

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
150 S. Independence Mall West  
Suite 216, The Public Ledger Building  
Philadelphia, Pennsylvania 19106-3499



**Region III/Division of Medicaid and Children's Health**

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SWIFT# 091020134021

**JUN 20 2014**

Nancy V. Atkins, MSN, RNC, NP  
Commissioner  
Bureau for Medical Services  
350 Capitol Street, Room 251  
Charleston, WV 25301-3706

Re: CMS Final Assessment Report for West Virginia's Home and Community-Based Services Intellectual and/or Developmental Disabilities Waiver, CMS Control #0133

Dear Commissioner Atkins:

Enclosed is a final report of the Centers for Medicare & Medicaid Services' (CMS) quality review of West Virginia's Home and Community-Based Services (HCBS) Intellectual and/or Developmental Disabilities (I/DD) Waiver program, with control number 0133. This waiver is designed to provide home and community-based services to individuals with Intellectual and/or Developmental Disabilities, who are at least 22 years of age, who meet the Intermediate Care Facilities for Individuals with Intellectual Disability (ICF/ID) level of care criteria, and meet Medicaid financial eligibility criteria.

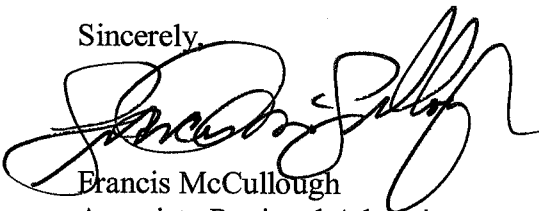
The State submitted comments to the draft report regarding level of care determinations, service plan monitoring, provider qualifications, participant health and welfare, administrative authority, and financial accountability. In the final report, such comments are referenced under State Response. We found the State to be in compliance with the assurances: State Conducts Level of Care Determinations Consistent with the Need for Institutionalization; Services Plans are Responsive to Waiver Participant Needs; Qualified Providers Serve Waiver Participants; Health and Welfare of Waiver Participants; State Medicaid Agency Retains Administrative Authority over the Waiver Program; and State Provides Financial Accountability for the Waiver. CMS encourages the State to develop additional performance measures to be included in the waiver renewal for two assurances: State Medicaid Agency Retains Administrative Authority over the Waiver Program; and State Provides Financial Accountability for the Waiver. The final waiver assessment report is releasable to the public.

Finally, we would like to remind you to submit a renewal package on this waiver to CMS Central and Regional Offices at least 90 days prior to the expiration of the waiver, June 30, 2015. Your waiver renewal application should address any issues identified in the final report as necessary for renewal and should incorporate the State's commitments in response to the report. Please note the State must provide CMS with 90 days to review the submitted application. If we do not receive your renewal request 90 days prior to the waiver expiration date, we will contact you to discuss termination plans.

Page 2 – Ms. Nancy V. Atkins, MSN, RNC, NP

Please do not hesitate to let us know how we may be of assistance. If you have any questions, please contact Margaret Kosherzenko at 215-861-4288.

Sincerely,

A handwritten signature in black ink, appearing to read "Francis McCullough", written in a cursive style.

Francis McCullough  
Associate Regional Administrator

Enclosure

cc: Cynthia Beane, BMS  
Patricia Nisbet, BMS



**U.S. Department of Health & Human Services**

**Centers for Medicare & Medicaid Services**

**Region III**

**FINAL REPORT**

**Home and Community-Based Services Waiver Review  
West Virginia Intellectual and/or Developmental Disabilities Waiver  
CMS Control #0133**

**June 9, 2014**

## EXECUTIVE SUMMARY

On August 20, 2010, West Virginia's Intellectual and/or Developmental Disabilities (I/DD) Home and Community-Based Services (HCBS) Waiver, CMS control #0133, was renewed for five years by the Centers for Medicare & Medicaid Services (CMS). This program provides HCBS for individuals who would otherwise require the level of care (LOC) in an intermediate care facility for the intellectually disabled or for persons with related conditions (ICF/ID). The I/DD Waiver operates on a statewide basis, currently serving 4,510 individuals with an estimated average annual per capital cost of \$68,647 for waiver services expenditures.

The West Virginia (WV) Department of Health and Human Resources Bureau for Medical Services (DHHR) is responsible for assessing the performance of contracted entities with delegated waiver operations and administrative functions. The Bureau for Medical Services (BMS) is a division within the DHHR. The BMS is responsible for the development of policies and procedures for statewide implementation of the Medicaid program under the federally approved State Plan and is responsible for the operation of the I/DD Waiver Program.

To determine member eligibility in the I/DD Waiver Program, BMS contracts with a Medical Eligibility Contracted Agency (MECA). The BMS also contracts with APS Healthcare, Inc. (APS Healthcare) as the Administrative Services Organization (ASO) which is responsible for monitoring the quality of West Virginia's I/DD Waiver services and ensuring that quality improvement strategies are implemented and evaluated. West Virginia has developed Quality Indicators as a measurement set for CMS assurances and State quality improvement. The I/DD Waiver Quality Improvement System (QIS) is evidence-driven and designed to collect the data necessary to provide evidence of compliance with the six (6) CMS assurances and ensure that stakeholders are active in the quality improvement process. Data obtained through the I/DD Waiver Quality Improvement System is incorporated into the Quality Management Report which is reviewed and analyzed by BMS Management through regular meetings with contractors. To address noncompliance with the assurances, the ASO provides Technical Assistance to contractors and/or requests the development of a Plan of Correction to address deficiencies.

The I/DD Waiver Quality Improvement Advisory (QIA) Council is a mechanism for involving participants, family/legal representatives, Waiver providers, and advocates in the quality improvement initiative. The QIA Council receives concerns and issues that affect the quality of Waiver services, reviews the Quality Management Report, identifies trends, and works to update the goals and objectives of the Quality Management Plan which is revised annually as necessary to address quality concerns.

The CMS conducted the current review of the waiver program in accordance with Federal regulations at 42 CFR §441.302 and instructions from the Revised Interim Procedural Guidance for Conducting Reviews of HCBS waiver programs issued on February 6, 2007. In response to the CMS request for specific evidence to review and determine if the State is

meeting the required assurances in the approved waiver, BMS submitted an evidence report. Overall, CMS finds that, upon implementation of the recommendations in this report, the waiver program will have met the regulatory assurances that are required for the program to continue.

## **STATE RESPONSE**

As noted in West Virginia's April 9, 2014 response to the draft report, BMS provided CMS with additional information regarding the assurance that the State demonstrates it has designed and implemented an adequate system for assuring that the State conducts level of care determinations consistent with the need for institutionalization; all service plans are responsive to waiver participant needs; waiver services are provided by qualified providers; the State assures the health and welfare of all waiver participants; and the State Medicaid program retains administrative authority and financial accountability for the waiver program.

After reviewing the response that BMS provided to the draft report, CMS recommends that the State provide additional training to ensure that members have a current and signed Freedom of Choice form; continue to monitor the process for criminal/investigation background checks; monitor the tracking of the follow-up of critical incidents by the ASO; and monitor to ensure the implementation of the Plans of Correction and the documentation of Technical Assistance. CMS also recommends that the State conduct further analysis and quality improvement strategies to ensure compliance with the administrative authority assurance. In addition, CMS recommends that interviews with State staff and providers are periodically conducted to verify that any identified financial irregularities are addressed and site visits are conducted with providers to verify that they maintain financial records according to provider agreements/contracts. The State's responses are included throughout the final report.

The report findings for each assurance are as follows:

**I. State Conducts Level of Care Determinations Consistent with the Need for Institutionalization**

The State substantially meets this assurance.

**II. Service Plans are Responsive to Waiver Participant Needs**

The State demonstrates the assurance, but CMS recommends improvements.

**III. Qualified Providers Serve Waiver Participants**

The State substantially meets this assurance.

**IV. Health and Welfare of Waiver Participants**

The State demonstrates this assurance, but CMS recommends improvements.

**V. State Medicaid Agency Retains Administrative Authority over the Waiver Program**

The State demonstrates this assurance, but CMS recommends improvements.

**VI. State Provides Financial Accountability for the Waiver**

The State demonstrates the assurance, but CMS recommends improvements.

## **Introduction**

Pursuant to section 1915(c) of the Social Security Act, the Secretary of the Department of Health and Human Services has the authority to waive certain Medicaid statutory requirements to enable a State to provide a broad array of HCBS as an alternative to institutionalization. CMS has been delegated the responsibility and authority to approve State HCBS waiver programs.

The CMS must assess each home and community-based waiver program in order to determine that assurances are met. This assessment also serves to inform CMS in its review of the State's request to renew the waiver.

State's Waiver Name: Intellectual and/or Developmental Disabilities (I/DD) Waiver

State Medicaid Agency: Bureau for Medical Services (BMS)

Operating Agency: Bureau for Medical Services (BMS)

State Waiver Contact: Patricia S. Nisbet, MA, LSW  
Director of Office of Home and Community-Based Services  
(304) 356-4904

Target Population: Individuals with intellectual and developmental disabilities, who are at least 22 years of age, who meet the Intermediate Care Facilities for individuals with intellectual disability (ICF/ID) level of care criteria, and meet Medicaid financial eligibility criteria.

Level of Care: Intermediate Care Facilities for individuals with intellectual disability (ICF/ID) or persons with related conditions.

Number of Waiver Participants: Approved Waiver - 4,534  
Currently Enrolled - 4,510

Average Annual per capita costs: \$68,647

Effective Dates of Waiver: The waiver was approved on August 20, 2010 effective July 1, 2010 through June 30, 2015.

