

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



August 24, 2023

Sally Kozak, Director
Office of Medical Assistance Programs
Department of Human Services
P.O. Box 2675
Harrisburg, PA 17105-2675

Dear Director Kozak:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Pennsylvania **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 Aug. 30, 2016, 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 October 31, 2022, CMS provided additional feedback on November 28, 2022, March 16, 2023, April 12, 2023, June 2, 2023, July 19, 2023, and August 14, 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 Aug. 17, 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,

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

Attachment

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF PENNSYLVANIA
REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL
(Detailed list of clarifications made to the STP since October 31, 2022)**

Public Comment

- Included a description of the public comment process, a summary of comments, and the state’s response to comment (pgs. 4-6 and Appendix E).

Site-Specific Assessment & Validation Process:

- Clarified the Office of Developmental Programs (ODP) providers’ self-assessment results by settings type (pg. 9).
- Clarified the Office of Long-Term Living’s (OLTL) definition of “other provider-owned or controlled providers” (pg. 41).
- Clarified that settings where individuals receive Medicaid HCBS services in the private homes of unrelated caregivers are categorized as Life Sharing homes and were included in the initial assessment and validation process (p.8).
- Clarified the settings where services are provided in the Office of Childhood Development and Early Learning (OCDEL) Infant, Toddlers and Families waiver program and how these settings were assessed for compliance (pgs. 60-61).
- Confirmed that Child Residential Service Homes licensed under 55 Pa. Code Chapter 3800 and Community Residential Rehabilitation Services for the Mentally Ill Home licensed under 55 Pa. Code Chapter 5310 were included in the initial assessment and validation process and included the details of that process (pgs. 9, 19-22).
- Provided initial compliance estimates for each setting type in ODP and OLTL (pg. 11 and pgs. 42-43 respectively).
- Provided information on the change in the number of settings for ODP programs from provider self-assessments in 2018 to final compliance determination (pgs. 18, 34 – 35).
- Provided information on the change in the number of settings for OLTL programs from provider self-assessments in 2015 to final compliance determination (pgs. 42-43, 45).
- Provided clarification on the ODP beneficiary relocation process for settings that no longer provide HCBS (pg. 35).
- Confirmed that 100% of ODP settings were validated through the Quality Assessment & Improvement (QA&I) process, licensing inspections and/or individual monitoring by Supports Coordinators by June 30, 2023 (pg. 38).
- Confirmed that 100% of OLTL settings were validated by the OLTL Quality Management Efficiency Team (QMET) by calendar year 2022 (pg. 45).
- Clarified the state’s standard on reverse integration, the process through which the state assures individual access to the broader community, and how this standard is communicated to providers (pgs. 29-30, 72).

Aggregation of Final Validation Results

- Provided a final determination of HCBS compliance by setting type within each program: ODP and OLTL (pgs. 36-38 and pg. 52 respectively).

Site-Specific Remedial Actions

- Described how the beneficiaries will have access to non-disability specific setting options in ODP and OLTL programs and how the state is building capacity among providers to increase non-disability specific setting options across home and community-based services (pgs. 69-71 and pgs. 44-45 respectively).
- ODP provided details on the number of unlicensed settings and how those settings are validated through Support Coordination (pgs. 33, 35).
- ODP provided details for settings that were not fully compliant, the steps those settings took to reach compliance and how the state validated compliance through licensing inspections, the QA&I process and/or through individual monitoring by Supports Coordinators including the timeframe to do so (pgs. 22-34).
- ODP clarified the meaning of the data presented in the QA&I outcomes in Figures 3, 4, and 5 (pg. 28).
- OLTL provided details for settings that were not fully compliant, the steps those settings took to reach compliance and how the state validated compliance using the QMET, including the timeframe to do so (pgs. 53-56).
- OLTL clarified that for providers with multiple settings, compliance action plans were issued on a settings basis (pg. 56).

Ongoing Monitoring of Settings:

- ODP clarified the process of provider and setting review selection for QA&I and licensing inspections, including the frequency of the random individual interviews (pgs. 73-74).
- Clarified how individual private homes are included in the ongoing monitoring process for waivers under the ODP, OLTL and OCDEL programs (pgs. 75-76, 44-45, and 60-61 respectively).
- OCDEL clarified that all requirements of the HCBS rule have been incorporated into the program's ongoing monitoring process, including the home visits by Service Coordinators (pg. 61, 79, 81).
- Clarified the frequency of OLTL programs' Service Coordinator monitoring visits (pg. 44).
- Updated all OLTL assessment/ongoing monitoring tools to include all HCBS criteria (Appendix D).

Heightened Scrutiny:

- ODP clarified their process for identifying settings for heightened scrutiny including the determination of the final number of settings to receive a heightened scrutiny onsite review (pgs. 11-15, 58-59).
- OLTL clarified how settings are evaluated for presumed institutional characteristics, the number of settings identified, and timeline for remediation (pgs. 54, 56).
- ODP provided details for onsite reviews for the heightened scrutiny process, the remediation requirements for those settings, and the date by which remediation was completed (pgs. 12-16).
- OLTL provided details for onsite reviews for the heightened scrutiny process, the remediation requirements for those settings, and the date by which remediation was

completed (pg. 53-56).

- OLTTL confirmed the number of individual settings submitted for heightened scrutiny review (pg. 54).

Communication with and Support to Beneficiaries when a Provider will not be Compliant

- ODP included the process and timeline for assuring beneficiaries have adequate notice should transition out of non-compliant settings need to occur, and confirmed that this information is provided in the person-centered planning process (pg. 64).

Other Feedback:

- Corrected the link to “Licensing Regulations that Align with the HCBS Rule” (pg. 16).
- Added hyperlinks to the appendices listed in the Table of Contents.