

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

February 14, 2022

Jennifer Langer Jacobs
Assistant Commissioner
State of New Jersey,
Department of Human Services,
Division of Medical Assistance and Health Services
PO Box 712
Trenton, NJ 08625-0712

Dear Ms. Jacobs:

This letter is to inform you that the Centers for Medicare & Medicaid Services (CMS) is granting New Jersey **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). 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 is actively working on those remediation strategies. The state submitted to CMS on April 17, 2015 a draft of the STP that was posted for a 30-day public comment period on January 26, 2015, made sure information regarding the public comment period was widely disseminated, and responded to and summarized the comments in the STP. The state submitted a draft on June 20, 2019 which responded to the feedback provided by CMS on October 2, 2015 and August 24, 2017. The state submitted another draft of the STP on October 31, 2019 responding to CMS feedback sent to the state on July 30, 2019. CMS provided additional feedback on November 25, 2019 to which the state provided a draft STP in response on July 31, 2020. Additionally, the state submitted drafts of the STP on December 22, 2020, June 22, 2021 and October 22, 2021.

After reviewing the drafts submitted by the state, CMS provided additional feedback on August 20, 2020, January 27, 2021, July 16, 2021, and December 15, 2021, requesting that the state make several technical corrections to receive initial approval. New Jersey subsequently addressed all issues and resubmitted an updated version of the STP on January 6, 2022. These changes are summarized in Attachment I to this letter. The state's responsiveness in addressing CMS' remaining concerns related to the state's systemic assessment and remediation resulted in the initial approval of its STP.

In order to receive final approval, all STPs must 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 home and community-based settings rule transition period (March 17, 2023);

- 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, 2023; 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 New Jersey 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 publish the updated STP for a minimum 30-day public comment period. It is critical to note that the transition period expires on March 17, 2023. In order to ensure continued funding for HCBS, states must have an approved final STP that effectively ensures the remediation by that date of any setting not yet fully compliant with the regulation. In addition, CMS must have, through the heightened scrutiny process, received, reviewed and concurred with the state's assessment of settings presumed to have institutional characteristics that the settings have overcome the presumption and demonstrate all of the qualities of a home and community-based setting set forth in the regulation. In order to facilitate the state's site-specific assessments referenced in bullet one above, as well as the state's review of settings presumed to have institutional characteristics, CMS recommends the state submit its assessment tool used to determine provider compliance with the settings criteria to CMS as soon as possible for review. CMS will assess the tool and provide feedback to the state that will be helpful both in achieving final STP approval and in determining the sample size CMS will request for the heightened scrutiny process.


Upon review of this detailed feedback, CMS requests that the state please contact Ondrea Richardson (Ondrea.Richardson@cms.hhs.gov) at your earliest convenience to confirm the date that New Jersey 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 New Jersey for its efforts thus far on the HCBS Statewide Transition Plan. CMS appreciates the state's completion of the systemic review and anticipates the implementation of the corresponding remediation plan with fidelity, and looks forward to the next iteration of the STP that addresses the remaining technical feedback that is forthcoming.

Sincerely,

2/14/2022

X 

Ralph F. Lollar

Director

Signed by: PIV

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

Attachment I.

SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF NEW JERSEY TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLAN DATED AND SUBMITTED JANUARY 6, 2022

Public Notice and Comment

The state posted the STP for public comment beginning January 26, 2015 for 30 days using at least two methods, one of which was non-electronic. A summary of public comments and responses was included in the STP, with a description of changes the state made in response to the comments (pgs. 3-4).

Settings Included in STP

The state confirmed that the state standards for Adult Family Care (AFC) settings are included in the STP, and assured the settings will be included in the site-specific assessment process as provider-owned or controlled residential settings. The state confirmed that the assessment of these settings will include assuring written lease/residency agreements are in place for each HCBS participant, which provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. Additionally, the state included settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual) as provider-owned or controlled settings and indicated that they will be assessed as such. The state specified the changes that will be made to their regulations in order to ensure compliance with all of the settings criteria (pgs. 4-5).

Systemic Assessment

General

- The state provided hyperlinks in the Appendix A: Systemic Assessment Crosswalk for each of the state standards, including state regulations, policies, managed care organization contracts and Special Terms and Condition documents, that have been assessed for compliance with the federal settings rule (see Appendix A).
- The state has indicated that written residency agreements are in development, which will provide for protections that address eviction processes and appeals for Community Care Residences and Community Residences for persons with head injuries, comparable to those provided under the state's landlord tenant law. While N.J.A.C. 10:44C, which addresses this area of concern, is not subject to re-adoption until January 10, 2024, the state has assured they will achieve compliance with the regulatory criterion prior to October 31, 2022 (Appendix A).

Systemic Assessment Spot Check

- The state assured that all of the federal settings criteria have been addressed through the crosswalk, (Appendix A).
- The state included a column in the systemic assessment crosswalk which addresses *the current* compliance levels with the settings criteria, and indicated whether the state statute/regulation/policy is compliant, non-compliant, in conflict, or silent in comparison to the settings criteria. Based on the compliance determination, the state included a remediation approach and the timeline for how remediation will occur by March 17, 2023 (Appendix A).