

Disabled & Elderly Health Programs Group

October 4, 2022

Tara LeBlanc
Medicaid Director
Louisiana Department of Health
P.O. Box 629
Baton Rouge, LA 70821-0629

Dear Director LeBlanc:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Louisiana **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 March 3, 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, 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 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 June 8, 2022, CMS provided additional feedback on July 1, 2022 and September 6, 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 September 23, 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:

www.ada.gov/olmstead/q&a_olmstead.htm.

This letter does not convey approval of any settings submitted to CMS for heightened scrutiny review¹, 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 LOUISIANA AS
REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL
(Detailed list of technical changes made to the STP since June 8, 2022)**

The State updated throughout the STP that March 17, 2023 is the date by which all settings must be in full compliance and all remediation and transition activities are completed.

Site-Specific Assessment & Validation Activities

- The Office for Citizens with Developmental Disabilities (OCDD) clarified the breakdown of compliance findings by specific setting types under both residential and non-residential settings and aligned the setting types for OCDD residential settings with the settings laid out in the STP. (pgs. 42-43)
- OCDD clarified there are no host home, substitute family care or shared living settings currently being utilized. (pg. 43)
- The Office of Behavioral Health (OBH) clarified that the state evaluated Therapeutic Foster Care (TFC) settings that serve children and TFC parents do not provide HCBS for members in their care. (pgs. 33-34)
- OBH amended the language to include that the state will complete ongoing monitoring of all Coordinated System of Care Waiver (CSoc) settings, including TFCs, for all settings criteria on a quarterly basis to assure the same community access as other children of similar age not receiving HCBS. (pg. 34)

Assessment and Validation Results

- Reworded the compliance category of “Presumed Non-HCBS” to “presumptively institutional in nature, but for which the state will submit evidence for the application of heightened scrutiny,” and updated this language on charts throughout the STP. (pg. 37 and charts on pgs. 17, 24, 26, 28)

Site-Specific Remedial Activities

- Clarified the following details:
 - Participants will be transitioned to compliant settings. (pg. 45)
 - Beneficiaries will receive three months’ notice when their current provider is non-compliant if a transition is needed. (pg. 45)
 - Choice of provider is ensured through the person-centered planning process. (pg. 45)
 - Continuity of services for participants during any needed transitions will be ensured. (pg. 45)
- OBH updated the STP that 4 children were moved from group homes during the transition period. (pg. 27)

Public Comment

- Included the date public comment began, April 22, 2022. (pg. 14)
- Included in the summary that no changes were made as a result of the comments. (pg. 15)
- Removed the statement: “The only option OCDD is removing is the operation of a ‘sheltered workshop’ and this is a requirement in the HCBS Settings Rule.” (pgs. 14-15). The federal settings regulation does not require the closure of sheltered workshops, but all sheltered workshops, like all settings, must meet the regulatory criteria.

Other

- Clarified that the statement, “None of the 4,127 (number updated to 4,191 as of 11/01/2019) were allowed to exist as a provider owned/operated setting,” was in reference to the Office of Aging and Adult Services (OAAS) settings. (pg. 17) Therefore the OAAS did not permit provider owned/operated settings to be used in the OAAS system.
- OBH separated the chart categories on pg. 28 to clarify that 4 group home settings cannot comply with the settings criteria and there were no settings that were presumptively institutional in nature. (pg. 28)
- The state clarified that the non-residential setting that was intended for heightened scrutiny submission by OCDD closed during the pandemic and is no longer being considered for heightened scrutiny (clarified on July 14, 2022 call).