

Disabled & Elderly Health Programs Group

August 22, 2019

Dr. Jennifer Lee
Director, Virginia Department of Medical Assistance Services
600 East Broad Street
Richmond, VA 23219

Dear Dr. Lee:

I am writing to inform you that the Centers for Medicare and Medicaid Services (CMS) is granting Virginia **final approval** of its Statewide Transition Plan (STP) to bring settings into compliance with the federal home and community-based services (HCBS) regulations found at 42 CFR Section 441.301(c)(4)(5) and Section 441.710(a)(1)(2). Upon receiving initial approval for completion of its systemic assessment and outline of systemic remediation activities on December 9, 2016, the state worked diligently in making a series of technical changes requested by CMS in order to achieve final approval.

Final approval is granted to the state after completing the following activities:

- Conducted a comprehensive site-specific assessment and validation of all settings serving individuals receiving Medicaid-funded HCBS, and included in the STP the outcomes of these activities and proposed remediation strategies to rectify any issues uncovered through the site specific assessment and validation processes by the end of the transition period.
- Outlined a detailed plan for identifying settings that are presumed to have institutional characteristics, including qualities that isolate HCBS beneficiaries, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- Developed a process for communicating with beneficiaries who are currently receiving services in settings that the state has determined cannot or will not come into compliance with the home and community-based settings criteria by March 17, 2022; and
- Established ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

After reviewing the STP submitted by the state on May 8, 2019, CMS provided additional feedback on June 12, 2019 and August 21, 2019 and requested several technical changes be made to the STP in order for the state to receive final approval. These changes did not necessitate another public comment period. The state subsequently addressed all issues and resubmitted an updated version on August 21, 2019. A summary of the technical changes made by the state is attached.

The state is encouraged to work collaboratively with CMS to identify any areas that may need strengthening with respect to the state's remediation and heightened scrutiny processes as the state implements each of these key elements of the transition plan. Optional quarterly reports through the milestone tracking system, designed to assist states to track their transition processes, will focus on four key areas:

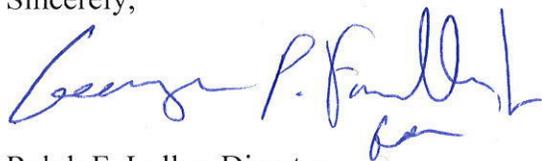
1. Reviewing progress made to-date in the state's completion of its proposed milestones;
2. Discussing challenges and potential strategies for addressing issues that may arise during the state's remediation processes;
3. Adjusting the state's process as needed to assure that all sites meeting the regulation's categories of presumed institutional settings¹ have been identified, reflects how the state has assessed settings based on each of the three categories and the state's progress in preparing submissions to CMS for a heightened scrutiny review; and
4. Providing feedback to CMS on the status of implementation, including noting any challenges with respect to capacity building efforts and technical support needs.

It is important to note that CMS' approval of a STP solely addresses the state's compliance with the applicable Medicaid authorities. CMS' approval does not address the state's independent and separate obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act or the Supreme Court's *Olmstead v. LC* decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the *Olmstead* decision is available at: http://www.ada.gov/olmstead/q&a_olmstead.htm.

This letter does not convey approval of any settings submitted to CMS for heightened scrutiny review, but does convey approval of the state's process for addressing that issue. Any settings that have been or will be submitted by the state under heightened scrutiny will be reviewed and a determination made separate and distinct from the final approval.

Thank you for your work on this STP. CMS appreciates the state's effort in completing this work and congratulates the state for continuing to make progress on its transition to ensure all settings are in compliance with the federal home and community-based services regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "George P. F...".

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

¹ CMS describes heightened scrutiny as being required for three types of presumed institutional settings: 1) Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment; 2) Settings in a building on the grounds of, or immediately adjacent to, a public institution; 3) Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

**SUMMARY OF CHANGES TO THE STP MADE BY THE STATE OF VIRGINIA AS REQUESTED
BY CMS IN ORDER TO RECEIVE FINAL APPROVAL
(Detailed list of technical changes made to the STP since May 8, 2019)**

Site-Specific Assessment & Validation Activities

- Clarified how the state determined that the Adult Day Care Centers (ADCCs) meet all the requirements of the HCBS rule. (p. 10-11 and 14)
- Clarified information about how individuals are offered services from among setting options, including non-disability specific settings. (p. 10-11)
- Included information regarding the supports available to individuals in the Commonwealth Coordinated Care (CCC) Plus Waiver who may be interested in employment. (p. 10-11)
- Confirmed that the desk reviews of Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID LOC) waiver provider self-assessments validated compliance with all HCBS requirements, confirmed that the state has completed initial validation of all ICF/IID LOC waiver settings, and provided additional detail regarding the methods used to validate 100% of the settings, including the nature of information that was reviewed to conduct the desk reviews. (p. 31-32)

Site-Specific Remedial Actions

- Clarified the process for assisting participants receiving services from providers not willing or able to come into compliance by the end of the transition period including: the processes for assuring that beneficiaries, through the person-centered planning process, will be given the opportunity, the information and the supports necessary to make an informed choice among options for continued service provision, including in an alternate setting that aligns, or will align, with the regulation by the end of the transition period; the estimated number of beneficiaries that may need assistance in this regard; and a description of how the state will ensure that all critical services and supports are in place in advance of each individual's transition. (p. 19-20)
- Clarified the steps the state is taking to assure that all beneficiaries have access to non-disability specific setting options in the CCC Plus Waiver. (p. 10-11)

Ongoing Monitoring

- Clarified how individual, privately-owned homes will be included in the ongoing monitoring process to ensure they remain compliant with the HCBS settings criteria through the transition period and into the future for individuals receiving HCBS in the CCC Plus Waiver. (p. 20-21),
- Clarified how the state will assure that non-residential settings in the CCC Plus Waiver comply with the requirements of the HCBS rule, particularly around integration of HCBS beneficiaries to the broader community. (p. 11, 15-17)
- Clarified information about the ongoing monitoring process, including how the Individual Experience Assessment (IEA) surveys will be administered and confirmed that the IEA surveys are tied back to specific settings. (p. 15-17)
- Clarified the frequency of QMR and licensing visits for the DD settings. (p. 55)

Heightened Scrutiny

- Provided additional information about the removal of several settings, which the state listed in the 2016 draft STP because they were co-located or clustered. (p. 40-41)
- Clarified the process the state would use should an ADCC require heightened scrutiny. (p. 20)
- Clarified why the state removed the two ADCC settings that were previously included in the STP. (p. 9)