



Disabled & Elderly Health Programs Group

August 9, 2016

Mikki Stier
Medicaid Director
Iowa Department of Human Services
100 Army Post Road
Des Moines, IA 50315

Dear Ms. Stier:

This letter is to inform you that CMS is granting the state of Iowa **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 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 changes and changes to contracts, and is actively working on those remediation strategies. Additionally, the state submitted the March 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 the summarized comments were included in most recent the STP submitted to CMS.

After reviewing the March 2016 draft submitted by the state, CMS provided additional feedback on June 9th, requesting that the state make several technical corrections in order to receive initial approval. These changes did not necessitate another public comment period. The state subsequently addressed all issues, and resubmitted an updated version on August 2, 2016. These changes are summarized in Attachment I of this letter. The state's 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 of Iowa's STP, the state will need to complete the following remaining steps and submit an updated STP with this information included:

- Complete comprehensive site-specific assessments of all HCBS settings, implement necessary strategies for validating the assessment results, and include the outcomes of these activities within the STP;
- Draft remediation strategies and a corresponding timeline that will resolve issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the HCBS rule transition period (March 17, 2019);

- Outline 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;
- Develop a process for communicating with beneficiaries that are currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings rule by March 17, 2019; and
- Establish ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

While the state of Iowa has made much progress toward completing each of these remaining components, there are several technical issues that have been outlined in Attachment II of this letter that must be resolved before the state can receive final approval of its STP. Additionally, prior to resubmitting an updated version of the STP for consideration of final approval, the state will need to issue the updated STP out for another minimum 30-day public comment period.

Upon review of this detailed feedback, CMS requests that the state please contact Michele MacKenzie (410-786-5929 or Michele.MacKenzie@cms.hhs.gov) or Susie Cummins (206-615-2078 or Susan.Cummins@cms.hhs.gov) at your earliest convenience to confirm the date that Iowa plans to resubmit an updated STP for CMS review and consideration of final approval.

It is important to note that CMS' initial or final 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 the state 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
Division of Long Term Services and Supports

ATTACHMENT I

SUMMARY OF TECHNICAL CHANGES MADE BY THE STATE OF IOWA TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN THE UPDATED HCBS STATEWIDE TRANSITION PLAN DATED AUGUST 2, 2016

Iowa Standards and Regulations that are Silent: CMS asked the state to provide clarification for the Iowa Medicaid Administrative Rules 441-IAC-77.41 and 441-IAC 79 that are identified as silent on the federal regulations.

State Response:

- The state provided clarification that rules at 441-IAC-77.41 address provider qualifications for HCBS PD Waiver services (Section 2.3.1.1). "The services that are available in the PD waiver and identified in IAC 441-77.41(249A) are CDAC, HVM, PERS, SME, Transportation, and CCO. These services are not site specific and do not require or identify specific residential or non-residential settings in the service descriptions. As such, they are identified as being silent in support of being provided in integrated settings." Additionally, the proposed rule changes for provider owned and controlled environments will ensure the settings for these services are in alignment with the federal HCBS requirements.
- Clarification for 441-IAC-79 was provided in the "Overall conclusions". "CH 79 of the IAC addresses provider rate development, rate reimbursement, and cost reporting methodologies. These rules do not impact the implementation of CMS settings rules. As such, they are silent on the settings in which services are provided and no change to the CH 79 rules are needed."

Potential conflict for the state Survey and Certification rule: CMS asked the state to provide clarification on the potential conflict for the Survey and Certification Administrative Rule 481-IAC-70 Adult Day Services and describe the next steps the state will take to remediate it.

State Response: The state clarified the possible conflicts as "ADC rules are either non-specific or silent on access to food, and use of community resources in service programming". The state also clarified that the rules are governed by the Department of Inspections and Appeals (DIA). The strategy for working with DIA in addressing these areas of conflict with the federal HCBS rule is laid out in the "Overall Conclusions" narrative for the "Licensed Residential Facilities" section, and then includes a timeline for working with DIA in Section 2.3.5.

Policy and Provider Manuals: CMS asked the state to clarify in the STP that updates will be made to the policy and provider manuals after the rule changes are complete.

State Response: The state added section 2.3.1.2 "Policy Manuals" that provides an explanation of the process for updating their policy and provider manuals.

Remediation Plan Timeline: CMS asked the state to include in the remediation plan the timeline for rulemaking.

State Response: The state provided further clarification on their rulemaking process including the timeline in Section 2.3.5.

