

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**

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February 3, 2023

Mr. Dave Richard  
Deputy Secretary, NC Medicaid  
North Carolina Department of Health and Human Services  
2501 Mail Service Center  
Raleigh, NC 27699-2501

Dear Mr. Richard:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting North Carolina **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 § 441.301(c)(4)-(5). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on September 6, 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 on March 17, 2023;
- 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 August 1, 2022, CMS provided feedback on September 21, 2022, December 6, 2022, and January 10, 2023, 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 of the STP on January 20, 2023. 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 settings<sup>1</sup> 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](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.

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<sup>1</sup> Medicaid regulations at 42 CFR § 441.301(c)(5)(v) describe 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.

Page Three – Richard

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 HCBS regulations.

Sincerely,

Ryan Shannahan, Deputy Director  
Division of Long-Term Services and Supports

Attachment

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF NORTH CAROLINA  
AS REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL  
(Detailed list of technical changes made to the STP since June 20, 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, no later than March 17, 2023.

**Public Comment**

- Provided the summary of public comments and the state's responses from the June 20, 2022, comment period after initial approval in the STP (Appendix L, pgs. 299-337).

**Site-Specific Assessment & Validation Activities**

- Clarified that foster care settings are not provider owned or controlled as they are established through state regulation (pg. 9).
- Provided the settings assessment and validation results, including the number of settings assessed by setting type, by waiver and by service type (pgs. 44-45).
- 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) (Appendix C, pgs. 115-116).

**Monitoring of Settings**

- Clarified how the state will ensure that foster care settings and individual private homes are monitored for ongoing compliance (pgs. 76-78).

**Heightened Scrutiny**

- Clarified the number of settings that closed during the transition period (pgs. 38-39).

**Beneficiary Recourse Process**

- Provided a process for beneficiaries to notify the state of provider non-compliance with HCBS criteria (pgs. 79-81).