

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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August 8, 2019

Bill Snyder  
Director, Medical Services  
State of South Dakota, Department of Social Services  
700 Governors Drive Kneip Building  
Pierre, SD 57501- 2291

Dear Mr. Snyder:

I am writing to inform you that the Centers for Medicare and Medicaid Services (CMS) is granting South Dakota **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 June 2, 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 due to the state 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 February 7, 2019, CMS provided additional feedback on February 26, 2019 and June 12, 2019 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 August 7, 2019. 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 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 the final 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

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<sup>1</sup> 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 SOUTH DAKOTA AS  
REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL  
(Detailed list of technical changes made to the STP since February 7, 2019)**

**Public Comment**

- Included all public comments applicable to the HCBS Statewide Transition Plan in the summary of comments and responded to the comments. (p. 141-153 )

**Site-Specific Assessment & Validation Activities**

- Clarified each setting's provider self-assessment was validated by an onsite visit and an individual interview. (p. 48)
- Included the sampling methodologies for individual interviews and ensured all HCBS settings criteria were assessed for during the interviews. (p. 48)
- Confirmed settings that reported limited compliance with one or more settings criteria demonstrated evidence that the only limitations were linked to an assessed health and welfare need for individual HCBS beneficiaries. (p. 51- 52)
- Clarified the site assessments completed for the adult day settings were conducted on site and via desk reviews. (p.54)
- Clarified the discrepancy in the number of assisted living settings was the result of provider disenrollment between the initial assessment and the validation process. (p. 64)
- Separated the supervised apartments, group homes, and shared living host homes in the validation results and included the exact numbers for the non-residential setting in the results. (p. 87, 111)
- Clarified all three of the adult day settings comply with the settings criteria and do not require further action. (p. 62)

**Site-Specific Remedial Actions**

- Clarified what the state is doing to build capacity for individuals in non-disability specific settings. (p. 56-61)
- Clarified that if relocation is necessary, alternative community residential options will be available to HCBS recipients. (p. 55)
- Corrected the settings compliance deadline to March 17, 2022. (p. 50)

**Ongoing Monitoring**

- Clarified that the specific HCBS settings criteria that the Systemic Monitoring and Reporting Technology (SMART), National Core Indicators (NCI) and the Council on Quality Leadership (CQL) include dignity and respect, location, physical accessibility, privacy, autonomy and living arrangements, which the state intends to utilize for continuous quality monitoring on a systemic level. (p. 29, 84-125)
- Clarified how the state links SMART and CQL information back to individual settings. (p. 126-128)
- Clarified the state is monitoring private homes for the HCBS settings criteria, the method by which the state intends to do so, and the frequency. (p.2-3)

### Heightened Scrutiny

- Clarified the process used for identifying settings that isolate individuals from their broader community. (p. 52)
- Clarified how the final decision will be made on whether or not to move a setting to CMS for heightened scrutiny review and the determining factors that the state is using to make that decision. (p. 53)
  
- Clarified when the state indicates on p. 64 that some settings that are on the same grounds or adjacent to an institution may not require heightened scrutiny review, it was because the institution was private.