

Home and Community-Based Settings: The Post Transition Landscape

August 2023

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Overview

- Provide a home and community-based services (HCBS) settings rule implementation status update, including proposed Corrective Action Plans (CAPs);
- Review ongoing monitoring requirements and considerations;
- Discuss ongoing compliance and heightened scrutiny considerations;
- Highlight promising practices for engaging providers, beneficiaries, and stakeholders;
- Share two states' experiences (Nebraska and Oregon); and
- Administration for Community Living (ACL) will share an overview of the importance of stakeholder input.
- Share a provider's implementation pathway

HCBS Settings Rule Status Update, Including Proposed CAPs

The Goal of the HCBS Settings Rule

- The HCBS Settings Rule was created to ensure that every person receiving Medicaid-funded HCBS has full access to the benefits of community living.
- It protects individuals' autonomy to make choices and to control the decisions in their lives, which most people take for granted. This includes controlling personal resources; ensuring a person's privacy, being treated with dignity and respect, and having freedom from coercion and restraint; deciding what and when to eat; having visitors; being able to lock doors; and having the protections of a lease or other legally enforceable agreement.
- The rule requires a person-centered process for receipt of HCBS, which means that the individuals receiving services direct the planning process and the plan reflects their own preferences and goals they have set for themselves.
- The rule is critical to CMS' broader efforts to expand availability and improve the quality of Medicaid-funded HCBS.

Corrective Action Plans (CAPs)

- The transition period for regulation implementation ended on March 17, 2023 and states were able to request a time-limited CAP to come into compliance with requirements that were directly impacted by the COVID-19 public health emergency (PHE).
- States had the opportunity to request a CAP for certain requirements, such as:
 - Access to the broader community;
 - Opportunities for employment;
 - Options for a private unit and/or choice of a roommate; and
 - Choice of non-disability specific settings.
- States could also request a CAP to complete remediation related to the CMS heightened scrutiny site visit findings and/or for heightened scrutiny settings that had not yet received final adjudication from CMS.
- All CAPs will be approved effective March 17, 2023.

CAP Status

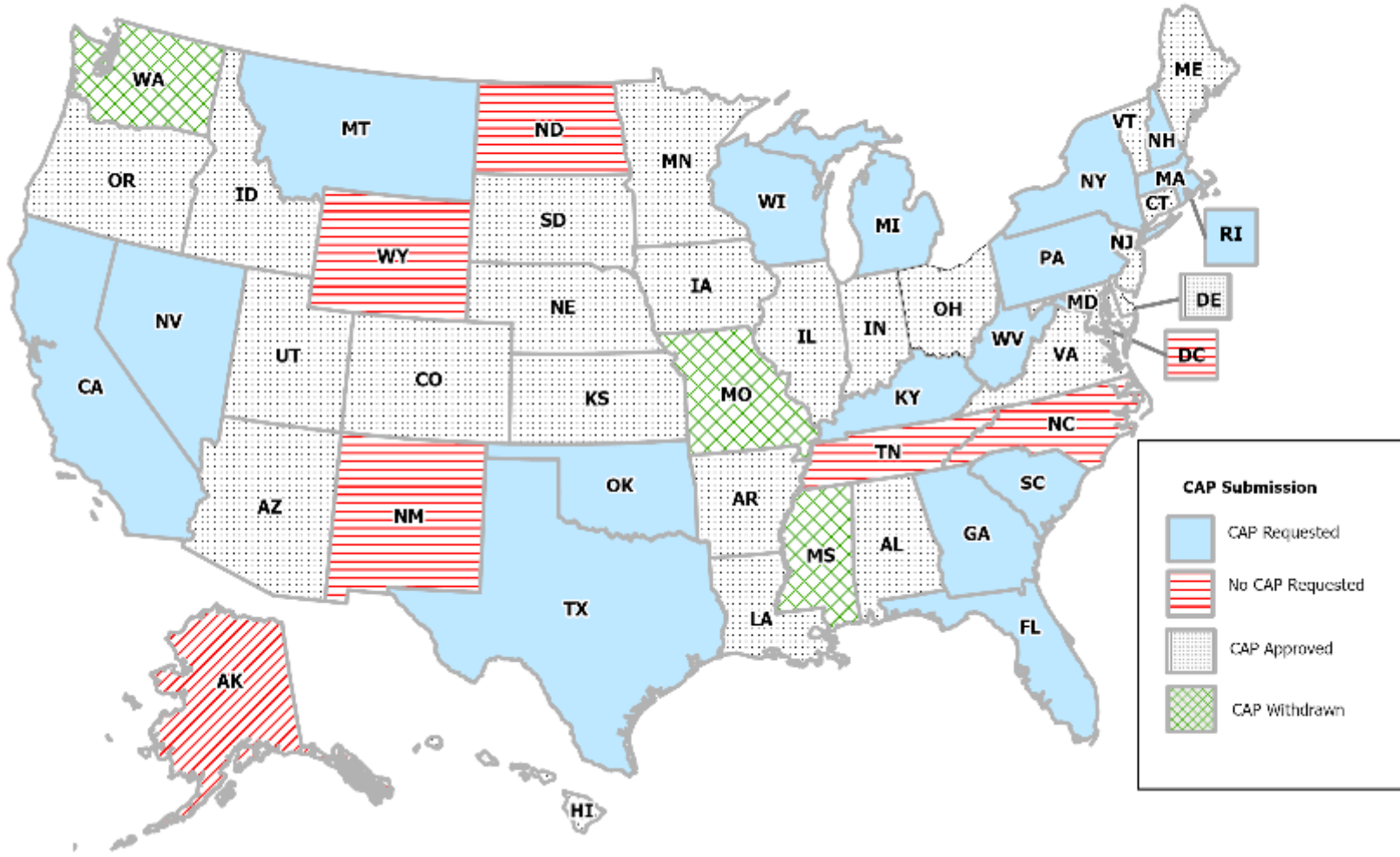
- CAPs apply only to states' settings that were eligible for the transition period (setting types in the state's HCBS delivery system as of the effective date of the final rule).

- As of August 4, 2023:
 - 44 states requested a CAP
 - 24 states have an approved CAP
 - 3 states withdrew their CAP request
 - 7 states did not request a CAP

 - Proposed and approved CAPs are posted on Medicaid.gov:
<https://www.medicaid.gov/medicaid/home-community-based-services/statewide-transition-plans/index.html>

CAP Status (cont.)

State CAP Submission Status as of 8/4/2023



CAP Monitoring and Oversight: CMS Responsibilities

- Schedules the initial conference call with the state to discuss:
 - CAP requirements/milestones
 - Including the state process for meeting the milestone criteria in the CAP;
 - CMS and state roles
 - Confirms ongoing meeting frequency (monthly, bi-monthly, quarterly, etc.);
 - Clarifies circumstances under which CMS will deem a particular task met.
- Conducts ongoing monitoring:
 - Provides feedback to the state via monthly monitoring meetings;
 - Ensures that the state is on track in meeting the goals and objectives of the CAP.
- Identifies a need to modify the CAP
- CAP remediation:
 - Determines milestone completion status;
 - Issues the CAP completion letter and publish on Medicaid.gov.

CAP Monitoring and Oversight: State Responsibilities

- Provides ongoing status reports to CMS within agreed upon time frames, including:
 - Confirming milestone deliverables and evidence;
 - Emerging challenges and/or stakeholder concerns.
- Identifies any need to modify the CAP.
- Monitoring and oversight includes resolving issues identified in heightened scrutiny report.
- CAP modifications may occur if:
 - The state or CMS discovers additional tasks required to demonstrate compliance with the settings criteria; and/or
 - The state determines (in consultation with CMS) that the established objectives, action steps, and/or timelines in an existing CAP should be modified in order to meet the established goal.

CAP Enforcement Mechanisms

- Full compliance is achieved when all Medicaid-funded HCBS are rendered in a compliant setting.
- Completion of the CAP will be granted after the state completes the activities described in the approved CAP, at which point the state will be in full compliance with all HCBS settings provisions of the regulation.
- In the event a state does not comply with or complete its CAP, CMS will use the enforcement flexibilities authorized under Medicaid rules including:
 - General Medicaid rules that apply to all authorities related to Federal Financial Participation (FFP) that permit deferrals or disallowances at 42 CFR Part 430 Subpart C; and
 - Strategies to ensure compliance under 1915(c) waivers including, but not limited to, enrollment moratoriums at 42 CFR §441.304(g)(3).

Ongoing Monitoring Requirements and Considerations

Ongoing HCBS Settings Compliance: Overview

- States have mechanisms in place for ongoing monitoring, to detect areas of non-compliance, and to ensure continued systemic compliance with the HCBS settings criteria, as is true for all Medicaid provisions.
- States articulated their process for ongoing monitoring in Statewide Transition Plans, but ongoing monitoring is required for all HCBS waivers, state plan benefits, and 1115 demonstrations beyond March 17, 2023.
- Through waiver actions and state plan amendments, states will describe how functions such as case management, licensure and certification standards, beneficiary feedback and other options for ongoing monitoring will be used to identify and remediate any provider compliance issues.

Ongoing HCBS Settings Compliance: Authorities Providing HCBS

- 1915(c) HCBS waivers, 1915(i) and 1915(k) state plan benefits, and 1115 demonstration authorities providing HCBS require information for ongoing monitoring and oversight of HCBS settings, including, but not limited to:
 - Where services are provided (settings);
 - How settings will meet, initially and ongoing, the settings requirements at 42 CFR §441.301(c)(4)-(5); 42 CFR §441.710(a); and 42 CFR §441.530;
 - The process by which states will monitor settings for compliance; and
 - The process by which states will address any non-compliance and remediation efforts.
- Specific requirements for each of the Medicaid authorities are listed in their respective technical guides, applications, and/or special terms and conditions, with links found in the Resource slides of this presentation.

Ongoing HCBS Settings Compliance: Ongoing Monitoring after March 17, 2023

- Examples of state methods for ongoing monitoring include:
 - Incorporating the settings requirements into state policies and procedures including existing licensing, certification, credentialing, case management, and quality assurance processes.
 - On-site or virtual visits to observe settings and individual integration into the community, review of records, interviews of individuals served, interviews of direct support staff, validated provider self-assessment, consumer satisfaction surveys linked to specific areas, and/or managed care plans' performance monitoring.
- States should use data to ensure accurate and consistent monitoring across settings and HCBS programs.
- The ability to collect, track, and trend data is the foundation of effective quality performance management and improvement across HCBS programs.

