

**Disabled & Elderly Health Programs Group**

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August 2, 2022

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Nebraska Department of Health and Human Services  
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P.O. Box 95026  
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Dear Director Bagley:

I am writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting Nebraska **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). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on March 31, 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.
- 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 February 28, 2022, CMS provided feedback on March 29, 2022, and requested several technical changes be made to the STP in order for the state to receive final approval. The state worked with CMS to make additional corrections to the statewide transition plan and resubmitted an updated version on July 22, 2022. 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.

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 NEBRASKA AS  
REQUESTED BY CMS IN ORDER TO RECEIVE FINAL APPROVAL  
(Detailed list of technical changes made to the STP since February 28, 2022)**

**Waiver Services Included in the STP**

- Clarified that while Adult Day Services are new services effective May 1, 2017, they are being delivered in existing settings already included in the assessment and validation process for compliance with the HCB settings criteria. (pg. 20)
- Addressed that the addition of Adult Day Services has not had an effect on the compliance of the settings. (pg. 20)

**Identification and Clarification of Settings**

- Included a brief summary of changes to the names of settings in the HCBS delivery system. (pg. 21)
- Clarified that Extended Family Homes (EFH) have also been previously categorized as Host Homes and Shared Living over the course of the transition period, and that all have referred to the same physical settings. (pg. 28)

**Site-Specific Assessment and Validation Processes**

- Clarified that the settings included in the chart on pgs. 27-28 encompassed all settings providing HCBS and all settings have been assessed and validated.
- Clarified that 54 Assisted Living Facilities were identified as being on the grounds of or adjacent to a public institution and have undergone the state heightened scrutiny review and will be submitted to CMS. The state also clarified the compliance determination for these settings. (pg. 33)
- Clarified that the chart on pg. 27 includes the validation of the EFH homes from 2020 and the results on pg. 41 included how many of each setting type falls under each compliance category. (pgs. 27 and 41)
- Clarified which of the Developmental Disability (DD) Waiver Residential setting types identified as settings that isolate (7 settings) remediated prior to July 1, 2021. (pg. 41)
- Identified how many of each setting type fell under the 245 DD Waiver Residential settings that were categorized as partially compliant. (pg. 41)

**Remediation Activities**

- Included the link to the Nebraska Medicaid State Transition Plan website. (pg. 46)
- Clarified that all remediation plans have been submitted and all settings will be compliant by March 2023. (pgs. 41-45)

**Monitoring of Settings**

- Clarified how the review of each setting has been incorporated into the annual provider assessment. (pg. 49)
- Clarified how private settings where HCB services are received are monitored for compliance with the settings criteria within the Aged and Disabled (A&D) and Traumatic Brain Injury (TBI) waivers, and the timeframes in which all settings will be monitored. (pgs. 50-51)
- Clarified that all settings are continually monitored through monthly reviews of person-centered plans with participants and at annual review meetings facilitated by service coordinators. (pg. 49)
- Provided the attestation in the ongoing monitoring section of the STP that all HCB settings criteria are included in the monitoring process. (pg. 41)