Medicaid Administrative Rules in Support of Federal HCBS Requirements: CMS asked the state to include additional detail in the STP on how the state determined that Medicaid Administrative Rules were in support of federal HCBS requirements. CMS requested the state provide specific relevant text from the administrative rules and a rationale for why the state determined the rule is in support of the regulations.

State Response: The state has added examples of specific rule text that support the federal HCBS regulations for each specific federal requirement throughout the systemic assessment crosswalk in section 2.3.1.1.

1915(i) Habilitation Services: CMS expressed the following concerns about the state’s evaluation of state rules for 1915(i) Habilitation Services.

- The crosswalk in section 2.3.1.1 indicates the 1915(i) habilitation services rule “supports” the HCBS rules. However, the section cited (441-78.27) refers to a person-centered planning section that is in conflict with the rules as the coordinator appears to be in charge of the process, “establishing an interdisciplinary team for the member”. With the interdisciplinary team, the coordinator identifies the member’s services based on the member’s needs, the availability of services, and the member’s choice of services and providers. CMS is concerned about the following points.
 - The process seems to reflect that the people involved are chosen by the coordinator with no indication of influence on these choices by the participant.
 - The “services available” language seems to potentially limit the service selection to what is currently available as opposed to all services in the waiver.
 - The regulation is missing information about:
 - the individual directing the services,
 - supports for individual decision making,
 - problem solving,
 - choices being informed and supporting full access to the community, and
 - other person centered planning requirements

State Response: The state has provided clarification in the “Overall Conclusion” that the service definition rules in IAC 441-CH 78 will be updated to include the HCBS final rules for setting requirements. The state has also added Appendix B, which provides additional text from the Iowa Administrative Code in support of the state’s determination that habilitation rules support the CMS setting regulations. Furthermore, Appendix B also provides a complete listing of the new rules for supported employment that were promulgated May 4, 2016.

ATTACHMENT II.

ADDITIONAL CMS FEEDBACK ON AREAS WHERE IMPROVEMENT IS NEEDED IN ORDER TO RECEIVE FINAL APPROVAL OF THE STATEWIDE TRANSITION PLAN

PLEASE NOTE: It is anticipated that the State will need to go out for public comment again once these changes are made and prior to resubmitting to CMS for final approval. The state is requested to provide a timeline and anticipated date for resubmission for final approval as soon as possible.

Public Engagement

Page 3 of the STP explains that comments are accepted electronically through a dedicated email address, U.S. mail or in person at the IME office. While this approach meets the minimal requirements outlined in the rule with respect to public comment, not all individuals have ready access to the internet or have email accounts. CMS encourages Iowa to consider expanding its options for receiving public comment in any future public comment periods. Several states have incorporated other strategies, (i.e. taken public comment via phone, at listening sessions, and through webinar).

Please provide additional details as to how the state will continue to engage key stakeholders in the state's ongoing HCBS implementation activities, particularly given the cross-section between the implementation of the federal HCBS rule and the state's roll-out of managed LTSS.

Site-Specific Assessments

Per CMS' requests, please include the following enhancements to Iowa's site specific assessment.

- Include additional information on the state's process and progress for determining settings compliance. CMS notes that the state provided estimates of the proportion of settings which are likely not compliant based on the provider survey data, but did not specifically identify the total number of HCBS service providers, number and type of settings that are complaint, may be compliant with changes, will be put forth for heightened scrutiny, and are not and cannot become compliant. The STP indicates that the state will update the STP with this information once site-specific assessments are completed (by 6/30/2017).
 - Provide additional details pertaining to Iowa's validation process. Provide more detail confirming that settings were assessed on all requirements of settings as outlined in the federal HCBS rule. Please also explain how providers were prompted to respond to questions in the assessments, i.e., yes/no responses, narrative responses, etc. Were providers asked to attach evidence along with their completed self-assessments to support their responses? If so, please describe the evidence submitted.
 - CMS requests a detailed description of how the state will address settings for which providers do not complete the self-assessment. Additionally, please provide additional detail on the methodology used by the state to calculate the scores of the self-assessments.
- *Validation of Provider Self-Assessments:* Please provide details regarding the process for review and validation of the provider self-assessments including who will be responsible for the review and validation, and when the review and validation will be complete. As Iowa is aware, states must provide a validity check for provider self-assessments. States may deploy a number of validation strategies, including but not limited to onsite visits by state staff, case managers or licensure/certification entities, consumer feedback, external stakeholder engagement, state review of data from operational entities, like

MCOs or regional boards/entities. The state must validate provider self-assessment results. Should the state use MCO entities to validate all of its provider self-assessments, please describe in the STP how the state will be assured that the results of the MCO are valid. States are responsible for assuring that 100% of all HCBS settings comply with the final HCBS rule in its entirety. Quality thresholds should not be used to reduce the state's requirement to assure 100% compliance across all settings. The more robust the validation processes (incorporating multiple strategies to a level of degree that is statistically significant), the more successful the state will be in helping settings assure compliance with the rule.

