



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

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September 16, 2015

MaryAnne Lindeblad  
Medicaid Director  
Washington Health Care Authority, Executive Office  
626 8<sup>th</sup> Avenue SE/PO Box 45502  
Olympia, WA 98504

Dear Ms. Lindeblad,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Washington's Statewide Transition Plan (STP) to bring state standards and settings into compliance with the new federal home and community-based settings requirements. Washington submitted this STP to CMS on March 11, 2015. CMS notes areas where the STP needs more details regarding assessment processes and outcomes, the remedial plan and heightened scrutiny. These items and related questions for the state are summarized below.

**1915(k) Alignment:** Washington's Assisted Living Facilities, including Adult Residential Care/Enhanced Adult Residential Care, are authorized under the Community First Choice Option. These should be removed from the Statewide Transition Plan.

**Systemic Assessment:** Washington provided the state regulations that correspond to the federal requirements for each setting and demonstrates regulatory compliance. However, the state should provide additional evidence such as provider manuals and policies to demonstrate that specific federal requirements are met, as several state regulations do not directly address the universe of federal requirements. Please identify which regulations, policies and procedures conflict with federal requirements for home and community-based settings (if any), remain silent on the specific qualities required and fully comply with the requirements in the federal regulation. For example:

- The assessment for Supported Living settings referred to regulations WAC 388-823-1095, 388-101-3320, and 388-101-3360 to support the federal requirement specified at 441.301(c)(4)(B)(2) regarding beneficiaries having a choice of roommates. The specified state regulations identify rights as a Developmental Disabilities Administration client, none of which relate to choice of roommate.
- The assessment for Adult Residential Services refers to code WAC 388-78A-2910 to support the federal requirement specified at 441.301(c)(4)(E) that the setting is physically accessible to the individual. The specified state regulations note that the setting must meet the accessibility code from the time of construction, not necessarily current accessibility standards.
- Some of the included URLs to access various state regulations were broken or led to a long list of sub-regulations:

- On p. 16, the state identifies chapters 388-71, 388-106, 388-825, 74.34, and 74.39A as evidence of regulations that assure individual autonomy and independence. When the reviewers clicked on any of those regulations, they were led to a page with hundreds of sub-regulations.
- The systemic assessment for Adult Day services refers to code WAC 388-0742 (p.27). The link provided leads to a long list of WAC sections, none of which are the specified WAC 388-0742.
- Two federal requirements specified at 441.301(c)(4)(vi)(B) and 441.301(c)(4)(vi)(A) do not appear to be addressed at all:
  - "Setting provides that each individual has privacy in their sleeping or living unit."
  - "If the setting is provider owned or controlled and the tenant laws do not apply, the state ensures that a lease...is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law."
- The state indicated that the provider must make "reasonable accommodations" in response to several federal requirements, but did not define the term "reasonable." Examples of this occur on p. 45, in response to the federal requirement specified at 441.301(c)(4)(vi)(C) regarding individuals' freedom and support to control their own schedules and on p. 46 in response to the federal requirement specified at 441.301(c)(4)(vi)(D) regarding individuals' ability to have visitors at any time.

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

Washington identified 4 types of settings that received site visits. These included adult day service centers, group training homes, one residential setting, and settings presumed to be institutional (including assisted living facilities attached to hospitals or nursing facilities which should be removed from the STP as these settings were evaluated and approved as home and community-based in the 1915(k) Community First Choice SPA). Please describe the approach the state used to evaluate whether sites had the effect of isolating residents. The state should provide a clear method for determining if each location may be isolating and requires follow-up.

### **Remedial Actions:**

- **Systemic Assessment:** Washington described its systemic remediation efforts to bring some settings into compliance with federal requirements. However, due to the concerns listed above regarding the systemic review, this remediation plan may not be sufficient to fully bring each setting and corresponding regulations into compliance by March 2019. Please review and revise the remediation plan based on any changes made to the systemic review and update the STP to reflect those changes.
- **Site-Specific Assessment:** Once the state has analyzed the results of its systemic assessment (see above), the state should identify the methods it will use to determine if a setting fully complies with the federal requirements, does not comply with the federal requirements and will require modifications, cannot meet the federal requirements and requires removal from the program and/or relocation of individuals; or is presumed to have the characteristics of an institution (but for which the state will provide justification that these settings do not have the characteristics of an institution and do have the qualities of home and community-based settings).

### **Heightened Scrutiny:**

The state should clearly lay out its process for identifying 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 on 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 with 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.

CMS has been notified of a single family home that has been established as an LLC with qualities similar to a farmstead. The state should evaluate this and any other similar settings and provide evidence of whether this site is isolating or whether it has qualities of a home and community-based setting. If the state is operating with a presumption that an individual's private home or private family home is meeting this requirement, the state needs to confirm that none of these settings were purchased or established in a manner that isolates the individual from the community of individuals not receiving Medicaid funded home and community-based services. Information available in the Home and Community-Based Toolkit on settings that isolate may be helpful in this regard. The state should not presume that a setting where all or the majority of services are rendered in that setting or on the grounds of that setting, or where a group of individuals with disabilities or a specific type of disability (or their families) have purchased the setting and reside in the setting has the characteristics of a home and community-based setting.

CMS would like to have a call with the state to go over these questions and concerns and to answer any questions the state may have. The state should revise the STP; post it for public comment for 30 days prior to being submitted to CMS, and resubmit the amended STP in no more than six months after receipt of this letter. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. In the meantime, please do not hesitate to reach out to Daphne Hicks, the CMS Central Office analyst taking the lead on this STP, at [Daphne.Hicks@cms.hhs.gov](mailto:Daphne.Hicks@cms.hhs.gov), with any questions.

Sincerely,

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

cc: David Meacham, ARA