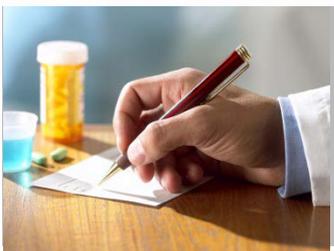


# HCBS Settings Rule Implementation: A National Conversation about Statewide Transition Plans

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



# Objectives for Today's Session

- Explain the Home and Community-Based Services (HCBS) settings regulation timeline and reaffirm the role of the Statewide Transition Plan (STP);
- Affirm CMS commitment to support states in achieving compliance with the HCBS settings regulation;
- Review content needed for initial and final STP approval and how the STP lays the foundation for initial and ongoing compliance;
- Review a Sample Checklist based on CMS guidance that can be used as a framework to examine settings, which may assist states to ensure that pertinent information is included in their STPs; and
- Identify different state and CMS monitoring mechanisms to ensure compliance with the HCBS settings requirements by March 17, 2023 and beyond.

# Settings Regulation Timeline and Role of Statewide Transition Plans

- The transition period for complying with the criteria of a home and community-based setting will expire on March 17, 2023.
- As states are determining the activities they will prioritize over the approximately 12 months remaining in the transition period, the role of the STP can't be overstated.
- The STPs provide a roadmap to describe how the state will ensure compliance with the regulation at both the state level and in their provider communities, providing transparency to stakeholders.
- CMS will be increasing the frequency of contact with states that have not yet received final STP approval to facilitate meaningful progress.

# State Challenges to Achieving Compliance with the HCBS Settings Criteria

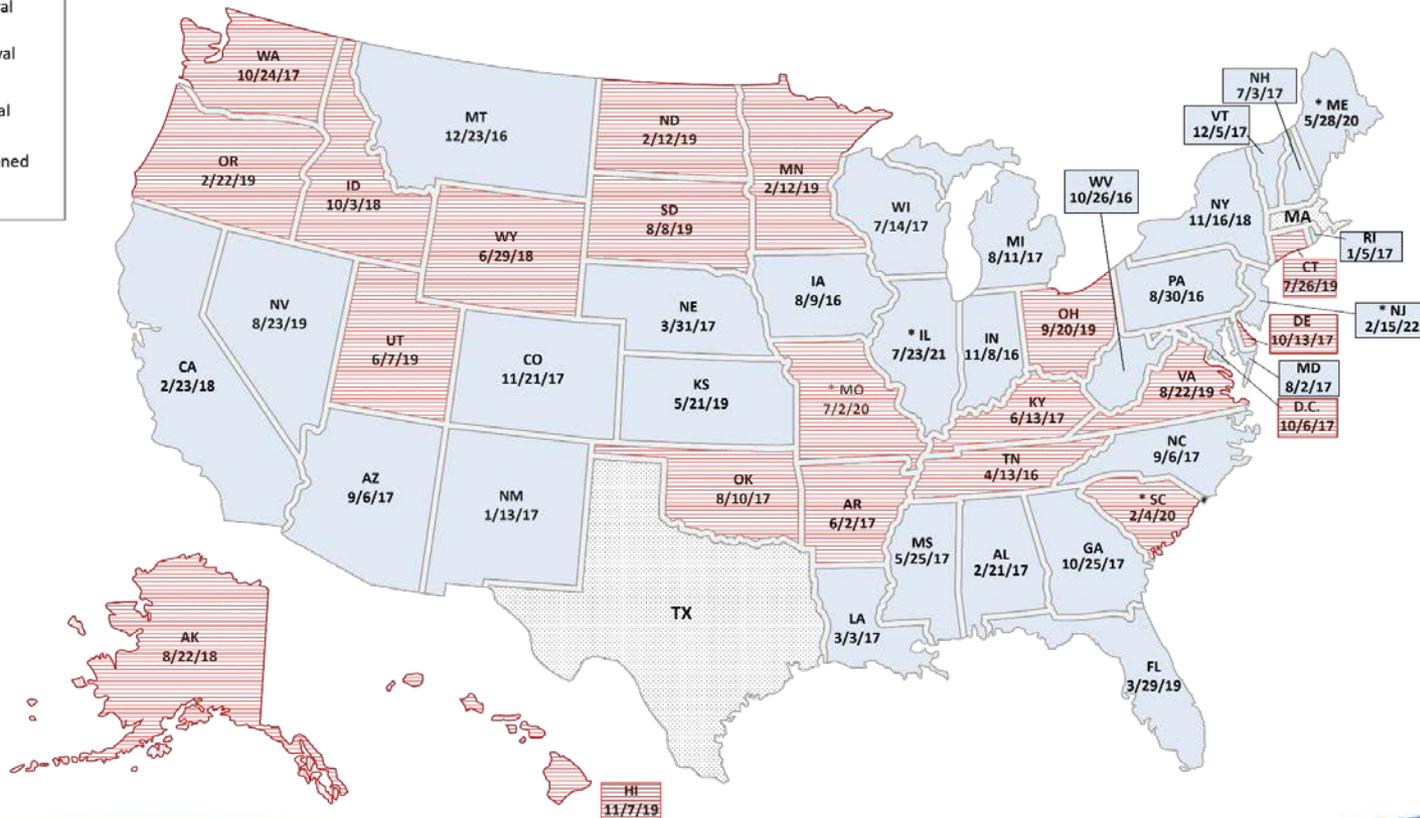
- Acknowledging that states are, and will continue to be, faced with a backlog of actions as a result of COVID-19, states are encouraged to work consistently on their HCBS settings compliance activities between now and March 17, 2023.
- CMS continues to expect that states will demonstrate progress toward compliance throughout the transition period. This will avoid last-minute build-up of actions and decisions and ensure adequate engagement of stakeholders throughout the transition period, as states finalize and implement their vision for HCBS provision.

