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

October 29, 2015

Ms. Nancy Smith-Leslie
Director
State of New Mexico
Medical Assistance Division Department of Human Services
PO Box 2348
Santa Fe, NM 87504-2348

Dear Ms. Smith-Leslie,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of New Mexico's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. New Mexico submitted its STP for its 1915(c) Home and Community Based Services waivers to CMS on March 17, 2015 and an amended STP on June 2, 2015 that included information and public comment in the context of the state's 1115 Demonstration. CMS requests additional detail regarding waivers and settings included in the STP, systemic assessments, site-specific assessments, monitoring, remediation, heightened scrutiny and relocation of beneficiaries. These issues are summarized below.

Waivers and Settings Included in the STP:

- Comparison of the NM 0173: Developmental Disabilities Waiver Program (DDWP) and the STP demonstrated general alignment, although CMS noted some minor variations in the timing of the assessments for the Developmental Disabilities (DD) Waivers between the STP and the DDWP transition plan. Please clarify that the STP contains the correct dates for the DD Waiver provider assessments.
- The STP identified services, not the setting types, in Appendices D and E that are labeled as "HCBS Compliance by Setting Type" for the Mi Via and DD waivers. Additionally, setting types were not included for the 1115 Centennial Care Demonstration. Please specify the settings for the two waivers and the 1115 Demonstration.
- Please provide clarification on the settings where the following services take place: employment supports, intense medical living, home health aide, and specialized therapies. In particular, please provide more information on the type of setting where home health aide services are provided outside the participant's home.

Systemic Assessment:

- Appendices A-C and H of the STP include a detailed crosswalk of the state regulations against the federal requirements that were assessed as part of the state's systemic review.

However, several items were left blank or noted "Not Found," or "will address in service standards." Please provide information about these items. For instance, if "will address in service standards" means that the state regulation is silent on a particular home and community-based setting characteristic and the remedial action is to address the issue in the service standards, please refine the action and identify the timeframe in which it will be completed.

Site-Specific Assessments:

- The information in Appendices D and E did not identify the settings that fully comply, will comply with modifications, cannot comply and will require relocation of beneficiaries, or settings that are presumed to have the qualities of an institution. Please provide estimates of the number of settings in each of these categories.
- For the Mi Via Waiver, the state will distribute the surveys to consultant agencies and/or vendors. The state indicated that it "believes this is a reasonable approach to obtain a foundation for provider compliance given: 1) the volume of direct care providers in the program would not make it feasible to conduct a survey with a low nonresponse rate, therefore surveying vendor agency providers ensures compliance and a response rate that is representative for providers servicing Mi Via participants and 2) the fact that consultant agencies and/or vendors are as close to the providers as possible under this consumer-directed model of care." Please clarify how the state will oversee the consultant and vendor agencies which are assisting with these assessments.
- The STP notes that the findings for the DD Waiver provider self-assessment surveys will be finalized by September 30, 2015. Please indicate how the state will address DD Waiver providers that do not complete the self-assessment.
- The Department of Health (DOH) and Developmental Disabilities Support Division regional offices will complete a validity check on a subset of provider agency responses to the provider self-assessment survey by July 2016, which is one year after the completion of the provider self-assessments. Please clarify if the state intends to wait until July 2016 to inform all providers of concerns or whether there is a process for notifying providers throughout the review period as individual validations are completed. If the state waits a full year to notify any provider of concerns, the timeframe for providers to complete needed corrections is significantly shortened.
- Please indicate in the STP the number of DD Waiver settings the state will visit as part of the validation, and the sampling methodology used.
- The Human Services Department (HSD) reviewed the Centennial Care Demonstration provider types under the Agency-Based Community Benefit (ABCB) and identified 61 assisted living providers, seven adult day health providers, and one employment support service provider. For Self-Directed Community Benefit (SDCB) services, there were 10

customized community supports and two employment supports vendors. Please confirm that this is the complete number of settings under the demonstration and indicate whether the state will assess each of the settings or a subset. If the state is assessing subsets, please describe the sampling methodology.

- Please clarify how HSD will manage the Centennial Care Demonstration provider self-assessment process, and indicate how the state will address providers that do not complete the self-assessment, along with a detailed description of the validation processes.
- Please identify a method for assessing the providers that provide services to the participants under the Medically Fragile Waiver. The state is transitioning the Medically Fragile Waiver into the Centennial Care Demonstration in 2016. Please clarify the assessment process for the providers who currently provide services under the Medically Fragile Waiver and how the state will address the settings as they move under Centennial Care.
- Please clarify the purpose of the participant surveys that will be conducted between June and July 2017 and how they will inform actions in the STP.
- The state indicated it will use the National Core Indicators (NCI) consumer survey for participants in the Mi Via and Developmental Disabilities Waivers to obtain participants' perspective on settings compliance. For the Centennial Care Demonstration, the state indicated that HSD will create a member survey that will be mapped to questions in the provider surveys. Please provide more detail on the use of the NCI survey. Absent the ability to crosswalk NCI consumer surveys against specific settings, it cannot be used to validate individual provider assessments. Similarly, the 1115 Demonstration member survey would need to be cross-walked back to specific providers/settings for validation purposes.

