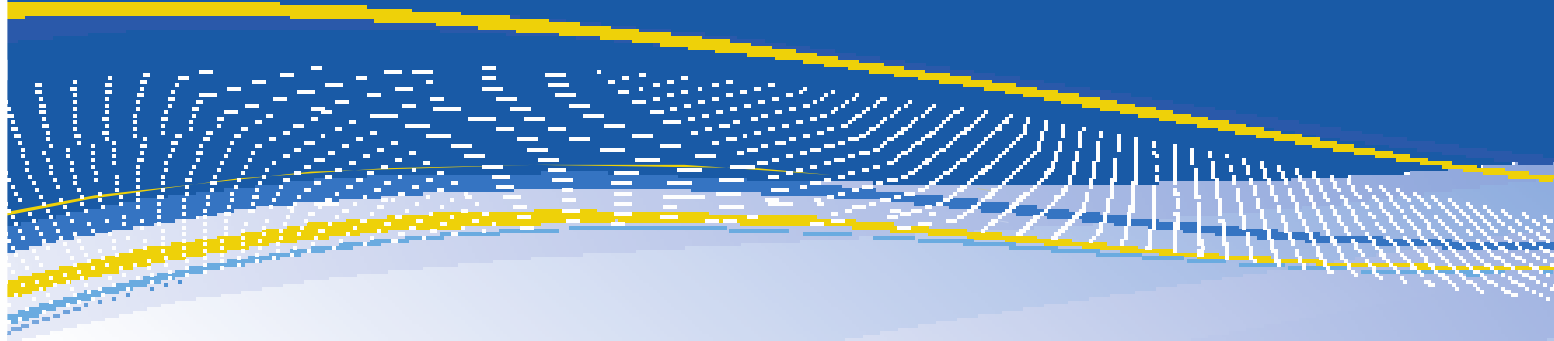
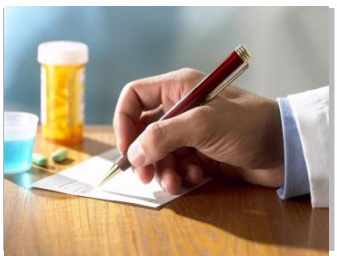




The Home and Community-Based Services (HCBS) Settings Regulation: Where Are We Now and Where Are We Going? – Part I

Division of Long-Term Services and Supports
Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services



Objectives for Today's Session

- Provide a brief refresher on the home and community-based settings criteria;
- Identify barriers and challenges confronted by states when balancing concerns for the health and safety of individuals during the pandemic with the need to comply with the community integration provisions of the home and community-based settings regulation;
- Review timelines for achieving compliance with the settings regulation, including heightened scrutiny submissions to CMS;
- Share two states' experiences in maintaining progress on HCBS settings compliance during the pandemic.

Home and Community-Based Settings Criteria (1 of 4)

Is integrated in and supports full access to the greater community.*

Provides opportunities to seek employment and work in competitive integrated settings, engage in community life and control personal resources.*

Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS.*

*The public health emergency (PHE) impacted each of these criterion.

Home and Community-Based Settings Criteria (2 of 4)

Is selected by the individual from among settings options including non-disability specific settings and an option for a private unit in a residential setting.

The setting options are identified and documented in the person-centered service plan.

The setting options are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

Home and Community-Based Settings Criteria (3 of 4)

Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.

Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices.

Facilitates individual choice regarding services and supports and who provides them.

