DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850

Disabled & Elderly Health Programs Group

December 29, 2015

Steven Costantino
Commissioner
State of Vermont, Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495

Dear Mr. Costantino,

The Centers for Medicare & Medicaid Services (CMS) has completed its review of Vermont's Statewide Transition Plan (STP) to bring state standards and settings into compliance with new federal home and community-based settings requirements. The state's STP is part of the state's Comprehensive Quality Strategy (CQS) for its 1115 (a) Demonstration Waiver called the Global Commitment to Health 1115(a) Demonstration (Global Commitment Demonstration).

Vermont submitted its STP, contained within the CQS, to CMS on September 8, 2015 and then added an Appendix to the document on September 15, 2015. CMS requests additional detail regarding the structure of Vermont's STP and public comments, waivers and settings included in the STP, systemic assessment, site-specific assessment, monitoring of settings, remedial actions, heightened scrutiny, and relocation of beneficiaries. These issues are summarized below.

The Structure of Vermont's STP and Public Comments

- There are three specific sections of the CQS that pertain to the home and community-based settings requirements: 1) the HCBS Transition Plan Preface, 2) The fourth part of Section III State Standards and 3) Appendix B: 42 CFR HCBS Rule and VT Choices for Care Crosswalk. One of the overarching aims of the full CQS document is to assess the quality of care received by members of Vermont's contracted health plan and define the plan's quality improvement goals. Because of this, much of the information contained in the CQS relates to Medicaid managed care policies in Vermont. In order to ensure that the elements of the CQS that relate to home and community-based settings requirements are clearly identified, CMS requests that Vermont add additional language to the CQS Introduction directing the public to the specific sections and pages related to the home and community-based settings transition plan. This will enable the public to more easily locate and comment on this material.
- Vermont conducted its public comment period prior to submitting Appendix B, which includes the crosswalk to the state's Choices for Care Requirements (e.g. legislative rules), to CMS. Therefore, CMS could not determine if the public had an opportunity to comment on Appendix B. CMS requests that the state clarify if Appendix B was part of the CQS during

the public comment period. If the public has not commented on Appendix B, CMS also requests that Vermont notify the public and allow for public comment.

Waivers and Settings Included in the STP:

- Table 1 and Table 6 of Vermont's CQS references home and community-based settings under the Choices for Care Benefit Table. These tables provide information on which federal home and community-based services align with which Choices for Care Benefit and whether they are covered by the Global Commitment Demonstration or the State Plan. However, the state does not indicate in the tables which of the residential and nonresidential settings listed were originally under the 1915(c) waiver, and which were originally a 1905(a) state plan benefit. Please note that all settings that were originally under the 1915(c) waiver will be required to comply with the federal home and community-based requirements. Please clarify this information on the settings listed in the STP and the document's tables.
- Tables 1 and 6 list respite care and companion care as part of the Global Commitment Demonstration, but they are not included in Tables 2 and 7, which list the settings that are being examined in the first phase of the CQS. The CQS also indicates that respite care is provided in foster homes. Please note that foster homes are generally provider-controlled settings and required to comply with the federal home and community-based requirements. CMS requests that Vermont provide additional detail on respite care and companion care to clarify if they are provided in home and community-based settings.

Systemic Assessment:

- Vermont has provided a crosswalk displaying the federal home and community-based requirements and the corresponding state regulations and policies in Appendix B. However, the state did not indicate in the crosswalk if the state regulations comply, do not comply, or are silent with regard to the federal home and community-based settings requirements. CMS requests that the state please include this information in the crosswalk.
- Additionally, the state did not cite the specific sections or provide detailed citations of the state regulations and policies that pertain to the federal requirements. Please include these citations so that CMS is able to verify the state's assessment of compliance.
- Appendix B provides a crosswalk for the Choices for Care program, but additional settings and services are listed in Tables 1 and 6 of the CQS that serve Vermont's populations with special health care needs (i.e. developmental services, traumatic brain injury, community rehabilitation and treatment and children with severe emotional disturbance). As noted earlier, settings that were previously provided under a 1915 (c) waiver are required to comply with the home and community-based settings requirements. CMS requests that Vermont expand Appendix B to include any additional settings, whose policies and rules would be part of the state's systemic assessment.

