 9)

**Ongoing Monitoring of Settings:**

- Updated the various settings checklists to ensure they contain all of the settings criteria;
- Clarified the CSQ is used with beneficiaries receiving services in residential settings and non-residential settings; (pgs. 56-57)
- Clarified that settings that provided services remotely during the Public Health Emergency (PHE) will be included in ongoing monitoring once the settings reopen; and (pg. 57)
- Provided methods for beneficiaries to contact state compliance staff to share feedback, complaints, or concerns, including how that information is shared with beneficiaries. (pg. 57)

**Heightened Scrutiny:**

- Clarified the process the state used to help identify settings for heightened scrutiny review; (pgs. 6, 56)
- Provided details on which entity determines to move settings forward to CMS for heightened scrutiny review; (pg. 6) and
- Clarified timelines around the heightened scrutiny process, including completion of the state's review, public comment timing, and submission to CMS. (pg. 56; Appendix P, pg. 7)

**Additional Feedback:**

- The state provided links to all Appendices in Section 4, putting them in one location for ease of access. (pg. 62)
- The state will receive technical assistance to address concerns with the lease/residential agreements and the assessment tools. Amendments to the CAP will be submitted as necessary.
- The state will submit an amended request for a CAP to include the assisted living setting submitted for heightened scrutiny to allow time for final adjudication.