Home and Community-Based Settings Criteria (4 of 4)

Additional Conditions: Provider-Owned or Controlled Settings

Unit is owned, rented
or occupied under a
legally enforceable
agreement

Privacy, lockable doors,
choice of roommates,
freedom to furnish and
decorate

Freedom to control
one's own
schedule/activities*;
access to food at any
time

Individuals are able to
have visitors of their own
choosing at any time*

*Criterion was impacted by the pandemic

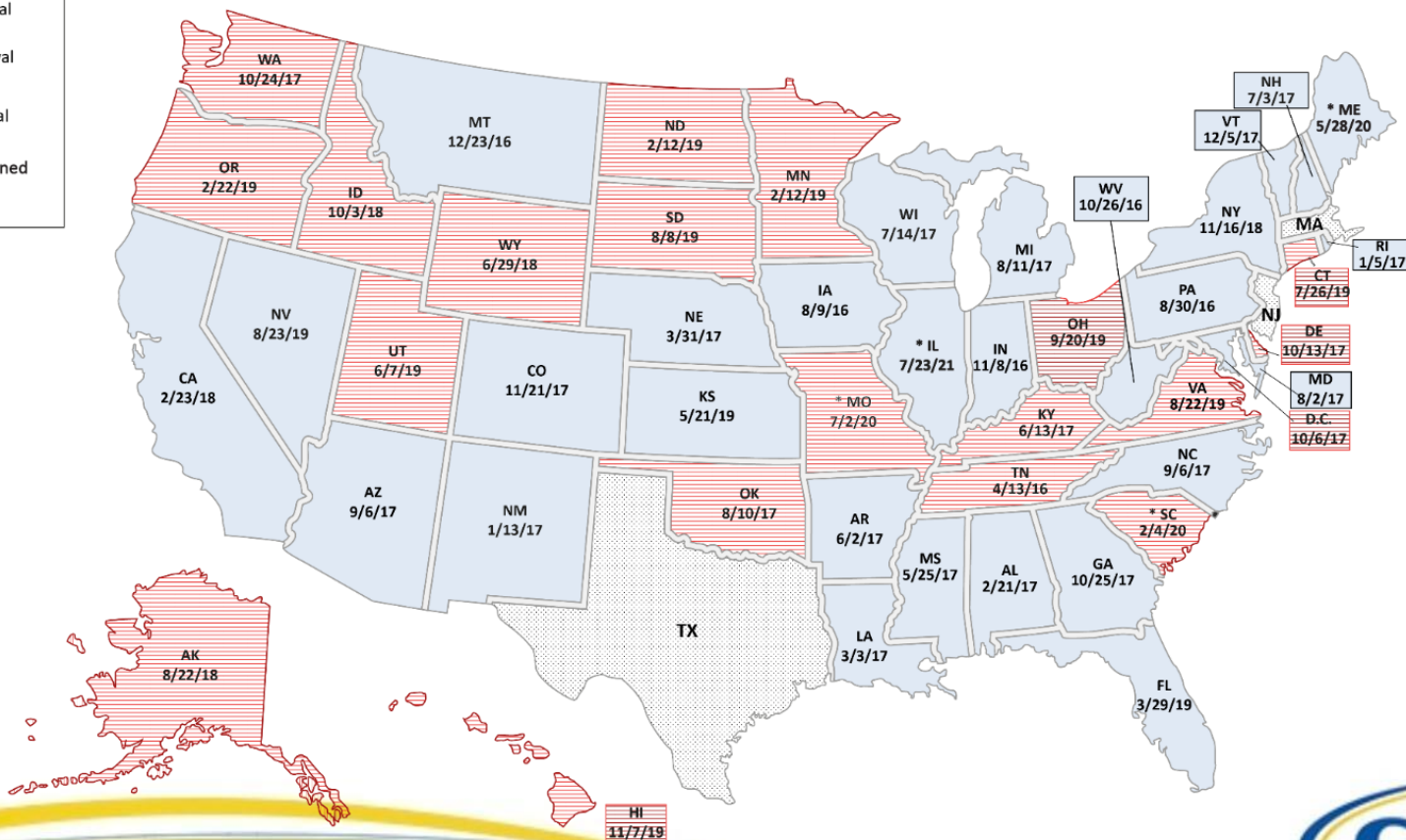
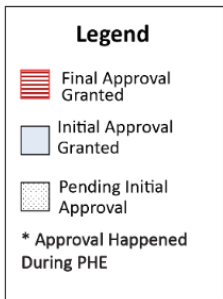
Initial and Final Approvals of Statewide Transition Plans (STPs)

