

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

June 2, 2017

Dawn Stehle
Deputy Director, Division of Health and Medicaid Services
State of Arkansas, Department of Human Services
112 West 8th Street, Slot S401
Little Rock, AR 72201-4608

Dear Ms. Stehle:

I am writing to inform you that CMS is granting Arkansas **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 Section 441.710(a)(1)(2). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on November 7, 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 due to the state completing the following activities:

- Conducted a comprehensive site-specific assessment and validation of all settings serving individuals receiving Medicaid-funded HCBS, and 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.
- 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 these settings and preparing for submission to CMS for review under Heightened Scrutiny;
- Developed a process for communicating with beneficiaries that are currently receiving services in settings that the state has determined cannot or will not come into compliance with the home and community-based settings criteria by March 17, 2022; 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.

In the November 7, 2016 letter conveying initial approval of the STP, CMS requested a set of technical changes be made to the STP in order for the state to receive final approval (see Attachment II).¹ CMS determined the remaining changes that needed to be made were technical in nature and did not rise to a level of requiring a further public comment period. The substantive changes made to the STP were released for public comment during the public notice period beginning on August 17, 2016. A summary of the state's technical changes made since the initial approval was awarded 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 settings² have been identified, reflects how the state has assessed settings based on each of the three categories and 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. CMS will opine on any requests for heightened scrutiny at the time they are submitted.

¹ <https://www.medicaid.gov/medicaid/hcbs/downloads/ar/ar-initial-approval.pdf>.

² CMS describes heightened scrutiny as being required for three types 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,

Ralph L. Lollar, Director
Division of Long Term Services and Supports

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

(Detailed list of technical changes made to the STP since receiving Initial Approval)

Setting Identification

- Added two types of residential settings potentially impacted – Adult Family Homes and Division of Disability Services (DDS) Staff Homes (p. 5) – based on communications with CMS that clarified that settings where individuals live in the private home of unrelated paid professional staff need to be assessed for compliance
- Provided definition of DDS Staff Homes (top of p. 7)

Site-Specific Setting Assessment & Validation Activities

- Clarified the role of provider self-assessments (bottom of p. 10, middle of p. 12)
- Added language on the self-assessment process for Adult Family Homes, including timing of this activity (middle of p. 11)
- Provided additional detail about the state's efforts to improve response/completion rate of beneficiary surveys to meet target sample (bottom of p. 15, p. 16)
- Added language on Adult Family Homes and site visits (p. 17)
- Added language on DDS Staff Homes and site visits (p. 17)
- Provided additional detail about the state's decision to make unannounced initial site visits (pgs. 17-18)
- Provided additional detail on the types of training and technical assistance the state is providing to assure all providers fully understand their obligations under the Final Rule (middle of p. 18)
- Added the clarification of the state's determination that the follow-up site visits will be conducted by different reviewers than those that conducted the initial site visit (p. 19)
- Provided additional detail on the timeframe in which the state will identify strategies for continued service provision to beneficiaries living in settings the state determines to be non-compliant (middle of p. 20, middle of p. 25)
- Clarified timeframe for advance notice as part of the Division of Adult Aging Services (DAAS) process to assist beneficiaries receiving services in non-compliant settings (top of p. 26) and
- Added language on the steps the state will take to assure continuity of service delivery for beneficiaries (bottom of p. 26, bottom of p. 27 and continues at top of p. 28).

Site Specific Outcomes & Remediation:

- Provided additional detail about how discrepancies between beneficiary interviews and findings from site visits are addressed; modified the language regarding provider corrective action plans (CAPs) so the expectation is for providers to address

discrepancies between information given by provider staff and information provided by beneficiaries and their families (p. 18)

- Provided greater clarification about the nine DDS settings that were found to be compliant with the rule by specifying the setting types (p. 20)

Non-Disability Specific Settings:

- Provided additional clarity on the manner in which the state will ensure that beneficiaries have access to services in non-disability specific settings among their service options for both residential and non-residential services (p. 13)
- Included a brief summary of the state's plans for building/expanding the number of non-disability specific settings for individuals to choose from (p. 13)
- Added language about the commitment the state is making to assure an adequate number of providers of HCBS (bottom of p. 25)

Heightened Scrutiny

- Added language to Heightened Scrutiny section about identification of settings that may isolate HCBS beneficiaries from their larger communities (p. 22)
- Added language to Heightened Scrutiny section to include Adult Family Homes and DDS Staff Homes (bottom of p. 22)
- Provided additional detail on the types of evidence, and added references to corresponding appendices, the state will be providing to CMS to support the determination that settings presumed to be institutional are home and community-based and have overcome the institutional presumption under heightened scrutiny (bottom of p. 24)
- Added language on the estimated number of beneficiaries that may be living or receiving services in settings that fall under heightened scrutiny (top of p. 25)
- Confirmed the state's determination that any setting requiring a CAP that has been flagged for heightened scrutiny will complete the CAP in its entirety prior to the state submitting the setting for review by CMS (pgs. 24, 25)
- Clarified that there will be both non-electronic and electronic notices sent out for any future notices of public comment opportunities on settings that the state is considering under heightened scrutiny (p. 20)
- Described how the final decision will be made on whether or not to submit a setting to CMS for HS review by the inter-divisional HCBS Settings working group, including outlining what determining factors would yield an affirmative decision that a setting overcomes the institutional presumption (p. 24)

Ongoing Compliance Monitoring

- Provided additional detail on how the state will monitor compliance around community integration (bottom of p. 18)
- Provided additional detail on how the state will monitor the successful completion of any corrective actions that need to be made by settings during the transition period (top of p. 19)

Milestones

- Added action steps to the timeline in Appendix A to correspond to some of the activities listed in previous bullet points (see new action steps A-12, A-16, A-19, A-24, A-27, A-30, A-35, A-36, D-17, A-41, D-24, AD-1)
- Made changes to existing action steps to include new DDS Staff Homes setting (D-18, D-19, D-20, D-21, D-22)