

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

Elizabeth Matney
State Medicaid Director
Iowa Medicaid Enterprise
1305 East Walnut Street
Des Moines, IA 50319

Dear Director Matney:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Iowa **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 August 9, 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 July 8, 2022, CMS provided additional feedback on August 1, 2022, November 9, 2022, February 23, 2023, March 6, 2023, and

March 13, 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 15, 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 and for the completion of site-specific compliance validation. 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 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 IOWA AS
REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL
(Detailed list of clarifications made to the STP since July 8, 2022)**

Site-specific Assessments:

- Clarified throughout the STP various methods for assessing and validating settings for compliance with the settings criteria. These assessments and validation strategies utilized did not yield site-specific compliance data. The state has agreed to complete this work through a Corrective Action Plan (CAP); (pgs. 29, 42, 43, 47, 49, 51, 52)
- Clarified the number and type of settings that disenrolled from the HCBS delivery system; (pg. 48)
- Clarified which settings the following services are delivered in:
 - Home-Based Habilitation
 - Interim Medical Monitoring and Treatment
 - Mental health outreach
 - Supported Community Living
 - Residential-Based Supported Community Living for Children; (pgs. 30, 32-34)
- Clarified that the Iowa Participant Experience Survey (IPES) was used for quality oversight and was not used as a method for validating settings assessments; (pg. 25)
- Clarified how the case manager ensures the member's perspective is fully represented in the member assessment responses and is conflict free; (pgs. 21-22)
- Clarified the resolution process through case management that was used when a participant responded "no" in regard to compliance with settings criteria; (pg. 24)
- Clarified that settings where members live with an unrelated, paid caregiver, in the caregiver's home, are included in the provider owned or controlled settings assessment and validation process; (pg. 32) and
- Clarified that settings where individuals are grouped or clustered for the purpose of receiving services were included in the state's overall assessment and validation processes. (pg. 36)

Site-specific Remedial Actions:

- Clarified what the state is doing in order to build capacity of non-disability specific settings in the state; (pgs. 27-28)
- Clarified how many settings received a CAP from the state initially after the state's validation of the provider self-assessments were completed; (pg. 83) and
- Clarified the details around the length of time that a provider has to complete a CAP and a date by which all providers must have CAPs submitted. (pg. 41)

Heightened Scrutiny:

- Clarified the state's internal process for determining whether a setting will be submitted to CMS for heightened scrutiny review; (pg. 46)
- Clarified how the state has identified settings that isolate; (pg. 46)
- Clarified the setting types of the 12 settings that came into compliance before July 2021; (pgs. 43-44) and

- Clarified that the state has identified settings that fall under the institutional presumption and included the settings type and category of heightened scrutiny under which they fall. (pgs. 46-47)

Communication with Beneficiaries of Options When a Provider Will Not Be Compliant:

- Clarified the process through which the individual is given notice that a setting will not be compliant, how the state will offer informed choice of alternative settings through person-centered planning, and a description of how the state will ensure that all critical services and supports are in place in advance of each individual's transition. (pgs. 41-42)

Ongoing Monitoring:

- Clarified how the ongoing monitoring process will account for all HCBS settings criteria; (pgs. 51-52)
- Clarified that all settings where HCBS are provided, including settings presumed compliant by the state, are included in the process for ongoing monitoring; (pgs. 34, 51-52) and
- Clarified the processes for ongoing monitoring of all settings and by when all settings in the state will have received ongoing monitoring at least once. (pgs. 51-52)

Other Feedback:

- Clarified that each section of the STP reflects the processes that were implemented by the state and removed outdated information throughout the STP; and
- Outlined areas in the STP that will be clarified through the settings CAP work. (pgs. 29, 42, 43, 47, 49, 51, 52)