Ongoing HCBS Settings Compliance: Monitoring and Provider Training

- The transition period has ended and states should already have shifted focus from transition work to the ongoing monitoring of and compliance with HCBS requirements.
 - States should provide ongoing training opportunities for providers to ensure compliance.
 - Provider training could include:
 - Person-centered thinking for all HCBS providers, regardless if the service they provide is in a provider-owned or controlled setting, a person’s home, or the community;
 - Annual refresher trainings for providers on the intent of the rule and how to practically apply the tenets of the rule.
 - HCBS settings requirements should be included in all new provider training.
- State staff responsible for oversight and monitoring may also benefit from annual refresher trainings.

Ongoing HCBS Settings Compliance: Monitoring and Remediation

- If a state finds that a setting is out of compliance with the setting requirements, it should consider taking the following steps to support provider remediation:
 - Report assessment results to the provider and identify provider actions needed to remedy areas of non-compliance;
 - Assist providers to achieve compliance and address issues that appear to be preventing compliance; and
 - Require providers to implement corrective action plans to remedy non-compliance.
- States should work with providers and offer technical assistance as needed to support remediation.
- Beneficiary relocation should only be considered when the provider is unwilling or unable to remediate.

Ongoing HCBS Settings Compliance: HCBS Settings Requirements and Considerations for Unwinding from the PHE

- States that received CMS approval for Appendix K flexibilities related to the settings rule need to ensure ongoing compliance with the settings rule once the flexibility ends.
- States requested these flexibilities for settings that were not established by the effective date of the final settings regulation, and were therefore not covered by the transition period. These settings had to be in compliance with the regulatory criteria in order to begin HCBS provision.
- The U.S. Department of Health and Human Services ended the COVID-19 PHE on May 11, 2023. CMS encourages states to notify their providers and settings that the PHE flexibilities will be ending.

Ongoing HCBS Settings Compliance: Health & Welfare (1 of 3)

- All HCBS authorities contain quality expectations.
 - 1915(c) HCBS waivers and 1915(k) CFC State Plan Options must provide assurances to CMS that the state has necessary safeguards to protect the health and welfare of participants receiving services.
 - 1915(i) State Plan HCBS benefit and the 1915(k) CFC State Plan Option require a quality improvement strategy that includes measures for quality of care and individual experience.
 - States that provide HCBS through an 1115 demonstration must provide similar information in the special terms and conditions (STCs).
- Ongoing monitoring of HCBS requirements support states in meeting waiver assurances and quality requirements.
- Ongoing monitoring of HCBS requirements can also support states' waiver incident management processes.
 - Ongoing monitoring can be a tool in a robust incident management process, identifying issues early before they rise to the level of 'incident'.

Ongoing HCBS Settings Compliance: Health & Welfare (2 of 3)

- Example of HCBS non-compliance issue:
 - Access to food at any time is restricted in a residential setting.
 - Issue can be discovered early through regular ongoing monitoring processes:
 - Monitoring of setting and provider practices and/or
 - Case management/service coordination monitoring of person-centered service plans (PCSP).
 - Prompt identification allows time for correction and compliance.
 - Findings can also highlight areas for quality improvement.
- Monitoring and incident management efforts that are not aligned can lead to gaps in the system and non-compliance *issues* that become *incidents*:
 - Nutritional deficiency; or
 - Abuse or neglect.

Ongoing HCBS Settings Compliance: Health & Welfare (3 of 3)

- All these efforts can feed into states' quality improvement strategies, whether to address specific performance measure deficiencies or to address overall systemic improvement and enhancement.
- The HCBS rule was designed to enhance the quality of HCBS and provide additional protections to beneficiaries.
- States can use ongoing monitoring, incident management, and quality assurance as three connected tools to support overall waiver quality.

Ongoing HCBS Settings Compliance and Heightened Scrutiny Considerations

Ongoing HCBS Settings Compliance: Heightened Scrutiny (1 of 4)

- One of the key components of the STP and activities under approved CAPs is heightened scrutiny; a joint process under Medicaid regulations at 42 CFR §441.301(c)(5)(v) where both states and CMS review presumptively institutional settings and CMS determines whether the setting complies with the settings regulatory criteria.
- States described in their STPs their plans for identifying settings presumed to have institutional characteristics:
 - Settings in the same building as a public or private institution,
 - Settings on the grounds of or adjacent to a **public** institution, and
 - Settings with qualities that isolate Medicaid beneficiaries from the broader community of individuals not receiving Medicaid HCBS.

Ongoing HCBS Settings Compliance: Heightened Scrutiny (2 of 4)

- States also included the proposed process for evaluating these settings and preparing information for submission to CMS for review under heightened scrutiny when the state determined the setting did or would comply with the regulatory criteria by March 17, 2023.
- Heightened scrutiny is the mechanism through which presumptively institutional settings may continue receiving federal funding for HCBS, if the state and CMS affirm that the setting adheres to all regulatory settings criteria.
- Federal funding is not available for HCBS rendered to individuals in a setting that does not overcome its institutional presumption.
- If the state receives information or discovers through ongoing monitoring processes that a provider has altered its operations to no longer comply with regulatory criteria, or there is a need to assess a newly discovered or newly constructed presumptively institutional setting in the state, the state must contact CMS to determine next steps.

Ongoing HCBS Settings Compliance: Heightened Scrutiny (3 of 4)

- States are required to monitor existing and newly constructed settings.
- States are required to submit presumptively institutional settings that the state has determined have overcome the presumption for CMS review.
 - Settings that require heightened scrutiny are not determined to be compliant until they have completed the heightened scrutiny process, including CMS review, and demonstrate compliance.
- States should ensure that individuals who review settings as part of ongoing monitoring are fully trained to understand all aspects of the settings rules, including heightened scrutiny, to ensure an accurate initial review of settings prior to any submission of settings by the state to CMS.
- CMS encourages states, providers, builders and other stakeholders to thoughtfully consider alternatives to new development of presumptively institutional settings.

Ongoing HCBS Settings Compliance: Heightened Scrutiny (4 of 4)

- States may wish to work proactively with their provider communities to ensure that new settings are not developed that would require heightened scrutiny and/or that existing settings do not alter operations in such a way that they become isolating. States may consider strategies such as:
 - Conducting regular provider engagement with new/existing providers who want to add settings;
 - Requiring providers to attend an informational session on HCBS requirements (done by the state) as a precursor to applying to be an HCBS provider; and
 - Encouraging interested providers to tour/shadow existing providers with settings that have successfully completed the heightened scrutiny process to understand how to best operate.

Resources to Assist States with Heightened Scrutiny Reviews

- To facilitate CMS' heightened scrutiny reviews and avoid follow-up questions, states should review available resources, including the continued use of an assessment tool that provides a methodical, thorough and consistent analysis, to help determine if a setting meets the requirements of the HCBS settings regulation.
- CMS Exploratory Questions to Assist States in Assessment of Residential and Non-Residential HCBS Settings may help states to build upon their assessment tools.
 - The exploratory questions are located in the HCB Settings Requirements Toolkit. There is a link to the Toolkit in the Resources slides.

Ongoing HCBS Settings Compliance: Insights from CMS' Heightened Scrutiny Site Visits Background

- In calendar years 2022-2023, 14 states have received a site visit from CMS.
- CMS selected states based on presumptively institutional settings that states submitted or settings in the state that were identified by federal partners or stakeholders.
- The site visit team has visited various settings across all three categories of presumptively institutional settings, including assisted living facilities, memory care units, adult day care centers, group homes, settings providing day services, sheltered workshops, intentional community/campus settings, and farmsteads.
- The findings from the site visits suggest there are concerns with overall assessments for compliance with the settings criteria, not limited to assessments of presumptively institutional settings.
- In some states, the entities responsible for the assessment and ongoing monitoring of settings, such as licensing and case management entities, are more familiar with settings' day-to-day processes; whereas the entities conducting heightened scrutiny reviews may not have that same experience or familiarity, leading to flawed findings.

Ongoing HCBS Settings Compliance & Common Site Visit Findings: Person-Centered Service Plans

- CMS reviewed service plans in advance, as well as on-site. In several states, CMS found:
 - Settings do not typically have the current service plans for all Medicaid HCBS beneficiaries who are served at the setting;
 - Individuals do not appear to have participated in the plan development and/or have not signed the plan; and
 - Individuals are functioning under provider-specific plans of care, or in some cases there are plans only known to the case manager and the individual.
 - Plans often did not record what was important to people, their preferences or their goals.
 - There was often no indication in the plans that choice had been offered, whether it was choice of setting, living location, employment or community integration or how the person managed their personal resources.
 - Restrictions were observed that were not supported by a specific assessed need for the individual or justified in the individual's person-centered plan and, therefore, are not permissible under the regulations as an individual modification to the regulatory criteria.

Ongoing HCBS Settings Compliance & Common Site Visit Findings: Provider-Owned or Controlled Settings: Identification

- CMS has found examples of states not identifying provider-owned or controlled settings as such if the setting is not formally owned by a provider of HCBS.
- CMS reminds states and stakeholders that the additional regulatory criteria found at 42 CFR §441.301(c)(4)(vi) also applies to settings controlled by a service provider.
 - This includes scenarios in which a provider has influence over whether an individual is accepted for residency.
 - This includes scenarios in which the landlord has influence over which service providers the individual in the setting uses.

Ongoing HCBS Settings Compliance & Common Site Visit Findings: Lease/Residency Agreements

42 CFR §441.301(c)(4)(vi): In a provider-owned or controlled residential setting, in addition to the qualities at 42 CFR §441.301(c)(4)(i) through (v), the following additional conditions must be met:

(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and **the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.** For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, **and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.**

Ongoing HCBS Settings Compliance & Common Site Visit Findings: Restrictive Language in Lease, Residency Agreement, or Other Form of Written Agreement

- CMS has found restrictive language in lease or residency agreements that is inconsistent with typical lease agreements.
- Examples of restrictive language in lease or residency agreements that the site visit team has seen during visits include requirements for the individual to:
 - Work on the provider’s worksite;
 - Pay the provider for lack of attendance at the worksite;
 - Move out during specified periods of time; and/or
 - Be evicted if the individual’s needs increase even if resources were available to provide additional support.

Promising Practices for Lease/Residency Agreements

- Some states have worked to assure compliant leases and residency agreements by collaborating with providers and provider associations to develop templates for standard leases and/or residency agreements that are inclusive of all regulatory requirements.
- As states navigate the landlord/tenant law requirements, which may vary throughout the state and across local jurisdictions, states should consider consulting their legal team to ensure any template lease or residency agreement includes the required protections.
- States should offer provider training to ensure all the requirements of the lease/residency agreement template are met.