Approved Waiver Services: Facility Based Day Habilitation  
Participant-Centered Support

Respite Care  
Service Coordination  
Supported Employment  
Financial Management Services– Participant-  
Directed  
Crisis Services  
Dietary Therapy  
Electronic Monitoring/Surveillance System and  
On-Site Response  
Environmental Accessibility Adaptations - Home  
Environmental Accessibility Adaptation - Vehicle  
Goods and Services – Participant- Directed  
Skilled Nursing  
Physical Therapy, Occupational Therapy, and  
Speech Therapy  
Positive Behavior Support Professional  
Skilled Nursing – Nursing Services by a Licensed  
Practical Nurse  
Skilled Nursing – Nursing Services by a Licensed  
Registered Nurse  
Therapeutic Consultant  
Transportation

CMS Contact:

Margaret Kosherzenko  
Health Insurance Specialist  
215-861-4288



## **I. State Conducts Level of Care Determinations Consistent with the Need for Institutionalization**

**The State must demonstrate that it implements the processes and instrument(s) specified in the approved waiver for evaluating/reevaluating an applicant's/waiver participant's level of care (LOC) need consistent with care provided in a hospital, Nursing Facility (NF), or ICF/ID. Authority: 42 CFR 441.301; 42 CFR 441.302; 42 CFR 441.303; SMM 4442.5**

**The State substantially meets this assurance.**

### **Background:**

Any interested party may apply for I/DD Waiver program by submitting an IDD-01 Application form to the Administrative Services Organization (ASO). When the IDD-01 Application form is received, it is time and date stamped to begin tracking of established timelines. A list of members of the Independent Psychologist Network (IPN) is forwarded to the applicant; the applicant chooses a member of the IPN to complete their Independent Psychological Evaluation (IPE). Once the IPE is completed, the evaluation is forwarded to the Medical Eligibility Contract Agency (MECA). The MECA makes a final written medical eligibility determination within 30 days of receipt of the completed IPE. To further monitor accuracy of initial determination, a secondary review is completed by MECA to determine appropriateness of the initial medical eligibility recommendation by the Independent Psychologist.

Redetermination functional assessments are completed annually up to 90 days before a member's anchor date (the anniversary date of the first month after the initial medical eligibility was established) by ASO Service Support Facilitators. At a minimum, annual redetermination of eligibility includes one functional assessment which includes standardized measures of adaptive behavior in the 6 major life areas. The completed functional assessment is provided to the MECA for medical eligibility determination.

All Independent Psychologists in the IPN are licensed by the State of West Virginia and trained by the MECA, which qualifies them to conduct the initial evaluation for applicants. For redetermination, annual assessments are conducted by ASO Service Support Facilitators, who are required to have at least a bachelor's degree and be a Qualified Intellectual Disability Professional (QIDP) certified with experience in supporting persons with intellectual and developmental disabilities. In addition, the Facilitators participate in periodic training with MECA, as well as, complete monthly structured inter-rater reliability exercises to ensure compliance in the proper administration of the required assessment tools. Before independently conducting any assessments, Facilitators are trained by experienced personnel; this training includes shadowing an experienced Facilitator. All initial Psychological Evaluations, as well as, assessments conducted annually for redetermination include the following State approved instruments:

- Inventory for Client and Agency Planning (ICAP)
- Adaptive Behavior Assessment Scale-II (ABAS-II) appropriate for applicant/member age and situation

In order to verify that eligibility criteria are properly applied when the IPE is completed, the final eligibility determination is made by MECA. In addition, every tenth IPE submitted is subject to a second MECA review. All assessments conducted by ASO Facilitators are reviewed for redetermination by MECA.

**Sub-Assurance 1-A: An evaluation for level of care is provided to all applicants for whom there is reasonable indication that services may be needed in the future.**

*Performance Measure: Percent of enrollees deemed medically eligible for ID/DD services prior to receiving services.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator B1</b>						
<b>Numerator: Number of enrollees deemed medically eligible for ID/DD services prior to receiving services.</b>						
<b>Denominator: Number of enrollees who receive services</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	291	100	190	100	171	100
<b>Non-Compliant</b>	0	0	0	0	0	0
<b>Total</b>	291	100	190	100	171	100

**Discovery and Remediation Report**

During the report review period, compliance was 100%. All enrollees deemed medically eligible were enrolled prior to receiving services.

**CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure.

*Performance Measure: Percent of referrals who receive LOC determination within established timelines.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator B2</b>						
<b>Numerator: Number of referrals (initial applicants) who receive LOC determination within established timelines.</b>						
<b>Denominator: Number of referrals applying for medical eligibility where final determination is due within reporting month.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	495	84	513	89	627	94
<b>Non-Compliant</b>	96	16	64	11	36	6
<b>Total</b>	591	100	577	100	663	100

**Discovery and Remediation Report**

Beginning July 1, 2010, the ASO implemented a tracking system to determine compliance with this indicator. Some inaccuracies were found with previous years' tracking, which resulted in a backlog of data. Additional resources were dedicated to clearing the backlog. In state fiscal year (SFY) 2012 compliance increased slightly. Of the 577 referrals received this fiscal year, 64 were not processed within timelines; however the average number of days to process packets for the fiscal year was 50 days, which is well within the established timeline of 90 days from application to determination.

**CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information. The State has developed a process to monitor the number of initial applicants who receive LOC determination within established timelines. CMS requested that West Virginia provide evidence for why information was not available when MECA was compiling data for referrals in SFY 2013.

Documentation submitted by West Virginia indicates that information for SFY 2013 from MECA is available, though it was not reported in the initial narrative due to the 94% rate of compliance. Further examination of remediation presented by MECA for SFY 2013 shows that 36 individuals received LOC determinations outside established timelines. Eighteen (18) were granted an extension. Determinations were made for 3 applications after additional information was requested and received. For 15 applicants, timelines were not met due to either delay in Independent Psychologist (IP) processing or delay in applicant response. For those that were delayed because of IP processing, the IPs were retrained. The Discovery and Remediation report for SFY 2013, as well as the table above, have been updated to reflect this correction.

**Sub-Assurance 1-B: The level of care of enrolled individuals is reevaluated at least annually or as specified in the approved waiver.**

*Performance Measure: Percent of active program members (due monthly) who receive determination within twelve months of previous medical eligibility date.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator B3</b>						
<b>Numerator: Number of active program members who receive determination within twelve months of previous medical eligibility date.</b>						
<b>Denominator: Number of active program members where re-cert is due in reporting month (whose medical eligibility date expires in the calendar month).</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	3584	81	2801	59	4101	95
<b>Non-Compliant</b>	818	19	1930	41	213	5
<b>Total</b>	4402	100	4731	100	4314	100

### **Discovery and Remediation Report**

Beginning July 1, 2010, the ASO implemented a tracking system to determine compliance with this indicator. Some inaccuracies were found with previous years' tracking, and it was discovered that a number of individuals had not received recertification within required timelines. As a result, the ASO cross-referenced those individuals with those not accessing services in greater than 90 days. This led to agencies being notified of those individuals who were outside recertification parameters and provided with deadlines to either submit documentation for or submit discharge documents.

Effective October 1, 2011, BMS approved up to a 9-month extension for some members in order to align eligibility date with "Anchor Date" (the fixed annual IPP date.) Aligning the Anchor Date with the eligibility date was necessary because of the new requirement to utilize the Annual Functional Assessment for redetermination in addition to determining the member's annual budget. As compliance appeared to significantly decrease in order to align these dates, the average days of the extension were tracked. There was an improvement in compliance numbers in SFY 2013 as anchor date alignment was completed.

### **CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure as the State has developed a process to monitor the percent of active members who receive LOC determination within twelve months of their previous medical eligibility date. CMS requested that West Virginia submit evidence of the average day of extension tracking for the non-compliant redeterminations in SFY 2013.

Documentation submitted by West Virginia indicates that the average number of days of extensions granted during SFY 2013 was 66; the Discovery and Remediation Report for this SFY has been revised to reflect this number, which was inaccurately reported initially as 737. Each month, the number of program members whose assessments were due the previous month and the date the assessment was completed are identified and a detail spreadsheet is generated. Those completed outside timelines or not completed are cross-referenced each month in the I/DD Waiver web application, CareConnections, to determine the reason. For SFY 2013, 12 individuals did not access services, 4 received a formal extension, and for 124, recertification was delayed due to anchor-date alignment. For 67 recertification was delayed for other reasons, such as no determination made in previous years or delayed MECA review.

**Sub-Assurance 1-C - The process and instruments described in the approved waiver are applied appropriately and according to the approved description to determine participant level of care.**

*Performance Measure: Percent of active members who receive the redetermination functional assessment.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator B4</b>						
<b>Numerator (a): Number of active members who received the redetermination functional assessments within timelines.</b>						
<b>Numerator (b): Number of active members whose assessment was completed prior to the “90 day window” (special permission granted by BMS for assessment to be conducted early but still within a 120 day window).</b>						
<b>Denominator: Number of active members whose Anchor date (fixed Individualized Program Plan date and eligibility date) occurs within the calendar month.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	N/A	N/A	3141	99	4405	99
<b>Non-Compliant</b>	N/A	N/A	44	1	47	1
<b>Total</b>	N/A	N/A	3185	100	4452	100

### **Discovery and Remediation Report**

This indicator was not measured in SFY 2011 as the practice of utilizing the Annual Functional Assessment for redetermination became effective October 1, 2011. Compliance overall has been high since tracking began in October 2011. Generally when numbers are below 100%, it is due to member non-compliance. When this occurs, extensive follow-up is completed by the ASO. This follow-up includes determining if the member has used services within 180 days and potentially initiating discharge if not. Other results of this follow-up have included discovery that members are hospitalized or experiencing some other anomalous event that necessitates an extension or hold be granted.

### **CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information. The State has developed a process to monitor the timeliness of the functional assessment redetermination. CMS requested that West Virginia submit evidence of their tracking of members who have holds granted in SFY 2012 and SFY 2013.

Documentation submitted by West Virginia indicates that in SFY 2012 and 2013, member holds and extensions were tracked via the web application, CareConnection. Requests for holds/extensions are submitted by the provider agency to the ASO, who determines whether or not to authorize the request. If the request for the hold/extension is granted, the document supporting the request and authorization is uploaded to the web application. The member’s status in the web application is changed from “Active” to “Member Hold” or “Member Extension,” depending on the type of hold applicable to the circumstance.