# Initial and Final Approvals of Statewide Transition Plans (STPs)

Status	Number of States as of February 28, 2022
Initial Approval	49 States
Initial and Final Approval	21 States

# Statewide Transition Plan Status as of February 28, 2022

Statewide Transition Plan Status as of 2/28/2022



# Review of the Key Components for Successful Implementation of the STP: Initial Approval

## Elements needed for Initial Approval:

- ✓ Completion of state's systemic assessment;
- ✓ Outcomes of this assessment included in the STP;
- ✓ Outline of remediation strategies to rectify issues that the systemic assessment uncovered;
- ✓ State is actively working on those remediation strategies; and
- ✓ State issued the draft STP for a 30-day public comment period, made sure the information was widely disseminated, and responded to and summarized the comments in the STP submitted to CMS.

# Review of the Key Components for Successful Implementation of the STP: Final Approval (1 of 4)

Elements needed for Final Approval:

1. Inclusion of a comprehensive summary of completed site-specific assessments of all settings serving individuals receiving Medicaid-funded HCBS, validation of those assessment results and the aggregate outcomes of these activities.
2. Description of draft remediation strategies and a corresponding timeline for resolving issues that the site specific assessment process and subsequent validation strategies identified by the end of the HCBS settings transition period (March 17, 2023).

# Review of the Key Components for Successful Implementation of the STP: Final Approval (2 of 4)

3. Detailed plan 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 that have qualities that isolate Medicaid beneficiaries) as well as the proposed process for evaluating these settings and preparing information for submission to CMS for review under heightened scrutiny when the state has determined the setting does or will comply with the regulatory criteria by March 17, 2023.

# Review of the Key Components for Successful Implementation of the STP: Final Approval (3 of 4)

4. Description of the process for communicating with beneficiaries currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings criteria by March 17, 2023, including a timeline and description of the processes for assuring that beneficiaries, through the person-centered planning process, will be given the opportunity, the information and the supports necessary to make an informed choice of an alternate setting that aligns, or will align by the end of the transition period, with the regulation.

# Review of the Key Components for Successful Implementation of the STP: Final Approval (4 of 4)

In addition, when communicating with beneficiaries, CMS requests that this description and timeline specifically explain how the state intends to assure beneficiaries that they will be provided sufficient communication and support (including options among compliant settings), and that there will be no disruption of services during the transition period, including the number of beneficiaries who may need assistance in this regard.

5. A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the federal settings criteria in the future.

# Focus Areas in the Required Elements for Final Approval

*“What are the common components to look for in each of these elements to verify that the state is ready for final approval”?*

# Element #1: Site-Specific Assessments

## Identify:

- The state's comprehensive, state-wide approach to assessing compliance;
- All major service categories under all HCBS authorities and all settings in which each category of service(s) is provided; and
- Methods used to identify all types of HCBS settings in the state.

# Site-Specific Assessments: Methodologies

- Provider self-assessments;
- On-site or virtual assessments by state personnel or by managed care plans (MCPs); and
- Participant surveys and interviews linking surveys to specific settings and including a process for reconciling differences between the provider self-assessment and participant surveys.

# Site-Specific Assessments: Focus Areas

- Distinctions between settings under the rule:
  - Group settings;
  - Individual, privately owned home.
- Reverse integration.
- All settings must be assessed and validated by the state.
- The state will assess all settings criteria after the remediation period.

