GEORGIA DEPARTMENT
OF COMMUNITY HEALTH

Brian P. Kemp, Governor **Russel Carlson, Commissioner**

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April 10, 2024

Ondrea D. Richardson
Health Insurance Specialist
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: ***HCBS Settings Compliance and Grievance Process: Revised from February 14, 2023, submission and March 20, 2024, submission.***

Dear Ms. Richardson:

Please find enclosed the submission request from CMS of how Georgia utilizes the following process and systems to monitor and regulate the Home and Community Based Settings Providers.

With all approved 1915(c) Waivers incorporated in the Final Settings Rule, the pending questions and answers from CMS are hereby detailed in the processes related to conducting on-site visits, member interviews, and desk audits, all, of which are determined by the schedules of activities for provider reviews and on-demand through *Critical Incident Reporting.* Some information can be found by accessing the current Statewide Transition Plan at https://dch.georgia.gov/programs/hcbs/hcbs-transition-plan as well as other entities and sites embedded in this document.

- ***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.***

Healthcare Facility Regulation Division (HFRD), Department of Behavioral Health and Developmental Disabilities (DBHDD), and Office of Inspector General (OIG) serves as three entities for which the Rules and Regulations of Waiver Services subject to the setting rule for the State of Georgia can be found. DCH does not individualize each waiver specifically but monitors compliance under the umbrella of the four Waiver Programs.

HFRD is the state agency responsible for licensing many of Georgia's health care facilities, including hospitals. HFRD is tasked with ensuring the safety and quality of care across the state, by regulating and enforcing all healthcare facilities in accordance with state and federal statutes, contracts, and agreements. HFRD conducts the following:

- Performs announced and unannounced site visits.

- Monitors and oversees each facility for the purpose of investigation.
- Conducts Compliance Surveys and Follow-up.
- Reviews records for compliance.
- Utilizes Assessment of System Review and Site-Specific Reviews as described in the STP page (6) to determine compliance.
- Systems review and remediation (pages 29-33 and pages 34-36 details the process of monitoring).
- Georgia Remediation Strategy Flow Chart within the STP (page 42) outlines details of steps taken for compliance.
- Reviews, references, and Access Appendix B (pages 60-61) of STP for compliance through Georgia policies, procedures, regulations, and manual links.
- Observation of Section three (page 33) Systemic Remediation Plan.

Specific to **HFRD** and **Pursuant to code 111-8-62** Personal Care Homes, the rules and regulations are established as the minimum standard for the operation of Personal Care Homes (PCH) that provide residential and personal services to adults who require varying degrees of supervision and care.

Under HFRD all PCH, Assisted Living Communities, Community Living Arrangements and Adult Day Care/Adult Day Health Centers are monitored for compliance. If a member has a complaint or has received poor quality care from an HFRD licensed facility or program, they can submit a complaint or grievance by the following link, https://dch.georgia.gov/divisionsoffices/hfrd/facility-licensure/hfrd-file-complaint

The Department of Behavioral Health and Development Disabilities (DBHDD), monitors both the NOW/COMP Waivers. DBHDD is responsible for ensuring that both Waivers and all entities under the waivers are monitored for compliance.

DBHDD's Office of Incident Management and Compliance (OIMC) conducts certification reviews of CAG, prevocational, and supported employment providers as described in DBHDD policy "**Accreditation and Compliance Review Requirements for Providers of Developmental Disability Services, 02-703."** For providers authorized for $250,000 or less annually, these certification reviews occur at intervals of 5 years or less. These reviews determine providers' compliance with DBHDD policies and service delivery standards.

For all CAG, prevocational, and supported employment providers, regardless of the amounts authorized, DBHDD's OIMC can perform special reviews to determine the provider's compliance with DBHDD policies and service delivery standards; these special reviews can occur at any time. Additionally, Qlarant conducts a Service Specific Review for Out-of-Home Respite, Community Access Group, Supported Employment, and Prevocational services.

DBHDD: Complaints and Grievances Regarding Community Services, 19-101: http://gadbhdd.policystat.com/policy/175832/.

Complaints and grievances may be filed against DBHDD State Office, Regional Offices, service providers having a contract or letter of agreement with the DBHDD, and state operated community service providers. DBHDD recognizes that complaints are dealt with at all levels throughout the system.

