

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

July 9, 2015

Cynthia Beane, MSW, LCSW
Acting Commissioner
Bureau for Medical Services
350 Capitol Street, Room 251
Charleston, WV 25301-3706

Dear Ms. Beane,

The Centers for Medicare & Medicaid Services (CMS) has completed its initial review of West Virginia's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community based settings requirements. West Virginia submitted this STP to CMS on February 9, 2015. Overall, CMS finds West Virginia's STP addresses a portion of the requirements; however, CMS notes several areas where CMS needs more detail regarding requirements for public notice, assessment of compliance, inclusion of the systemic review and outcomes, the remedial action processes (including the associated time lines), and ongoing monitoring. These concerns and related follow-up for the state are summarized below.

Public Notice

- **Statement of public notice:** The state has provided two updates via email clarifying the public notice process described in the submitted STP. In summary, the state posted one statement of public notice and public input procedure on the state website. The second statement of public notice occurred via circulation of the public notice link (<http://www.dhhr.wv.gov/bms/hcbs/HCBSSTP/Pages/Public-Notice.aspx>) on multiple listservs and email lists to stakeholders and stakeholder groups. To fulfill the requirement for a non-electronic option for public notice, listserv/email recipients were asked to print the notice and post it in a visible site at their respective agencies and ask staff to share the notice with the members they serve. A phone number to obtain a hard copy of the draft was included in the notice. Additionally, copies of all materials were provided at the public forum meeting in Charleston. Please insert this information in the STP to ensure there is evidence of proper public notice.

- **Summary of public comments and a description of any changes made as a result of public comments.** In lieu of a summary, West Virginia included all public comments from both email and the public meeting, including state responses to the comments, in a "Responses and/or Action Steps" column where changes were discussed as a result of a given public comment.

While West Virginia may include all public comments in full, the state should also provide a summary of public comments to distill the major themes identified in the comments and the state's disposition on those major themes (e.g. did the state make changes in the STP or did the state determine changes were unnecessary).

Assessments

- **Systemic assessments and outcomes.** The STP does not fully describe a systemic review process. The STP notes a "regulatory review," and according to the timeline provided, the state completed its review of state regulations and supporting documents across the three waiver programs with residential and non-residential settings as of 11/10/14. The results of that review are not described (e.g. specific state regulations that were analyzed; which settings they relate to; the specific aspect of each regulation found to be compliant, non-compliant or silent; or any changes that must be made to each regulation to bring it into compliance).

CMS need a description of the state's systemic review process. This should include all settings, regulations related to the settings, and findings (outcomes) with regard to what, if anything, was found deficient in those regulations, and what changes need to be made to each regulation to bring it into compliance or what sub-regulatory guidance will be issued to facilitate provider compliance with settings requirements. If the state did not meet the assessment target date stated in the STP (11/10/14), the target date should be amended.

- **Provider v. Setting-specific assessments.** West Virginia provides a timeline for completing site-specific assessments via provider self-assessment surveys. The anticipated end date for this assessment is 6/30/15.

CMS needs to understand the details of the provider specific-assessments and surveys. Are the providers expected to attest to meeting the federal regulations through the providers' policies and procedures, or did the providers conduct site visits? If the state is acting on information provided solely by the providers of service, a validation process must be identified by the state that ensures the reliability of the provider information such as a review of a sample of the provider self-assessments by an entity that has been in the settings (e.g. case management, licensing or compliance staff, etc.).

Remedial Actions

- **Milestones and time-line for remedial actions needed to address any non-compliant settings.** West Virginia's STP provides a description of remedial actions in four general compliance areas (provider remediation, outreach and education, quality, policies and procedures); however, most completion dates for milestones related to remediation are 6/30/2020, which exceeds the March 17, 2019 provider compliance requirements date by 15 months.

West Virginia should provide a detailed plan to address remedial actions including milestones for meeting such actions and an appropriate timeline for completion where compliance is met by March 17, 2019 in accordance with regulatory guidelines.

- **Monitoring process for assuring full and ongoing compliance with the home and community-based services settings requirements.** CMS needs to understand the state's process for monitoring and assuring full and ongoing compliance with the home and community-based settings requirements, including beyond the transition timeframe of March 2019.

West Virginia's STP should include a detailed description of how the state will monitor compliance with the home and community-based services settings requirements. This description should include details on the monitoring process it intends to use to ensure that all updated timelines and milestones in the remedial process are met, and the processes the state will use to ensure continued compliance of its settings with the federal requirements.

- **Updated information on the completion of the state assessment and milestones.** West Virginia should include a date in this STP by which the state will update the STP with the findings from the completed assessments and milestones identified to complete transition by March of 2019.

Heightened Scrutiny

CMS must clearly understand the state's 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 described in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved into compliant settings or into non-Medicaid funding streams.

These settings 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 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 will need to revise and resubmit its STP, which may necessitate the STP being re-posted for public comment. A representative from CMS's contractor, NORC, will be contacting you shortly to schedule the call. During the call or shortly thereafter, CMS will inform the state of the timeframe for submitting the revised STP. If you have questions or concerns, please contact Michele MacKenzie of my staff at 410-786-5929 or at Michele.MacKenzie@cms.hhs.gov with any questions related to this letter.

Sincerely,

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

cc. **Francis McCullough**