Ongoing HCBS Settings Compliance & Common Site Visit Findings: Additional Themes

- Common site visit findings include:
 - Access to visitors;
 - Community integration;
 - Provider staff training on HCBS.

Promising Practices for Engaging Providers, Beneficiaries, and Stakeholders

Promising Practices: Support and Education for HCBS Providers-State Examples

- Development and distribution of educational materials such as:
 - Community integration tips sheet for providers with detailed examples that providers can use to help individuals be a part of their community and develop personal relationships outside of individuals who are paid to provide services or other individuals who are also receiving services.
 - Community inclusion and integration fact sheet:
 - Contains definitions of community inclusion and integration, types of activities to promote community integration and inclusion, and how settings can ensure it is happening; and
 - The fact sheet links to scenarios with examples of what community inclusion and integration looks like and what it does not look like (reverse integration, segregated activities in the community).
- Trainings for providers of four setting types and facilitated peer-to-peer discussions which were recorded and posted to the state website for future viewings.

Promising Practices: Support and Education for HCBS Beneficiaries and Advocates-State Examples

- Most states include information on their Medicaid agency website or other operating agency website to provide updates on the status of implementation activities.
- Some states also include training and other informational materials specifically for HCBS beneficiaries, their supporters, and advocates.
- Examples include:
 - Videos in English and Spanish that explain HCBS provisions;
 - Virtual training on person-centered planning, thinking, and practice; and
 - Training on HCBS Settings Rule: Basics and Advocacy with the state’s protection and advocacy agency.
 - The recorded training was interactive and had scenarios to help webinar participants walk through real world examples of typical restrictions that people might encounter.

Promising Practices for Beneficiary Complaints and Feedback (1 of 4)

- Last year CMS requested states provide, by January 1, 2023, information on how regulatory settings criteria have been incorporated into state-level oversight and enforcement, how providers have been assessed for regulatory compliance, and how beneficiaries have an identified point of contact to report concerns about provider compliance.
- For beneficiary complaints, many states identify the case manager as a contact for the beneficiary to report concerns about provider compliance.
- Some states also describe options beyond case management like on-line portals to report directly, 1-800 numbers, requirements for health plans to have complaints procedures, a dedicated staff to receive and track complaints, and outreach to beneficiaries and training to make sure consumers know their rights. One state notes a *no wrong door* approach to file a complaint.

Promising Practices for Beneficiary Complaints and Feedback (2 of 4)

- State example #1:
 - 1-800 numbers, with dedicated lines for reports of abuse, exploitation, and neglect, residential settings, adult family homes, or assisted living facilities.
 - Annual issuance of a copy of client rights, the client complaint process, and contact information to file a complaint at the time of the person-centered service planning meeting.
 - Beneficiaries may notify the state of provider non-compliance by phone or email by contacting their case worker. Additionally, when specific to a residential setting, the investigative agency, the Complaint Response Unit, may be notified by the client. When the state receives a complaint, the state follows the processes identified in the STP for provider remediation.

Promising Practices for Beneficiary Complaints and Feedback (3 of 4)

- State example #2:
 - My Rights videos and other resources for beneficiaries in multiple languages. Materials are publicized through several channels including a state informational memo, newsletters, and social media.
 - A dedicated section to the state’s HCBS settings final rule website where a beneficiary may ask a question or report a concern.
 - Beneficiaries can report concerns to their case managers.
 - The state plans to have a tool/checklist for case managers.
 - Survey for beneficiary, family, and advocates.
 - Department-wide complaint line.

Promising Practices for Beneficiary Complaints and Feedback (4 of 4)

- If a state makes different or additional opportunities available for beneficiaries to discuss provider concerns, transparency to stakeholders is strongly encouraged.
- CMS is posting the information states submitted on January 1, 2023 to Medicaid.gov.

Communication and Support for Beneficiaries when a Provider will not be Compliant

- CMS required states to include a detailed strategy in their STPs to assist participants receiving services from providers not willing or able to come into compliance with the settings regulations.
- States provided the timeline and a description of the processes for assuring that beneficiaries, through the person-centered planning process, are given the opportunity, the information and the supports necessary to make an informed choice among options for continued service provision, including in an alternate setting that aligns with the regulation.
 - This description and timeline specifically explained how the state intended to assure beneficiaries that they would be provided with sufficient communication and support, including the entity responsible for assisting the individual with the process, options among compliant settings, and assurance that there will be no disruption of services during the transition period.

Promising Practices for Supporting Beneficiaries when a Provider will not be Compliant-State Examples (1 of 3)

- Participants receive in-person notice of need to transition:
 - Face-to face visits with beneficiaries, family members, and/or guardians.
- Participant visits to settings options and/or roommate selection:
 - One state STP explicitly states: The member will have the opportunity to visit each setting option of his or her choosing and will make a final selection. Individuals will have choice among qualified providers, settings and be provided opportunities to visit several settings and given information to help them understand the various options available.
 - Another state's DD system built a 6 month transition timeline to include time for the individual to meet and select roommates for residential moves and to make a home visit.

Promising Practices for Supporting Beneficiaries when a Provider will not be Compliant-State Examples (2 of 3)

- Post-transition monitoring:
 - One state plans to review care coordinator/case manager documentation on any participants that transition as a result of setting noncompliance on a quarterly basis for the two years following the transition to monitor the participant's experience and to ensure the new setting is adequately and effectively meeting the participant's needs.
 - Another state plans to survey participants who had to transition within 30 days of the transition. The state will address issues identified through the survey process within 30 days.
 - A third state uses weekly case manager reports to the state Medicaid agency on the status of the transition process and the case managers are directed to follow up with the individual on a weekly basis or the frequency the individual requests.

Promising Practices for Supporting Beneficiaries when a Provider will not be Compliant-State Examples (3 of 3)

- Other promising practices:
 - Beneficiaries are also notified of potential sources of advocacy (including state protection and advocacy agency, ombudsman, other advocacy organizations) and state HCBS contact;
 - One state added community transition services to two 1915(c) HCBS waivers in order to ensure that participants relocating to a less restrictive setting have needed services and supports in place in advance of the individual's transition; and
 - Several states posted their transition training materials, policies, and/or manuals on-line.

Stakeholder Engagement

- States should continue to engage stakeholders beyond the transition deadline.
 - Stakeholders include beneficiaries, self-advocates, advocates, families;
 - Engagement is MORE than just public comment periods;
 - Engagement is MORE than annual service plan reviews or individual experiences surveys (even though those tools contribute to overall monitoring of compliance); and
 - Engagement could include active, ongoing workgroups or advisory committees, and/or regular town halls (these can be done virtually or via large conference calls).
- Stakeholder engagement is key to effective implementation and ongoing maintenance of settings criteria.

Promising Practices for Stakeholder Engagement: Educating External Stakeholders Is Key!

- Educate **ALL** members of the stakeholder community on the settings criteria and the state's process(es) for ongoing provider monitoring using a variety of modalities.
- A shared understanding of the HCBS settings criteria, coupled with the opportunity to ask questions, identify issues and raise concerns in a non-threatening, welcoming environment builds group cohesiveness, trust, and a common bond.
- Getting everyone on the same page will help with messaging a clear and consistent goal to share and gather information or to answer questions when they arise.
- Accurate, honest and reliable information is key!

2023 HCBS Conference-Nebraska

The Post-Transition Landscape

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Welcome and Introductions



*Director Tony Green
Division of Developmental
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*Deputy Director Kristen Smith
Policy, Quality, and Eligibility
Division of Developmental
Disabilities*

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Nebraska – Where is it?



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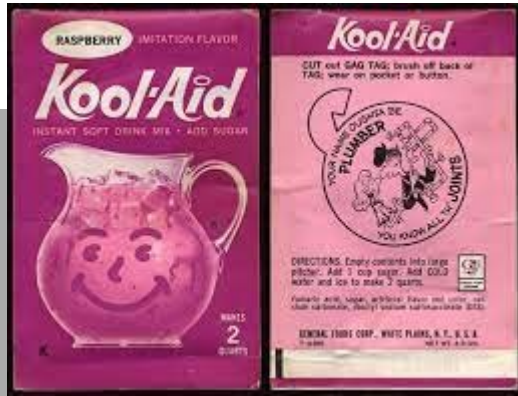
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Nebraska



Nebraska



Medicaid HCBS Waivers in Nebraska

- Aged and Disabled Waiver (AD Waiver)
 - All ages with a disability and ages 65 and older, meet nursing facility level of care.
 - Intended to help people live safely in their own home or assisted living; instead of a nursing facility.

- Comprehensive Developmental Disabilities Waiver (CDD Waiver)
 - All ages, eligible for DD services per NE statute, and meet ICF/IID level of care.
 - Intended to maximize independence as people live, work, and socialize in their community.

- Developmental Disabilities Adult Day Waiver (DDAD Waiver)
 - Age 21 and older, eligible for DD services per NE statute, and meet ICF/IID level of care.
 - Intended to maximize independence to work in the community; focus on competitive, integrated employment.

- Traumatic Brain Injury Waiver (TBI Waiver)
 - Ages 18 through 64, meet nursing facility level of care.
 - Provides specialized assisted living.

- Family Support Waiver (FSW) – UNDER DEVELOPMENT
 - Children ages birth to 21 years old, serves up to 850 with a budget of \$10,000;
 - Intent to provide support to children and their families.

