

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

July 14, 2017

Mr. Michael Heifetz
Medicaid Director
State of Wisconsin, Department of Health Services
1 West Wilson Street, Room 350 PO Box 309
Wisconsin, WI 53701-0309

Dear Mr. Heifetz:

This letter is to inform you that CMS is granting Wisconsin **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 submitted the March 2017 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 March 2017 draft of the STP, CMS provided feedback on April 5, 2017 requesting that the state make several technical changes in order to receive initial approval. The state addressed all issues, and resubmitted an updated version on June 30, 2017. These changes did not necessitate another public comment period. The technical 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 Wisconsin 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 home and community-based 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 home and community-based settings rule transition period (March 17, 2022);

- 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 home and community-based settings rule by March 17, 2022; 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 Wisconsin 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 out for a minimum 30-day public comment period.

Upon review of this detailed feedback, CMS requests that the state please contact Michelle Beasley at Michelle.Beasley@cms.hhs.gov or Jessica Loehr at Jessica.Loehr@cms.hhs.gov at your earliest convenience to confirm the date that Wisconsin 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 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.

Sincerely,



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

ATTACHMENT I.

SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF WISCONSIN TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED 6/30/17

Institutional Respite: CMS requested the state clarify the duration of institutional respite for the Community Options Program (COP), Community Integration Program (CIP), Family Care Waiver Renewal 2015, and Self-Directed Support waivers.

State's Response: The state has included language in the STP indicating that respite in institutional settings will be limited to 30 days (page 36).

- **Crosswalk Language Citations:** There were several places where the descriptive language provided in the “Areas of Compliance in State Standards” column of the crosswalk did not contain a citation or electronic link (e.g., see page 70 of the STP). CMS asked the state to review the crosswalk and include links to state standards in which that language can be found.

State's Response: The state added citations to the descriptive language in the “Areas of Compliance in State Standards” column and added links to the source documents.

- **Crosswalk Documents:** The June 2016 STP stated, “The SMA [State Medicaid Agency] can impose additional requirements on licensed or certified providers above those required in statute and rule in order for the provider to serve HCBS program participants. The SMA will ensure that any setting that serves one or more HCBS waiver participants will be required to comply with the settings requirements through our additional requirements and monitoring” (page 8). The state then identified that several state policy documents (e.g., provider standards, participant/member handbooks, waiver provider agreements) were relevant to the setting criteria. However, CMS’s review of the systemic assessment crosswalk found that most of the documents cited were regulations and statutes. CMS asked the state to clarify whether all of the state’s relevant policy documents were included in the Systemic Assessment Crosswalk and asked the state to include the relevant policy documents in the crosswalk.

State's Response: The state included a number of reference materials that apply across settings, including the Department of Health Services-Managed Care Organization (DHS-MCO) Contract, Medicaid waiver and policy manuals, and the Family Care member booklet (page 37). These documents are also assessed throughout the crosswalk, where appropriate.

- **Provider Responsibility:** CMS requested the state include language indicating that while implementation of some of the HCBS settings rule criteria may fall to the entity providing care management, choice of private room or roommates and access to activities in the community are the responsibility of the service provider.

State's Response: The state included clarification in the STP indicating that standards such as preference for a private room or choice of roommate and access to activities in the community are the responsibility of the setting's service provider (page 5).

- **Use of Restrictive Measures:** Several state standards cited on pages 40-44 of the STP indicated that restraints are utilized in HCBS settings. CMS asked the state ensure that any use of restraints or other restrictive practices is documented through the person-centered planning process.

State's Response: The state provided language illustrating that in all programs, the approved restrictive measure or restraint must be incorporated into the individual's behavioral plan, which is considered a key component of the person-centered plan (page 41).

- **Residential Agreements:** For Adult Family Homes (AFH), Residential Care Apartment Complexes (RCAC), and Community-Based Residential Facilities (CBRF), the state indicated that each resident shall have a written agreement that is signed by and provided to each party. CMS asked the state to confirm that this document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

State's Response: The state indicated that the written agreements will provide protections comparable to those provided under the local landlord tenant law for AFHs, RCACs, and CBRFs.

- **Modifications for Provider-owned or Controlled Settings:** The IRIS Policy Manual language cited on page 49 did not appear to fully comply with the modifications provision of the settings rule. CMS asked the state to provide remediation language or illustrate that the state already has standards that comply with this provision.

State's Response: The state indicated that it will include the following language in the IRIS Policy Manual: "The plan shall document at least the following: a) For members residing in a provider-owned or controlled residential setting, the plan must document that any modification of additional conditions for provider owned and controlled settings follow the criteria outlined at 42 C.F.R. § 441.301(4)(vi)(F).

- **Foster Care Homes - Use of Restraints:** CMS asked the state to ensure that any use of restrictive interventions, including physical restraints that are utilized in Foster care homes, are documented through the person-centered planning process.

State's Response: The state indicated in the STP that DCF 56.09 (1G) specifically prohibits the use of restrictive measures with children in foster care unless 'the foster child's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the foster child and others safe.' Under DCF 56.02 (2)(a), licensing agencies are prohibited from granting exceptions to the use of restrictive measures. DCF

56.02 (2)(b) defines the Department exceptions panel, which reviews Restrictive Measures applications for children who reside in foster care homes. The panel includes members from the Department of Children and Families (DCF) and DHS to jointly review all requests for exceptions. DHS prohibits the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS. Use of restraint and/or isolation is monitored by waiver agencies and DHS (page 96). The state provided language illustrating that in all programs, the approved restrictive measure or restraint must be incorporated into the individual's behavioral plan, which is considered a key component of the person-centered plan.

- **Adult Day Care – Use of Restrictive Practices:** CMS asked the state to provide a state standard or remediation language indicating that adult day care centers must ensure participants are free from coercion and restraint.

State's Response: The state included language indicating they prohibit the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS (page 104). The state also clarified that in granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place according to Wisconsin Administrative Code § DHS 94.10. The state provided language illustrating that in all programs, the approved restrictive measure or restraint must be incorporated into the individual's behavioral plan, which is considered a key component of the person-centered plan.

- **Prevocational Settings – Use of Restrictive Practices:** CMS asked the state to provide a state standard or remediation language indicating that prevocational settings must ensure participants are free from coercion and restraint.

State's Response: The state included language indicating they prohibit the use of restraint or seclusion of waiver participants unless the specific restraint or seclusion intervention has been reviewed and approved by DHS (page 119). Use of restraint and/or isolation is monitored by waiver agencies and DHS. The state provided language illustrating that in all programs, the approved restrictive measure or restraint must be incorporated into the individual's behavioral plan, which is considered a key component of the person-centered plan.

- **Additional Details Regarding State's Systemic Remediation:** CMS requested that the state provide a description of how instances of silence, partial compliance, and non-compliance of state standards with the HCBS settings rule criteria would be remediated. CMS reminded the state that it can utilize a plethora of strategies to achieve compliance, including but not limited to changes in the state's administrative rule, the issuance of additional policy changes in key policy documents to the field (including but not limited to policy communications, provider manuals, licensing agreements, etc.), and/or the development of sub-regulatory guidance.

State's Response: The state has added descriptions of its planned systemic remediation throughout the crosswalk.

- **Identification of State Documents in Need of Remediation:** CMS asked the state to provide a clear indication of which waiver applications, contracts, policy guidance or other state standards will be remediated in the systemic assessment.

State's Response: The state added language to the remediation column of its crosswalk that clearly identifies the specific contract and policy documents the state plans to remediate (e.g., see page 74).