*Performance Measure: Percent of ASO Functional Assessments reviewed, signed by an independent psychologist with MECA.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator B5</b>						
<b>Numerator: Number of ASO functional assessment reviewed, signed by an independent psychologist with MECA.</b>						
<b>Denominator: Number of functional assessments completed (reviewed by MECA within calendar month).</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	N/A	N/A	3746	87	4191	96
<b>Non-Compliant</b>	N/A	N/A	573	13	165	4
<b>Total</b>	N/A	N/A	4319	100	4356	100

### **Discovery and Remediation Report**

This indicator was not measured in SFY 2011 as the practice of utilizing the Annual Functional Assessment for redetermination became effective October 1, 2011. Since data tracking began in October 2011, with the exception of November 2011, numbers for this fiscal year were in the high 90-percent range. In November 2011, numbers were at 61%, due to alignment of anchor date resulting in a significant influx of assessments for review. Though 39% of assessments provided to MECA for review were not reviewed during that calendar month as the indicator specifies, they ultimately were reviewed and signed in a timely manner.

In SFY 2013, compliance numbers increased significantly; any numbers under 100% are due to this indicator measuring whether or not the assessments were reviewed during the calendar month. If MECA receives assessments at the end of the month they may not review during the calendar month due to the time constraint but will review in a timely manner.

### **CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information. The State has developed a process to monitor the timeliness of the review and signature of the functional assessment. CMS requested that for SFY 2013, West Virginia submit evidence of their tracking of members' functional assessments that were sent to the MECA at the end of the month.

Documentation submitted by West Virginia indicates that MECA reports on whether or not the assessments are reviewed within timelines (30 days). The information above indicating that the non-compliant items were a result of assessments received late in the month is erroneous. Each month, MECA receives a notification via the web application, Care Connection indicating that an Annual Assessment has been uploaded for their review. MECA reviews the assessment when the notification is received and makes an eligibility determination in the web application. When this determination is made, the ASO receives a notification via CareConnection. When that notification is received by the ASO, a determination letter is generated and attached to CareConnection for reference by all necessary parties.

*Performance Measure: Percent of requests to appeal eligibility determination which are processed within established timeframes.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator B6</b>						
<b>Numerator: Number of requests to appeal eligibility determinations which are processed within established timeframes.</b>						
<b>Denominator: Number of requests to appeal eligibility determinations.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	0	0	213	99	164	100
<b>Non-Compliant</b>	150	100	3	1	0	0
<b>Total</b>	150	100	216	100	164	100

### **Discovery and Remediation Report**

This indicator measures the number of days from the request of a hearing to the date of determination, which is required to occur within 90 days. In SFY 2011, the Board of Review scheduled hearings to occur later than 90 days after the request, which resulted in the entire indicator being delayed for the entire year. Significant improvements have been made, however, as indicated by the increase to 99% compliance in SFY 2012 and 100% compliance in SFY 2013. This primarily results from increased and more effective communication with the Board of Review.

### **CMS Findings and Recommendations**

The evidence provided by West Virginia demonstrates compliance with this performance measure.

## **II. State Plans are Responsive to Waiver Participant Needs**

**The State must demonstrate that it has designed and implemented an adequate system for reviewing the adequacy of service plans for waiver participants. Authority: 42 CFR 441.301. 42 CFR 441.302. 42 CFR 441.303. SMM 4442.6; SMM 4442.7 Section 1915 (c) Waiver Format, Item Number 13.**

**The State demonstrates the assurance, but CMS recommends improvements.**

### **Background**

The ASO conducts on-site reviews of provider records using a two-year cycle. During each on-site review, 10% of (or up to 20) members' records are reviewed per agency. The annual service plan, or Individualized Program Plan (IPP), and the review that is conducted at the 6-month juncture, are reviewed for this sample, using a Review Tool, to determine if members' needs are addressed. In the event that personal goals and/or member health and safety needs are not addressed on the service plan, a Plan of Correction is required to address the deficiency(s). Technical Assistance is also provided to the agency to reduce future occurrences.

In addition to determining if personal goals and member health and safety needs are addressed, the service plans from the sample are reviewed to determine whether or not the following required components are present and accurately address members' need:

- Cover/Demographics
- Meeting Minutes
- Summary of Assessment and Evaluation Results
- Medications
- Individual Service Plan
- I/DD Waiver Services
- Non I/DD Waiver Services and Natural Supports
- Individual Habilitation Plan and Task Analysis (if applicable)
- Tentative Weekly Schedule
- Crisis Plan
- Individual Spending Plan (if applicable)
- Budget
- Tentative Weekly Schedule
- Behavior Support Plan (if applicable)
- Human Rights Committee for approval for Electronic Monitoring (if applicable)
- Signature Page (and rationale for disagreement if necessary)

The Review Tool is also used to monitor whether habilitation recommendations are assessment driven and methodology for training is included, and if medication administration (when applicable) is outlined in the IPP. If required components of the IPP are not present, a Plan of Correction is required to address the deficiency(s) and Technical Assistance is provided by the ASO to reduce future occurrences. If certain critical components of the plan are missing, all services associated with that plan are disallowed for the time period covered.

The Review Tool is further used to assess whether member service plans from the identified sample are updated or reviewed quarterly (or every 6 months if approved and documented by the Interdisciplinary Team (IDT)) and at Critical Junctures. If the plans are not updated or reviewed according to policy, the plan is considered invalid during the lapse period. All services delivered during the time that the plan is not valid are disallowed. Technical Assistance is also provided by the ASO and the agency is required to address the deficiency(s) on a Plan of Correction.

In addition, during the on-site review, the ASO completes a comprehensive review of members' records in the identified sample to determine if services, as specified in the service plan, were received. The review tool captures whether supporting documentation is present in the file for every service delivered (according to claims data) to the member in at least a three month period. Services that have been provided and have claims data but have no supporting documentation are disallowed. Further, Technical Assistance is provided and the agency is required to address the deficiency(s) via a Plan of Correction.

The ASO also conducts a member or family satisfaction survey with 10% of members served by each agency. This survey identifies the number of those surveyed who feel as though their agency does what it can to ensure the services on the IPP are provided. All providers receive the survey results following reviews and can use them to identify processes that are working well for the agency, as well as, opportunities for improvement.



When a medically approved applicant receives an allocated slot and is assessed by the ASO for the first time, he or she (or his/her legal representative if applicable) completes the IDD-02 Freedom of Choice form to indicate 1) his/her choice of Service Coordination provider; 2) his/her choice between the I/DD Waiver program and institutional (ICF/IDD) care; and 3) his/her choice of Service Delivery Model. The ASO also completes the IDD-02 Freedom of Choice form with each member during the annual functional assessment, unless the legal representative is not present. If the legal representative does not attend the functional assessment, the Service Coordination agency then is responsible for ensuring completion of the document annually. In addition, members may elect to change any options on their IDD-02 at any time by notifying their Service Coordinator.

**Sub-Assurance II-A: Service plans address all individuals’ assessed needs (including health and safety risk factors) and personal goals, either by the provision of waiver services or through other means.**

*Performance Measure: Percent of members’ records (Annual and 6-month IPPs) reviewed that reflect members’ health and safety needs.*

Data Source: Discovery & Remediation Reports FY 2011, 2012, and 2013-Indicator D1						
Numerator: Number of members’ records (Annual and 6-month IPPs) reflecting members’ health and safety needs.						
Denominator: Number of members’ records (Annual and 6-month IPPs) reviewed.						
Division Data	SFY 2011 Totals	SFY 2011 Percent	SFY 2012 Totals	SFY 2012 Percent	SFY 2013 Totals	SFY 2013 Percent
Compliant	467	97	271	99	441	95
Non-Compliant	16	3	4	1	22	5
Total	483	100	275	100	463	100

### Discovery and Remediation Report

The necessity to ensure that members’ health and safety needs are reflected in the IPP has been addressed extensively with providers. Teams are tasked with identifying how these needs will be met, including what methods will be used and who is most appropriate to provide the training. During ASO-conducted provider reviews, if it is discovered that these needs are not addressed, Technical Assistance is conducted and the provider is required to address the deficiency via a Plan of Correction that is submitted to, reviewed by, and ultimately approved by the ASO.

### CMS Findings and Recommendations

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information for why the number of reviews performed in SFY 2012 was lower than those performed in SFY 2011 and SFY 2013. CMS requested copies of the Plans of Correction, documentation of Technical Assistance provided, and documentation of any ongoing monitoring of providers’ Plans of Correction for this performance measure. In

addition, CMS recommends that Plans of Correction be monitored to ensure the implementation of the Plans of Correction.

Documentation submitted by West Virginia indicates that West Virginia’s I/DD Waiver provider reviews are conducted every two years by the ASO, resulting in 100% of the providers being reviewed during that two-year cycle. On alternating years, the State’s designated licensing entity, Office of Facilities Licensure Accreditation and Certification, (OHFLAC) conducts reviews with providers. This ensures that all providers are reviewed annually; however, the ASO and OHFLAC monitor and review using different criteria. The above criteria reflects information gathered and reported by the ASO only. During the review cycles of SFY 2011, 2012, and 2013, Plans of Correction were not monitored, but will be in the future by requesting documentation and evidence that items cited on the Plan of Correction have been addressed. In addition, the State intends to alter contract requirements as they intend for the ASO to review providers annually.

*Performance Measure: Percent of members’ records (Annual and 6-month IPPs) reviewed whose IPPs reflects identified personal goals.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator D2</b>						
<b>Numerator: Number of members’ records (Annual and 6-month IPPs) reflecting members’ personal goals.</b>						
<b>Denominator: Number of members’ records (Annual and 6-month IPPs) reviewed.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	464	96	268	97	442	95
<b>Non-Compliant</b>	18	4	7	3	21	5
<b>Total</b>	482	100	275	100	463	100

**Discovery and Remediation Report**

All Individual Program Plans are required to address members’ personal goals and dreams, utilizing Person-Centered Planning tools, including a “Circle of Support.” The team may also choose to use Futures Planning tools, such as Making Action Plans (MAPs) and Planning Alternatives Tomorrow with Hope (PATHs). During ASO-conducted provider reviews, if it is discovered that these needs are not addressed, Technical Assistance is conducted and the provider is required to address the deficiency via a Plan of Correction that is submitted to, reviewed by, and ultimately, approved by the ASO.

**CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information for why the number of reviews performed in SFY 2012 was lower than those performed in SFY 2011 and SFY 2013. CMS requested copies of the Plans of Correction, documentation of Technical Assistance provided, and documentation of any ongoing monitoring of providers’ Plans of Correction for this performance measure. In addition, CMS recommends that Plans of Correction be monitored to ensure implementation of the Plans of Correction.

Documentation submitted by West Virginia indicates that West Virginia's I/DD Waiver provider reviews are conducted every two years by the ASO, resulting in 100% of the providers being reviewed during that two-year cycle. On alternating years, the State's designated licensing entity, OHFLAC conducts reviews with providers. This ensures that all providers are reviewed annually; however, the ASO and OHFLAC monitor and review using different criteria. The above criteria reflects information gathered and reported by the ASO only. During the review cycles of SFY 2011, 2012, and 2013, Plans of Correction were not monitored, but will be in the future by requesting documentation and evidence that items cited on the Plan of Correction have been addressed. In addition, the State intends to alter contract requirements as they intend for the ASO to review providers annually.

**Sub-Assurance II-B: The State monitors Service plans development in accordance with its policy and procedures.**

*Performance Measure: Percent of members' records reviewed whose Individual Program Plan is current.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator D3</b>						
<b>Numerator: Number of members' records reviewed whose Individual Program Plan is current.</b>						
<b>Denominator: Number of members' records reviewed.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	306	99	182	99	404	100
<b>Non-Compliant</b>	3	1	2	1	2	0
<b>Total</b>	309	100	184	100	406	100

**Discovery and Remediation Report**

This indicator measures whether or not the Annual Service Plan is completed as required, and also if it is updated at least every six months. (The I/DD Waiver Policy Manual indicates teams must meet every quarter unless the team determines that twice yearly meetings are adequate. If this determination is made it must be clearly documented in the IPP.) Providers consistently meet this requirement.

**CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information. West Virginia has developed a process to ensure that members' Individual Program Plans are current. CMS requested that West Virginia explain why the number of reviews performed in SFY 2012 was lower than those performed in SFY 2011 and SFY 2013. In addition, CMS inquired as to why the total number of records reviewed for this indicator was lower than the total number of records reviewed for other indicators in this sub-assurance.

Documentation submitted by West Virginia indicates that West Virginia’s I/DD Waiver provider reviews are conducted every two years by the ASO, resulting in 100% of the providers being reviewed during that two-year cycle. On alternating years, the State’s designated licensing entity OHFLAC conducts reviews with providers. This ensures that all providers are reviewed annually; however, the ASO and OHFLAC monitor and review using different criteria. The above criteria reflects information gathered and reported by the ASO only. When providers are reviewed by the ASO, a 10% sample of member records is utilized to determine compliance. In SFY 2012, since the overall number of providers reviewed was lower than SFY 2011 and SFY 2013, the 10% sample selection resulted in fewer records selected. In addition the State intends to alter contract requirements as they intend for the ASO to review providers annually.

*Performance Measure: Percent of members’ records reviewed (IPPs reviewed) whose IPP was signed by the member and/or legal representative.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator D4</b>						
<b>Numerator: Number of members’ IPPs signed by member or legal representative.</b>						
<b>Denominator: Number of members’ IPPs reviewed.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	524	99	310	100	510	99
<b>Non-Compliant</b>	3	1	1	0	4	1
<b>Total</b>	527	100	311	100	514	100

**Discovery and Remediation Report**

It is required that the member (if he/she is their own legal representative) and/or the legal representative (if applicable) sign the IPP indicating their participation and agreement. Providers consistently meet this requirement.

**CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information for why the number of reviews performed in SFY 2012 was lower than those performed in SFY 2011 and SFY 2013.

Documentation submitted by West Virginia indicates that West Virginia’s I/DD Waiver provider reviews are conducted every two years by the ASO, resulting in 100% of the providers being reviewed during that two-year cycle. On alternating years, the State’s designated licensing entity OHFLAC conducts reviews with providers. This ensures that all providers are reviewed annually; however, the ASO and OHFLAC monitor and review using different criteria. The above criteria reflects information gathered and reported by the ASO only. In addition, the State intends to alter contract requirements as they intend for the ASO to review providers annually.

**Sub-Assurance II-C: Service plans are updated or revised at least annually or when warranted by changes in waiver individuals needs.**

*Performance Measure: Percent of members' records reviewed whose IPP was updated at least every six months.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator D5</b>						
<b>Numerator: Number of members' records reviewed whose IPP was updated at least every 6 months.</b>						
<b>Denominator: Number of members' records reviewed.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	300	99	169	99	215	96
<b>Non-Compliant</b>	3	1	2	1	8	4
<b>Total</b>	303	100	171	100	223	100

**Discovery and Remediation Report**

Prior to February 2013, 6-month update documents were only reviewed if the member's Annual Service Plan had been completed. Effective with reviews conducted in February 2013, all records reviewed as part of the sample were reviewed to determine if a 6-month update was present, even if it was not related to the current Annual Service Plan. Providers consistently meet this requirement; however, there was a slight decrease in compliance in fiscal year 2012. This can be accounted for by a miscalculation by one provider on which date the 6-month review was actually due. Once this issue was identified by the provider, it was corrected from that point forward with no further issues.

**CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information for why the number of reviews performed in SFY 2012 was lower than those performed in SFY 2011 and SFY 2013.

Documentation submitted by West Virginia indicates that West Virginia's I/DD Waiver provider reviews are conducted every two years by the ASO, resulting in 100% of the providers being reviewed during that two-year cycle. On alternating years, the State's designated licensing entity OHFLAC conducts reviews with providers. This ensures that all providers are reviewed annually; however, the ASO and OHFLAC monitor and review using different criteria. The above criteria reflects information gathered and reported by the ASO only. The above criteria reflects information gathered and reported by the ASO only. In addition, the State intends to alter contract requirements as they intend for the ASO to review providers annually.

**Sub-Assurance II-D: Services are delivered in accordance with the service plan, including the type, scope, amount, duration, and frequency specified in the service plan.**

*Performance Measure: Percent of participants who utilized 80% to 120% of services indicated in the IPP.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator D6</b>						
<b>Numerator: Number of members who (potentially) utilized 80% to 120% of services indicated in the IPP.</b>						
<b>Denominator: Number of I/DD Waiver program members.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	1827	42	2187	50	2453	55
<b>Non-Compliant</b>	2528	58	2187	50	1995	45
<b>Total</b>	4355	100	4374	100	4448	100

### **Discovery and Remediation Report**

Provider claims can be submitted up to a year after service provision; data will be different when budget is compared to services billed through the claims payer. As such, this indicator is calculated based on the original budget versus the total cost of services ultimately authorized, representing services that teams plan to deliver during member service year. In SFY 2011, of the 58% of members who did not fall in the compliant range, 18% were potentially utilizing less than 80%, 36% were potentially utilizing more than 120%, and 4% were potentially utilizing 0%. In SFY 2012, of the 50% of members who did not fall in the compliant range, 27% were potentially utilizing less than 80%, 18% were potentially utilizing more than 120%, and 5% were potentially utilizing 0%. This indicates improvement overall as the number of members whose purchases are for less than 80% has increased and the number of members whose purchases are for more than 120% of their original budget has decreased. In SFY 2013, this trend continues. The 45% in the compliant range is comprised of 26% whose purchases were less than 80% of their original budget, 17% whose purchases were 120% more than the original budget, and 2% were potentially utilizing 0%.

### **CMS Findings and Recommendations**

The evidence provided does not demonstrate compliance with this sub-assurance and CMS requested additional information. The performance measure must be 86% or above to meet compliance. Although West Virginia has developed a process to monitor members who utilize 80% to 120% of services indicated on their IPPs, the compliance was below 60%. CMS recommends that additional training be performed to reinforce the requirements of this sub-assurance. The CMS requested that West Virginia provide their plan for ensuring increasing compliance with this performance measure. In addition, the narrative indicates that compliance for SFY 2013 was 45%, but the Data Source Table indicates compliance was 55%. CMS requested that West Virginia review this data, revise as necessary, and provide the correct information.

Documentation submitted by West Virginia indicates that the narrative above has been corrected to reflect the accurate percentage for SFY 2013 of 55% compliance. In addition, the percentages reflecting members whose purchases were 120% more than their original budget and those who were potentially utilizing 0% of the original budget were updated to 18% and 1% respectively. Further review has resulted in the State's determination that this indicator does not truly measure what the sub-assurance requires. As such, in the future, West Virginia plans to monitor this sub-assurance during provider reviews. This will be accomplished by reviewing claims data to ensure that services listed on members IPPs have been delivered, documenting rate of compliance on the I/DD Waiver review tool and Discovery and Remediation Report, and providing Technical Assistance to agencies who do not meet the requirement.

**Sub-Assurance II-E: Individuals are afforded choice between waiver services and institutional care and between/among waiver services and providers.**

*Performance Measure: Percent of members with a current/signed Freedom of Choice Form.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator D7</b>						
<b>Numerator: Number of members with current/signed Freedom of Choice Forms.</b>						
<b>Denominator: Number of I/DD program members assessed.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	N/A	N/A	2309	68	3710	87
<b>Non-Compliant</b>	N/A	N/A	1074	32	540	13
<b>Total</b>	N/A	N/A	3383	100	4250	100

**Discovery and Remediation Report**

This indicator was not measured in SFY 2011 as the practice of offering more than one Service Delivery Model to members became effective with the October 1, 2011 Policy Manual. Prior to October 1, 2011, members were offered Freedom of Choice in selecting their Service Coordination agency and choosing between ICF and I/DD services; however, data for this was not tracked.