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Nebraska's HCBS Waiver Population

Waiver	Total Served	Level of Care	Registry
Aged and Disabled	7,364	Nursing Facility	No
Traumatic Brain Injury	18	Nursing Facility	No
DD Adult Day	394	ICF/IDD	No
DD Comprehensive	4,855	ICF/IDD	Yes (2,489)
Total	12,631		

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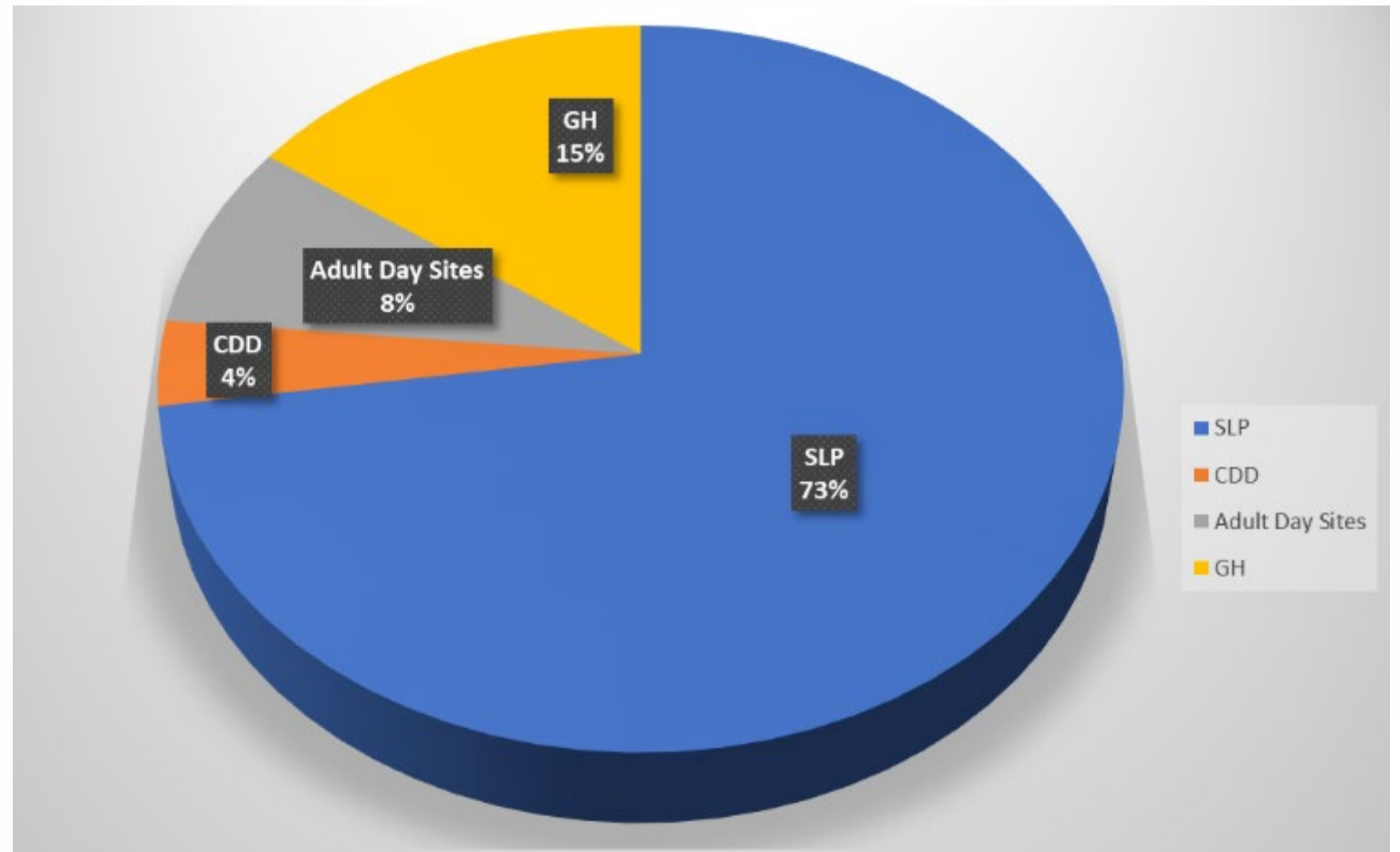
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Nebraska Waiver Sites

Total: 2042



Types: Shared Living Provider (SLP), Centers for Persons with Developmental Disabilities (CDD), Adult Day Site, Group Home (GH)

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Nebraska's Final Rule Overview

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Nebraska's CAP

- The requested CAP allowed Nebraska time to resolve working through the adjudication process with CMS for Heightened Scrutiny settings and to work through the completion of the STP milestones.
- CMS approved the CAP for Nebraska on 6/26/2023.
- Medicaid authorities subject to the CAP - 1915(c) HCBS Waivers:
 - Developmental Disabilities Adult Day Services (DDAD) Waiver, NE.0394
 - Comprehensive Developmental Disabilities Services (CDD) Waiver, NE.4154
 - HCBS for Aged and Adults and Children with Disabilities (A&D) Waiver, NE.0187
 - Traumatic Brain Injury (TBI) Waiver, NE.40199

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State Milestones and Timeframes Under the CAP

Milestone	Begin Date	Completion Date
Heightened Scrutiny Activities		
Submit the list of settings identified by settings type and category of institutional presumption to CMS.	—	March 24, 2023
Submit information to CMS on presumptively institutional settings selected by CMS for a sampled heightened scrutiny review.	April 18, 2023	April 21, 2023
Address heightened scrutiny findings related to CMS' heightened scrutiny review including, as applicable, remediation of all similarly situated settings that utilize a similar service delivery model and, as applicable, any overall assessment processes of all providers of HCBS in the state to ensure that all providers are being assessed appropriately against the regulatory settings criteria.	Date CMS issues findings to the state.	The later of March 17, 2024, or 12 months post the date CMS issues findings to the state.
Statewide Compliance		
Final compliance statewide with HCBS settings rule.	—	The later date of March 17, 2024, or 12 months post the date CMS issues findings to the state.

Evaluated Settings for Nebraska Waivers

AD Waiver	DD Waivers	TBI Waiver
Assisted Living Facilities	Host Home/Shared Living	Assisted Living Facilities
Adult Day Health	Group Home	
Extra Childcare for Children with Disabilities	Centers for Developmental Disabilities (CDDs)	
Respite Settings	Adult Day Settings	
	Day Support (Workshop)	
	Hubs	

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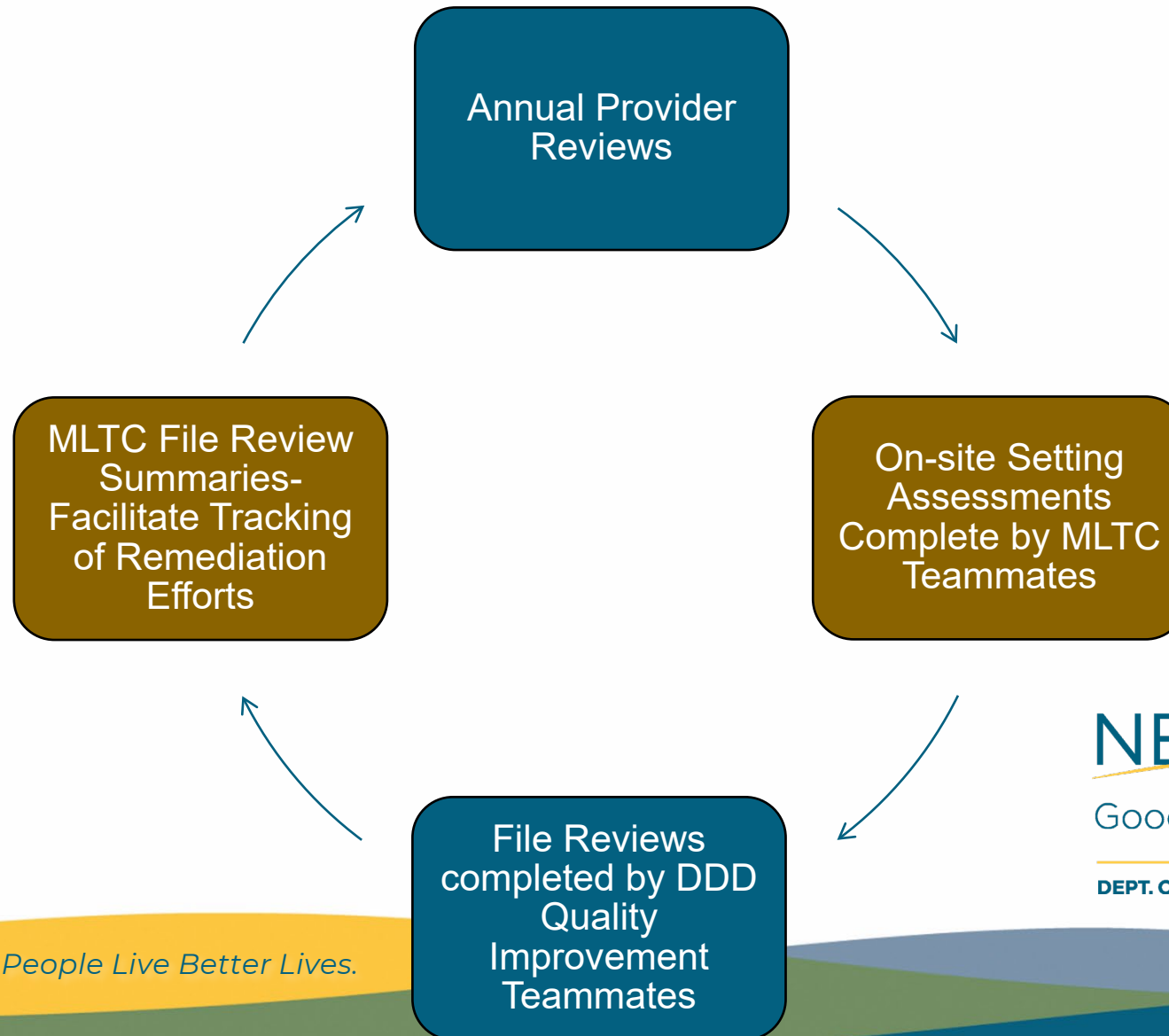
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Ongoing Monitoring - (AD/TBI) Waivers

Ongoing Monitoring is a collaborative effort between the Division of Developmental Disabilities (DDD) and the Division of Medicaid and Long-Term Care (MLTC).



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AD/TBI Waiver Compliance Assessment Tool

Provider Setting Final Rule Checklist-Assisted Living Facility

ONSITE VISIT INFORMATION			
Assisted Living name:			
Resource Developer:			
Onsite Visit Date:			
POLICY REVIEW	YES	NO	DESCRIBE EVIDENCE
1. Are the individuals able to independently enter and leave the building at any time? <i>Guidance: Are any doors locked that prevent entry/exit, are there any rules in place that limit hours/time residents can leave?</i>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Are the individuals able to choose to come and go without a required scheduled return? <i>Guidance: Is there a curfew?</i>	<input type="checkbox"/>	<input type="checkbox"/>	
3. Are the individuals able to have visitors at a time of their choosing? <i>Guidance: Can visitors be there any time of day, early/late as long as it's not infringing on the rights and safety of other residents in the facility?</i>	<input type="checkbox"/>	<input type="checkbox"/>	
4. Are visitors allowed to stay overnight without restrictions? <i>Guidance: Does the ALF have restrictions on visitors? Can visitors stay overnight in the individuals apartments?</i>	<input type="checkbox"/>	<input type="checkbox"/>	
5. Do the individuals have a choice in where they sit in the dining room? <i>Guidance: Can the individuals choose where and who they sit with? Is there a seating chart?</i>	<input type="checkbox"/>	<input type="checkbox"/>	
6. Are individuals able to eat privately, if they choose? <i>Guidance: Can individuals eat alone or at different times than others?</i>	<input type="checkbox"/>	<input type="checkbox"/>	
7. Are the individuals able to choose their own provider? <i>Guidance: Can individuals choose their own hairdresser or physician? Do they have to use providers the ALF provides?</i>	<input type="checkbox"/>	<input type="checkbox"/>	
8. Do the individuals choose their wake/sleep times? <i>Guidance: Are individuals required to get up at a certain time/or go to bed at a certain time?</i>	<input type="checkbox"/>	<input type="checkbox"/>	

- Nebraska created an assessment tool to be used for Assisted Living Facilities (ALF).
- This is completed when a new ALF is opened.
- DHHS Quality Team completes these assessments annually to ensure the ALF is meeting standards ongoing.

