

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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September 6, 2017

Mr. Thomas Betlach  
State Medicaid Director  
State of Arizona, Health Care Cost Containment System  
801 East Jefferson, MD 4100  
Phoenix, AZ 85034

Dear Mr. Betlach:

This letter is to inform you that CMS is granting Arizona **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 October 2015 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 October 2015 draft submitted by the state, CMS provided additional feedback on November 25, 2015, April 11, 2016, and June 6, 2017 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 30, 2017. 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 Arizona'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 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 Arizona 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 Amanda Hill; [Amanda.Hill@cms.hhs.gov](mailto:Amanda.Hill@cms.hhs.gov) or Michele MacKenzie; [Michele.MacKenzie@cms.hhs.gov](mailto:Michele.MacKenzie@cms.hhs.gov) at your earliest convenience to confirm the date that Arizona 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](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, and looks forward to the next iteration of the STP that addresses the remaining technical feedback that is forthcoming.

Sincerely,



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

## ATTACHMENT I.

### SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF ARIZONA TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY IN UPDATED HCBS STATEWIDE TRANSITION PLAN SUBMITTED AUGUST 30, 2017

- **Public Notice and Engagement:** CMS requested the state provide information about the opportunities for public input that were disseminated via email.

**State's Response:** The state revised Appendix E entitled "Public Comment Notifications" to incorporate Appendix E.4. "Public Comment Period Notification" which includes copies of the six emails distributed during the public comment period and the documents contained within those email notifications (community forum flyers and the HCBS Rules overview document).

- CMS requested the state to verify the non-electronic forms of public notice and how they were widely distributed to notify individuals who do not have access to email or internet of their opportunity for public comment.

**State's Response:** The state clarified that their "outreach strategy" denoted activities undertaken by partnering organizations to disseminate information to the community including strategies that accommodated individuals who may not have access to email or the internet.

- CMS requested the state provide a summary of changes that were made as a result of the public input comments.

**State's Response:** The state revised Appendix F entitled "Public Comment" and included the Public Comment Matrix (F.1) which included the changes that were made to the statewide transition plan as a result of public comment.

- **Links:** CMS requested the state update the links for the following areas of the systemic assessment: Service Specification, General Contract Scope of Work, and Contract Special Terms and Conditions.

**State's Response:** The state verified or updated all links in the systemic assessment. Additionally, the state provided general revisions to the Arizona Health Care Cost Containment System (AHCCCS) policy to assist the reader in locating the referenced policy in the event a link in the matrix is inoperable as the result of ongoing policy revisions.

- **Person-Centered Planning:** The STP included a section called "Person Centered Planning Assessment and Transition Plan," which contained information on the state's process to develop a transition plan to come into compliance with the person-centered planning requirements. The regulatory criteria for person-centered service planning were effective

March 17, 2014 and should not be included in the settings transition plan unless it pertained to the state's plan for compliance with the settings criteria. The state was asked to remove the person-centered section from the STP or modify the language to address the relationship to the settings criteria.

**State's Response:** The state removed the regulatory requirements for person centered planning from the STP that did not pertain directly to the HCBS settings criteria.

- **Settings:** CMS asked the state to clarify if the rural substance abuse transitional agencies were a setting type providing HCBS and if so, to include rural substance abuse transitional agencies as a setting type in the STP, address the state's standards for these settings (e.g. licensure, certification, etc.) in the systemic assessment and include these settings in the state's site-specific setting assessment process.

**State's Response:** AHCCCS incorporated the Rural Substance Abuse Transitional Facilities into the Systemic Assessment and Transition Plan section of the STP. Additionally, Behavioral Health Residential Facilities and Rural Substance Abuse Transitional Facilities have been categorized under the heading of Acute Behavioral Health Treatment Facilities to provide clarification and to address Rural Substance Abuse Transitional Facilities in Arizona's Systemic Assessment and Transition Plan (reference pages 3, 9, 12 and 17-18).

- **Systemic Assessment:** CMS asked the state to clarify dates included in the STP regarding when the state's workgroup met to conduct a review of the statutes and policies associated with each setting type.

**State's Response:** The state clarified that the systemic assessment review was completed in June 2015 and aligned the dates in the STP.

- CMS requested the state address how they assessed state standards against the criteria around the modifications of additional conditions in provider-owned and controlled settings at 42 CFR §441.301(c)(4)(vi)(F).

**State's Response:** The state incorporated information about the outcome of the person centered planning assessment conducted by the HCBS Rules Workgroup in June 2015. The state also clarified that their state standards pertaining to the modifications of the additional conditions in provider-owned and controlled settings were found to be non-compliant in their systemic assessment results and they will be working on enhancing the state's mandated person-centered planning standards while simultaneously developing a transition plan to come into compliance with the regulatory standards as they pertain to HCBS settings.

- CMS found that for Assisted Living Facilities, the state was partially compliant with the regulatory criteria indicating that the setting is integrated in and supports full access to the greater community, including opportunities to seek employment and work in

competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of individuals not receiving Medicaid HCBS. Additionally for the subset of Assisted Living Centers located on grounds of nursing facilities, the state plans to ensure facilities on the same grounds are licensed and operated separately. CMS asked the state to describe remediation strategies to ensure that services to the individual, and activities in which the individual participates, are integrated with the broader community.

**State's Response:** The state changed the compliance determination to partial compliance and included a reference to an additional remediation strategy for assisted living facilities.