

Disabled & Elderly Health Programs Group

September 24, 2015

Stephen Groff
Director, Division of Medicaid and Medical Assistance
Department of Health and Social Services
1901 N. Du Pont Highway, Lewis Bldg.
New Castle, DE 19720

Dear Mr. Groff,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Delaware's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Delaware first submitted its STP to CMS on March 17, 2015, and resubmitted the STP on June 3, 2015 to reflect requested clarifications. CMS notes areas where some additional detail is needed on site-specific assessments, monitoring, remedial actions, relocation of beneficiaries and heightened scrutiny. These items are summarized below.

Systemic Assessment:

Following completion of the systemic assessment, please include in the STP the state code for each setting type that corresponds to the relevant section of the federal requirement. Delaware should also indicate whether the state code supports, is silent on, or contradicts the federal requirement(s) and how the state will remediate any conflicting or silent provisions.

Site-Specific Assessment:

- Please describe in the STP how the state will ensure that all providers respond to the surveys, and list any actions the state will take for providers who do not respond.
- Please clarify what activities are included in the desk review of the provider assessment results. Clarify whether the desk review is an activity to validate provider self-assessment results (and if so, how that will be done) or if it is a general review of the surveys.
- Delaware indicates that it will conduct a "look-behind" review of twenty percent of providers. Please describe the activities included in this review, the methodology to select providers for this review and any rationale for the sample size of twenty percent.
- Please describe how the state will follow-up with providers who indicate that their settings are not compliant. For instance, will the state conduct a site-visit or use another method to follow-up with these settings?
- Delaware includes the following action item in its STP: "Providers use the survey tool to assess their policies, procedures, etc. against the Rule. Providers develop/submit Corrective Action Plan (CAP) to correct non-compliant policies, etc. The Division of Developmental Disabilities Services (DDDS) must approve the CAP within 30 days of submission to DDDS." As these activities are crucial to the assessment process, CMS urges the state to

consider breaking this action item into smaller milestones with corresponding timeframes to better track the progress in assessing and remediating provider settings. Please indicate your response to this suggestion.

- After completing site-specific assessments, please provide an estimate of the number of settings that comply with the federal regulation, can comply with modifications, cannot comply, or are presumed to be institutional in nature for which the state may or may not submit requests to CMS for heightened scrutiny.

Monitoring:

In its STP, Delaware notes that it intends to monitor compliance of settings. Please provide a step-by-step approach (supported with precise timeframes) for both provider remediation and compliance activities (based on a provider's approved CAP), and ongoing compliance after the March 2019 deadline. In its approach, Delaware should describe how often monitoring will occur, whether it will be integrated into existing licensing processes, and what specific tools and processes the state will use to ensure compliance of settings.

Remedial Actions

- Delaware indicates that DDDS and Division of Medicaid and Medical Assistance (DMMA)-required trainings will be provided for state staff and providers. Please specify whether the trainings are state-wide or if they are customized to different providers and settings.
- Regarding Delaware's STP to make changes to state policies and procedures from 8/1/15-1/13/17, CMS requests that the state confirm if this extended date is due to legislative process. If not, the state should provide a rationale for this timeline, as it crosses a significant portion of the transition period.
- Please describe the key elements of the provider CAPs, the state's approach and timeframe to monitor providers' compliance with these plans, and how the state will ensure that providers adhere to these plans. The STP indicates that CAPs will be fully implemented by March 17, 2019. This date does not allow any time to verify whether providers have fully come into compliance with the requirements or if additional changes are needed. Please revise the STP to include more reasonable timeframes for each step of the remediation process. These timeframes should provide sufficient time for settings to comply with the federal settings requirements prior to the March 2019 deadline.

Relocation of Beneficiaries

- Delaware includes the relocation of beneficiaries as part of its remedial strategy. Please indicate how individuals will receive reasonable notice and the critical services/supports necessary for the transition.
- Please revise the STP to provide estimates of the number of beneficiaries who will require relocation, assurances that potentially affected beneficiaries will have all the information and support they need to make informed choices about alternate settings, and the assurance that all the services and supports necessary will be in place at the time of relocation. Ensure that the STP includes those currently being transitioned from the Stockley facility, a site that the state has identified as non-compliant.

Heightened Scrutiny

The state should clearly lay out its process for identifying settings that are presumed to be institutional in nature. These are settings for which the state must submit information for the heightened scrutiny process if the state determines, through its assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution. If the state determines it will not submit information on settings meeting the scenarios in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved.

Settings presumed to be institutional include the following:

- Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- Settings in a building on the grounds of, or immediately adjacent to, a public institution;
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

As noted above, CMS recognizes that Delaware has already confirmed the setting(s) related to Stockley Center as non-compliant and is in the process of relocating beneficiaries. CMS requests that Delaware describe in its STP the methodology used to determine this site(s) as non-compliant and confirm the settings type of the Stockley Center.

CMS would like to have a call with the state to go over these concerns and to answer any questions the state may have. The state will need to revise and resubmit its STP within a reasonable timeframe of the completion of the systemic and site specific assessments in December of 2015, which will necessitate the STP being re-posted for public comment. Please be prepared to discuss this timeframe during the telephone call. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Michele MacKenzie, the CMS Central Office Analyst taking the lead on this STP, at (410) 786-5929 or Michele.MacKenzie@cms.hhs.gov with any questions related to this letter.

Sincerely,

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

c. F. McCullough