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On-going Monitoring - DD Waivers

- Self-Assessments have been developed for our Developmental Disability (DD) Waiver Providers to complete before opening and serving participants in a residential or non-residential site.
- In order to ensure providers are not operating settings before receiving full compliance, the DDD Quality Team completes quarterly data validations, comparing our master site list to our Provider Enrollment Broker's database.
- DDD's Quality Unit sends our DD providers bi-annually (at minimum) their master site list to confirm and validate current locations. Quarterly data related to any on-site or self-assessments reviewed by the DDD Quality Team to identify any provider trends related to Final Rule are also shared.



What does the Self-Assessment Process look like for Nebraska DD Providers?

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Tools for Agency Provider Self-Assessment

- Nebraska's Quality Team created Residential and Non-Residential questions based on Federal Regulations from the HCBS Final Settings Rule.
- These tools allow providers to determine if they are in alignment with Final Rule settings.
- These tools are then used by the Department of Health and Human Services (DHHS) Quality Team to ensure integrity.

Nebraska State Transition Plan

Residential Site Monitoring Assessment Questions

1. Does the setting provide opportunities for regular, meaningful activities in integrated community settings for the period of time desired by the participant? **FQ1.11**
2. Does the setting allow and support participants in engaging in legal, age-appropriate activities in a manner similar to those who do not receive HCBS? **FQ4.1**
3. Are the participants free from a set schedule for daily activities? **FQ4.2**
4. Are participants made aware of the agency's complaint or grievance process including how to make an anonymous complaint? **FQ3.3**
5. Does the setting facilitate the opportunity for participants to have access to and control of their funds? **FQ4.6**
6. Does the setting ensure that each participant's supports and plans are specific to the participant and are not restrictive to the rights of all participants receiving support within the setting? **FQ3**
7. Does the setting allow for participants to have access to communication tools? **FQ4.7**
8. Does the agency provide the participant the opportunity to visit any new settings prior to a participant's move? **FQ2 & FQ5.1**
9. Does the setting provide the participant a choice of roommate/housemate? **FQ7.1**
10. Does the setting inform participants how they can request a roommate/housemate change? **FQ7.3**
11. Are participants free to choose when and what to eat? **FQ8.1/8.2 & FQ4.3**
12. Does the setting allow participants to eat where they choose within and outside the setting? **FQ8.3**
13. Can participants have visitors at the time and place of their choosing? **FQ9.1/9.2**
14. Does the setting allow for visitors to take the participants outside of the setting for the time period as desired by the participant? **FQ9.3/9.4**
15. Are the setting's physical characteristics consistent with community standards? **FQ1.3**
16. Is all information about participants kept private? **FQ3.5**
17. Is the setting free from the use of monitoring devices, delayed egress devices or secure perimeter? **FQ3.12 & FQ 7.6**
18. Does the setting provide for participants to have access to preferred leisure activities and can they schedule such activities at their convenience? **FQ4**
19. Are the participants' personal interests and preferences reflected in the home environment? **FQ7**
20. Does the setting provide locking bedroom doors? **FQ7.4**
21. Does the setting allow participants to close and lock the bathroom door? **FQ7.5**
22. Does the participant have full access to the common areas of the home? **FQ10.1/10.3/10.4**
23. Does the setting provide participants a lease or written residency agreement? **FQ6.1**

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DD Self-Assessment Process

- All new settings must be self-assessed by the DD agency provider with validation activities completed by DDD staff.
 - Shared living settings must ensure that when a Shared Living Provider (SLP) changes addresses or selects a new agency provider, a new self-assessment is completed.
 - Settings selected for validation activities will be notified through a separate process.
- Self-Assessment Surveys are administered through Survey Monkey.

Medicaid HCBS Final Settings Rule Non-Residential Self-Assessment

Non-Residential Self-Assessment

PLEASE DO NOT INCLUDE PARTICIPANT NAMES or IDENTIFYING INFORMATION!

Please note that this assessment is to be filled out based on the site itself, not the participants moving in. To successfully complete the self-assessment process, agencies must fill out the applicable DD Self-Assessment Survey 15 business days prior to beginning services in the setting.

Every federal question in the assessment must have comments entered. Please be as detailed as possible. Do not copy and paste the examples we provided - if you do, we will return the assessment to be remediated. The boxes are limited to 1000 characters.

You are also encouraged to submit supplemental evidence if applicable. This may be submitted in the same fashion as outlined above. The type of supplemental evidence that can be submitted can vary from question to question but typically are items like: event/activity calendars, photographs, monthly meeting notes, etc.

DD REVIEW OF ASSESSMENT AND DETERMINATION OF COMPLIANCE

- Completed assessments will be reviewed by DDD staff within 15 business days to determine whether the DD agency provider is in compliance or if an on-site visit is needed.
- DDD Staff will issue a response (notification letter) to the agency provider via email.
- When an on-site visit is deemed necessary, DDD staff will notify the agency provider via phone to schedule the on-site visit.
- When the setting is found to be “fully compliant,” the agency provider is permitted to begin providing services in that setting.
- When the setting is found to be “partially compliant,” the agency provider will be required to correct the identified issues and submit evidence of remediation to DDD staff. The agency will not be permitted to begin services in the setting until the setting is deemed “fully compliant.” Service authorizations will not be approved until the agency receives a fully compliant determination for that site, and must be enrolled with our provider enrollment broker, Maximus.

You may leave and come back to the survey as many times as you would like until you click the "Done" button at the end of the end. To come back to the survey, simply re-click on the email link you received. Once you have clicked "Done", you will no longer be able to change your answers.

If you have questions about how to fill out the assessment, or require technical assistance, please send an email to ashley.knudson@nebraska.gov.

0 of 58 answered

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Expectations – Timeline

- The Self-Assessment must be submitted 15 business days before opening.
- DDD Quality staff have 15 business days to review and email a notification letter.
- When the setting is found to be Fully Compliant, the agency can begin providing services upon receipt of their Fully Compliant letter from DDD.
- When the setting is found to be Partially Compliant, the agency is required to correct the identified issues and submit evidence of remediation to DDD.
- Services may not begin until the setting is found to be “Fully Compliant.”

Agency Providers can locate Self-Assessment tools and information on the NE-DHHS Public Website:

<https://dhhs.ne.gov/Pages/HCBS-Statewide-Transition-Plan.aspx>

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DD Waiver Monitoring Communication from DHHS

Thank you for completing a Medicaid Final Rule Self-Assessment for the Shared Living Home Lincoln on **5/18/2023**.

If this was a self-assessment, was it submitted by the provider in a timely fashion? (15 business days before opening and providing services): No

The Division of Developmental Disabilities has reviewed the setting at the address above and preliminarily has determined it to be:

* **Partially Compliant – Additional information needed in “Agency Response” in Section B**

This address was check against the most recent Maximus enrollment list. Our results identified:

* This address was not found to be enrolled; please enroll

Any information requested in Section B should be provided by the agency and returned to the assigned reviewer, , within 20 business days on **6/26/2023**. Please attach visual evidence showing remediation of any areas of concern when you return this form. Failure to respond by the due date could result in further action and an inability to provide services in this setting.

Additional information about the Final Settings Rule can be found at <https://www.medicaid.gov/medicaid/hcbs/guidance/index.html>.

If you would like to appeal this DDD STP assessment, you may do so here: <file:///C:/Users/aknudts/Downloads/Request%20for%20Fair%20Hearing.pdf>

If you have any additional questions about the Final Settings Rule, you may submit those to the reviewer or to dhhs.dddqualityunit@nebraska.gov.

Thank you,

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DD Waiver Monitoring Communication from DHHS (cont.)

<u>Assessment and Area of Non-Compliance</u>		<u>Information Needed for compliance</u>
On-Site		Please provide additional information on whether the participant has a key to the home or has been offered a key.
1.5	Does the setting permit individuals to come and go at will?	
Agency Response:		
On-Site		Please provide additional information regarding the availability of the participants ISP in the home.
2.1	Does the setting have, on file, a person centered plan based on needs and preferences of the individuals served?	
Agency Response:		
On-Site		Please provide additional information regarding the anonymous complaint process, specifically regarding the ability for the participant to be able to do this anonymously. Is there more than one option, such as a reporting line, or an email address? Also, please address the availability of this information to the participant in the home.
3.4	Does the setting allow for the filing of an anonymous complaint?	
Agency Response:		
On-Site		Please provide additional information regarding the agency obtaining informed consent from the participant and/or their representative prior to the implementation of any restrictive intervention.
3.10	Does the setting policy require that the individual and/or representative grant informed consent prior to the use of restrictive interventions?	
Agency Response:		
On-Site		Please provide additional information regarding access the participant has to communications tools such as a landline phone, cell phone, tablet, or something similar.
4.7	Does the setting allow for individuals to have access to communication tools?	

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On-going Monitoring - DD Waivers

DDD service coordination staff and the DDD quality team actively monitor the provision of services and supports identified in the service plan.

This monitoring includes:

- Individual private homes,
- Non-licensed settings, and
- Individualized day/supported employment settings.

All settings receive ongoing monitoring by DDD service coordination staff at least annually.

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Monitoring (cont.)

- Beginning the first Quarter of 2023, a report of completed self-assessments and on-site monitoring was sent to each individual DD Provider.

Self-Assessments

Overview

	Self-Assessment		Active in Maximus	Total Received
	Received			
	Timely	Untimely		
Fully Compliant	1	0	0	2
Partially Compliant	0	0		
Incomplete	0			
No response	0			

****Great job getting your self-assessment in timely!**

Issue Identified Training Required:
Maximus & Self-assessment training.

Issue Identified:

Sites not enrolled in Maximus.

On site Monitoring

Overview

	On Site Reviews		Total
	Monitoring	Target	
Fully Compliant	2	0	2
Partially Compliant	0	0	
No Response	0	0	

Issue Identified Training Required: None

Issue Identified:

None/remediated – great job!

