

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 16, 2023

Amanda Cassel Kraft, Assistant Secretary
MassHealth Executive Office of Health and Human Services
1 Ashburn Place
Boston, MA 02108

Dear Assistant Secretary Kraft:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Massachusetts **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 December 27, 2022, 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 January 31, 2023 and February 28, 2023, CMS provided additional feedback on February 17, 2023 and March 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 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 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, Deputy Director
Division of Long-Term Services and Supports

Attachment

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

(Detailed list of clarifications made to the STP since January 11, 2023)

Public Comment

- Included a description of how the public could request copies of the Statewide Transition Plan for review and commenting purposes. (pg. 7)

Site-specific Assessment, Validation, and Classification of Results:

- Confirmed that the self-assessment tool used for Department of Developmental Services (DDS) and Massachusetts Rehabilitation Commission (MRC) settings included all the settings criteria; (pgs. 34-35)
- Provided additional information confirming that the attestations for the Adult Foster Care settings for DDS, MRC, and Executive Office of Elder Affairs (EOEA) will be validated by the state for all settings rule requirements by March 17, 2023; (pg. 61)
- Confirmed that all settings in which members reside in the home of an unrelated caregiver receive ongoing monitoring for all settings rule requirements; (pg. 61)
- Provided assurances that settings in which people reside on their own or with family members in privately owned or rented homes receive ongoing monitoring for compliance with all settings rule requirements; (pg. 61)
- Clarified where group employment supports are delivered, along with additional details about the process by which those settings were determined to be compliant; (pgs. 36, 38-39)
- Clarified how compliance was assessed and validated for 225 Community Based Day Settings (CBDS) following remediation activities, including the 8 CBDS settings that were initially determined non-compliant; (pgs. 45-47) and
- Indicated that the 6 group employment settings which were initially found non-compliant, are currently compliant. (pgs. 38-39)

Site-Specific Assessment Process:

- Provided additional details about the licensure and certification processes that were used to verify the compliance of residential settings for DDS waivers, including the timeline in which settings received reviews, the tools used that reflected all the rule requirements, and who conducted those visits on behalf of the state; (pgs. 11-12, 32-33)
- Clarified the number of MRC settings that received a desk review or site visit, along with the factors that led the state to determine that an onsite visit was needed; (pg. 47)
- Confirmed that all MRC settings were assessed and validated for all settings rule criteria, including lease agreements; (pg. 48)

- Clarified the number of shared living settings assessed, along with the findings; (pg. 50)
- Indicated how settings were assessed to assure they have implemented locks and tenancy agreements for full compliance; (pg. 48)
- Provided additional details about the documents MRC staff reviewed to validate settings compliance; (pg. 49)
- Provided additional details how Aging Services Access Points (ASAP) completed reviews, including information about site visits and documentation review; (pg. 53)
- Confirmed that all ASAP survey results evaluated by EOEА contained all the settings criteria in the survey; confirmed the onsite visit processes for Supportive Day settings; and (pg. 53)
- Clarified that EOEА issued revised HCBS Program Guidelines in January 2023. (pg. 29)

Site-Specific Remediation:

- Confirmed that the state does not implement reverse integration methods in settings; (pg. 5)
- Confirmed that Day Habilitation settings are no longer HCBS settings and are not required to comply with the settings criteria; (pg. 37)
- Confirmed that CBDS' initially-identified challenges to providing meaningful day services have been remediated into compliance; and (pgs. 39-40)
- Added details for the DDS and MRC site specific assessment and remediation process, including remediation validation. The state also confirmed that these settings were compliant with requirements for locks on doors and lease agreements. (pgs. 40-43, 45-47, and 51)

Heightened Scrutiny:

- Indicated a timeline for completing the heightened scrutiny process; (pgs. 61-63)
- Provided additional information on the process and timelines associated with the transition process, including notifying participants if they are receiving services from a provider that cannot comply with the regulatory criteria, and the entities responsible for the process; (pgs. 63-64)
- Confirmed that presumptively institutional settings that overcome the institutional presumption have been posted for public comment, with the list of settings submitted to CMS; (pg. 61)
- Clarified that the 25 settings identified in the chart on page xxii are the same as the settings described on page 34. Also noted that the settings require heightened scrutiny due to potential isolation of HCBS beneficiaries, along with details about the factors that were considered in making the determination the settings were presumptively institutional; and (pgs. 34 and 61)
- Confirmed that the state validated presumptively institutional settings against all the settings rule criteria, not just the requirement for community integration. (pg. 62)

Ongoing Monitoring of Settings:

- Provided specific detail for each HCBS program’s monitoring of settings for compliance with all setting criteria, including the timelines in which settings are subject to monitoring, the frequency of the monitoring, and the specific entity responsible for monitoring the program; (DDS pgs. 32-47, MRC pgs. 47-52, and EOEAs pgs. 52-57)
- Assured individual/private homes are included in ongoing monitoring; and (pg. 59)
- Provided additional detail about what actions the state will take if, during ongoing monitoring, a setting is found to be non-compliant. (pgs. 58-61)