- The STP indicates validation through “qualitative follow-up” with providers; however, CMS requests the state indicate 1) the total number of HCBS providers in the state where qualitative follow-up was conducted, 2) whether the qualitative follow-up was voluntary, (3) what was included in terms of information collected during this qualitative follow-up; (4) what qualitative methods were applied; and 3) whether the random sample selected for qualitative follow-up was representative of residential and non-residential settings.
- CMS is concerned that the random selection of onsite reviews may not sufficiently identify or capture all settings with qualities that isolate beneficiaries from the broader community, and thus ask the state to provide clearer details confirming how these settings will be identified and assessed.

Participant Experience Survey: Please address the following issues with respect to the state's use of the participant experience survey to assess and validate settings.

- How will the state tie the results of participant experience surveys back to individual settings?
- There is no information about who filled out the survey, whether the participant was questioned or whether another individual filled the participant survey out on behalf of the individual.

Individual, Privately-Owned Homes: The state may make the presumption that privately-owned or rented homes and apartments of people living with family members, friends, or roommates meet the home and community-based settings requirements if they are integrated in typical community neighborhoods where people who do not receive HCBS also reside. A state will generally not be required to verify this presumption. However, as with all settings, if the setting in question meets any of the scenarios in which there is a presumption of being institutional in nature and, the state determines that presumption is overcome, the state should submit to CMS necessary information for CMS to conduct a heightened scrutiny review to determine if the setting overcomes that presumption. In the context of private residences, this is most likely to involve a determination of whether a setting is isolating to individuals receiving HCBS (for example, a setting purchased by a group of families solely for their family members with disabilities using HCBS services). The state must also address how it tracks these settings through its ongoing monitoring process to ensure they remain compliant through the transition period and into the future. Please articulate how the state has done this analysis, and how these settings will be monitored over time.

Non-Disability Specific Settings: Please provide more specific details demonstrating how the state will assure beneficiary access to non-disability specific settings in the provision of residential and non-residential services. This additional information should include how the state is strategically investing to build capacity across the state to assure non-disability specific options.

Group Non-Residential Settings: As a reminder, all settings that group or cluster individuals for the purposes of receiving HCB services must be assessed by the state for compliance with the rule. This

includes all group residential and non-residential settings, including but not limited to prevocational services, group supported employment and group day habilitation activities. CMS requests the state provide additional details about how the state came to the conclusion the settings are compliant (i.e., the methods used to assess the settings for compliance, including the sampling methodology if not all settings were assessed). The state should provide:

- the specific number of non-residential supported employment and prevocational settings within the state, and
- stratification of those that are individual versus group supported employment placements, if possible.

Reverse Integration Strategies: CMS requests additional detail from the state as to how it will assure that non-residential settings comply with the various requirements of the HCBS rule, particularly around integration of HCBS beneficiaries to the broader community. As CMS has previously noted, states cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting. Compliance requires a plan to integrate beneficiaries into the broader community. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries in the facility-based setting is not considered by CMS by itself to be a sufficient strategy for complying with the community integration requirements outlined in the HCBS settings rule. Under the rule, with respect to non-residential settings providing day activities, the setting should ensure that individuals have the opportunity to interact with the broader community of non-HCBS recipients and provide opportunities to participate in activities that are not solely designed for people with disabilities or HCBS beneficiaries that are aging but rather for the broader community. Settings cannot comply with the community integration requirements of the rule simply by only hiring, recruiting, or inviting individuals, who are not HCBS recipients, into the setting to participate in activities that a non-HCBS individual would normally take part of in a typical community setting. CMS encourages Iowa to provide sufficient detail as to how it will assure non-residential settings implement adequate strategies for adhering to these requirements.

Site-Specific Remediation

The following additional information related to site-specific remediation is requested.

