

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Disabled & Elderly Health Programs Group

May 10, 2017

Ms. Teri Green
State Medicaid Agent
State of Wyoming, Department of Health
6101 Yellowstone Road, Suite 210
Cheyenne, WY 82009

Dear Ms. Green:

This letter is to inform you that CMS is granting Wyoming **initial 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). Approval is granted because the state has completed its systemic assessment; included the outcomes of this assessment in the STP; clearly outlined remediation strategies to rectify issues that the systemic assessment uncovered, such as legislative/regulatory changes and changes to vendor agreements and provider applications; and is actively working on those remediation strategies. Additionally, the state submitted the October 2016 draft of the STP for a 30-day public comment period, made sure information regarding the public comment period was widely disseminated, and responded to and summarized the comments in the STP submitted to CMS.

After reviewing the October 2016 draft submitted by the state, CMS provided additional feedback on November 16, 2016 and April 11, 2017 requesting that the state make several technical corrections in order to receive initial approval. These changes did not necessitate another public comment period. The state subsequently addressed all issues, and resubmitted an updated version on March 3, 2017 and May 5, 2017. These changes are summarized in Attachment I of this letter. The state's responsiveness in addressing CMS' remaining concerns related to the state's systemic assessment and remediation expedited the initial approval of its STP. CMS also completed a spot check of 50% of the state's systemic assessment for accuracy. Should any state standards be identified in the future as being in violation of the federal HCBS settings rule, the state will be required to take additional steps to remediate the areas of non-compliance.

In order to receive final approval of Wyoming's STP, the state will need to complete the following remaining steps and submit an updated STP with this information included:

- Complete comprehensive site-specific assessments of all home and community-based settings, implement necessary strategies for validating the assessment results, and include the outcomes of these activities within the STP;
- Draft remediation strategies and a corresponding timeline that will resolve issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the home and community-based settings rule transition period;
- Outline 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;
- Develop 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 rule by the end of the transition period; and
- Establish ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

While the state of Wyoming has made much progress toward completing each of these remaining components, there are several technical issues that must be resolved before the state can receive final approval of its STP. CMS will be providing detailed feedback about these remaining issues shortly. Additionally, prior to resubmitting an updated version of the STP for consideration of final approval, the state will need to issue the updated STP out for another minimum 30-day public comment period.

Upon review of this detailed feedback, CMS requests that the state please contact Amanda Hill at Amanda.Hill@cms.hhs.gov at your earliest convenience to confirm the date that Wyoming plans to resubmit an updated STP for CMS review and consideration of final approval.

It is important to note that CMS' initial approval of an 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 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.

I want to personally thank the state for its efforts thus far on the HCBS Statewide Transition Plan. CMS appreciates the state's completion of the systemic review and corresponding remediation plan, and looks forward to the next iteration of the STP that addresses the remaining technical feedback that is forthcoming.

Sincerely,

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

ATTACHMENT I.

SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF WYOMING TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 5/5/17

- **Public Notice and Engagement:** CMS requested the state provide additional information about the most recent STP public comment period. The request included providing links to the STP postings on the Wyoming Department of Health’s website, clarify in the STP the different options that the public had to submit comments, include both the start and end dates for the latest public comment period in the STP, and provide information on the public comments submitted.

State’s Response: The state included the public notice language in the STP on p. 4. The state included the link to the current draft STP on p. 5. The state included additional detail on the different options that the public had to submit comments on pp. 4-5 of the STP. The public was able to submit comments via a public forum, email, phone, or mail. The start and end dates of the latest public comment period were included on p. 5 of the STP. The state clarified that no other comments were received from the public comment period. This clarification was also added to p. 5 of the STP.

- **Links:** CMS asked the state to ensure the following links were functioning in the STP:
 - Assisted Living Facility Licensing Rule, Chapter 12, p. 21 and p. 26 of the systemic assessment
 - The CMS toolkit on p. 23 of the STP
 - “Finding Waiver Specific Transition Plans,” p. 32 of the STP
 - Policy and Procedure Manual for Community Choices Waiver Policy of the systemic assessment

State’s Response: The state updated the links.

- **Settings:**
 - The state was asked to clarify the settings in which prevocational services are provided, in the Acquired Brain Injury Waiver, Supports Waiver, and Comprehensive Waiver and to ensure they are accounted for in the systemic assessment.
 - The state was asked to update the description on pg. 1 of the CMH waiver. It included information regarding respite services which are no longer provided in this waiver.

State’s Response: The state clarified prevocational services are included in the non-residential settings in the systemic crosswalk. The state also made the update to the CMH waiver description.

- **Identification of Compliance for State Standards:** The name of the Long Term Care Waiver changed to Community Choices when the waiver was renewed on July 1, 2016. CMS requested that any future versions of the STP reflect the name change. CMS also requested

that the state confirm if the Community Choices waiver had services offered in congregate settings as indicated by adult day care being listed as a covered service for this waiver.

State's Response: The state made the name change from the Long Term Care Waiver to Community Choices Waiver throughout the STP. The state also included Adult day settings in the STP on p. 2 for the Community Choices Waiver.

