DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Baltimore, Maryland 21244-1850

Disabled & Elderly Health Programs Group

August 24, 2018

Cory Gustafson
Commissioner
Department of Vermont Health Access
280 State Drive
Waterbury, VT 05671

Dear Mr. Gustafson:

In follow-up to the 12/5/17 initial approval granted to Vermont's Home & Community Based Services (HCBS) Statewide Transition Plan (STP), CMS provided additional detailed feedback to the state to assist with final approval and implementation of its STP. CMS acknowledges that since this technical assistance was provided, work has continued within the state to bring settings into compliance and further develop the STP; however, a summary of this feedback is attached for reference to assist in the state's efforts as it works towards final approval.

In order to receive final approval, the STP should include:

- A comprehensive summary of completed site-specific assessments of all HCBS settings, validation of those assessment results, and inclusion of the aggregate outcomes of these activities;
- Draft remediation strategies and a corresponding timeline for resolving issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the HCBS settings transition period (March 17, 2022);
- A detailed plan for identifying settings presumed to have institutional characteristics, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- A process for communicating with beneficiaries currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings rule by March 17, 2022; and
- A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the federal settings criteria in the future.

Prior to submitting the updated version of the STP for consideration of final approval, the state will need to issue the STP for a minimum 30-day public comment period. I want to personally thank the state for its efforts thus far on the HCBS STP, and look forward to the next iteration of the STP that addresses the feedback in the attachment.

Sincerely,

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

ATTACHMENT

Additional CMS feedback on areas where improvement is needed by the State of Vermont in order to receive final approval of the HCBS Statewide Transition Plan

PLEASE NOTE: It is anticipated that the state will need to go out for public comment once these changes are made and prior to resubmitting to CMS for final approval. The state is requested to provide a timeline and anticipated date for resubmission for final approval as soon as possible.

Person-Centered Planning

CMS requests the state clarify in the comprehensive quality strategy (CQS) that Person-Centered Planning criteria do not have a phase-in allowance; these criteria were effective March 17, 2014, with the exception of the provisions outlining documentation requirements for modifications to the settings criteria.

Site-Specific Settings Assessment Process

- The STP is silent regarding the number of settings to be assessed for each service population group, with the exception of Developmental Disability Services. Please provide the total number of settings subject to the HCBS Settings Rule by specialized service population group.

- ***Group Settings:*** As a reminder, all settings that group or cluster individuals for the purposes of receiving HCBS must be assessed by the state for compliance with the rule. This includes all group residential and non-residential settings, including but not limited to prevocational services, group supported employment and group day habilitation activities.

- ***Provider self-assessment surveys:*** The state has developed electronic surveys and provided links to the survey tools. The STP does not provide information regarding the state's strategy to ensure each setting has completed a self-assessment. The STP states "to increase response rate, a process will be created to follow-up with providers failing to meet requested response timeframes. Based on the results of the survey, an authorized representative of each provider will attest in writing whether they believe that their organization's rules and policies are either fully compliant with the new rules or that remediation is necessary (pg.13)."

    - Please confirm in the STP that providers completed a distinct self-assessment for each individual setting providing Medicaid-funded HCBS.
    - Please confirm that the self-assessment process evaluates the experience of individuals receiving HCBS in each setting.

- ***Individual, Private Homes***: The state may make the presumption that privately owned or rented homes and apartments of people living with family members, friends, or roommates meet the home and community-based settings criteria if they are integrated in typical community neighborhoods where people who do not receive home and community-based services also reside. A state will generally not be required to verify this presumption. However, the state must outline what it will do to monitor compliance of this category of settings with the regulatory criteria over time. CMS requests that Vermont provide additional details about its strategy for compliance monitoring of these settings. Note, settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS to the individual), are considered provider-owned or controlled settings and should be evaluated as such.

Validation of HCBS Settings

States are responsible for assuring that all HCBS settings comply with the settings criteria. States may use a combination of various strategies to assure that each setting is properly validated (including but not limited to state onsite visits; data collection on beneficiary experiences and consumer feedback; leveraging of existing case management, licensing & certification, and quality management review processes; partnerships with other federally-funded state entities, including but not limited to Developmental Disability and aging networks; and state review of data from operational entities, such as managed care organizations (MCOs) or regional boards/entities; provider policies, consumer surveys, and feedback from external stakeholders), so long as compliance with each individual setting is validated by at least one methodology beyond the provider self-assessment.