- Provide details about how Iowa will identify settings that can comply with the rule with remediation.
- Include interim milestones for the remediation process. A reasonable remediation process and general timeline are provided, but interim milestones are not specifically broken down. For example, in the table regarding Site-specific Assessment Outcomes, the state indicates that a corrective action plan (CAP) will be initiated for settings that require remediation. Please provide a specific timeline for when the CAPs will be completed, evaluated and implemented.
- The state should include how it is taking steps to assure that various personnel (both internal to state government and also external entities, like MCOs) who are responsible for case management, service coordination, and assessing/validating settings to assure they are compliant with the federal HCBS rule are being trained on the federal HCBS requirements. The state should also include its strategy for implementing quality assurance checks in the process to make sure that verification of setting compliance with respect to the HCBS rule is being conducted consistently throughout the state.
- The state should also include information as to how it is educating providers on any changes in state standards that will require providers to make specific adjustments or modifications systems-wide in order to comply with the federal HCBS rule.

Heightened Scrutiny

The following additional information regarding the heightened scrutiny process is requested.

- Clarify how the state is identifying sites it may present for heightened scrutiny, when it expects to have identified those sites, and when the state expects to put forth evidence for heightened scrutiny review to CMS. With regards to the proposed end date of 6/30/18 for the submission of Heightened Scrutiny evidence, CMS encourages the state to consider moving up this deadline in light of the fact that the state currently plans to complete many of its site-specific assessment activities, as well as its data matching and state determinations related to heightened scrutiny by the end of 2016. Heightened scrutiny settings not identified until 6/30/18 may result in insufficient time for additional remediation or communication processes to be completed by the March 17, 2019 compliance deadline. CMS highly encourages the state to submit settings for heightened scrutiny review on a rolling basis.
- Describe how the state will identify settings (both *residential* and *non-residential*) that may have the effect of isolating individuals. Additional information on settings that isolate can be found at <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/home-and-community-based-services.html>. CMS suggests to use Appendix A to identify potentially problematic settings (both residential and non-residential).
- Include additional interim milestones for the heightened scrutiny process with end dates, where possible. For example, within the heightened scrutiny activities of data matching, state determinations and submission of evidence for heightened scrutiny—the state should provide a breakdown of individual activities and their date of completion. As is, the STP is unclear with regard to whether the state may still be submitting evidence for heightened scrutiny up until the end date of 6/30/18, and by what date the state plans to require applicable sites to submit corrective action plans.

Communication with Beneficiaries of Options when a Provider Will Not Be Compliant: The STP needs to include a more detailed timeline and specific description of how the state will ensure that beneficiaries are given the opportunity, the information and the supports to make an informed choice of an alternate setting that aligns with the federal requirements. Please describe in greater detail the state's process for communicating with beneficiaries and their families when settings cannot be brought into compliance with the rule including:

- Identifying the estimated number of beneficiaries that the state may need to relocate, and tailor the state's beneficiary relocation plan and timeline accordingly.
- A description of how all beneficiaries impacted by the need to access a compliant provider will receive reasonable notice and due process, including a minimum timeframe for that notice;
- A description of how the state will ensure that beneficiaries are given the opportunity, the information, and the supports to make an informed choice of an alternate setting that aligns with the federal requirements;
- Outlining a detailed relocation process with timelines, and describe how the state will protect beneficiaries impacted by a setting's inability to provide services to those beneficiaries in the future, and who will be responsible for executing each step of the process; and
- A description of how the state will ensure that all critical services and supports are in place in advance of each individual's transition.

Monitoring of Settings

CMS requests additional information about the state's anticipated approach with respect to ongoing monitoring and compliance of settings:

- Additional information on how the state will share its plans for monitoring of ongoing compliance of settings with beneficiaries, external stakeholders and the public.
- For all monitoring plans, provide further details, including start and end dates for interim milestones, the entities responsible for the various monitoring activities, and the state's plan for overseeing monitoring efforts.
- For all monitoring plans, describe the monitoring processes that will occur beyond March 2019.

Milestones

CMS requests that the state resubmit an updated milestone chart reflecting anticipated milestones for completing systemic remediation, settings assessment and remediation, heightened scrutiny, relocation and ongoing monitoring of compliance.

A new template has been developed by CMS for states to use to capture milestones more consistently over time. CMS will provide this template to the state of Iowa to help you complete this request. CMS requests that the state update its milestones using the new template (should the state choose to do so) and resubmit into the Liberty system no later than 30 days after receiving this communication and the template.