DBHDD ensures that consumers, representatives, guardians, associations, agencies, contractors, sub-contractors, or those who seek to become involved with the delivery or receipt of services may file complaints and grievances. Within the DBHDD State Office, the Office of External Affairs (OEA) is the designated entity for the management of complaints and grievances and follows a standard process for managing complaints and grievances.

A party may file an initial complaint or grievance to the DBHDD State Office. In such an event, the following steps are taken:

The complaint/grievance is sent to DBHDD Office of External Affairs (OEA) Phone: 404-657-5964 Fax: 770-408-5439 Email: DBHDDconstituentservices@dhr.state.ga.us.

To file a complaint about the quality of care or safety, the following link can be utilized https://dbhdd.georgia.gov/be-caring/how-report-concern-or-complaint-about-quality-care-or-safety.

Pursuant to **42 CFR Part 455 Program Integrity: Medicaid**, **42 CFR Part 455.21 Cooperation with State Medicaid Fraud Control Units,** and under the Office of Inspector General, the Program Integrity Unit (PIU) of DCH is another entity that also performs on-site reviews with little and/or no advance notification and investigates evidence of non-compliance with the settings rule.

PIU performs utilization reviews on claims and investigates suspected fraud, waste and abuse of Georgia's Medicaid and PeachCare for Kids programs. PIU is comprised of three sub-units: Intake and Analytics, Review and Investigations and Pharmacy Lock-in. Those specifically related to the waiver members are the following units:

- **Intake and Data Analytics sub-unit:** The Intake and Data Analytics sub-unit is responsible for the fraud hotline, which provides an anonymous and confidential whistleblower reporting service for potential Medicaid fraud. In addition, the sub-unit detects patterns of fraud, waste, and abuse utilizing data analysis.

- **Review and Investigations sub-unit:** The Review and Investigations sub-unit is responsible for reviewing claims for payment discrepancies inconsistent with Medicaid, PeachCare for Kids®, and waiver program policies. The unit also investigates credible allegations of fraudulent activity related to Medicaid and PeachCare for Kids® programs.

PIU has ultimate responsibility for conducting provider audits and has the authority to recover funds in the case of claims paid to providers with serious policy infractions. The Program Integrity unit conducts a 56% random sample review of enrolled providers annually and responds to

requests for audit in addition to random sample reviews. When issues are discovered by the DCH Program Integrity Unit a refund is requested for member-specific reimbursement. Program Integrity also requests that a "Corrective Action Plan" be submitted by the provider to the Department stating how and when all issues will be resolved.

Direct Service Providers and Case Management Agencies are required to report incidents to DCH. The responsibility for submission of an incident report falls on the first person to witness or discover the incident regardless of location or whether during the point of service. If the reporting provider is the direct service provider, the case manager will be notified of the incident by the confirmation email of the submission of the incident.

The reporting provider is required to notify all appropriate parties in accordance with state law. Monthly reports are reviewed by the HCBS waiver unit and generated by the electronic incident management system. It provides analysis by a few criteria such as waiver type, severity level, incident type or provider type to support development of individual or systemic remediation strategies as appropriate.

DCH reviews the information and accepts or denies the "Corrective Action Plan". In addition to the Program Integrity reviews, the Waiver Program Specialist reviews case management activities through reports of timely activities and the performance of on-site reviews for any case management provider found to require remediation. Information can be located related to all Waivers by accessing: https://dch.georgia.gov/programs/hcbs.

The HCBS Waiver Quality Unit directly monitors all aspects of the Final Settings rule. The Waiver Quality Unit reviews all documents from providers and member case records to determine settings compliance and those appropriate for remediation strategies to occur. Additionally, the unit manages the Critical Incidents to identify patterns of behavior that will need further scrutiny as well as review if case management has provided the required follow-up and revision to a member's care plan as warranted. For members of our developmental and intellectually disabled population the state works collaboratively with its sister agency the DBHDD to improve the quality of support services for this population by conducting desk Reviews and provider/member interviews.

Critical Incidents - This process is immediate and allows for the state to readily survey an area with little to no notification to provider or member. The state will engage all parties related to the matter including the service provider, law enforcement, Adult Protective Services, case management, the member, and other natural supports to ensure the health and safety of the member is addressed. HFRD is notified of issues, concerns and deficiencies related to the licensed site.