Effective October 1, 2011, the Freedom of Choice form is required. The ASO completes it with the member or his/her legal representative, if applicable, at the Annual Functional Assessment. As the legal representative is not required to be present at the assessment, DD2s are completed by agencies for all members whose legal representative does not attend. In November 2012, the ASO implemented follow-up with agencies for each DD2 that they were responsible for completing. This resulted in a significant increase in compliance overall, going from 84% in Quarter 1 to 97% in Quarter 4.

### **CMS Findings and Recommendations**

The evidence provided does not demonstrate compliance with this performance measure and CMS requested additional information. West Virginia has developed a process to ensure that members have a current and signed Freedom of Choice form. As compliance was 68% in SFY 2012 and 87% in SFY 2013, CMS requested that West Virginia provide their plan for ensuring increasing compliance with this performance measure. CMS recommends that additional training be performed to reinforce the requirements of this sub-assurance.

Documentation submitted by West Virginia indicates that increased compliance for this indicator is ensured by the practice that was implemented in November 2012 of following-up with provider agencies. Because the ASO completes the Freedom of Choice form at the Annual Functional Assessment only for those members whose Legal Representatives are present, responsibility for completion is that of the provider agency for those members whose Legal Representatives do not attend. For those individuals, the ASO follows-up with the provider agency if the form is not completed and uploaded into the web application within timelines. Significant improvement in compliance occurred beginning in March 2013 as a result of the practice of contacting providers to request that the Freedom of Choice form be uploaded to the CareConnection web application. Further research resulted in identification of additional forms that were uploaded being located; the Discovery and Remediation report for SFY 2013 has been updated to reflect the changes in numbers for March, April, May and June 2013. The table above has been updated as well. The overall percentage of compliance/non-compliance did not change.

### **III. Qualified Providers Serve Waiver Participants**

**The State must demonstrate that it has designed and implemented an adequate system for assuring that all waiver services are provided by qualified providers. Authority: 42 CFR 441.302; SMM 4442.4.**

**The State substantially meets this assurance.**

#### **Background**

All I/DD providers are required to have a behavioral health license, granted by the WV Office of Health Facilities Licensure and Certification (OHFLAC). Once a provider is certified and licensed, the ASO includes them in a two-year review cycle. The ASO verifies State standards as specified in the I/DD Waiver Policy Manual, including: review of staff qualifications, utilization review of service notes, member service plans, and member health and safety factors.

At each provider on-site review, a 10% sample of personnel files is selected to verify that individuals who deliver I/DD Waiver services to members are properly qualified. Each of the staff charts selected is reviewed to ensure that cardiopulmonary resuscitation and First Aid are updated according to the approved vendor's expiration date and that training in Recognition and Reporting of Abuse/Neglect/Exploitation, Member Rights, Confidentiality, and Infectious Disease Control occur annually. Personnel files are also reviewed to ensure that a Criminal/Investigation Background (CIB) check is current. In the event of a lapse in



any of these requirements, all services provided by the unqualified staff person during the lapse period are disallowed.

**Sub-Assurance III-A: The State verifies that providers initially and continually meet required licensure and/or certification standards and adhere to other State standards prior to their furnishing waiver services.**

*Performance Measure: Percent of I/DD providers who have an active behavioral health license.*

Data Source: Discovery & Remediation Reports FY 2011, 2012, and 2013-Indicator C1						
Numerator: Number of I/DD providers who have an active behavioral health license.						
Denominator: Number of I/DD providers.						
Division Data	SFY 2011 Totals	SFY 2011 Percent	SFY 2012 Totals	SFY 2012 Percent	SFY 2013 Totals	SFY 2013 Percent
Compliant	76	96	82	99	82	100
Non-Compliant	3	4	1	1	0	0
<b>Total</b>	<b>79</b>	<b>100</b>	<b>83</b>	<b>100</b>	<b>82</b>	<b>100</b>

**Discovery and Remediation Report**

In SFY 2011, the requirement that all facilities be licensed Behavioral Health Providers was implemented. Prior to that time, agencies that were considered "service only" and did not offer Service Coordination services were allowed to deliver services without a license. Any new providers were, and continue to be, required to have completed the entire licensing process prior to delivering any services; however those who were already doing so were allowed to continue while going through the process. At the beginning of SFY 2011, 7 of 79 providers were not licensed. By the end of SFY 2011 all but 3 had active licenses. By the end of SFY 2012, all but 1 provider had an active license. By September 2012, 100% of providers were licensed.

**CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure as West Virginia has developed a process to ensure that providers have an active behavioral health license.

**Sub-Assurance III-B: The State monitors non-licensed/non-certified providers to assure adherence to waiver requirements.**

*Performance Measure: Percent of licensed I/DD providers who have been monitored/reviewed by OHFLAC and the ASO.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator C2</b>						
<b>Numerator: Number of licensed I/DD providers monitored/reviewed by OHFLAC and the ASO.</b>						
<b>Denominator: Number of licensed I/DD providers.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant OHFLAC</b>	84	N/A	52	100	40	N/A
<b>Non-Compliant OHFLAC</b>	N/A	N/A	N/A	0	N/A	N/A
<b>Compliant ASO</b>	46	N/A	26	100	43	N/A
<b>Non-Compliant ASO</b>	N/A	N/A	N/A	0	N/A	N/A
<b>Total</b>	<b>79</b>	<b>N/A</b>	<b>83</b>	<b>100</b>	<b>82</b>	<b>N/A</b>

### **Discovery and Remediation Report**

The ASO operates on a two-year review cycle, and the State's designated licensing entity Office of Facilities Licensure Accreditation and Certification (OHFLAC) also reviews provider agencies. The first two year cycle represented with this data is from July 1, 2010 through June 30, 2012. As such, the following should be noted:

- Non-compliant numbers, as well as, percentages for SFY 2011 and SFY 2013, are not applicable because the review cycle concluded in SFY 2012 (and will conclude again in SFY 2014.) Only at the conclusion of a two-year cycle can compliance be measured.
- The total number of reviews conducted by OHFLAC at the end of the two-year cycle was 136. This far exceeds the number of providers, as OHFLAC will review a provider more than once during the cycle if necessitated by a complaint investigation. The actual percentage of reviews for OHFLAC at the end of the review cycle exceeds 100%, as there were 83 providers at the end of SFY 2012.
- The total number of reviews conducted by the ASO at the end of the two-year cycle was 74, and the total number of licensed providers at the end of the fiscal year was 83. Of the nine (9) providers not reviewed, seven (7) were newly licensed and did not therefore fall on the review rotation for the cycle. Two (2) did not provide services during the cycle.

### **CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure as West Virginia has developed a process to ensure that providers are monitored or reviewed by OHFLAC and the ASO, but CMS requested clarification of this information. Review of the Waiver Discovery and Remediation Report for SFY 2012 indicates varying numbers of ASO Reviews. The C-2 Table indicates 26 ASO reviews, the narrative below the C-2 Table indicates the ASO reviewed 27 providers, and the Data Source Table indicates 28 ASO reviews. Also, review of the Waiver Discovery and Remediation Report for SFY 2013 C-2 Table indicates that OHFLAC reviewed 40 providers and the ASO reviewed 43 providers. The narrative below the C-2 Table

indicated that the ASO reviewed 40 providers and OHFLAC conducted 43 provider reviews. CMS requested that West Virginia review this data, revise as necessary, and provide the correct information.

Documentation submitted by West Virginia indicates that the information has been corrected in the C-2 table, above, to reflect the correct number of reviews. In SFY 2012, the ASO conducted 26 reviews. In SFY 2013, the ASO reviewed 43 providers and OHFLAC conducted 40 provider reviews.

**Sub-Assurance III-C: The State implements its policies and procedures for verifying that provider training is conducted in accordance with State requirement and the approved waiver.**

*Performance Measure: Percent of agency staff whose Abuse/Neglect training is current.*

Data Source: Discovery & Remediation Reports FY 2011, 2012, and 2013-Indicator C3						
Numerator: Number of agency staff whose Abuse/Neglect training is current.						
Denominator: Number of agency staff files reviewed.						
Division Data	SFY 2011 Totals	SFY 2011 Percent	SFY 2012 Totals	SFY 2012 Percent	SFY 2013 Totals	SFY 2013 Percent
Compliant	768	100	348	95	521	94
Non-Compliant	1	0	19	5	34	6
Total	769	100	367	100	555	100

### Discovery and Remediation Report

In SFY 2011, the compliance rate was 100%. In SFY 2012, a compliance rate of 95% resulted from issues in February 2012, when compliance was 90% and in May 2012, when compliance was 77%. In SFY 2013, the overall compliance rate of 94% resulted from issues in November 2012, when compliance was 83%, in December 2012, when compliance was 84%, and in June 2013 when compliance was 85%. The decline in compliance from SFY 2011 to subsequent fiscal years resulted from policy changes that were effective October 1, 2011, and provider transition to new requirements. New policies required that all staff be trained annually; previously the training was only required upon hire. All deficiencies related to lapses in Abuse/Neglect training are required to be addressed via an agency completed Plan of Correction (POC) which is submitted to the ASO. The ASO reviews and ultimately approves the POC once satisfactory methods to address deficiencies are reported. Technical Assistance was provided by the ASO and all services delivered by unqualified staff were disallowed.

### CMS Findings and Recommendations

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information as to why there were only 367 reviews performed in SFY 2012 which was lower than those performed in SFY 2011 and SFY 2013. CMS requested West Virginia to provide copies of the Plans of Correction, documentation of Technical Assistance provided, and documentation of any ongoing monitoring of providers' Plans of

Correction. In addition, CMS recommends that West Virginia monitor to ensure the implementation of the Plans of Correction and the documentation of Technical Assistance.

