



Administrator  
Washington, DC 20201

AUG - 2 2010

Mr. Ronald J. Levy, Director  
Department of Social Services  
Broadway State Office Building  
P.O. Box 1527  
Jefferson City, MO 65102

Dear Mr. Levy:

I am responding to your request to amend the State of Missouri's 1915(c) mental retardation/developmental disabilities (MR/DD) Comprehensive Home and Community-Based Services (HCBS) waiver received by the Centers for Medicare & Medicaid Services (CMS) on February 1, 2010, (control number 0178.R04.03). For the reasons set forth below, I am unable to approve this amendment as submitted.

On April 22, 2010, CMS issued a formal Request for Additional Information (RAI), which identified a number of issues critical for approval. While the State's response to this request on May 10, 2010, addressed most of the issues included in the RAI, the issue regarding the State's proposal to increase the number of unduplicated participants for waiver years 4 and 5 based on increased transition of individuals into residential units clustered on the grounds of a large State-operated institution remains outstanding and precludes CMS approval. The State's submission does not comport with the following statutory and regulatory provisions that authorize the Secretary to approve as medical assistance HCBS to be provided to individuals living in the home and community:

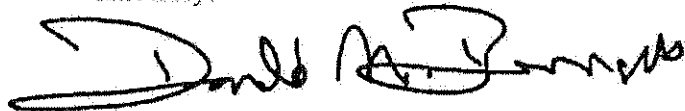
- 1) Section 1915(c)(1) of the Social Security Act (the Act), provides that the Secretary may, by waiver, provide that a State plan may include as "medical assistance" payment for part or all of the cost of HCBS for individuals who would otherwise require the level of care provided in an institution. Further, 42 CFR section 441.301(b)(1)(ii) requires that the State's waiver request must provide that HCBS will be furnished only to recipients who are not inpatients of a hospital, nursing facility, or intermediate care facility for the mentally retarded. Since the HCBS provided in a waiver must be an alternative to services provided in an institution, and the State proposes in its amendment to provide services to individuals residing on the campus of an institution by adding capacity to the waiver for this purpose, the waiver amendment proposal does not comport with the requirements of the statute and regulation.
- 2) 42 CFR 441.300 permits States to offer HCBS that individuals need in order to avoid institutionalization. However, Missouri proposes to add capacity through this waiver amendment to serve individuals living on the grounds of an institution which provides inpatient institutional treatment, a setting which is segregated from and with restricted access to the larger community. Under the proposed amendment, Missouri would not provide

services that permit individuals to avoid institutionalization, but would serve individuals in an institutional setting. This waiver amendment does not meet the requirement of the regulation.

Section 1915(c)(1) of the Act provides the Secretary with discretionary authority with regard to approval or denial of 1915(c) HCBS waiver submissions. After consulting with the Secretary as required by Federal regulations at 42 CFR 430.25(f)(2)(ii), I am unable to approve the proposed amendment for the reasons cited above.

If you have any questions or wish to discuss this determination further, please contact Ms. Barbara Edwards, Director, Disabled and Elderly Health Programs Group, 7500 Security Boulevard, Mail Stop S2-14-26, Baltimore, MD 21244-1850.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald M. Berwick". The signature is written in a cursive style with a large, sweeping initial "D".

Donald M. Berwick, M.D.  
Administrator