- **Systemic Assessment Crosswalk:** CMS noted that, for several of the state standards provided in the crosswalk, the end of the applicable standard cut-off, the state had cited entire chapters of regulations, making it difficult to find the applicable text, and many of the links did not direct to the specific standard.

State's Response: The state repaired the links and added page numbers to assist with finding specific sections. Cells on the systemic assessment spreadsheet were enlarged to assure all wording was visible.

- CMS asked the state to attest that those receiving services in non-residential settings have access to food, controlling their own schedules and activities, and access to visitors to the same degree as those individuals not receiving Medicaid HCBS.

State's Response: The state amended the crosswalk to include non-residential settings in their assessment for these criteria.

- Additionally the state was asked to include in the crosswalk an assessment of the state regulations, policies, and standards as they pertain to the federal criteria to support the modification of conditions for provider-owned and controlled settings.

State's Response: The state included this requirement in their systemic assessment.

- **Policy and Procedure Manual:** CMS noted that it was not clear from the crosswalk whether the referenced policy manual existed or was in development and had not yet been issued. The state used the same label in the second column from the left, "Policy and Procedure Manual, in Development," to describe both an existing policy manual that is being amended (e.g., Community Choices Waiver Policy) and a policy manual that had not been issued (e.g., BHD-PVS-0338-Integrated Setting Policy). CMS asked the state to clarify the status of the manual.

State's Response: The state included additional language to make this distinction clear in its systemic assessment. In the column titled, "Current, future, waiver app, etc." the state used "Policy and Procedure Manual, in development" to indicate the policy had not been issued and "Policy and Procedure Manual" to describe the existing policy manual that is being amended.

- **Behavior Health Division Policy:** CMS indicated that it was unclear if the Behavior Health Division (BHD) –PVS-0339-Policy will be overarching policy for all waivers and asked the state to clarify if the template language at the end of the systemic assessment

will be incorporated into the BHD-PVS policy in its entirety or if only sections will be incorporated.

State's Response: The state removed the template language at the end of the systemic assessment and added additional wording to the draft policies to provide further detail. The state also clarified that this policy and procedure will be applied to Comprehensive, Supports, and ABI Waiver Settings.

- **Systemic Assessment Language Discrepancies:** CMS indicated that there were several discrepancies between Wyoming's template language at the end of the systemic assessment and the federal settings rule.

State's Response: The state removed the draft template language and instead inserted the language that will be included in the proposed rules and addressed in draft policies throughout the systemic assessment.

- **Identification of Compliance for State Standards:** CMS conducted a spot check of the state standards included in the state's systemic assessment addendum. CMS found that several standards the state determined were compliant were actually silent. CMS asked the state to make changes to this area.

State's Response: The state corrected the crosswalk to note that the specified standards were silent.

- **Systemic Assessment Results:** CMS asked the state to revisit several state standards and reconsider whether the existing regulations and policy documents are fully compliant with the federal regulations, particularly related to restraints. CMS noted that the Comprehensive, Supports, and ABI Waivers allow restraints and reference the safeguards that are written into Wyoming State Statute 35-1-625 and 626. These state statutes were not included in the systemic assessment. CMS asked the state to ensure that all pertinent State Statutes are in alignment with the federal settings criteria.

State's Response: The state noted that in consultation with its Attorney General, it is the State's interpretation that Chapter 35 does not apply to Wyoming Medicaid. Wyoming Medicaid is governed by Chapter 42 of Wyoming State Statute. However, to mitigate any potential impact, Section 4 of proposed Wyoming Medicaid Chapter 45 addresses this issue for the Comprehensive, Supports, and ABI waivers. Potential impact related to the Assisted Living Facility and Community Choices waivers will be mitigated in policy. Additionally, the systemic assessment was updated for the Comprehensive, Supports, and ABI Waiver Settings with BHD-PSS-0438-Policy on Participant Right to Privacy, Dignity, and Freedom from Restraint (p. 11), the state added the necessary remediation.

- **Community Choices Waiver:** CMS requested clarification about whether all policies under the Community Choices waiver were reviewed by the state. CMS indicated that it was unclear if all of the policies for the other waivers posted at

<https://health.wyo.gov/behavioralhealth/dd/> had been reviewed because they were not included in the systemic assessment.

State's Response: The state indicated that all policies have been reviewed.

- **Systemic Assessment Remediation:** CMS requested that the state provide more detail to the descriptions of the changes the state will make to its state standards to bring them into full compliance with the HCBS settings criteria in the STP. For example, throughout the crosswalk, the state's proposed remediation for its Community Choices Waiver Policy manual was "policy language will be developed within scope of template language provided at the end of the table." CMS stated that this did not describe the proposed amendments to that manual. For each federal setting criterion for which this remediation was proposed, CMS requested that the state identify which section of the template language will be included in the Community Choices Waiver Policy manual.

State's Response: The state augmented the policy language in its systemic crosswalk to provide more specificity in the column titled "State's Current Language or Proposed Language. The state included the intended language changes as well as where the changes will be made.

