



HCBS Settings Rule Implementation – Moving Forward Toward March 2023 & Beyond

Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services



Background

- The March 17, 2023 transition period deadline for full state compliance with the Home and Community-Based Services (HCBS) settings regulation, effective March 17, 2014, is fast approaching.
- CMS has been working very closely with states and HCBS stakeholders since the issuance of the settings rule in January 2014 to ensure its successful and effective implementation. CMS remains steadfast in ensuring adherence to the tenets of the rule and the regulatory criteria, which provide the framework for ensuring that HCBS are truly person-centered, and the settings within which they are provided facilitate autonomy and independence.
- CMS staff have been in regular communication with states and stakeholders over the course of the COVID-19 public health emergency (PHE) and have consistently heard about the stress the pandemic has put on individuals and families, states and their staff, and the already fragile direct service workforce.

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Background

- Our priority is to make sure that the HCBS settings rule is implemented in a way that is both meaningful for individuals receiving services and reflective of realities that states and providers have been facing in addressing and living through the COVID-19 PHE.
- CMS understands that the pandemic has impeded state progress in assessing and bringing their HCBS systems fully into compliance with the HCBS settings final rule. We also understand that there are significant aspects of the settings criteria unrelated to pandemic disruptions that should be in place by now but are inconsistently implemented throughout the country.
- States currently have an unprecedented opportunity to access additional HCBS funding through Section 9817 of the American Rescue Plan Act of 2021.
 - States can and should be leveraging this opportunity to increase their capacity to offer services in compliant settings (particularly non-disability-specific residential settings), and to expand services that are truly integrated to support individual autonomy and community participation.

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Background

- In conversations with states and other stakeholders, we understand the reality of where we are today, and hear the concerns that not every setting in the country will be fully compliant with all requirements of the settings rule by March 17, 2023.
- CMS has been discussing what success looks like by the transition deadline; how federal partners, states, providers, and other HCBS stakeholders can most wisely use the remainder of the transition period; and the need for continued implementation of the rule's requirements after March 2023.
- CMS, in partnership with the Administration for Community Living (ACL), is moving forward with a strategy that aligns the focus of federal support and state compliance activities with the realities of the direct-service workforce crisis exacerbated by the COVID-19 PHE.

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Recalibrated Strategy

- We believe this strategy will ensure implementation of important regulatory criteria related to beneficiary rights in the short-term, building upon the regulation's person-centered service plan and planning requirements that have been in effect since 2014, while allowing for sustained state and provider efforts to fully implement all other settings criteria.
- This multi-faceted approach contains the following components, *in order to continue federal reimbursement of HCBS beyond the transition period*:
 - States must receive final Statewide Transition Plan approval
 - States and providers must be in compliance with all settings criteria NOT directly impacted by PHE disruptions, including PHE-related workforce challenges
 - Time-limited corrective action plans (CAPs) are available to states to authorize additional time to achieve full compliance with settings criteria that ARE directly impacted by PHE disruptions, when states document the efforts to meet these requirements to the fullest extent possible, and are in compliance with all other settings criteria.

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Final Approval of Statewide Transition Plans

- **Expectation:** All states will have received final approval of their Statewide Transition Plans (STPs) by the end of the transition period.
- This ensures states' policies and procedures reflect the settings criteria, and that states have completed an assessment of their individual settings and identified steps providers will need to take to reach compliance.
- CMS strongly encourages all states that do not currently have final STP approval to ensure submission of a draft STP for CMS review no later than July 31, 2022.
 - States submitting an STP for review after this date risk not receiving final approval by the end of the transition period, which could impact their ability to continue receiving federal reimbursement of HCBS.

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Implementation of Regulatory Settings Criteria Not Impacted by PHE

- **Expectation:** All states and settings will be fully compliant with the following regulatory settings criteria that are not impacted by the COVID-19 PHE, including its exacerbation of the workforce shortage, by the end of the transition period.
 - Privacy, dignity, respect, and freedom from coercion and restraint; and
 - Control of personal resources.
- **Expectation:** All states and *provider-owned and controlled residential settings* will be fully compliant with the following regulatory settings criteria that are not impacted by the COVID-19 PHE, including its exacerbation of the workforce shortage, by the end of the transition period.
 - A lease or other legally enforceable agreement providing similar protections;
 - Privacy in their unit, including lockable doors, and freedom to furnish or decorate the unit;
 - Access to food at any time;
 - Access to visitors at any time;
 - Physical accessibility; and
 - Person-centered service plan documentation of modifications to relevant regulatory criteria.