Documentation submitted by West Virginia indicates that when providers are reviewed by the ASO, a 10% sample of staff records is utilized to determine compliance. In SFY 2012, since the overall number of providers reviewed was lower than in SFY 2011 and SFY 2013, the 10% sample selection resulted in fewer records selected. West Virginia's I/DD Waiver provider reviews are conducted every two years by the ASO, resulting in 100% of providers being reviewed during that two-year cycle. On alternating years, the State's designated licensing entity OHFLAC conducts reviews with providers. This ensures that all providers are reviewed annually; however, the ASO and OHFLAC monitor and review using different criteria. The above criteria reflects information gathered and reported by the ASO only. During the review cycles of SFY 2011, 2012, and 2013, documentation for Technical Assistance was not available for all providers and Plans of Correction were not monitored, but will be in the future by requesting documentation and evidence that items cited on the Plans of Correction have been addressed. In addition, provider reviews will be conducted annually by the ASO in the future.

*Performance Measure: Percent of agency staff whose First Aid training is current.*

Data Source: Discovery & Remediation Reports FY 2011, 2012, and 2013-Indicator C4						
Numerator: Number of agency staff whose First Aid training is current.						
Denominator: Number of agency staff files reviewed.						
Division Data	SFY 2011 Totals	SFY 2011 Percent	SFY 2012 Totals	SFY 2012 Percent	SFY 2013 Totals	SFY 2013 Percent
Compliant	748	97	362	99	550	99
Non-Compliant	21	3	5	1	5	1
Total	769	100	367	100	555	100

### Discovery and Remediation Report

In SFY 2011, a compliance rate of 97% resulted from 94% compliance in December 2010 and 95% compliance in March 2011. In SFY 2012, and again in SFY 2013, the compliance rate was 99%, indicating improvement over SFY 2011. All deficiencies related to lapses in First Aid training are required to be addressed via an agency completed Plan of Correction which is submitted to the ASO. The ASO reviews and ultimately approves the Plan of Correction once satisfactory methods to address deficiencies are reported. Technical Assistance was provided by the ASO and all services delivered by unqualified staff were disallowed.

### CMS Findings and Recommendations

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information for why there were only 367 reviews performed in SFY 2012 which was lower than those performed in SFY 2011 and SFY 2013.

Documentation submitted by West Virginia indicates that when providers are reviewed by the ASO, a 10% sample of staff records is utilized to determine compliance. In SFY 2012, since the overall number of providers reviewed was lower than in SFY 2011 and SFY 2013, the 10% sample selection resulted in fewer records selected. West Virginia's I/DD Waiver provider reviews are conducted every two years by the ASO, resulting in 100% of providers being reviewed during that two-year cycle. On alternating years, the State's designated licensing entity OHFLAC conducts reviews with providers. This ensures that all providers are reviewed annually; however, the ASO and OHFLAC monitor and review using different criteria. The above criteria reflects information gathered and reported by the ASO only. In addition, the State intends to alter contract requirements as they intend for the ASO to review providers annually.

*Performance Measure: Percent of agency staff whose Cardiopulmonary Resuscitation (CPR) training is current.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator C5</b>						
<b>Numerator: Number of agency staff whose CPR training is current.</b>						
<b>Denominator: Number of agency staff files reviewed.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	740	96	360	98	551	99
<b>Non-Compliant</b>	29	4	7	2	4	1
<b>Total</b>	769	100	367	100	555	100

### **Discovery and Remediation Report**

In SFY 2011, a compliance rate of 96% resulted from 90% compliance in December 2010, 93% compliance in March 2011, and 95% compliance in May 2011. In SFY 2012, the compliance rate improved to 98%, with compliance comparatively low in October 2011 at 94% and again in February 2012 at 93%. Compliance again improved in SFY 2013 to 99%, with May 2013 standing out as having lower compliance than other months at 93%. All deficiencies related to lapses in CPR training are required to be addressed via an agency completed Plan of Correction which is submitted to the ASO. The ASO reviews and ultimately approves the Plan of Correction once satisfactory methods to address deficiencies are reported. Technical Assistance was provided by the ASO and all services delivered by unqualified staff were disallowed.

### **CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information for why there were only 367 reviews performed in SFY 2012 which was lower than those performed in SFY 2011 and SFY 2013.

Documentation submitted by West Virginia indicates that when providers are reviewed by the ASO, a 10% sample of staff records is utilized to determine compliance. In SFY 2012, since the overall number of providers reviewed was lower than in SFY 2011 and SFY 2013, the 10% sample selection resulted in fewer records selected. West Virginia's I/DD Waiver

provider reviews are conducted every two years by the ASO, resulting in 100% of providers being reviewed during that two-year cycle. On alternating years, the State's designated licensing entity OHFLAC conducts reviews with providers. This ensures that all providers are reviewed annually; however, the ASO and OHFLAC monitor and review using different criteria. The above criteria reflects information gathered and reported by the ASO only. In addition, the State intends to alter contract requirements as they intend for the ASO to review providers annually.

*Performance Measure: Percent of agency staff whose Consumer Rights training is current.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator C6</b>						
<b>Numerator: Number of agency staff whose Consumer Rights training is current.</b>						
<b>Denominator: Number of agency staff files reviewed.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	767	100	346	94	503	94
<b>Non-Compliant</b>	2	0	21	6	32	6
<b>Total</b>	769	100	367	100	535	100

### **Discovery and Remediation Report**

In SFY 2011, the compliance rate was 100%. In SFY 2012, a compliance rate of 94% resulted from issues in February 2012, when compliance was 90% and in May 2012, when compliance was 77%. In SFY 2013, the overall compliance rate of 94% resulted from issues in November 2012, when compliance was 83%, in December 2012, when compliance was 81%, and in June 2013 when compliance was 85%. The decline in compliance from fiscal year 2011 to subsequent fiscal years resulted from policy changes that were effective October 1, 2011, and provider transition to new requirements. New policies required that all staff be trained annually; previously the training was only required upon hire. All deficiencies related to lapses in Abuse/Neglect training are required to be addressed via an agency completed Plan of Correction which is submitted to the ASO. The ASO reviews and ultimately approves the Plan of Correction once satisfactory methods to address deficiencies are reported. The ASO also provided Technical Assistance and all services delivered by unqualified staff were disallowed.

### **CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information for why there were only 367 reviews performed in SFY 2012 which was lower than those performed in SFY 2011 and SFY 2013. CMS requested West Virginia to provide copies of the Plans of Correction, documentation of Technical Assistance provided, and documentation of any ongoing monitoring of providers' Plans of Correction. In addition, CMS recommends that West Virginia monitor to ensure the implementation of the Plans of Correction and the documentation of Technical Assistance.

Documentation submitted by West Virginia indicates that when providers are reviewed by the ASO, a 10% sample of staff records is utilized to determine compliance. In SFY 2012, since the overall number of providers reviewed was lower than in SFY 2011 and SFY 2013, the 10% sample selection resulted in fewer records selected. West Virginia's I/DD Waiver provider reviews are conducted every two years by the ASO, resulting in 100% of providers being reviewed during that two-year cycle. On alternating years, the State's designated licensing entity OHFLAC conducts reviews with providers. This ensures that all providers are reviewed annually; however, the ASO and OHFLAC monitor and review using different criteria. The above criteria reflects information gathered and reported by the ASO only. During the review cycles of SFY 2011, 2012, and 2013, documentation for Technical Assistance was not available for all providers and Plans of Correction were not monitored, but will be in the future by requesting documentation and evidence that items cited on the Plans of Correction have been addressed. In addition, the State intends to alter contract requirements as they intend for the ASO to review providers annually.

*Performance Measure: Percent of agency staff whose Infectious Disease Control training is current.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator C7</b>						
<b>Numerator: Number of agency staff whose Infectious Disease Control training is current.</b>						
<b>Denominator: Number of agency staff files reviewed.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	764	100	343	94	526	95
<b>Non-Compliant</b>	5	0	23	6	29	5
<b>Total</b>	769	100	366	100	555	100

### **Discovery and Remediation Report**

In SFY 2011, the compliance rate was 100%. In SFY 2012, a compliance rate of 94% resulted from issues in February 2012, when compliance was 93% and in April 2012, when compliance was 94%, and in May 2012, when compliance was 74%. In SFY 2013, the overall compliance rate of 95% resulted from issues in November 2012, when compliance was 78%, in May 2013 when compliance was 87%, and in June 2013 when compliance was 85%. The decline in compliance from SFY 2011 to subsequent fiscal years resulted from policy changes that were effective October 1, 2011, and provider transition to new requirements. New policies required that all staff be trained annually; previously the training was only required upon hire. All deficiencies related to lapses in Infectious Disease Control training are required to be addressed via an agency completed Plan of Correction which is submitted to the ASO. The ASO reviews and ultimately approves the Plan of Correction once satisfactory methods to address deficiencies are reported. The ASO also provided Technical Assistance and all services delivered by unqualified staff were disallowed.

### **CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information for why there were only 366 reviews performed in SFY 2012 which was lower than those performed in SFY 2011 and SFY 2013. CMS requested West Virginia to provide copies of the Plans of Correction, documentation of Technical Assistance provided, and documentation of any ongoing monitoring of providers' Plans of Correction. In addition, CMS recommends that West Virginia monitor to ensure the implementation of the Plans of Correction and the documentation of Technical Assistance.

Documentation submitted by West Virginia indicates that when providers are reviewed by the ASO, a 10% sample of staff records is utilized to determine compliance. In SFY 2012, since the overall number of providers reviewed was lower than in SFY 2011 and SFY 2013, the 10% sample selection resulted in fewer records selected. West Virginia's I/DD Waiver provider reviews are conducted every two years by the ASO, resulting in 100% of providers being reviewed during that two-year cycle. On alternating years, the State's designated licensing entity OHFLAC conducts reviews with providers. This ensures that all providers are reviewed annually; however, the ASO and OHFLAC monitor and review using different criteria. The above criteria reflects information gathered and reported by the ASO only. During the review cycles of SFY 2011, 2012, and 2013, documentation for Technical Assistance was not available for all providers and Plans of Correction were not monitored, but will be in the future by requesting documentation and evidence that items cited on the Plans of Correction have been addressed. In addition, the State intends to alter contract requirements as they intend for the ASO to review providers annually.