The STP indicates the state will develop a plan to validate the results of the provider-specific self-assessment during Phase 2, due 12/31/16. "At this time, the state plans to validate the results using a mixed-methods approach – using consumer survey as well as data from related oversight and monitoring activities that use a variety of desk and onsite review methodologies and tools (pg. 12)."

- Please include additional details in the STP about the state's plan to validate the provider self-assessments.
- Please provide information in the STP about the state's plan for site visits, including the number of settings to receive site visits and when and how they will occur.

Once the state's validation activities have been completed, please provide an updated chart of the number of settings falling into categories of compliance (fully compliant with the settings criteria, could come into full compliance with modifications, cannot comply with the federal settings criteria, or are presumptively institutional in nature).

Remediation Strategies

- ***Site-Specific Remediation:*** The STP indicates that "Providers that indicate that remediation is necessary will be required to submit a Corrective Action Plan to the State within 30 days of submission of the provider self-assessment. The State will work with providers, through a corrective action process, to improve the quality of care and the setting characteristics to align with State and federal HCBS standards (pg. 13)." Please provide the following additional information:
    - Describe the process that the state will take to assure that any discrepancies between the consumer responses and/or other validation strategy and provider self-assessments are addressed.
    - Describe in more detail what state strategies will be employed to support site-specific remediation.
    - Describe the process the state will employ to track progress with site-specific corrective action plans to ensure HCBS settings will achieve compliance by the March 2022 deadline.
    - Please provide a detailed plan the state will use for communicating and assisting beneficiaries currently receiving services in settings that are determined not to be able to come into compliance prior to the end of the transition period that includes:
        - A description for how participants will be offered informed choice and assistance in locating a compliant residential or nonresidential setting in which HCBS are provided or accessing alternative funding streams.
        - An estimated number of beneficiaries who are in settings that the state anticipates will not be in compliance by the end of the transition period and may need to access alternative funding streams or receive assistance in locating a compliant setting.
        - Confirmation of the state's timeline for supporting beneficiaries in exploring and securing alternative options should a transition out of a non-compliant setting be necessary.
        - An explanation of how the state will ensure that needed services and supports are in place in advance of the individual's transition.

- ***Non-Disability Specific Settings:*** Please provide clarity on the manner in which the state will ensure that beneficiaries have access to services in non-disability specific settings among their service options for both residential and non-residential services. The STP should also indicate the steps the state is taking to build capacity among providers to increase access to non-disability specific setting options across home and community-based services.

Ongoing Monitoring of Settings

The STP indicates "The state will monitor progress on Corrective Action Plans and will also begin routine monitoring of compliance with the requirements of the new rules during the Transition period for providers for whom no Corrective Action Plan is in effect. Monitoring of compliance with the HCBS Final Rule will occur long after the March 17, 2019, federal implementation date. On an ongoing basis, the state will ensure effective monitoring of provider settings to support continued compliance with all applicable HCB settings requirements. The Vermont Managed Care Entity (MCE) will have primary operational responsibility for monitoring, with oversight from AHS and an External Quality Review Organization. MCE staff will monitor member experience and compliance with HCB settings requirements by modifying its current monitoring/oversight tools to include the new HCBS requirements. If the MCE identifies a compliance issue during a review, the provider will be notified of the issue and remediation measures will be taken, including but not limited to the development of a CAP, to address the issue. The provider will submit periodic updates to the MCE on the status of implementation. AHS and an External Quality Review Organization will be responsible for overseeing the MCE and will ensure that they adhere to all applicable CMS guidance (pg. 15)."

- Please add information on the estimated timeframes for implementing each element of the oversight and monitoring plan.

Heightened Scrutiny

As a reminder, the state must 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 on a presumptively institutional setting, the presumption will stand and the state must describe the process for communicating with the individuals involved. Please only submit those settings under heightened scrutiny that the state believes will overcome any institutional characteristics and can comply with the federal HCBS rule. Please include further details about the criteria or deciding factors that will be used consistently across reviewers to make a final determination regarding whether or not to move a setting forward to CMS for heightened scrutiny review. There are state examples of heightened scrutiny processes available upon request, as well as several tools and sub-regulatory guidance on this topic available online at http://www.medicaid.gov/HCBS.

Milestones

A milestone template has been completed by CMS with timelines identified in the STP and has been sent to the state for review. CMS requests that the state review the information in the template and send the updated document to CMS. The chart should reflect anticipated milestones for completing systemic remediation, settings assessment and remediation, heightened scrutiny, communications with beneficiaries and ongoing monitoring of compliance.