

Disabled & Elderly Health Programs Group

July 11, 2022

Drew Snyder
Executive Director, Medicaid
Mississippi Division of Medicaid
550 High Street, Suite 1000
Jackson, MS 39201

Dear Director Snyder:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Mississippi **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 May 25, 2017, 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.
- 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 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 February 25, 2022, CMS provided feedback on March 31, 2022, 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 on May 27, 2022. 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.

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

¹ CMS describes 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.

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF MISSISSIPPI AS
REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL
(Detailed list of technical changes made to the STP since February 25, 2022)**

The state updated throughout the STP the date by which all settings must be in full compliance and all remediation and transition activities are to be completed, clarifying that it would be no later than March 17, 2023.

Public Comment

- Provided the summary of public comments received after the initial approval of the STP and the state's responses in the STP (pgs. 171-176)

Division of Medicaid Systemic Assessment

- Addressed elements of Part 208, Chapter 7: 1915(i) HCBS Rule 7.6: Serious Events/Incidents and Abuse/Neglect/Exploitation governing the use of restraints in Department of Mental Health's (DMH) settings.
- Clarified that Chapter 5: HCBS Rule 5.8 and Chapter 7: 1915 (i) HCBS are currently being revised to remove all references regarding the use of restraints and to refer to the DMH Operational Standards that were revised effective Sept. 1, 2020. The filing has a planned effective date of Sept. 1, 2022. (pgs. 69, 105).

Site-Specific Assessment & Validation Activities

- Clarified the definition of shared supported living to address if the settings are disability specific or mixed use (pg. 4).
- Provided the settings assessment and validation results, including the number of settings assessed by setting type, by waiver and by service type (pgs. 158 – 160).
- Provided a final disposition of validation results for all settings by waiver based on compliance level (fully comply; do not comply but could with modifications; cannot comply; and are presumed to have the qualities of an institution, but for which the state will submit evidence for the application of heightened scrutiny) (pgs. 165-166).
- Provided additional details on how access to the broader community is achieved (pgs. 161-162).

Monitoring of Settings

- Clarified how the state will ensure that settings where Supported Living Services and Shared Supported Living services are provided that are not provider-owned or controlled are monitored for ongoing compliance (pg. 172-173).
- Clarified the frequency of telephone interviews and random home visits conducted by Support Coordinators/Targeted Case Managers as part of the ongoing monitoring process (pgs. 172-173).
- Confirmed that Support Coordinators and Targeted Case Managers ensure privacy and dignity of participants while conducting random home visits and telephone interviews (p. 173).