



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Bureau for Medical Services

Bill J. Crouch
Cabinet Secretary

Cynthia E. Beane
Commissioner

November 21, 2022

Ms. Ondrea Richardson, Health Insurance Specialist
Centers for Medicare and Medicaid Services
Division of Long-Term Services and Supports
7500 Security Boulevard
Baltimore, MDD 21244-1850

Dear Ms. Richardson,

The purpose of this letter is to request a Corrective Action Plan (CAP) for West Virginia's Home and Community Based Programs for certain HCBS settings criteria. This CAP is requested for the following 1915c Waivers: the Aged and Disabled Waiver (ADW), the Intellectual/Developmental Disabilities Waiver (IDDW) and the Traumatic Brain Injury Waiver (TBIW).

WV has not received approval of the STP submitted on October 25, 2022 but is asking for approval of a CAP based on the CMS deadline of December 1, 2022.

WV does have the expectation that all HCBS settings will be compliant with the regulatory settings criteria of privacy, dignity, respect and freedom from coercion and restraints as well as control of personal resources.

Additionally, WV is in the process of completing all Provider Controlled Settings Assessments and fully expects these to be completed by March 17, 2023. WV has the expectation that these provider-controlled settings will have leases or other legally enforceable agreements providing similar protections, privacy in the units, including lockable doors, and freedom to furnish or decorate the unit. Additionally, the members who reside in these settings have access to food at any time, access to visitors at any time and that the units are physically accessible and person-centered service plans document any modifications to relevant regulatory criteria.

WV has identified some issues regarding the completion of Provider Controlled Settings and Member Controlled Settings Assessments including:

1. Covid 19 has prevented Case Managers and operating agencies from making regular home visits to complete the assessments to member-controlled settings. Appendix K

temporarily suspended in home visits by Case Managers, but that accommodation is expiring in January 1, 2023 and home visits will resume. Training is beginning in December 2022 to train the Case Managers on how to complete the member-controlled assessments. Case Managers will be completing these assessments up to 90 days prior to a member's annual anchor date. Anchor dates are assigned throughout the year so some members might not have an anchor date until December 2023, etc.

2. Covid-19 outbreaks in provider-controlled settings have prevented the operating agencies from completing site visits, but again, the expectation is for all these site visits to be concluded and remediation occur prior to March 17, 2023.
3. Policy manuals are in the process of being updated to include the most up to date information on WV's Statewide Transition Plan, but two of the applications are still in the process of being approved by CMS and policy manuals are usually not put out for public comment until the applications are approved.
4. Covid-19 has caused staff shortages which in turn have made access to the broader community difficult for some members as there have not been enough staff available to provide the staffing and supervision needed. WV has raised Direct Service Personnel rates significantly beginning on July 1, 2020. IDWW rates were raised 10% at that time and ADW and TBI rates were raised \$0.25 per unit. On 4/1/21, rates were raised 50% with an attestation from the provider that 85% of the increase be passed through to the DSPs for compensation. This temporary one-year rate was renewed on 7/1/22.
5. Covid-19 has also made opportunities for employment difficult to achieve because again, direct care staff are needed to provide job coaching services. Questions have been added to all person-centered plans to ask the member if they are interested in having a paid job.
6. A provider agency owns an apartment building with 22 one-bedroom HUD apartments, but the agency is operating it as a 22-bed group home for IDWW members. Instead of providing support to all members in their apartments, the agency is using staffing ratios for some members (i.e., one staff for multiple members), preparing and serving congregate meals, and storing/administering members' medications from a central location.

BMS and its operating agency conducted site visits and provided technical assistance in February and August 2022. The agency was cited for not allowing all members to access their kitchens or have choices for meals/snacks; limiting some members' access to the dining and laundry areas; and some members not having locks on their bedroom or bathroom doors.

The Office of Health Facility Licensure and Certification (OHFLAC) participated in these and subsequent site visits and cited the agency for additional issues including some staff having lapsed training qualifications; unreported medication administration errors; and items being inappropriately stored that restricted egress and created fall hazards for some members.

A Plan of Correction (POC) is currently being finalized between the agency and OHFLAC. BMS and OHFLAC will continue to work with the agency to bring this site into compliance

with the Integrated Settings Rule requirements as soon as possible. Until this is fully accomplished, BMS and OHFLAC will continue to monitor the setting and require the agency to provide regular progress reports.

WV is unsure how much time is needed for the CAP, but WV is requesting an extension of one year from March 17, 2023. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia S. Nisbet". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Patricia S. Nisbet
Special Projects Director

Cc: Cynthia Beane, Commissioner
Randall Hill, Office Director 2