Comparison: Initial and Final Approvals of Statewide Transition Plans (STPs) Before the Public Health Emergency (PHE) to the Present

	As of December 31, 2019	Present
Initial Approval	46 States	48 States
Initial and Final Approval	19 States	21 States

Statewide Transition Plan Status as of November 5, 2021

Statewide Transition Plan Status as of 11/05/2021



Changes to the Delivery of HCBS Triggered by Restrictions Imposed Due to the PHE

- Closing congregate day services or reducing the number of participants in attendance;
- Curtailing or eliminating participant employment opportunities as mandated by businesses/employers in the community;
- Limiting or eliminating on-site, face-to-face participant contact with Case Managers, Service Coordinators, Quality Assurance and Licensing and Certification staff;
- Re-aligning Direct Service Workers (DSWs) staffing patterns to ensure participant coverage where it was needed the most;

Changes to the Delivery of HCBS Triggered by Restrictions Imposed Due to the PHE, (cont.)

- Leveraging technology to continue priority work whenever possible including conducting evaluations and re-evaluations over the phone, providing covered services via telehealth, and establishing remote monitoring of participants to ensure health and safety and to reduce social isolation.
- Delivering services in alternative settings and, in some cases, non-compliant settings;
- Altering implementation activities for settings rule compliance:
 - Planned on-site validation and monitoring visits now had to focus on remote reviews of provider policies and interviews with participants.

Challenges Balancing Health and Safety With the Delivery of HCBS, Assessing Provider Compliance with the Settings Regulation and Ensuring Community Integration

- Many participants were isolated and segregated from family, friends, and home and community-based services as settings closed or were reduced in capacity due to health precautions;
- Access to shopping, meals and/or meal preparation and transportation was curtailed or eliminated;
- Individuals lost wages and means of supplemental support when laid off or terminated from jobs;
- Not all consumers had access to technology supports;
- Some individuals had difficulty remembering what life was like pre-pandemic;
- **All of these realities made assessing provider compliance with the settings regulation very difficult, as life was so different for everyone!**

Settings Regulation Timeline Extension, Presumptively Institutional Settings, and Revised Due Dates for Heightened Scrutiny Submissions to CMS

- Settings regulation timeline extended to **March 17, 2023**.
- Presumptively Institutional Settings:
 - Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment (Category I):
 - Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution (Category II);
 - Revised submission date to CMS for Categories I and II:
March 31, 2021.

Settings Regulation Timeline Extension, Presumptively Institutional Settings, and Revised Due Dates for Heightened Scrutiny Submissions to CMS (cont.)

- Presumptively Institutional Settings (cont.):
 - Any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS (Category III):
 - If the state determines that these settings implemented remediation strategies that brought the setting into compliance with the settings criteria by **July 1, 2021**, then that setting will not need to be submitted to CMS; however, it will need to be posted for public comment with the state's determination and may be reviewed by CMS if there are significant concerns raised during public comment.

Settings Regulation Timeline Extension, Presumptively Institutional Settings, and Revised Due Dates for Heightened Scrutiny Submissions to CMS (cont.)

- States may submit isolating settings that have not completed remediation for a heightened scrutiny review no later than **October 31, 2021** after completing public comment.
- In addition to reviewing a sample of the settings submitted by the state for heightened scrutiny review, CMS will also review any settings that the state requests CMS to review as well as any setting that generated significant public comment in opposition of the state's assessment.

Putting the Pieces Together: Settings Rule Implementation and HCBS Reforms

- As states develop approaches for using the increased federal funds for HCBS available under section 9817 of the American Rescue Plan, implementation of the HCBS settings rule needs to factor prominently in those decisions.
- Increased federal funding can be used for capital investments, including for non-disability specific housing options, in furtherance of complying with the settings criteria.
- States should also be thinking about leveraging increased federal funding for other implementation activities such as provider assessments and trainings and activities to further ongoing monitoring of provider compliance.

