

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

August 20, 2015

Cynthia Jones
Director, Department of Medical Assistance Services
600 East Broad Street
Richmond, VA 23219

Dear Ms. Jones,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Virginia's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. Virginia submitted its STP to CMS on March 17, 2015. CMS notes some areas where the STP requires additional information regarding the identification of settings where services are delivered, the assessment processes and outcomes, remedial action processes and monitoring, and the impact of the ongoing Department of Justice (DOJ) settlement on STP activities. CMS encourages the state to more cohesively integrate the STP by discussing the transition activities across all waivers instead of in a waiver-specific fashion. This alignment would also ease the state's ability to track progress. CMS' questions for the state are summarized below.

Public Comment:

The STP includes categorized comments by topic area, listing each comment and providing an individual response and disposition for each. However, the STP does not provide an overall summary indicating the focus of the majority of the comments and summarizing the changes the state made to the STP as a result of the comments. CMS requests the state provide an overall summary of the comments and changes made to the STP as a result.

Assessments:

- **Systemic assessment:** Although Virginia identified some settings that based on rules and regulations could be potentially non-complaint, CMS needs additional information and justification on how Virginia identified those settings and how it conducted its systemic assessment.

- Please describe how the state arrived at its preliminary determinations, or if more detailed outcomes of the systemic assessment activities are available but were not provided in the STP.
 - CMS requests that Virginia revise the STP to identify the specific state regulations, policies, and codes that were analyzed; the specific aspects of each regulation found to comply or not-comply with the provisions of the settings requirements, and the changes that must be made to each regulation to bring it into compliance.
 - Where Virginia has identified settings that will or will not comply according to state policies and procedures, the state should specifically identify those settings and how that determination was made.
 - Please list all settings in which services are delivered under each of Virginia's waivers.
 - Please clarify whether children's residential facilities are a setting under the Elderly or Disabled with Consumer Direction (EDCD) waiver, and if so, how these settings comport with the regulations.
- **Site-specific assessment:**
 - The STP provides timelines, descriptions of tools used, outcomes, and other details pertaining to its site-specific assessment activities. CMS finds that the STP only partially describes the outcomes of its site specific assessments. For example, the STP notes site landscape assessments, but without a clear description of the intended processes it is difficult for CMS to understand the full functionality of that assessment with regard to Virginia's settings. Please provide additional detail about site-specific assessments.
 - In instances where the assessment involves sampling methodology, CMS is requesting information on how the state determined that the sample is statistically significant. CMS notes that where the STP refers to the use of National Core Indicator data (or any other consumer feedback data such as quality of experience assessments), the data must be cross-walked to specific sites in order to be useful in evaluations. Please describe how this cross-walk will occur.

Monitoring of Settings:

CMS needs additional information regarding Virginia's process for the initial monitoring process and how that monitoring process will continue beyond the period of the transition plan. Additionally, CMS requests the state provide more information about its timeline for monitoring activities and how Virginia will successfully monitor the various transition activities for each waiver.

Remedial Actions-State Standards and Settings:

The STP outlines remediation strategies for each waiver and an overall compliance and monitoring strategy; however, the remedial actions are general in nature and not tied to particular compliance issues. Please provide additional information about how the state will address each specific compliance issue identified in the STP. The STP notes that some revisions to policies and procedures will occur in 2015, and others in 2016. Please specify the dates each specific policy will be revised.

As noted previously, the STP would be improved by coordinating and aligning its remediation process, timelines, milestones and assessments as opposed to discussing each process primarily within the context of individual waivers.

Heightened Scrutiny:

Please explain the state’s process for identifying settings that are presumed to have institutional qualities. These are settings for which Virginia 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. The state should include findings from its additional assessment of the Alzheimer’s Assisted Living settings (Assisted Living Facilities). If Virginia 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 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.

Relocation of Beneficiaries:

The STP mentions relocation of beneficiaries within each waiver, as appropriate. However, the STP does not provide the specific timeline for relocation and does not specify the number of individuals identified that will likely require relocation services. Please give an estimated number of beneficiaries potentially affected and clarify in the STP that such individuals will be given the information and supports to make informed choices about alternate settings, and that critical services and supports will be in place at the time of relocation.

State Plans for Additional Assessments:

The STP indicates that the state may conduct additional assessments after adopting changes due to the DOJ settlement process which will be ongoing over the next 4 years. CMS is seeking additional clarification from the state about the impact of the DOJ settlement on the STP.

CMS is pleased the state includes dates by which it will complete various site-specific assessment activities (March 2016). Once all systemic and site-specific assessments are completed, the state should submit an amended STP that addresses CMS’ request for additional information described in this letter. The revised STP should be posted for public comment for a period of 30 days, consistent with 42 CFR § 441.710(3)(iii)(A)-(C), prior to being submitted to CMS. Please make the necessary changes to the STP, including the date Virginia will submit the further amended STP to CMS, and submit to CMS within 30 days of receipt of this letter.

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. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact Michele MacKenzie at 410-786-5929 or at Michele.MacKenzie@cms.hhs.gov, the CMS Central Office analyst taking the lead on this STP, with any questions.

Sincerely,

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

cc: Francis McCullough, ARA