*Performance Measure: Percent of agency staff files whose Criminal/Investigation Background (CIB) check is conducted and returned satisfactory prior to providing I/DD services.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator C8</b>						
<b>Numerator: Number of agency staff whose CIB check is compliant.</b>						
<b>Denominator: Number of agency staff files reviewed.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	766	100	365	99	548	99
<b>Non-Compliant</b>	3	0	2	1	7	1
<b>Total</b>	769	100	367	100	555	100

### **Discovery and Remediation Report**

In SFY 2011, the compliance rate was 100%. Providers are overall very compliant with this requirement. During SFY 2012, 2 of 367 staff files reviewed were not compliant, and in fiscal year 2013, 7 of 555 reviewed were not compliant. When this requirement is not met, agencies are required to address this on the Plan of Correction which is submitted to the ASO. The ASO reviews and ultimately approves the Plan of Correction once satisfactory methods to address deficiencies are reported. Technical Assistance is provided also. Because of difficulty with the State contractor returning records within a timely manner, providers



were given until January 2013 before disallowances were attached to this particular deficiency.

### **CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information for why there were a low number of records reviewed in SFY 2012, and why the State contractor had difficulty returning records within a timely manner. CMS recommends that West Virginia monitor the process for criminal/investigation background checks to ensure compliance with this requirement.

Documentation submitted by West Virginia indicates that when providers are reviewed by the ASO, a 10% sample of staff records is utilized to determine compliance. In SFY 2012, since the overall number of providers reviewed was lower than in SFY 2011 and SFY 2013, the 10% sample selection resulted in fewer records selected. West Virginia's I/DD Waiver provider reviews are conducted every two years by the ASO, resulting in 100% of providers being reviewed during that two-year cycle. On alternating years, the State's designated licensing entity OHFLAC conducts reviews with providers. This ensures that all providers are reviewed annually; however, the ASO and OHFLAC monitor and review using different criteria. The above criteria reflects information gathered and reported by the ASO only. In addition, the State intends to alter contract requirements as they intend for the ASO to review providers annually.

The WV State Police decided to out-source the background check process and awarded a request for proposal (RFP) to MorphoTrust in July 2102. There were delays because MorphoTrust seriously under-estimated the number of people who would be seeking fingerprint based background checks. In addition to the home and community based programs, all hospitals, schools, and nursing homes were included in the RFP. Because the contractor had difficulty meeting the demand, new offices were opened in an effort to resolve the issue. This contractor is not affiliated with WV DHHR BMS, but is a contractor of the WV State Police. BMS approached the WV State Police in January 2013 with concerns regarding the delays and the State legislature was also approached by some provider agencies. As a result, WV State Police considered pulling the contract, but ultimately required MorphoTrust to meet with BMS until BMS felt the access and turn-around problems were resolved. The contractor now reports that the turn-around time for State fingerprint based checks is less than 24 hours. WV DHHR had absolutely no control over the contract with MorphoTrust and the WV State Police. See the following timeline:

10/2012-WV State Police conducted trainings for providers regarding employee background checks.

1/9/13-BMS HCBS Director, as lead for the WV grant project National Background Check Program, and BMS Director of Policy Administrative Services, met with MorphoTrust's Senior Director for Program Management. During the meeting, the HCBS Director expressed providers' concerns regarding the delays.

2/6/13-Email communication with WV State Police and MorphoTrust regarding providers' concerns.

2/12/13-Meeting with MorphoTrust and BMS Policy Managers during which providers' concerns were discussed.

3/12/13-Meeting with MorphoTrust and BMS Policy managers during which providers' concerns were discussed. MorphoTrust began submitting WV Program Reports to BMS in January 2013.

MorphoTrust provides ongoing location updates to BMS via email.

Communication between BMS and MorphoTrust regarding the WV grant project National Background Check is ongoing.

#### **IV. Health and Welfare**

**The State must demonstrate, on an ongoing basis, that it identifies, addresses, and seeks to prevent instances of abuse, neglect and exploitation. Authority: 42 CFR 441.302; CFR 441.303; SMM 4442.4; SMM 4442.9.**

**The State demonstrates the assurance, but CMS recommends improvements.**

##### **Background**

A variety of mechanisms are in place to address issues surrounding child and adult abuse, neglect, and exploitation. At the State level, the designated entity responsible for the investigation and substantiation of abuse and neglect is the West Virginia Department of Health and Human Resources Child Protective Services (CPS) and Adult Protective Services (APS). The roles and responsibilities of CPS and APS are delineated in West Virginia State Code.

The State also has an automated incident reporting system, the West Virginia Incident Management Systems (WVIMS). Incidents involving I/DD Waiver members must be reported by the provider within 48 hours of learning of the incident. The ASO monitors the reporting, documentation, and timely resolution by provider of all incidents as set forth in Chapter 513 and the waiver application.

In addition, the State requires at the provider level that all agencies have written policies and procedures for thoroughly reviewing, investigating, and tracking all incidents involving the risk, or potential risk, to the health and safety of the enrolled members. Providers are required to train their direct care staff prior to service delivery and annually, on the topic of recognition and reporting of abuse, neglect, and exploitation. During provider reviews, the ASO reviews personnel records, member records, agency policies and procedures, and Utilization Guidelines to determine the agencies' compliance with incident management tracking, reporting, and investigation procedures.

Each member is required to receive a monthly home visit by his/her Service Coordinator, during which, among other items, the Service Coordinator monitors the environment for member safety. If it is identified upon provider review that required home visits are not conducted for any members in the identified sample, all Service Coordination for that member for that month is disallowed. Incident reports and corresponding reports in WVIMS are also reviewed for the chosen member sample. In the event that IMS and/or incident reports are made incorrectly or the provider fails to follow-up on the reports in the required timeframes, Technical Assistance is provided and the deficiency(s) is required to

be addressed by the provider on a Plan of Correction. As an added measure, the WVIMS is monitored by the ASO and providers who fail to follow-up on critical incidents within the 14 day timeframe are notified that follow-up is required immediately.

**Sub-Assurance 1V-A: On an ongoing basis the State identifies, addresses, and seeks to prevent instances of abuse, neglect, and exploitation.**

*Performance Measure: Percent of incidents appropriately followed up on by the provider agency within required timeframes.*

Data Source: Discovery & Remediation Reports FY 2011, 2012, and 2013-Indicator G1						
Numerator: Number of Incident Management System reports appropriately followed up on by the provider within required timeframes.						
Denominator: Number of charts reviewed with reportable incidents.						
Division Data	SFY 2011 Totals	SFY 2011 Percent	SFY 2012 Totals	SFY 2012 Percent	SFY 2013 Totals	SFY 2013 Percent
Compliant	64	75	27	55	112	91
Non-Compliant	22	25	22	45	11	9
Total	86	100	49	100	123	100

### Discovery and Remediation Report

In SFY 2011 WVIMS was not mandatory as long as providers had a method of tracking incidents. The requirement to use WVIMS was implemented October 1, 2011. In SFY 2012, low compliance is accounted for by:

- In August 2011, one provider had two incidents that required entry; however since the requirement to utilize the WVIMS had not yet been implemented, they used their own tracking system.
- In October 2011, November 2011, March 2012, and April 2012 compliance rates were 0%. At each review Technical Assistance was provided and the deficiency was required to be addressed via a Plan of Correction. The Plan of Correction was reviewed and ultimately approved by the ASO. Since the requirement to utilize WVIMS was effective October 1, 2011, there was a slight learning curve that resulted in the low numbers. Providers were somewhat resistant to this requirement, thus a good deal of Technical Assistance was necessary.

In SFY 2013, compliance numbers increased significantly to 91%. The 91% rate is a result of provider failure to appropriately report in September 2012, when compliance was 67%, in October 2012, when compliance was 69%, in February 2013, when compliance was 83%, and in June 2013, when compliance was 82%. Again, at each review Technical Assistance was provided and the deficiency was required to be addressed via a Plan of Correction.

### CMS Findings and Recommendations

The evidence provided does not demonstrate compliance with this performance measure and CMS requested additional information. West Virginia has developed a process to ensure that providers follow up on incidents within required timeframes. As some providers continued to

be deficient in reporting incidents timely, CMS requested copies of the Plans of Correction, documentation of Technical Assistance provided, and documentation of any ongoing monitoring of providers' Plans of Correction for this performance measure. CMS recommends that West Virginia monitor to ensure the implementation of the Plans of Correction and the documentation of Technical Assistance.

Documentation submitted by West Virginia indicates that during the review cycles of SFY 2011, 2012, and 2013, documentation of Technical Assistance was not available for all providers and Plans of Correction were not monitored, but will be in the future by requesting documentation and evidence that items cited on the Plans of Correction have been addressed. In addition to deficiencies in Incident Management System (IMS) reporting being addressed via Plans of Correction with individual providers, a training with all providers on use of the system was conducted in November 2010.

*Performance Measure: Percent of reported Incident Management System critical incidents followed up on by the I/DD provider within 14 days.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator G2</b>						
<b>Numerator: Number of Incident Management System critical incidents followed up on by the provider within 14 days.</b>						
<b>Denominator: Number of critical incidents.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	544	92	1153	97	1409	97
<b>Non-Compliant</b>	47	8	37	3	43	3
<b>Total</b>	591	100	1190	100	1452	100

### **Discovery and Remediation Report**

The above numbers indicate those incidents submitted by providers as Critical Incidents or Abuse/Neglect/Exploitation. The ASO reviews 100% of these reports. Upon review, the ASO clinically evaluates the entered incident to determine whether or not the provider followed-up appropriately. When deemed inappropriate or insufficient, the ASO contacts the provider to request additional follow-up, such as staff training, referral to protective services, etc. Since the implementation in October 2011 of the requirement to use IMS to report and track incidents, compliance rates have improved. There has been a significant improvement from SFY 2011 to SFY 2012.

### **CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information on the follow-up of the 43 non-compliant occurrences in SFY 2013, including documentation of staff training, referrals to protective services, and outcomes to the members. CMS recommends that West Virginia monitor the tracking of the follow-up of critical incidents by the ASO.

