

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

February 15, 2023

Kelly Cunningham Medicaid Administrator
State of Illinois, Division of Medical Programs
Department of Healthcare and Family
201 South Grand Avenue East, 3rd Floor
Springfield, IL 62763-0001

Dear Director Cunningham:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Illinois 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 441.710(a)(1)-(2). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on July 23, 2021, 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 8, 2022, CMS provided additional feedback on December 29, 2022, 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 January 31, 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.

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.

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.

Sincerely,

Mary Marchioni, Acting Director
Division of Long-Term Services and Supports

Attachment

SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF ILLINOIS AS REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL

(Detailed list of clarifications made to the STP since December 8, 2022)

Site-Specific Assessment & Validation Activities

- For the Illinois Department of Human Services- Division of Developmental Disabilities (IDHS-DDD) compliance validation tools, explained how the state assessed the setting for assistance with access to the community through facility transportation, informed choice of activities and facilitation of access to transportation. (pgs. 16-17)
- For IDHS-DDD, explained how Group Supported Employment was assessed to ensure Medicaid HCBS individuals experience the setting as do individuals employed who are not receiving Medicaid HCBS, such as physical accessibility, support to control their schedules within the allowable work schedule, integration with others in the workplace, and confirmation that the assessment includes whether the setting supports opportunities to seek employment in competitive integrated settings. (p. 20)
- For Illinois Department on Aging (IDoA) and Division of Rehabilitation Services (DRS) non-residential settings, clarified how these settings were assessed for confirmation that restrictions placed on individuals are supported by a specific-assessed need and are clearly justified and documented in the individual person-centered service plans [42 CFR 441.301(c)(4)] via assessment of the person-centered planning requirements.

Remediation Strategies

- Provided end dates in Appendix G for action items 4 and 5 addressing modifications, provider sanctions/disenrollment and individual transitions. (pgs. 149-150)
- For IDHS-DDD, provided an explanation of how the state will confirm all settings have completed settings criteria remediation prior to March 17, 2023. (pgs. 26-27)
- For IDHS-DDD, included in the STP that no individuals are expected to need to transition from non-compliant settings. (p. 33)

Heightened Scrutiny

- For IDHS-DDD, provided February 28, 2023, as the anticipated completion date for the IDHS-DDD heightened scrutiny process. (p. 15)
- Provided further information regarding what information is considered to find a setting has overcome the institutional presumption and who is involved in the final decision making. (p. 10)