Opportunities Under ARP Section 9817 to Support Compliance with the Settings Rule

- Providing in-person or virtual training to providers to support community integration
- Developing new initiatives to increase access to competitive integrated employment for people with disabilities
- Making capital investments to further the availability of non-disability specific settings as part of a state's HCBS options, including to develop deed-restricted accessible and affordable housing units for people with disabilities
- Making modifications to provider-owned settings to support settings compliance
- Expanding the continuum of HCBS to promote beneficiary choice of services and settings

Furthering HCBS Settings Compliance During the Pandemic

State Perspectives

Maine

Missouri

Maine's HCBS Compliance Journey

Heidi Bechard

Office of Aging and Disability Services

December 2021



Maine's HCBS Compliance Journey

- Maine's HCBS settings compliance journey began in 2019
- Identified the degree of system reform required to achieve compliance with the federal HCBS Settings Rule requirements
- Identified current HCBS settings subject to validation

Prepping for the HCBS Compliance Journey

Partnerships and collaboration were critical to support Maine's HCBS settings compliance journey

- Contracted with Subject Matter Experts
- Developed Maine's [HCBS Compliance Portal](#)
- Residential and non-residential setting validations
- Provider education/technical assistance/support
- Ongoing communication with providers/settings
- Monthly CMS TA and small group calls

Gaining Momentum

- **Fall 2019:** OADS hosted Town Hall sessions and held office hours for HCBS providers in advance of HCBS setting self-assessment submissions.
- **Winter 2020:** HCBS Setting validations began, systemic assessment completed, development of initial Statewide Transition Plan (STP).
- **March 2020:** Initial STP posted for public comment and public hearing held. Public comment period ended on March 31, 2020.
- **March 25, 2020:** Onsite HCBS setting validations placed on pause due to PHE.
- **April 13-June 12, 2020:** Further 60 day pause on onsite HCBS setting validations and Individual Experience Assessments (IEA). Move to remote setting validations.

Maintaining Focus and Momentum

- Re-evaluate, recalibrate, and adapt
- Identify providers' needs and how best to support them
- Identify needs of individuals served, families, and their guardians

Maintaining Forward Momentum

- Communications with providers
- Robust development of [OADS HCBS Trainings and Resources webpage](#)
- Monthly HCBS provider meetings
- Completing STP Key Milestones and items identified in Maine's systemic assessment

Overcoming Challenges

- Adapting and adjusting
- Utilizing available resources (internally and externally)
- Change agents
- Maintaining focus on goals

Progress

- Maine's initial STP approved by CMS, May 2020
- Maine's Global HCBS Waiver Person-Centered Planning and Settings rule proposed, September 2021
- Updates underway for HCBS Waivers and associated Rules to align with the HCBS Settings rule
- HCBS setting validations completed, setting findings reports issued, Transition To Compliance Plans (TTCP) approved, evidentiary packages in development
- Person-centered planning and adjustments for provider service implementation plans
- Working toward posting of final STP 2022
- Planning for beyond March 17, 2023

Questions?

Heidi Bechard
Initiatives and Implementation Manager
Office of Aging and Disability Services
Heidi.Bechard@maine.gov



Maine Department of Health and Human Services



Improving lives THROUGH
supports and services
THAT FOSTER self-determination.