Site-Specific Assessments:

- Vermont indicates that in Phase 1: "Initiation" the state will develop a plan for the assessment of adult family care settings in the Choices for Care Program. Subsequently, in the description of Phase 2: "Implementation & Additional Discussion", the assessment is referred to as a "self-assessment tool" that is also being used with the four special health needs populations listed above. CMS requests that Vermont clarify whether this is a provider self-assessment or if the state's Managed Care Entity (MCE) will conduct an assessment.
- Additionally, the self-assessment tool may require validation. If Vermont is using a provider self-assessment, please add a description of the validation process that the state will use to confirm the results.
- The timeline proposed by Vermont, and the detailed descriptions of the STP Phases, contains conflicting dates and information. According to Global Commitment to Health Specialized Program Assessment and Quality Phases Table, (Table 3 and Table 8 of the CQS), the adult family care settings are assessed during Phase 1, but the self-assessment tool isn't developed until Phase 2. These activities were scheduled to be concluded in either October 2015 or December 2015. CMS requests that Vermont adjust the timeframe to indicate when the state will develop site specific assessment tools and complete the assessments.

Monitoring of Settings:

- According to the CQS, Vermont's MCE will provide monitoring of all home and community-based settings. However, the STP does not describe either the role of the MCE within the Global Commitment Demonstration or how it relates to the Choices for Care program. Please add language that clarifies and describes the overall role of the MCE with regard to the state's home and community-based settings.
- In Phases 2 and 4 of the STP, Vermont addresses the ongoing monitoring of its settings, stating that these activities will be completed by December 2018. CMS requests that Vermont clarify that the state or the MCE will be conducting ongoing monitoring and will ensure settings remain compliant after initial compliance is achieved on March 17, 2019.

Remedial Actions:

- The CQS does not provide sufficient detail on Vermont's systemic remediation process nor does the state outline specific remedial actions that will address each compliance issue found during the systemic assessment. The overall description of remedial actions in Phase 2 does not mention changes to regulations, policies, and licenses and certification. CMS requests that Vermont add these details to the CQS.
- The STP also does not include a timeline and interim milestones for the systemic remediation, indicating how long the state will take to change needed regulations, licenses and certifications. CMS requests that the state describe the process and timeframe for changing these documents and whether it will require legislative action.
- Vermont's CQS refers to site-specific remediation in Phase 2 where it mentions "corrective action plans" as part of the control processes for adult family care settings. CMS requests that

Vermont provide details regarding the process and timeline for completing the corrective action plans.

- In instances when the additional settings covering the special health care needs populations listed above are required to comply with the federal home and community-based requirements, Vermont does not specify whether these settings will also be required to complete corrective action plans and when these settings will complete remediation. CMS requests that Vermont provide details on the remediation of all settings that must comply with the federal home and community-based requirements.
- In Phase 4: "Maintenance" Vermont's STP indicates that full compliance will be achieved by the end of 2019, but the federal requirements state that compliance is to be achieved by March 17, 2019. Please clarify in the CQS that full compliance will be achieved by the federal deadline.

Heightened Scrutiny:

Vermont should clearly lay out its process for identifying settings that are presumed to have the qualities of an institution; including any additional settings that Vermont may identify that must comply with the federal home and community-based settings requirements beyond the adult family care setting currently addressed in the CQS. Settings that are presumed to have the qualities of an institution are settings for which the state must submit information for the heightened scrutiny process if the state determines, through its assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution. If the state determines it will not submit information for settings meeting the scenarios described in the regulation, the presumption will stand and the state must describe the process for informing and transitioning the individuals involved to compliant settings or non-HCBS funding streams.

Settings that are presumed to be institutional in nature include the following:

- Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- Settings in a building on the grounds of, or immediately adjacent to, a public institution;
- Any other setting that has the effect of isolating individuals receiving Medicaid home and community-based services from the broader community of individuals not receiving Medicaid home and community-based services.

Please ensure that the process for identifying settings presumed to have qualities of an institution is applied to all home and community-based settings included in the revised CQS.

Relocation of Beneficiaries:

The four phases in Vermont's CQS do not include a description of a process for relocating beneficiaries from settings that are unable to comply with the federal home and community-based settings requirements. The CQS should allow for the possibility that some settings will not be able to comply. CMS requests that the state include this information in the revised CQS, including how

beneficiaries will receive support to make informed choices about alternate settings that do comply and how all supports and services needed by an individual will be available at the time of transition.

CMS would like to have a call with the state to go over these questions and concerns and to answer any questions the state may have. The state should resubmit its revised STP, in accordance with the questions and concerns above, within 90 days of receipt of this letter. A representative from CMS' contractor, NORC, will be in touch shortly to schedule the call. Please contact George Failla at 410-786-7561 or George.Failla@cms.hhs.gov with any questions related to this letter.

Sincerely,

Dianne E. Kayla for

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

cc R. McGreal, ARA