

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

August 23, 2019

Suzanne Bierman
Medicaid Administrator
Division of Health Care Financing and Policy
Las Vegas Medicaid District Office
1210 S. Valley View, Suite 104
Las Vegas, NV 89102

Dear Ms. Bierman:

This letter is to inform you that CMS is granting Nevada **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 issued the November 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 May 12, 2019 draft submitted by the state, CMS provided additional feedback on June 18, 2019, requesting that the state make several technical corrections to receive initial approval. These changes did not necessitate another public comment period. Nevada subsequently addressed all issues and resubmitted an updated version on August 23, 2019. These changes are summarized in Attachment I of this letter. The responsiveness in addressing CMS' remaining concerns related to the state's systemic assessment and remediation expedited the initial approval of its STP.

In order to receive final approval, all STPs should include:

- A comprehensive summary of completed site-specific assessments of all HCBS settings, validation of those assessment results, and inclusion of the aggregate outcomes of these activities;
- Draft remediation strategies and a corresponding timeline for resolving issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the HCBS settings transition period (March 17, 2022);

- A detailed plan for identifying settings presumed to have institutional characteristics, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- A process for communicating with beneficiaries currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings criteria by March 17, 2022; and
- A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the federal settings criteria in the future.

While the state of Nevada 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 for a minimum 30-day public comment period.

Upon review of this detailed feedback, CMS requests that the state contact Amanda Hill (Amanda.hill@cms.hhs.gov) to confirm the date that Nevada 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 Nevada 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 with fidelity and looks forward to the next iteration of the STP that addresses the remaining technical feedback provided in the attachment.

Sincerely,



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

Attachment I.

SUMMARY OF TECHNICAL CHANGES MADE BY THE STATE OF NEVADA TO ITS SYSTEMIC ASSESSMENT AND REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN

August 12, 2019

Public Comment

- CMS asked the state to clarify the following regarding the public notice process and comments received: whether the entire STP was posted for public comment; the start and end dates of all public notice periods; how the state issued invitations for comment; clarification of the non-electronic forms of public notice made available; all comments provided online or submitted via letter; the state's summary of and response to comments received.

State's Response: The state added the requested clarifications and included a summary of comments, along with its response to each of those comments.

Settings

- CMS requested that the state include all settings types and compliance determinations in their systemic assessment chart.
State's Response: The state listed all settings individually and it modified its systemic assessment chart and systemic remediation accordingly.
- CMS requested that the state correctly identify the Intellectual Disabilities (ID) waiver as a 1915(c) program rather than as a 1915(i) state plan amendment (SPA).
State's Response: The state corrected this error.
- CMS requested that the state update Appendix J6 to reflect the current list of settings or remove the list altogether.
State's Response: The state removed this list and included the full list within the narrative of the STP.
- CMS asked the state to correct the name of Residential Group for Seniors and Assisted Living Facility.
State's Response: The state updated the name of this setting.

Systemic Assessment and Systemic Remediation

- CMS requested the state include the full systemic assessment that cross-walked the HCBS settings criteria with the Nevada Revised Statutes (NRS), Nevada Administrative Code (NAC), and the state's Medicaid Services Manual (MSM), which describes policies and procedures and includes provider requirements.

State's Response: The state revised its chart to provide a comprehensive list of settings and a full crosswalk with the NRS, NAC, and MSM.

- CMS requested that the state clarify in instances wherein the Department of Public and Behavioral Health (DPBH) would not agree with proposed changes to the NAC that its proposed remediation of the MSM would be sufficient.

State's Response: The state indicated that changes to the MSM would be sufficient, because providers are obligated to comply with the MSM in order to provide Medicaid HCBS. The state amended its STP, so the remediation grid states this clearly.

- CMS asked the state to amend or remove the language where the drafted MSM policy language in Appendix J6 did not comport with all of the settings criteria.

State's Response: The state removed the draft language from the appendix and instead included this information in the systemic assessment crosswalk.

The following includes examples of the technical changes completed in response to CMS's spot check of how the state categorized the compliance of their standards with the settings criteria.

- For the settings criterion of "the setting is physically accessible to the individual", CMS indicated that the NRS and NAC are silent for Residential Group Homes for TBI and requested the state propose remediation.

State's Response: State updated the STP to include a remediation plan for the MSM to ensure that Residential Group Homes for TBI are physically accessible.

- For the settings criterion of "any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D) must be supported by a specific assessed need and justified in the person-centered service plan", CMS indicated that all residential settings are partially compliant and should be remediated to address gaps in compliance.

State's Response: The state provided a remediation plan for this criterion in all residential settings.

- For the settings criteria of "individuals have the freedom and support to control their own schedules and activities" and "individuals have access to food at any time", CMS asked

the state to change the finding for Residential Group Home for Seniors and Assisting Living Facilities from “partially compliant” to “conflicting.”

State’s Response: The state changed its findings in these cases to conflicting and will complete remediation.

- For the settings criteria of “the unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law”, CMS asked the state to describe a remediation plan for its MSM.

State’s Response: The state amended its STP to include a remediation plan in its MSM.

- CMS asked the state to amend the remediation for the settings criterion of “individuals are able to have visitors of their choosing at any time”. The proposed remediation included the premise of visiting hours, which does not comply with the criteria.

State’s Response: The state updated its remediation plan for the MSM to ensure that individuals can receive visitors at any time.