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Implementation of Regulatory Settings Criteria Not Impacted by PHE, cont'd

- States should ensure the following information is submitted to CMS no later than **January 1, 2023** to document state and provider compliance with these regulatory criteria.
 - Description of how the state's oversight systems (licensure and certification standards, provider manuals, person-centered plan monitoring by case managers, etc.) have been modified to embed the regulatory criteria into ongoing operations*;
 - Description of how the state assesses providers for initial compliance and conducts ongoing monitoring for continued compliance*; and
 - Description of a beneficiary's recourse to notify the state of provider non-compliance (grievance process, notification of case manager, etc.) and how the state will address beneficiary feedback.

*Information should already be contained in the state's STP

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Remaining HCBS Settings Criteria

- For the settings criteria that fall outside of those described on slide 7, states and providers must implement these remaining criteria to the fullest extent possible in light of the circumstances caused by the PHE and develop a plan and timeline for full implementation, either as part of or separate from their STP.
- When the ability to support individuals to fully integrate into the community as they desire is impacted by PHE disruptions, including staffing shortages, states and providers must still ensure that the operating policies of the setting are aligned with the regulatory criteria, in a manner that facilitates individual autonomy and community participation as key components of service delivery models to the fullest extent possible.

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Availability of Corrective Action Plans (CAPs)

- **Flexibility:** CMS will authorize CAPs to continue federal reimbursement of HCBS beyond the end of the transition period, if states need additional time to ensure full provider compliance with the regulatory criteria-NOT included on slide 7. These include for example:
 - Access to the broader community;
 - Opportunities for employment;
 - Option for a private unit and/or choice of a roommate; and
 - Choice of non-disability specific settings.
- States must be able to show that their policies and procedures reflect the settings criteria and they have made efforts to implement the criteria to the fullest extent possible and work with CMS on a concrete, time-limited plan to come into full compliance with remaining criteria.

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Availability of CAPs, cont'd

- States should submit the following information to CMS by **December 1, 2022** to request a CAP:
 - Information on which criteria the state will need extra time to ensure full provider compliance;
 - The state's efforts to bring providers into compliance with those criteria, and the PHE-related impacts that created barriers to compliance; and
 - The state's plan to overcome encountered barriers, and the time needed to do so.
- CMS is not determining a maximum amount of time for which a CAP will be authorized at this time.
- CAPs are applicable to states for settings eligible for the transition period (settings in existence as of the effective date of the final rule).

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Heightened Scrutiny in the New Implementation Strategy

- States should continue to submit presumptively institutional settings for a heightened scrutiny review.
- CMS will select a sample of settings to review, with the sample size informed by whether the state has submitted an assessment tool to CMS that fully assesses each of the settings rule criteria.
- Information in the state's submission should clearly indicate how the setting complies or will comply with all regulatory criteria, including those contained on slide 7.
- States should prioritize responding to questions CMS has asked in our review to-date of individual settings to demonstrate adherence with those criteria.
- On a case-by-case basis, CMS will work with the state to determine the ability to incorporate individual settings' compliance into the CAP.

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A Final Word

- CMS reiterates our commitment to the implementation of the HCBS settings regulation in a way that enhances the ability of states' HCBS systems to facilitate beneficiary autonomy and community participation.
- Amidst pandemic recovery efforts, the tenets of the settings regulation are more important than ever to bring to the lives of older adults and individuals with disabilities.
- CMS recognizes and appreciates the continued collaboration with ACL in the development of this implementation approach.
- As federal partners, we look forward to ongoing dialogue with states, providers, beneficiaries, families, and other stakeholders to continue the flow of federal funding needed to sustain service delivery and system reform, while achieving new standards of choice and control in the lives of beneficiaries.

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