HCBS Final Rule Reminders

What to look for:



Access to Visitors

- Prohibiting overnight guests.
- Limits on number of visits an individual can receive.
- Staff preventing a person from having visitors or restricting the time of day the person can have visitors.
- Participants reporting they need approval to have guests.



Lease Agreement

- Restrictive language, for example, "The individual may be evicted if the individual's needs increase even if resources are available to provide additional support."
- For shared living settings, the lease agreement must be an agreement between the SLP and the individual, with the provider being an optional third party.



Rights Restrictions

- Not having locks on bedroom or bathroom doors, restricted access to the community (e.g., locked building entrance doors with no keys or other accommodations afforded to the individual), behavior plans requiring individuals to earn activities that are their right or using the loss of activities and rights as a negative consequence, and restrictions on visitors, smoking, and access to food.

Identified Trends

Areas Commonly Identified in Compliance:

- Community integration
- Persons are involved in meaningful activities
- Longevity and consistency with persons living in SLPs
- Persons have personalized bedrooms
- Persons can live with romantic partners and friends of their choosing

Areas of Continued Focus and Remediation:

Nebraska's findings align with trends noted across the National trends.

- Access to Visitors
- Lease Agreements
- Right Restrictions

Heightened Scrutiny

For settings presumed to have institutional qualities, CMS requires an assessment process called “heightened scrutiny.” Identified settings are required to undergo an additional review by state staff and may be included in a sample reviewed by CMS.

- DHHS-NE identified 66 ALFs and 12 DD waiver sites, which required review.
- Public comment for these sites was completed in April of 2022.
- Out of these sites submitted to CMS, CMS pulled a random stratified sample from our submission and selected 16 sites to review in more detail. CMS reviews are pending.

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Training Opportunities and Stakeholder Engagement

Beginning January 2023, the Quality Team began our HCBS Final Rule Education series

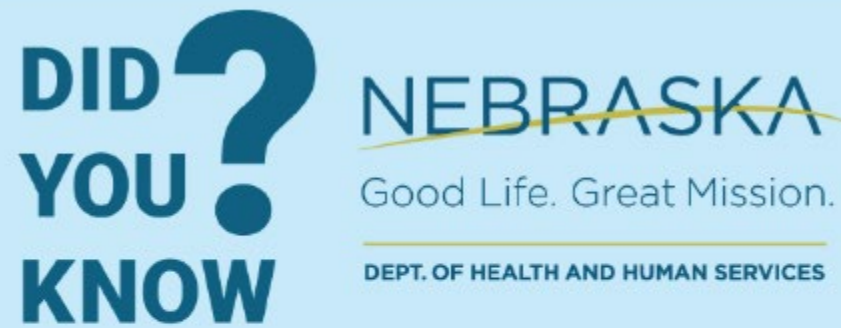
Monthly Q&A Sessions with Stakeholders.

Training to both DD Providers and A&D Providers on HCBS Final Rule Processes.

Currently in the development of video resources for agencies, including DSPs and persons in services.

Additions to our public website including flyers and links to additional training resources.

The State of Nebraska DHHS continues to collaborate with Agency Providers to offer support and trainings.



HCBS PROVIDERS




The Quality Team is excited to offer virtual and in-person training to our agency partners.

We hope you will take advantage of this opportunity in preparation for CMS onsite visits, and to further your agency's knowledge on the implementation of the Final Settings Rule.


CONTACT

Ashley Knudtson

 (402) 214-0470

 ashley.knudtson@nebraska.gov

For additional resources visit:

 <https://dhhs.ne.gov/Pages/HCBS-Statewide-Transition-Plan.aspx>

*Please contact DHHS for scheduling availability



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CMS HCBS Final Rule: Federal Requirements for HCBS Settings



1 **Federal Requirement #1:**
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

2 **Federal Requirement #2:**
The setting is selected by the individual from among setting options including non-disability specific settings. The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, and resources.

3 **Federal Requirement #3:**
The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.

4 **Federal Requirement #4:**
The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact.



5 **Federal Requirement #5:**
The setting facilitates individual choice regarding services and supports, and who provides them.

6 **Federal Requirement #6:**
The setting provides for a legally enforceable agreement between the provider and the consumer that allows the consumer to own, rent, or occupy, the residence and provides protection against eviction.

7 **Federal Requirement #7:**
The setting provides for privacy in units including lockable doors, choice of roommates/housemates, and freedom to furnish and decorate the sleeping or living units within the lease or other agreement.

8 **Federal Requirement #8:**
The setting provides options for individuals to control their own schedules including access to food at any time.

9 **Federal Requirement #9:**
The setting provides individuals the freedom to have visitors at any time.

10 **Federal Requirement #10:**
The setting is physically accessible.

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Resources

- Nebraska HCBS Final Settings Rule website:
 - <https://dhhs.ne.gov/Pages/HCBS-Statewide-Transition-Plan.aspx>
- Nebraska's Statewide Transition Plan - CMS approved August 2, 2022:
 - <https://dhhs.ne.gov/DD%20Documents/20220721-%20State%20Transition%20Plan%20-%20June%201%202022%20Final%20Submission%2005.03.2022.pdf>
- CMS HCBS Final Rule: Federal Requirements for HCBS Settings:
 - <https://dhhs.ne.gov/DD%20Documents/Federal%20Requirements%20for%20HCBS%20Settings%20graphic.pdf>

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Oregon Department of Human Services: Home and Community- Based Settings

August, 2023

Anna Lansky, Interim ODDS Director

Jane-ellen Weidanz, APD Deputy Director of Policy

Home and Community-Based Settings Rule is Issued in 2014

Oregon had to implement a plan for all HCBS programs and services in Oregon in one cohesive plan.

Traditionally, Oregon HCBS programs have operated fairly independently, differentiated by the populations served:

Office of
Developmental
Disabilities
Services (ODDS)

Aging and People
with Disabilities
(APD)

Health Systems
Division (Adult
Mental Health
Services) (OHA)

Programs Came Together to Establish Common Values, Language and Expectations for Implementation of HCBS



Example:

- Oregon programs had to establish a common term for people who receive services.
- Variations used included service recipient, client, consumer, patient, etc.
- “Individual” became the consensus term for people receiving HCBS in Oregon.

Oregon Establishes Rules for Implementation of HCBS



Oregon created a cross-program rule set
(Oregon Administrative Rules 411-304: Home and Community-Based Settings and Services)

Oregon’s rules mirror the federal HCBS rules,
with some minor changes to reflect Oregon-specific language, programs, and policies.

The biggest difference between Federal CFR language and Oregon rule language:
“Modifications to the Conditions” in Oregon are referred to as “Individually-Based Limitations”.

The concepts and requirements are the same as the CFR.

In Addition to the Regulatory Foundation, Oregon Developed an Education and Communication Plan

The plan was multi-faceted and included the following:

Creation of cross-program and program-specific community partner groups

Publishing infographic materials for at-a-glance visual references to the new rules

Statewide roadshows with travel to all counties in Oregon, providing in-person community forum and education sessions offered in day and evening times

Webinars and technical assistance sessions for providers

Meeting with case management entities and provider organizations

Participants included individual service recipients and their families, community service providers, case managers, provider organizations, advocacy organizations, and other members of the community.

Pre-COVID-19 HCBS Setting Status

Convened joint process with broad representation

- Individuals receiving HCBS and their advocates [Disability Rights Oregon, Legal Aid Services of Oregon, Oregon Law Center, Long-Term Care Ombudsman]
- State advisory councils
- Provider associations and motivated providers

Program specific representation was also critical

- Each program met with their providers and provider advocacy groups
- Additional advocacy organizations
- Examples included:
 - AARP, Alzheimer's Association of Eastern Oregon; Center for Independent Living, Case Managers, Governor's Commission on Senior Services, Licensing/Regulatory staff, staff from various counties, Service Employee International Union 503

An Emphasis was Placed on Taking Macro-Level HCBS Concepts and Putting them into Micro-Level Examples and Application

Providers and other community members had many fears about how the new rules would impact their ability to safely support individuals.



Education campaigns focused heavily on explaining the rules and how they might apply in home settings. Many examples were provided.



Curriculum focused on opportunities to support an individual to successfully enjoy their freedoms rather than how to put limits in place.



“How do we get to a yes?” when providing support:

Start with a foundation in safe, socially-appropriate experiences related to personal freedoms and build on these opportunities to enhance independence and personal growth of individuals needing support.

Timelines were Developed & Compliance Deadlines Set

With a focus on the implementation of the provider-owned, controlled or operated settings, ODDS set a firm expectation of settings-based rule compliance by September 1, 2018.

Following the September 2018 deadline, all settings and services were required to meet all HCBS regulations. This timeline was included in regulatory updates to Oregon Administrative Rules and enforced through the licensing process*.

ODHS – APD; ODDS; OHA- Health Systems Division

Closing Sheltered Work Settings in Oregon

Sheltered Work (SW) settings isolate people with disabilities to perform work.

Oregon made an early determination that Sheltered Work settings are not HCBS compliant.

Research shows that segregated SW settings make it more difficult to access competitive integrated employment.

Closed to ensure ongoing HCBS and ADA compliance.



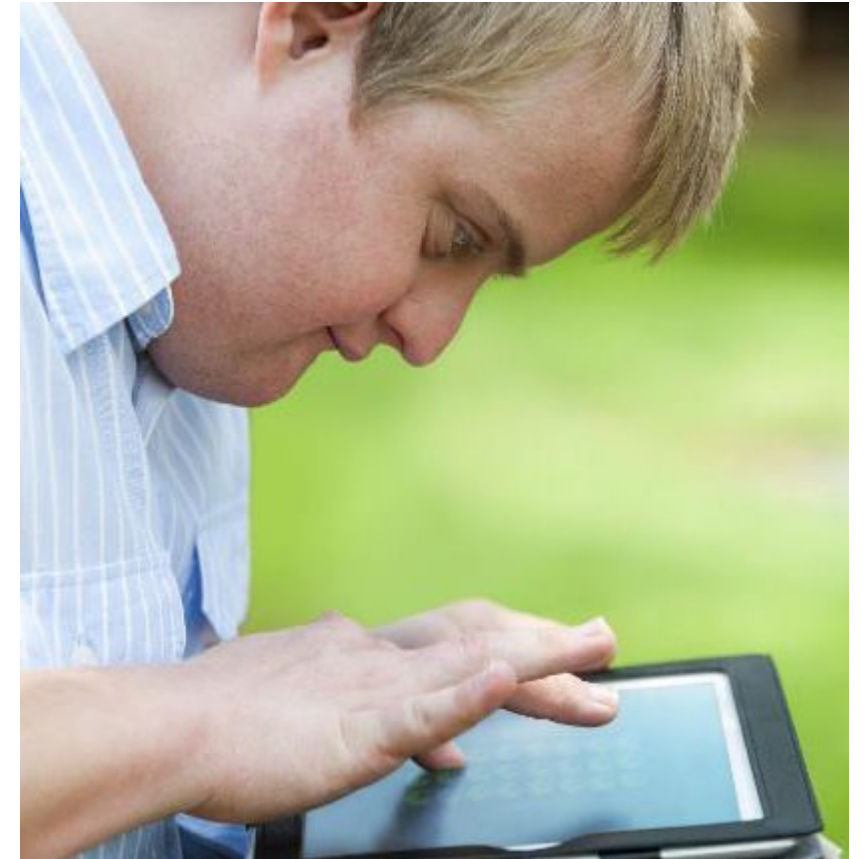
HCBS Provider Assessment & Transformation Plans

Oregon assessed all employment service settings with an online provider self-assessment tool (ensures due process and sufficient time for transformation).