Members can report activities of fraud, waste and abuse anonymously using the established numbers of (404) 463-7590 or 800-533-0686 and/or by accessing the following link: https://dch.georgia.gov/report-medicaidpeachcare-kids-fraud. Additionally, formal complaints can be lodged against any Medicaid provider by accessing the following link: https://dch.georgia.gov/office-inspector-general/report-fraud-waste-and-abuse.

- **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.**

Pursuant to GA code GA Code § 31-8-135 (2022): Grievance Procedure for a resident or the legal surrogate can take the following steps:
https://law.justia.com/codes/georgia/2022/title-31/chapter-8/article-5a/section-31-8-135/

a) Any resident, or the representative or legal surrogate of the resident, if any, who believes his or her rights under this article have been violated by a personal care home or its governing body, administrator, or employee shall be permitted to file a grievance under this Code section.

(b) In order to file the grievance provided for in subsection (a) of this Code section, the resident, or representative or legal surrogate of the resident, if any, may submit an oral or written grievance to the administrator or the administrator's designee. The administrator or designee, within five business days, shall either resolve the grievance to the grievant's satisfaction or respond in writing to the grievance, including in the response a description of the review and appeal rights set forth in this article.

(c) If the person filing the grievance is not satisfied by the action or failure to act of the administrator or designee, the grievant may submit an oral or written complaint to the state or community ombudsman.

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DCH is responsible for the daily management of the waiver and for providing oversight, guidance, and contract management to all agencies that participate in the operation of the services. The Department is responsible for the development of all program policies, assurance of waiver requirements, quality management, participation in assessment and care planning by waiver participants, and monitoring of participant rights.

Pursuant to 42 CFR 431.10.G and 42 CFR 431 Subpart E, Requests for a Fair Hearing: The state provides the opportunity to request a Fair Hearing to individuals: (a) who are not given the choice of home and community-based waiver services as an alternative to institutional level of care specified for any waiver; (b) who are denied the service(s) of their choice or the provider(s) of their choice; or (c) whose services are denied, suspended, reduced, or terminated.

Quality Improvement. Through an ongoing process of discovery, remediation and improvement, the state assures the health and welfare of participants by monitoring:

- level of care determinations
- individual plans and services delivery
- provider qualifications
- participant health and welfare
- financial oversight
- administrative oversight of the waiver.

The waiver program(s) provides assurance that all members are provided written information on the process of complaint/grievance procedures. Complaints are reported to case managers, provider agencies, the waiver program specialist and/or the Program Integrity Unit.

Waiver participants are provided the contact numbers for reporting of abuse, neglect, or exploitation: the Medicaid Agency; the Waiver Program Specialist; the Medicaid Fraud and Abuse Unit; the contract agency; the case manager; and the provider agency staff.

Case management under the Waivers and according to DCH

- To investigate the incident with involvement of appropriate parties while taking immediate steps to protect the waiver participant's health, safety, and welfare.
- Submit the Follow-Up and Interventions Report to the Department within seven (7) business days of submitting the incident report.
- Participate in regulatory agency investigations, when applicable and take appropriate a corrective action approved by the HCBS unit, if alleged violation is verified.
- Provide information of the outcome of the incident to the member and/or family as appropriate.

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Pursuant to DCH Policies and Procedures Part II Manual, Chapter(s) 600-100 and Policy and Procedure Manual of CCSP and SOURCE, 601.6 for reporting Incidents.

All wavier participants are given a document with the case management agency's contact information so that if any issues or concerns arises, they can report accordingly. The member is contacted monthly and are asked if there's any issues or concerns. Depending on the nature of the complaint, case management may report the incident via our online reporting system.

Members/families are given a document outlining their rights and responsibilities initially and routinely. This document includes filing grievances.

By accessing the website https://dch.georgia.gov/programs/hcbs detailed information regarding the process related to monitoring and compliance for all Waiver programs can be found.

If you should have any further inquiries related to Georgia's Statewide Transition Plan, or any related matters concerning the Complaint and Grievance process please contact Jada Cruce (Compliance Specialist 3) at jcruce@dch.ga.gov.

Sincerely,

Taesha M. Ward, MPA
Director of Program and Community Supports
Delivery & Administration
Georgia Department of Community Health
Medical Assistance Plans