

## **Disabled & Elderly Health Programs Group**

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September 24, 2015

Stefanie Nadeau  
Director, Office of MaineCare Services  
Department of Health and Human Services  
221 State Street  
Augusta, Maine 04333-0040

Dear Ms. Nadeau,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Maine's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Maine submitted its original STP to CMS on March 13, 2015, and resubmitted the STP on April 14, 2015. CMS appreciates the detailed tables that were provided to report the outcomes of the systemic and site-specific assessments. However CMS is requesting supplemental information on site-specific assessments, timelines, validation processes, and remediation strategies. These items are summarized below.

### **Site-Specific Assessment:**

- CMS requests information on Maine's Private Non-Medical Institutions (PNMIs). The STP reports that these are residential settings. However, the information provided about them in the STP is unclear. For example:
  - The note listed under Table 7 on page 16 of the STP states, "The PNMI is not funded as a waiver service, but is funded under the Medicaid State Plan. Although permitted, no waiver members under §20 currently reside in a PNMI."
  - The STP then states that "the waiver permits members to reside in non-medical institutions, i.e. PNMIs, which are residential services funded as a Medicaid service under the Maine benefits manual provided in group homes."
  - Finally, on page 17, Maine indicates that some residents who receive certain home and community-based services (HCBS) do reside in a PNMI and some beneficiaries served under §21 and §29 waivers currently reside in a PNMI (p. 17).
- CMS requests that Maine clarify the language referenced above and confirm whether PNMIs are an HCBS residential setting, as the STP indicates that Maine will submit evidence for a heightened scrutiny review of these settings.
- CMS also requests that Maine provide more details regarding the types of settings included in the "non-disability specific" category.
- Maine describes three steps in its assessment process: 1) provider self-assessments; 2) member assessments; and 3) validation using site visits for a five percent sample of settings. The STP indicates that Maine's assessment process is overseen by an advisory group and the state also formed committees to incorporate ongoing stakeholder and community involvement. CMS

requests that Maine include additional information on how a five percent validation sample and the role of the advisory group will adequately demonstrate the accuracy of the provider self-assessments.

- CMS also requests from Maine more specific timelines regarding the process of conducting site-specific assessments. For example:
  - On page 22, the Action Item entitled “Disseminate Report” includes presentations and posting on the website with a start date of October 1, 2016 and an end date of “ongoing”. Please provide specific timeframes for posting the report and associated presentations.
  - Under “Design Remediation”, the STP includes “develop and submit updated Transition Plan to CMS if necessary”; the state indicates this will occur from October 1, 2016 to February 27, 2017. Please describe the criteria Maine will use to determine if an updated version is necessary.
  - On page 23, the action item on “Modify Verification Systems”, has a two year time period, from January 1, 2016 – December 30, 2017, to “develop a member experience assessment tool”. Please describe any interim activities or milestones.

#### **Remedial Actions:**

- Based on the systemic assessment described in the STP, most of the estimated sites in Maine are categorized as “Compliance Possible”. However, the STP does not identify a remedial strategy or timeline to bring any settings into compliance. Please describe in the STP the plan to remediate settings in the event that a setting does not comply with the federal settings requirements. The remediation plan should include timelines and milestones for each step.
- The STP indicates that provider training will occur in 2018. CMS suggests that Maine consider a much earlier general training on the regulations prior to self-assessments to ensure that providers understand the self-assessments. Please indicate your response to this suggestion.

#### **Relocation of Beneficiaries:**

As noted above, most of the estimated sites in Maine are categorized as “Compliance Possible”. Please include a plan to relocate beneficiaries in the event that a setting cannot or will not comply with the federal requirements. The plan should describe how any beneficiaries potentially facing relocation will be given adequate time and the support to make informed choices among alternate settings, and will be assured all services and supports will be in place at the time of relocation.

#### **Heightened Scrutiny:**

The STP indicates that seven PNMIIs and three adult day centers will be put forth for heightened scrutiny. The STP also described a process for identifying these types of settings, which included completion of a comprehensive listing of providers and settings in Maine. The state should clearly lay out its process for identifying the settings that are presumed to have institutional qualities. 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 for settings meeting the scenarios described in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved to other compliant settings or settings not funded by Medicaid HCBS.

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, Maine is collecting evidence on PNMI and adult day centers. In the STP, Maine indicates it will collect evidence in September 2016 for heightened scrutiny for the seven PNMI, but the state does not specify when it will collect evidence for the three adult day centers or when evidence will be submitted to CMS for review. CMS requests that Maine include an estimated date of the state's submission of evidence for heightened scrutiny review.

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 may need to revise and resubmit its STP, which may necessitate the STP being re-posted for public comment. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Ciera Lucas, the CMS Central Office Analyst taking the lead on this STP, at (410) 786-0832 or at [Ciera.Lucas@cms.hhs.gov](mailto:Ciera.Lucas@cms.hhs.gov) with any questions related to this letter.

Sincerely,

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

cc. R. McGreal, ARA