Sheltered workshop settings required to develop ODDS-approved transformation plan (hire job developers, offer community work experiences, notice timelines, family information nights and communication plan, etc.). Received technical assistance.

All settings required to be compliant by 09/01/2018.

Extension for 3 largest sheltered workshops granted through 03/01/2020 (more intensive TA and support to transition).



Office of Developmental Disabilities HCBS
Compliance for Employment and Day Services
**Assuring work settings continue to
meet HCBS setting requirements**

Provider self-
assessment
and
licensure.

- Oregon continues to require providers complete an assessment for any service at a provider site or in a group setting. Opportunity to ensure due process and review for providers looking to set up provider owned businesses.

CMS HCBS guidance regarding
new construction incorporated into
Oregon processes.



Area of Challenge: Modifications to the Conditions

Individually-Based Limitations (Modifications to the Conditions)

With the nuanced nature of supporting individuals with activities of daily living and safety support, this area was difficult to navigate in identifying what type of structure or support would be considered a limitation to a personal freedom.

Oregon took the approach of mirroring the federal requirements for when a limitation is applied and created a form that requires entry of information specific to each component. The form must be consented to by the individual and authorized by a case manager. The individual is informed of their rights to withdraw consent. The form is attached to and becomes part of the person-centered services plan.

Area of Challenge: Negative, Fearful Reactions

Negative reactions, usually out of fear or concern of a negative or unsafe outcome.

People expressed fears for how the rules would be practically implemented. Oregon education campaigns helped to explain roles and responsibilities, including those for individuals when exercising freedom and living with others in a community-based setting.

Locks on Doors-

- Providers raised major concerns about the cost and operational barriers to implement locks. Oregon held a firm position that the default expectation is all residents will have locks on their bedroom doors and individuals may opt not to use them. With this firm expectation, providers have complied with the expectation.

Visitors at Any Time-

- If there is a visitor who is posing an active safety risk to the household, that person can be asked to leave.
- The person having the guest over still needs to practice courtesy to the other housemates regarding things such as volume and respect for personal space of others.

Control of Schedule and Activities-

- Individuals are encouraged to self-direct their routine and activities, but also need support to identify when things can reasonably happen, factoring resources such as transportation, cost of an activity, business hours, personal obligations (such as work), etc.

Area of Challenge: COVID Impacts

Workforce shortage and staff turnover

Turnover is a major problem in 54% of LTCFs

Nurses with less than 1 year experience in 29% in CBC facilities

In some case management entities 50% of the staff were not there prior to COVID

Training efforts were reduced during COVID



Additional pressure to serve more complex individuals in HCBS

For APD, hospital discharge delays led to increasingly complex individuals (substance use disorders, harmful behaviors, and mental illness) being referred to HCBS.

Head Start Going into the Transition Plan Process



Oregon benefitted from having an established culture and values that honor:

Individual direction

Person-centeredness

Community-based living

Inherent structures in place prior to the implementation of the federal HCBS regulations, including:

Community-Based Residential Service Settings: Oregon had long since closed all institutional settings for IDD and moved individuals into community living situations. For APD, creation of the HCBS system started in the early 1980s, reducing reliance on institutional settings. Oregon statute addressing zoning and concentration of licensed or certified residential home settings.

Oregon state statute declaring individual rights: Many of the affirmed rights in the legislation, based decades earlier, are similar in concept and application as HCBS regulations.

Person-centered service planning: Oregon had already implemented a robust person-centered service planning process. The requirements of the new HCBS regulation were already present in current ODDS service planning policies and only minor changes were needed for APD.

Residential Facilities Ombudsman (RFO) and Long Term Care Ombudsman (LTCO): These programs were at the table as a community partner and served as an advocacy organization for individuals in services.

Promising practices

Care Plans

Example: After a 7/2022 compliance visit that generated many findings, a provider hired a consultant to revamp their care plans.

Training

Enhancing online trainings to meet adult learning needs

Tracking system shows which providers and case managers have taken HCBS trainings

Allows providers to use online training for their staff

Allows attestation of compliance and training progress to be verified at next onsite licensing visit

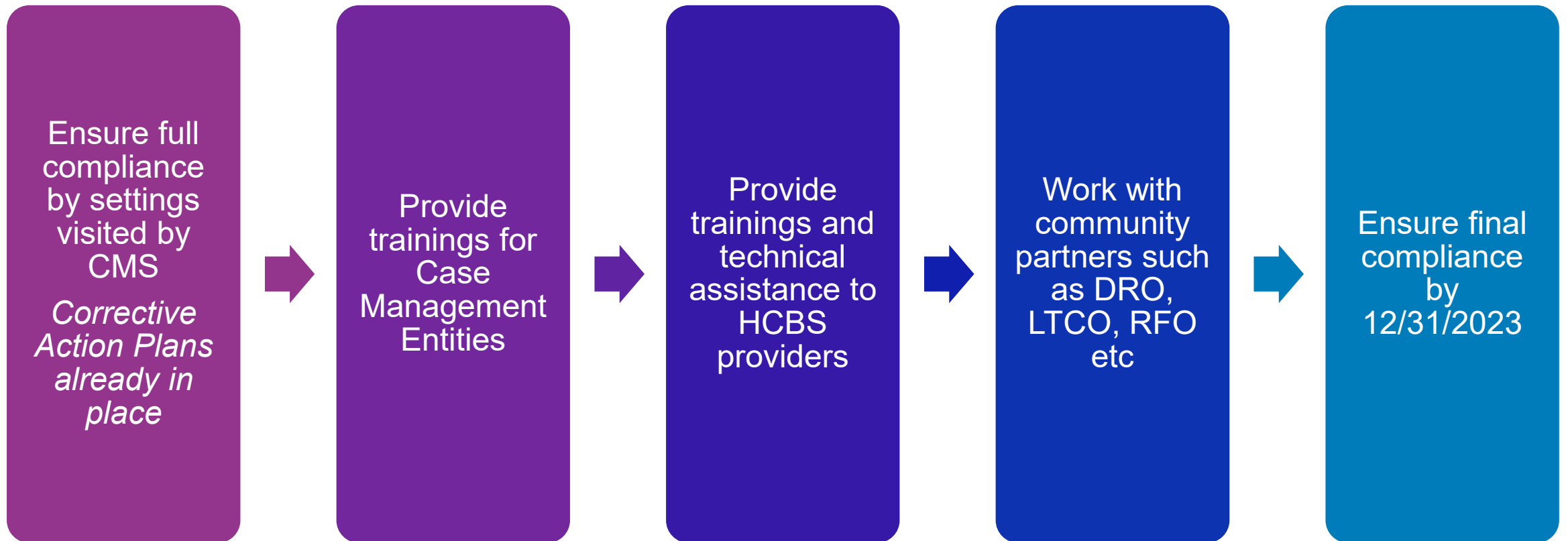
Build it into normal process

Build HCBS as part of the regulatory framework which builds in accountability

Makes it part of doing the “daily job” rather than something else

HCBS Setting Implementation Status Update

Recent CMS site visit showed that COVID has impacted compliance and understanding of HCBS



Implementation and maintenance will be an ongoing effort.



Addressing physical accessibility-

With increased challenges accessing affordable housing, providers are balancing economic use of space and maintaining a community-living home with physical accessibility to the spaces for individual residents.



Evolution of Person-Centered Planning-

Moving from a services-based planning to a LifeCourse model which honors an individual's community-living life plan with services identified to support their goals.

Implementation and maintenance will be an ongoing effort.



Supporting individuals in community living life events and transitions- establishing a system that supports individuals receiving services while also supporting individuals with disabilities who are parenting minor children or aging.



Adapting services in a manner that utilizes technology while also adhering to person-centered and privacy expectations.



Ensuring that case management entities and LTSS providers fully embrace and internalize HCBS

Resources

Oregon HCBS Webpage

<https://www.oregon.gov/odhs/providers-partners/Pages/hcbs.aspx#:~:text=Home%20and%20community-based%20services%20%28HCBS%29%20provided%20opportunities%20for,or%20developmental%20disabilities%20C%20physical%20disabilities%20and%20For%20mental%20illnesses.>

Infographics, Training Materials, Transition Plan, & Links to Individual Programs Forms, Examples, Technical Assistance Information and Contact Information



Oregon Administrative Rules

<https://www.oregon.gov/DHS/SENIORS-DISABILITIES/SPPD/APDRules/411-004.pdf>

Why is Stakeholder Input Important?