Missouri's Compliance with Home and Community-Based Settings (HCBS) Requirements

**Emily Luebbering, Director Federal Programs
Missouri Department of Mental Health
Division of Developmental Disabilities**

MO Waiver Overview



- 👤 Missouri has eleven (11) 1915(c) HCBS waivers
- 👤 The Division of Developmental Disabilities within the Department of Mental Health operates four (4) waivers
 - 👤 Comprehensive
 - 👤 Community Support
 - 👤 Partnership for Hope
 - 👤 Missouri Children's with Developmental Disabilities
- 👤 Serve 15,719 individuals

Statewide Transition Plan

- 👤 MO Statewide Transition Plan initially approved 2017
- 👤 On-Site Participant Assessments completed in 2015-2018
- 👤 Final CMS Approval of Statewide Transition Plan (STP) July 2, 2020

Quality Integrated Functions

Ongoing Compliance/Monitoring

 Provider Relations

 Quality Enhancement

 Targeted Case Management Technical Assistance
Coordinator

 Service Monitoring by Support Coordinators

 Licensure and Certification

 Risk Prevention Consultants




Quality Enhancement

- 👤 March 2020 the first confirmed COVID-19 case in Missouri
- 👤 Identified need for detection and surveillance of individuals receiving IDD services
 - 👤 **Detection**
 - 👤 **Surveillance**
 - 👤 **Communication**

Quality Enhancement Cont.

- 👤 Quality monitoring processes:
 - 👤 Required Training Modifications
 - 👤 Quality Monitoring Process Modifications
 - 👤 Appendix K Authority

Support Coordinators Planning

-  Allowance for an electronic method of signing off on required documents
-  An expedited utilization review process when services need to be adjusted
-  Verbal authorizations by telephone for services

Support Coordinators Monitoring




-  Video monitoring added

Targeted Case Management Technical Assistance Coordinator









- 👁️ Targeted Case Management Monitoring
 - 👤 Continue to conduct quarterly and annual monitoring processes
 - 👤 Conduct reviews as a desk audit with follow up meetings held virtually

Provider Policy/Procedure Monitoring

-  Reviews completed virtually or through alternative methods
-  Review process to include the existence of COVID-19 Strategic Plan
-  100% of reviews completed during pandemic

Licensing & Certification Surveys

-  Surveys scheduled virtually
-  Environments reviewed from the front porch
-  Review of personnel record remotely
 -  Parking lots of agency office
 -  Assessment of the agency office to determine safe to enter
-  100% of sites were reviewed

Resources







DD Coronavirus (COVID-19) Information:

 <https://dmh.mo.gov/dev-disabilities/covid-19-information>

HCBS Transition Plan:

 <https://dmh.mo.gov/dev-disabilities/hcbs>

Includes but not limited to:

-  HCBS Statewide Transition Plan
-  Heightened Scrutiny
-  HCBS Self-Assessment-Participant/Guardian
-  Provider Surveys
-  Trainings
-  Frequently Asked Questions



Improving lives THROUGH
supports and services
THAT FOSTER self-determination.

Thank You

Contact:

Emily.Luebbering@dmh.mo.gov

Moving Forward

- As the country emerges from 18-24 months of PHE constraints and restrictions, CMS reaffirms its commitment to the implementation of the HCBS settings regulation.
- While recognizing the all-encompassing role that the PHE has imposed in order to protect the health and safety of Medicaid participants, CMS, with their state partners, need to ensure that implementation of the settings rule continues as a priority, while solidifying the HCBS reforms identified through Section 9817 of the American Rescue Plan Act of 2021.
- CMS looks forward to continuing this discussion in Part II of our overview of the HCBS settings regulation coming up next!

Resources

- CMS Baltimore Office Contact—Division of Long-Term Services and Supports:
 - HCBS@cms.hhs.gov
- To request Technical Assistance:
 - HCBSSettingsTA@neweditions.net
- Frequently Asked Questions (FAQs): HCBS Settings Regulation Implementation, Heightened Scrutiny Reviews of Presumptively Institutional Settings, published by CMS on March 22, 2019:
 - <https://www.medicare.gov/federal-policy-guidance/downloads/smd19001.pdf>

Resources (cont.)

- Home and Community-Based Settings Regulation—
Implementation Timeline Extension and Revised Frequently
Asked Questions State Medicaid Director Letter, SMD # 20-003,
July 14, 2020
 - <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd20003.pdf>