

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

December 5, 2017

Mr. Cory Gustafson
Commissioner
State of Vermont, Department of Vermont Health Access
280 State Drive
Waterbury, Vermont 05671-1010

Dear Mr. Gustafson:

This letter is to inform you that CMS is granting Vermont **initial 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). Approval is granted because the state has completed its systemic assessment; included the outcomes of this assessment in the STP; clearly outlined remediation strategies to rectify issues that the systemic assessment uncovered, such as legislative/regulatory changes and changes to vendor agreements and provider applications; and is actively working on those remediation strategies. Additionally, the state submitted the March 2017 draft of the STP for a 30-day public comment period, made sure information regarding the public comment period was widely disseminated, and responded to and summarized the comments in the STP submitted to CMS on July 31, 2017.

After reviewing the March 2017 draft submitted by the state on July 31, 2017, CMS provided additional feedback on October 5, 2017 requesting that the state make several technical corrections in order to receive initial approval. These changes did not necessitate another public comment period. The state subsequently addressed all issues in an updated version on November 17, 2017. These changes are summarized in Attachment I of this letter. The state's responsiveness in addressing CMS' remaining concerns related to the state's systemic assessment and remediation expedited the initial approval of its STP.

In order to receive final approval of Vermont's STP, the state will need to complete the following remaining steps and submit an updated STP with this information included:

- Complete comprehensive site-specific assessments of all home and community-based settings, implement necessary strategies for validating the assessment results, and include the outcomes of these activities within the STP;
- Draft remediation strategies and a corresponding timeline that will resolve issues that the site-specific settings assessment process and subsequent validation strategies identified

by the end of the home and community-based settings rule transition period (March 17, 2022);

- Outline a detailed plan for identifying settings that are 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;
- Develop 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 rule by March 17, 2022; and
- Establish ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

While the state of Vermont has made much progress toward completing each of these remaining components, there are several technical issues that must be resolved before the state can receive final approval of its STP. CMS will be providing detailed feedback about these remaining issues shortly. Additionally, prior to resubmitting an updated version of the STP for consideration of final approval, the state will need to issue the updated STP out for a minimum 30-day public comment period.

Upon review of this detailed feedback, CMS requests that the state please contact Michele MacKenzie (410-786-5929 or Michele.MacKenzie@cms.hhs.gov) or Jessica Loehr (410-786-4138 or Jessica.Loehr@cms.hhs.gov) at your earliest convenience to confirm the date that Vermont plans to resubmit an updated STP for CMS review and consideration of final approval.

It is important to note that CMS' initial approval of an 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 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.

I want to personally thank the state for its efforts thus far on the HCBS Statewide Transition Plan. CMS appreciates the state's completion of the systemic review and corresponding remediation plan with fidelity, and looks forward to the next iteration of the STP that addresses the remaining technical feedback that is forthcoming.

Sincerely,

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

ATTACHMENT I.

SUMMARY OF TECHNICAL CHANGES MADE BY STATE OF VERMONT TO ITS SYSTEMIC ASSESSMENT & REMEDIATION STRATEGY AT REQUEST OF CMS IN UPDATED HCBS STATEWIDE TRANSITION PLANS DATED 11/17/17

- **Public Notice:** CMS asked the state to submit its responses to public comments from the most recent public comment period in the updated STP.

State's Response: The state submitted the detailed public comment review in its latest submission, dated November 17, 2017.

- **Waivers Included in the STP:** CMS asked the state to verify that the Palliative Care Program is included in one of these crosswalks or to explain why it is not included.

State's Response: The state added language to the STP indicating that the Palliative Care Program is only eligible to children living in their own homes and indicating that VT presumes they meet the criteria of the HCBS settings rule.

- **Systemic Assessment and Remediation:**

- CMS asked the state to make sure all links for reviewed state policies are active and accurate so that the documents can be located.

State's Response: The state updated the STP to ensure that all links are active and accurate so that the documents can be located.

- CMS asked the state to specify timeframes for respite and to note the process for authorizing respite if allowed for more than 30 days.

State's Response: Vermont edited the CQS/STP to specify timeframes for respite for each program. Where applicable, processes for authorizing respite for more than 30 days are included (Medicaid Comprehensive Quality Strategy, p.7).

- For the Traumatic Brain Injury (TBI) Waiver, CMS asked for clarification that the state's remediation will bring the program into compliance with the final rule by including the settings criteria.

State's Response: Vermont edited the TBI work plan to clarify that its remediation will bring the program into compliance with the final rule by including the settings criteria.

- CMS asked the state to clarify how they will ensure that any use of restrictive interventions within its TBI waiver will be handled and documented via the person-centered planning process.

State's Response: The state responded that they plan to use their existing TBI quality review process to make certain that any use of restrictive interventions will be handled and documented via the person-centered planning process, following the criteria in 42 CFR 441.301(c)(viii)(A) through (H). Vermont updated the TBI Work Plan to note that the provider manuals will include language for modification to the HCBS settings criteria.