Foundational Value

- Nothing about us, without us

Practical Reality

- Individuals with disabilities and families can see what state agencies can not
- Input needed to meet legal requirements

The Stakeholders

PEOPLE WITH DISABILITIES,
THEIR FAMILIES, FRIENDS,
AND NEIGHBORS

ADVOCACY GROUPS:
Self-advocate groups
Parent groups
Sibling groups
Legal and policy advocacy groups

AGING AND DISABILITY
NETWORKS:
State Independent Living
Councils
Centers for Independent Living

Protection & Advocacy Systems
State Ombudsman
State Councils on Developmental
Disabilities
University Centers for Excellence
in Developmental Disabilities

Opportunities for Engagement

- Waiver applications, renewal applications and amendments – verbally and in writing
- Proposed state laws, regulations, proposed rules and state policy
- Invitations to serve on advisory boards and work groups monitoring services and interviewing participants
- Corrective action plans required by CMS and other oversight bodies

Strategies to Support Local Stakeholder Engagement

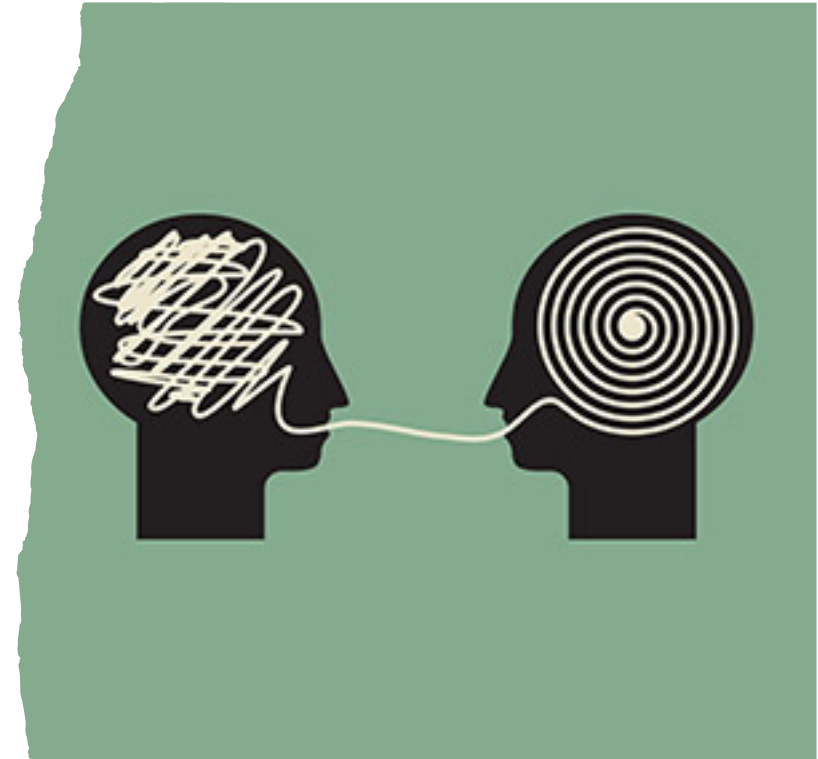
- **Become subject matter experts**
 - Read everything -- Your state's waiver, CMS guidance, state quality strategy; not just the State Transition Plan
- **Use every opportunity to comment**, written or oral
 - Formal public comment vs. other comment
 - Share comments widely
- **Coordinate templates for others to use in submitting comments**
- **Build partnerships** with other disability groups or HCBS programs – for example, Independent Living

Strategies to Support Local Stakeholder Engagement, Cont.

- **Gather stakeholders** and invite state decision-makers – for example, host a “Town Hall Meeting”
 - Put information in plain language
 - Look for stories about services in advance
 - Prepare speakers in advance (to create impactful, succinct commentary)
 - Follow-up with a written summary of key points
- **Get to know legislators and other elected officials**
- **Have the state’s back when they are doing the right thing**

Tips for Stakeholder Engagement

- Request meeting materials in advance of the meeting
- Ask for materials in an accessible format
- Ask for plain language to be used during the meetings



ACL's Activities to Support Stakeholder Engagement

- Working with aging and disability networks to support local stakeholder engagement
- Webinars
 - HCBS Rule series
 - Waiver Application series: Getting the Services You Need from the Waiver
- ACL blogs and policy roundups
 - Sign up for ACL updates at acl.gov

Stakeholder Success

- Helped to create a nationwide conversation about the HCBS Settings Rule
- Communicated with stakeholders in other states for assessment of their experience and best advice
- Successfully advocated for CMS review of certain settings
- Success in advocating for conflict-free case management statewide
- Successfully advocated for an independent monitoring system in which people with disabilities, family members, friends and other citizens conduct the participant interviews

State Changes in Response to the Rule

- Incorporating the rule into state code and enforcing through licensing
- Building the rule into provider enrollment qualifications
- Building compliance with the rule in Medicaid provider agreements
- Adding service definitions to their waivers that support integration
- Changes to person-centered planning to ensure that all entities responsible for developing PCSPs are addressing the full range of rights in the Settings Rule
- Requiring participant assessment tools
- Freezing payment to settings and disenrolling providers they determine do not meet the rule and putting in place transition plans to enable people to move to a setting that meets the rule

Provider Implementation Experience

- Napa Valley PSI – Caren Hewitt & Lea Ronald

- Short Introduction to Video

- **Video link:**

- https://us06web.zoom.us/rec/share/C3tNOAF5SKx58rGIvigYb04yZ_VmV2b9yOkLs5KCexVgc1MQ1I7BN29mww0s6IK5.2zkp66zS18EiABPd

Summary

- The HCBS Settings Rule ensures basic requirements for individuals receiving Medicaid HCBS.
- CMS celebrates the important work that has happened across the nation to date, and acknowledges the work still ahead.
- States are completing work under CAPs to bring their HCBS delivery systems into full compliance for requirements directly impacted by the PHE.
- Heightened scrutiny obligations remain beyond the transition period.
- Robust ongoing monitoring is key to ensuring that settings remain compliant.
- States should consider how to leverage stakeholders to strengthen ongoing monitoring processes and ensure robust beneficiary complaint and feedback processes.

Resources (1 of 5)

CMS Baltimore Office Contact—Division of Long-Term Services and Supports:

- HCBS@cms.hhs.gov

To Request Technical Assistance:

- HCBSsettingsTA@neweditions.net

The Home and Community-Based Services Training series has trainings focused on various aspects of STP and HCBS implementation:

- [Home & Community Based Services Training Series | Medicaid](#)

STPs, Heightened Scrutiny Documents, and HCBS Settings Corrective Action Plans:

- <https://www.medicaid.gov/medicaid/home-community-based-services/statewide-transition-plans/index.html>

Resources (2 of 5)

HCBS Settings Regulation Implementation: A National Conversation about Statewide Transition Plans, March 2022

- <https://www.medicaid.gov/medicaid/home-community-based-services/downloads/hcbs-rule-stp-conversation.pdf>

HCBS Settings Rule Implementation – Moving Forward Toward March 2023 and Beyond, May 2022

- <https://www.medicaid.gov/medicaid/home-community-based-services/downloads/hcbs-settings-rule-imp.pdf>

Themes Identified During CMS' Heightened Scrutiny Site Visits, November 2022

- <https://www.medicaid.gov/medicaid/home-community-based-services/downloads/themes-identified-during-cms.pdf>
- <https://www.medicaid.gov/media/146861> (recording)

Resources (3 of 5)

Medicaid Home and Community-Based Services Settings Regulation: Fitting the Pieces Together, February 2023

- <https://www.medicaid.gov/medicaid/home-community-based-services/downloads/hcbs-settings-fitting-pieces-together-feb2023.pdf>

Home and Community-Based Settings Compliance Post-March 2023, May 2023

- <https://www.medicaid.gov/medicaid/home-community-based-services/downloads/hcb-settings-comp-post.pdf>

Frequently Asked Questions (FAQs): Home and Community-Based Settings Regulation Implementation: Heightened Scrutiny Reviews of Presumptively Institutional Settings: SMD # 19-001, issued on March 22, 2019

- <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>
- <https://www.medicaid.gov/sites/default/files/2019-12/hs-faq.pdf> (slides)

Resources (4 of 5)

1915(c) Waiver Technical Guide

- https://wms-mmdl.cms.gov/WMS/help/version_36_1915c_Waiver_Application_and_Accompanying_Materials.zip

1915(i) Template

- https://www.medicaid.gov/sites/default/files/2019-12/1915i-application_0.pdf

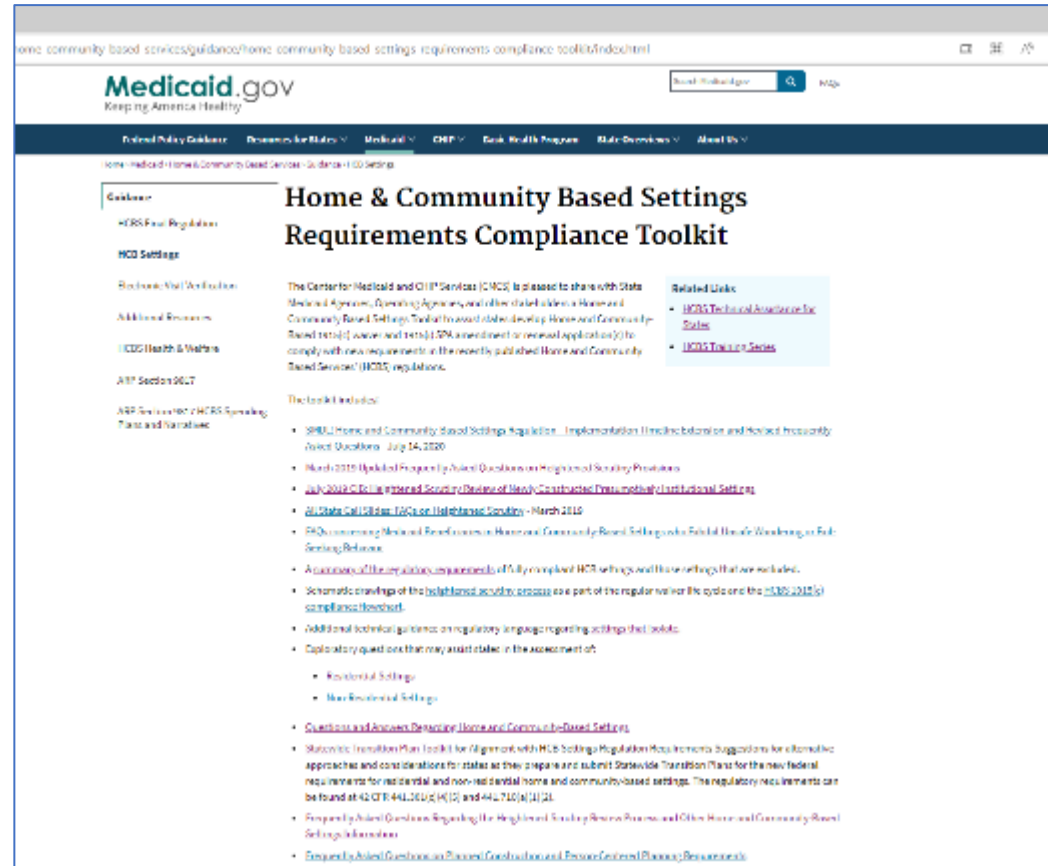
1915(k) Technical Guide

- https://www.medicaid.gov/sites/default/files/2019-12/cfc-technical-guide_0.pdf

Resources (5 of 5)

CMS Home & Community Based Settings Requirements Compliance Toolkit

- [Home & Community Based Settings Requirements Compliance Toolkit | Medicaid](#)



Questions