Monitoring of Settings:

- For Mi Via and DD Waivers, the state intends to use the results from the NCI consumer survey as a tool for participant monitoring. Please clarify how the state will use the NCI data to inform on the compliance of specific settings or describe a different approach to monitor settings.
- The STP says during September 2015, the state would conduct compliance surveys of consultants, agencies and vendors providing services to Mi Via participants for compliance verification and to identify provider training opportunities for sessions to be conducted in March 2016. Following those provider training sessions, the Medical Assistance Division (MAD) and DOH will monitor Customized Community Group Supports (CCGS) vendor compliance through provider attestations that are submitted as part of the provider enrollment packets. Please provide more information on what will be included in the validity checks to ensure the accuracy of the attestation and how MAD and DOH will conduct those validity checks as part of the overall compliance monitoring process.

- CMS noted that it appears the Managed Care Organizations (MCOs) will be solely responsible for monitoring compliance of the 1115 Demonstration settings by monitoring outcomes through support brokers and care coordinators asking members about their satisfaction with community benefits. Please clarify the role of the state in the oversight and monitoring processes for the 1115 Demonstration providers.

Remedial Actions:

- Regarding Appendix A on pp. 29-33, please clarify if the qualities listed apply to provider owned and controlled settings (residential settings). Please clarify whether there are any changes to the standards, regulations, policies and provider manuals specific to the Mi Via Waiver other than the changes you identified for residential settings.
- For the DD Waiver standards for non-residential settings, the state indicated that some key attributes of home and community-based settings are not currently addressed and that the state will make appropriate updates to state standards, New Mexico Administrative Code (NMAC), and policies as appropriate. Please include the specific rules, regulations and policies the state assessed, where changes will be made, and the timeframe for those specific changes.
- For Mi Via Waiver provider remediation, the state will not process Customized Community Group Supports (CCGS) provider packets if they do not include the provider's attestation that the services and supports provided will be delivered in a community-based integrated setting. Please indicate how the state will ensure the attestations are independently validated.
- Page 16 of the STP indicates that after the participant survey, non-compliant Mi Via Waiver providers will be required to implement remediation activities. Please include milestones and dates for when the providers will submit their remediation plans and when the state will approve the plans.
- The STP did not include DD Waiver provider remediation strategies and instead indicated that participants will be given a "freedom of choice form" to select a new provider. Please describe why the state has determined the providers cannot come in to compliance during the transition period and how the pool of providers who do comply will be sufficient to ensure services to the HCBS population, including individuals who will need to leave the noncompliant settings.
- For the Centennial Care Demonstration provider remediation, the state will require the providers to submit an attestation that the services and supports will be provided in a community-based integrated setting. Please clarify how such attestations will be independently validated and the action the state will take if a provider does not submit an attestation. In addition, describe the process the provider will be required to take to remediate the identified areas of concern.
- Please clarify for the two waivers and the 1115 Demonstration what is meant by the activities to "Implement remediation strategies" on 1/1/18 on page 10 of the STP. Does this mean that

the state will have fully implemented the remediation and the settings will be compliant by 1/1/18 or does it mean that the state will start to implement the remediation strategies to become compliant on that date?

Heightened Scrutiny:

The STP did not identify any settings presumed to be institutional. There were public comments regarding assisted living settings that have secured memory care units. The state should clearly lay out its process for identifying settings that are presumed to have the qualities of an institution. 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 such settings meeting the scenarios described in the rule, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved.

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; and
- Any other setting that has the effect of isolating individuals receiving Medicaid home and community-based services from the broader community of individuals not receiving Medicaid home and community-based services.

Relocation of Beneficiaries:

- Please clarify why relocation options were not identified for the Mi Via Waiver beneficiaries.
- As noted previously, the DD Waiver remediation strategy includes relocation where DOH will provide the eligible recipients with a freedom of choice form to select a new provider. Please provide more information about the freedom of choice process.
- Please provide an estimate of the number of beneficiaries that may be subject to relocation, along with a detailed description of the relocation plans that include beginning and ending timeframes for the waivers and the 1115 Demonstration. Such plans should describe how a beneficiary is given ample time and support to choose among alternate settings and that all needed services and supports will be in place at the time of transition.

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 resubmit its revised STP, in accordance with the questions and concerns above, within 45 days of that call. In the revised STP please indicate when the state will be submitting an updated STP that includes the completed assessment outcomes and a more

detailed remediation strategy. That updated STP will need to undergo public comment before submission to CMS. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Sara Rhoades at 410-786-4484 and Sara.Rhoades@cms.hhs.gov with any questions related to this letter.

Sincerely,

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

CC: Bill Brooks, ARA