- CMS informed the state that several of the amendments to Chapter 45 (Medicaid Waiver Provider Certification and Sanctions) proposed by the state as remediation of silence were not sufficient because they omitted key elements of the HCBS settings criteria.

State's Response: The state corrected the crosswalk to note that these standards are silent. The state proposed to revise the language of proposed rule, Chapter 45, section 13, as follows: section 13(g)(xiv)(B) will state that the individual has the "freedom and support to control their own schedules and activities." In addition, section 13(g)(i) will state, "All service settings owned or controlled by a provider or self-directed employee must meet the following requirements: (i) In residential service and day service facilities, the provider shall ensure participants have access to food at all times, and provide nutritious meals and snacks options. Providers may not require a regimented meal schedule except as outlined in subsection (m) of this Chapter. (m) Settings that include any modification to a participant's right to food or a non-regimented meal schedule imposed by a provider must be ordered by the participant's attending medical professional with evidence in the plan of care that details the assessed need for the order and the protocols that must be followed" (p. 22). The state further amended their remediation to include the modifications of conditions for provider-owned or controlled settings.

- The state indicated in several places in the crosswalk that it planned to create a new rule, Section 13 of Chapter 45. (Chapter 45 is titled "Waiver Provider Certification and Sanctions.") However, Chapter 45 already included a Section 13 and it addressed "Occupational Therapy Services." The state needed to provide more detail about its proposed amendments to Chapter 45 and clarify these changes in the systemic crosswalk.

State's Response: The state noted that Chapter 45 is being overhauled by the state. While current Chapter 45 Section 13 is Occupational Therapy, proposed Chapter 45 Section 13 is Home and Community Based Services Standards for Waiver Services. The state amended the STP to include a section explaining the revisions of Chapter 45 with a link to the *Notice of Intent to Adopt Rules* document. The state specified the remediation in accordance with each requirement within the systemic assessment.

- In row #15 of the crosswalk, the state indicated that the proposed remediation is to amend Assisted Living Facility Rule, Chapter 12 to add the language “the setting must be physically accessible to the participant.” However, the state did not identify where in Chapter 12 it planned to include this language.

State's Response: The state indicated in its systemic crosswalk that these revisions will be included in the Community Choices Waiver Policy updates.

- For the federal reg, “rights of privacy, dignity, respect, and freedom from coercion and restraint,” CMS initially found that Assisted Living Facility Licensing Rule, Chapter 12, Section 7, c, iii, which permits the use of physical and chemical restraints if they are used to treat the individual’s medical symptoms and by order of a physician, was non-compliant because it conflicted with the state’s restraints policy in Appendix G-2 of the Community Choices waiver, which prohibited all restraints. The state changed the systemic crosswalk to read that it plans to amend the CCW waiver to reflect what is in the state’s regulation. CMS requested the state to further propose remediation to include that the use of restraints must be supported by a specific assessed need and justified in the person-centered service plan and that the following requirements must be documented in the person-centered service plan: (A) Identify a specific and individualized assessed need. (B) Document the positive interventions and supports used prior to any modifications to the person-centered service plan. (C) Document less intrusive methods of meeting the need that have been tried but did not work. (D) Include a clear description of the condition that is directly proportionate to the specific assessed need. (E) Include a regular collection and review of data to measure the ongoing effectiveness of the modification. (F) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. (G) Include informed consent of the individual. (H) Include an assurance that interventions and supports will cause no harm to the individual

State's Response: The state included additional remediation to include the safeguards around the use of restraints.

- **Milestones/Timelines:** There were several items related to the milestone dates and timelines that needed clarification. CMS requested the state address the following discrepancies:
 - CMS asked the state to remedy conflicting and confusing end dates in the timeline with regards to the systemic assessment. The state updated its timeline, but the language in the STP did not clearly specify the status of the systemic activities. In the timeline at the end of the STP (Milestones 4 and 9), the state included conflicting timelines and end dates that had already passed. For example, for Milestone 9, the state changed the completion

date to 7/1/2017. However, the milestone read, “By December 2016, the State will update administrative rules and laws required to meet new standards.” The state was asked to clarify in this instance what will be occurring between December 2016 and July 2017.

- The state was asked to denote when each milestone has been completed. Additionally, the state’s classification of milestones by-year was confusing given the variety of starting and ending years for each task.

State’s response: The state indicated that remediation will be completed by July 2017. However, there were several activities in the state’s systemic crosswalk, “Wyoming Statewide Transition Plan – Systemic Assessment,” where the state did not plan to complete the activity until October 1, 2017. The state was asked to clarify how these two different timelines fit together.

- **Training and Education:** For Milestone 7 the state was asked to provide information regarding the actions involved with deploying a communication strategy to inform and educate participants, guardians, providers, and legislators on the new standards and requirements, along with the specific dates the items will be accomplished by.

State’s Response: The state redesigned the Milestone tables and in doing so resolved all outstanding issues with the milestones and timelines.