

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 4, 2022

Adeline Strumolo
Acting Commissioner, Department of Vermont Health Access
280 State Drive
Waterbury, VT 05671

Dear Ms. Strumolo:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Vermont **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). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on December 5, 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 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.

After reviewing the STP submitted by the state on May 18, 2020, CMS provided feedback on June 9, 2020 and requested several technical changes be made to the STP in order for the state to receive final approval. The STP was resubmitted on March 1, 2021 and CMS provided additional feedback on March 17, 2021 and June 4, 2021. These changes did not necessitate another public comment period. The state subsequently addressed all issues and resubmitted an updated version on October 11, 2021. 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 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 VERMONT AS REQUESTED
BY CMS IN ORDER TO RECEIVE FINAL APPROVAL
(Detailed list of technical changes made to the STP since May 18, 2020)**

Public Comment

- Verified there was both an electronic and non-electronic method of posting the STP for public comment (pg.)

Site-Specific Settings Assessment Process

- Classified the number of settings by residential and non-residential settings and indicated the type of setting within the residential and non-residential categories for each of the specialized service population groups (pgs. 16, 20, 24).

Provider self-assessment surveys:

- Confirmed that each setting was assessed and validated (pgs. 16-17).

Individual, Private Homes:

- Distinguished between individual/private homes and those which are provider owned/controlled and assured the provider owned/controlled settings were included in the assessment process (pg. 16).

Validation of HCBS Settings:

- Clarified the specific methods used for assessing and validating each setting (pg. 18). Edited Tables 2 and 3 to clarify any discrepancies between the number of settings from each program that required assessment and the validation results (pgs. 16 and 20).

Remediation Strategies:

- Clarified how the state will assure that any discrepancies between the consumer responses and/or other validation strategy and provider self-assessments are addressed (pg. 18).
- Included a process about how the state will track the progress of site-specific CAPs to assure compliance by March 2023 (pg. 19).

Reverse Integration Strategies:

- Included detail around integration of HCBS beneficiaries to the broader community (pg. 27).

Non-Disability Specific Settings:

- Included information and steps the state will be take in order to assure capacity building among providers to increase non-disability specific settings options across home and community-based services (pg. 28).

Ongoing Monitoring of Settings

- Added information related to the ongoing monitoring of all distinct settings in which the HCBS criteria apply, including the frequency and timeline of the monitoring, the monitoring processes for individual/private homes, and the date by which the monitoring tool will be modified (pg. 25).

Heightened Scrutiny:

- Included all three categories of settings that are presumed institutional in the assessment process (pg. 21).
- Clarified the heightened scrutiny assessment process did not identify any Medicaid HCBS settings co-located with hospitals or nursing facilities and therefor, the state will not submit such settings to CMS for heightened scrutiny review (pg. 23).
- Added details to the process about how the state will identify settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of persons not receiving Medicaid HCBS (pg. 22).
- Added information about how existing settings were assessed for institutional characteristics of all three heightened scrutiny categories, including a timeline that reflects sufficient time to complete all remediation, communication, and relocation activities by March 17, 2023 (pg. 21-23).
- Categorized each specific setting type reviewed for heightened scrutiny by each of the three prongs (i.e., settings located in a building that is also a publicly or privately-operated facility providing inpatient institutional treatment; settings located in a building on the grounds of, or immediately adjacent to, a public institution; and settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS), (pg. 24).
- Provided details regarding how reviews are conducted for settings presumed institutional (pg. 21).
- Described how the final decision is made to determine whether or not to move a setting to CMS for heightened scrutiny review (pg. 24).
- Clarified that HCBS will not be provided in institutional settings (pg. 21).