Documentation submitted by West Virginia indicates that for incidents in July, August, September, and October 2012 and March 2013, there was a lapse in tracking by the ASO.

Information on which members were affected by the 15 incidents that occurred during those months and were not properly followed-up on is not available. Information on the other 28 incidents is documented in Appendix L. To avoid future occurrences of tracking lapse, the ASO is carefully monitoring and tracking members whose incidents are not followed-up on appropriately. This monitoring and tracking includes maintaining a spreadsheet of all incidents indicated as not receiving proper follow-up. The ASO identifies the following in the tracking document: type of incident, date of incident, date of ASO contact, type of follow-up completed and outcome to the member.

*Performance Measure: Percent of members who receive a monthly home visit by a Service Coordinator.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator G3</b>						
<b>Numerator: Number of members who receive a monthly home visit.</b>						
<b>Denominator: Number of I/DD records reviewed.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	269	93	125	94	252	97
<b>Non-Compliant</b>	20	7	8	6	9	3
<b>Total</b>	289	100	133	100	261	100

### **Discovery and Remediation Report**

Providers are generally compliant with this requirement. In the event that it is found, upon provider review, that a required home visit was not conducted by a Service Coordinator, all Service Coordination units billed are disallowed for that month. In addition, Technical Assistance is provided and the deficiency is addressed via a Plan of Correction that is submitted to the ASO. The ASO reviews and ultimately approves the Plan of Correction once satisfactory methods to address deficiencies are reported.

### **CMS Findings and Recommendations**

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information for the low number of records reviewed in SFY 2012.

Documentation submitted by West Virginia indicates that when providers are reviewed by the ASO, a 10% sample of staff records is utilized to determine compliance. In SFY 2012, since the overall number of providers reviewed was lower than in SFY 2011 and SFY 2013, the 10% sample selection resulted in fewer records selected. West Virginia's I/DD Waiver provider reviews are conducted every two years by the ASO, resulting in 100% of providers being reviewed during that two-year cycle. On alternating years, the State's designated licensing entity OHFLAC conducts reviews with providers. This ensures that all providers are reviewed annually; however, the ASO and OHFLAC monitor and review using different criteria. The above criteria reflects information gathered and reported by the ASO only. In addition, the State intends to alter contract requirements as they intend for the ASO to review providers annually.

#### IV. Administrative Authority

The State must demonstrate that it retains ultimate administrative authority over the waiver program and that its administration of the waiver program is consistent with the approved waiver application. Authority: 42 CFR 441.303; CFR 431; SMM 4442.6; SMM 4442.7.

The State demonstrates the assurance, but CMS recommends improvements.

#### Background

BMS participates in monthly contract management meetings with the ASO, the Medical Eligibility Contract Agency (MECA), and the Fiscal/Employer Agent (F/EA). All policy clarifications, provider training material, and communications to stakeholders receive BMS approval before dissemination.

**Sub-Assurance V-A:** The Medicaid Agency retains ultimate administrative authority and responsibility for the operation of the waiver program by exercising oversight of the performance of waiver functions by other State and local/regional non-State agencies (if appropriate) and contracted entities.

*Performance Measure: Percent of Medicaid oversight meetings held where waiver functions are discussed.*

Data Source: Discovery & Remediation Reports FY 2011, 2012, and 2013-Indicator A1						
Numerator: Number of Medicaid oversight meetings where waiver functions were discussed.						
Denominator: Number of Waiver meetings.						
Division Data	SFY 2011 Totals	SFY 2011 Percent	SFY 2012 Totals	SFY 2012 Percent	SFY 2013 Totals	SFY 2013 Percent
Compliant	20	100	36	100	25	100
Non-Compliant	0	0	0	0	0	0
Total	20	100	36	100	25	100

#### Discovery and Remediation Report

During the report period, 100% of the Medicaid oversight meetings were held, and I/DD waiver functions were discussed.

#### CMS Findings and Recommendations

The evidence provided demonstrates compliance with this performance measure, but CMS requested additional information. The CMS recommends the State conduct further analysis and quality improvement strategy to ensure compliance with this assurance. The following are some examples of questions that could be considered when developing performance measures:

- Has the contractor/agency complied with all terms and conditions of the contract during the period of this evaluation?
- Have deliverables required by the contract been delivered on a timely basis?

- Has the quality of services required by the contract been satisfactory during the evaluation period?
- From an overall standpoint, are you satisfied with the contractor's/agency's performance?
- Where applicable, have all of the required Business Associate Agreement forms been completed and forwarded to the Office of Contract Management?

Additionally, some examples of evidence that could be provided include a description of the State quality management program with evidence of activity such as monitoring and review reports; a record of actions taken; record of service denials and appeal requests; and copies of issued notices of appeal.

West Virginia indicates that they will incorporate the recommendations from CMS into their waiver application.

## **VI. Financial Accountability**

**The State must demonstrate that it has designed and implemented an adequate system for assuring financial accountability of the waiver program. Authority: 42 CFR 441.302; 42 CFR 441.303; 42 CFR 441.308; 45 CFR 74; SMM 4442.8; SMM 4442.10.**

**The State demonstrates the assurance, but CMS recommends improvements.**

### **Background**

The ASO performs a review of service requests prior to granting service authorizations. Services authorized are tied directly to the corresponding procedure code of the I/DD Waiver covered service, the enrolled member, and selected provider agency. Also, during provider on-site reviews, the ASO completes a comprehensive review of members' records in the identified sample to determine if services as specified in the service plan were received. The review tool captures whether supporting documentation is present in the file for every service delivered (according to claims data) to the member in at least a three month period. Services that have been provided and have claims data but have no supporting documentation are disallowed. Further, Technical Assistance is provided and the agency is required to address the deficiency(s) via a Plan of Correction.

**Sub-Assurance VI-A: State financial oversight exists to assure that claims are coded and paid for in accordance with the reimbursement methodology specified in the approved waiver.**

*Performance Measure: Percent of processed claims for services reviewed and prior authorized by the ASO.*

Data Source: Discovery & Remediation Reports FY 2011, 2012, and 2013-Indicator 11						
Numerator: Number of processed claims for services reviewed and prior authorized.						
Denominator: Number of processed claims.						
Division Data	SFY 2011 Totals	SFY 2011 Percent	SFY 2012 Totals	SFY 2012 Percent	SFY 2013 Totals	SFY 2013 Percent
Compliant	853,627	100	883,979	100	1,031,269	100
Non-Compliant	0	0	0	0	0	0
Total	853,627	100	883,979	100	1,031,269	100

### Discovery and Remediation Report

Compliance is at 100% for this performance measure. All I/DD Waiver services require prior authorization in order for the claims payer to process and pay. As authorization is issued, the provider is notified by the ASO of the authorization number on which to bill the appropriate claim. The ASO also sends the prior authorization to the claims payer who compares service, provider, member, and prior authorization for appropriateness prior to making payment.

### CMS Findings and Recommendations

Evidence provided by West Virginia demonstrates compliance with this performance measure.

*Performance Measure: Percent of claims paid against current IPPs reviewed.*

Data Source: Discovery & Remediation Reports FY 2011, 2012, and 2013-Indicator 12						
Numerator: Number of claims paid against current IPPs reviewed.						
Denominator: Number of claims paid against all IPPs reviewed.						
Division Data	SFY 2011 Totals	SFY 2011 Percent	SFY 2012 Totals	SFY 2012 Percent	SFY 2013 Totals	SFY 2013 Percent
Compliant	1407	100	8195	100	14730	100
Non-Compliant	0	0	11	0	0	0
Total	1407	100	8206	100	14730	100

### Discovery and Remediation Report

All claims reviewed during the period were paid against current IPPs. In SFY 2011, data is available only for the last month of the fiscal year, as it was discovered that the claims payer was unable to provide that information. As such, monitoring claims paid against current IPPs was added to the review tool effective with reviews conducted in June 2011.

### CMS Findings and Recommendations

Although compliance is at 100% for this performance measure, CMS recommends the following improvements and requested additional information. The State should demonstrate that interviews with State staff and providers are periodically conducted to verify that any identified financial irregularities are addressed. The State should also demonstrate that site visits are conducted with providers to verify that they maintain financial records according to provider agreements/contracts. The evidence provided by the State in the fiscal year 2011-



2012 Discovery and Remediation Report indicates that there were 8,195 claims paid against current IPPs reviewed and 8,206 claims paid against all IPPs reviewed. These numbers differ from the information listed in the Evidence Report for SFY 2012 and clarification was requested.

Documentation submitted by West Virginia indicates that the data for SFY 2012 has been corrected to reflect the accurate information. In addition, West Virginia indicates that they will incorporate the recommendations from CMS into their waiver application.

*Performance Measure: Percent of waiver claims that were submitted using the correct rate as specified in the approved waiver.*

<b>Data Source: Discovery &amp; Remediation Reports FY 2011, 2012, and 2013-Indicator I3</b>						
<b>Numerator: Number of processed claims for services reviewed and prior authorized.</b>						
<b>Denominator: Number of processed claims.</b>						
<b>Division Data</b>	<b>SFY 2011 Totals</b>	<b>SFY 2011 Percent</b>	<b>SFY 2012 Totals</b>	<b>SFY 2012 Percent</b>	<b>SFY 2013 Totals</b>	<b>SFY 2013 Percent</b>
<b>Compliant</b>	<b>853,627</b>	<b>100</b>	<b>883,979</b>	<b>100</b>	<b>1,031,269</b>	<b>100</b>
<b>Non-Compliant</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total</b>	<b>853,627</b>	<b>100</b>	<b>883,979</b>	<b>100</b>	<b>1,031,269</b>	<b>100</b>

#### **Discovery and Remediation Report**

Compliance is at 100% for this performance measure. As per contract, the claims payer will not process payment for more than the approved rate of service. All claims submitted for payment will always pay at the agreed upon rate or less, as may have been submitted by the provider as their standard and customary rate.

#### **CMS Findings and Recommendations**

Evidence provided by West Virginia demonstrates compliance with this performance measure.