# Site-Specific Assessments: Validation Strategies

- Validity check required for provider self-assessments.
- Independence of assessments must be ensured when an MCP validates provider settings.
- Validation strategies vary across states.
- More robust validation processes increase success factors in helping settings assure compliance.

# Site-Specific Assessments: Aggregate Outcomes

- Results from site-specific assessments can be used to identify areas of non-compliance for system-wide remediation strategies.
- Results are to be aggregated by setting type and by HCBS program, identifying how many settings were determined to be in each of the following compliance categories:
  - fully compliant;
  - do not comply, but could with modifications;
  - cannot comply; and,
  - are presumed to have the qualities of an institution but for which the state will submit evidence for the application of heightened scrutiny.

# Element #2: Remediation Strategies

- State drafts remediation strategies with timelines for issue resolution by March 17, 2023.
- Designs setting-specific remediation and corrective action plans.
- Describes a monitoring process to ensure implementation in full compliance.
- Develops non-disability specific settings.

# Element #3: Heightened Scrutiny Review

Settings presumed NOT to be home and community-based:

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

# Element #4: Communicating with Beneficiaries

- State establishes a communication strategy with beneficiaries who are currently in home and community-based settings that cannot or will not come into compliance by March 17, 2023.
- Beneficiaries must:
  - Receive reasonable notice and due process;
  - Be given the opportunity, information, and supports to make an informed choice about options; and
  - Have sufficient time prior to March 17, 2023 to implement the plan.

# Communicating with Beneficiaries: Focus Areas

- Critical services and supports must in place for the beneficiary prior to transition.
- The STP describes who is responsible for ensuring beneficiary transition occurs correctly.
- STP includes an estimate of the number of individuals the state has determined through the assessment process who may need assistance in this regard.

# Element #5: Monitoring and Quality Assurance

Two key areas for monitoring:

1. Monitoring of Implementation of Remedial Actions
2. Monitoring to Ensure Ongoing Compliance

# Monitoring Implementation of Remedial Actions

- Monitoring State-Level Remedial Actions:
  - State process for meeting each STP milestone and timeline; and
  - Action when milestone(s) will not be met.
- Monitoring Provider-Level Remedial Actions:
  - Description of process – how, who, actions for non-responsiveness.

# Monitoring for Ongoing Compliance

The state should identify:

- Who will conduct the monitoring;
- Tools used to verify continued compliance;
- How the settings requirements will be integrated into existing procedures;
- Monitoring process for individual, private homes;
- Processes used to continually assess settings versus processes used to screen settings prior to enrollment as a provider; and
- Stakeholder engagement process.

# Strategies to Re-Integrate Individuals into the Community as the Public Health Emergency (PHE) Subsides

- Methods for assessing beneficiary comfort with re-integration activities;
- Based on the comfort level of the individual, methods to re-integrate beneficiaries back into the community;
- Assess the use of technology to facilitate and support individual re-entry into community activities;
- Identify how the setting offers a continuum or range of activities to facilitate community re-integration based on the needs, preferences and choices of the individual; and
- Assessment and monitoring of the beneficiary's re-integration experiences at the time of re-integration and ongoing.

# The Role of Data Collection and Analyses in Monitoring and Quality Assurance Processes

- The ability to collect, track and trend data is the foundation of effective quality/performance management and improvement across HCBS programs.
- Use of data to assist in the state's HCBS settings monitoring is a critical element in ensuring accurate and consistent ongoing monitoring.
- Reinforcing cross-agency collaboration on the monitoring function, including the evaluation and use of existing databases to track progress, is critical.

# Using Milestones/Timelines to Track Progress Toward Compliance

## Milestones

- The key steps to implementing and tracking the state's STP
- The state should:
  - Detail the milestones for each step of the monitoring process and identify reasonable timelines for each milestone, using CMS' complete list of standard milestones.
  - Supplement the list to track internal milestone steps as needed.
  - Work collaboratively with CMS to identify areas that need strengthening, with respect to the state's remediation and heightened scrutiny processes. Optional quarterly milestone reporting may assist states with this.

# Establishing Strategic Partnerships to Facilitate Collaboration Across State Agencies

The goal of strategic partnerships across state agencies is to establish a collaborative, cooperative effort in the successful implementation and ongoing monitoring of the STP in order to meet the HCBS settings criteria by:

- Ensuring representation from all critical, relevant agencies; and
- Creating a communication network to identify goals and objectives, provide clarification and direction, and help ensure consistent interpretation of the settings regulation across the state.

# Educating External Stakeholders Is Key!

- Educate all members of the stakeholder community on the settings criteria 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!

# Stakeholder Engagement

- Stakeholder organizations may include, but are not limited, to:
  - Protection and Advocacy organizations
  - Developmental Disability Councils
  - University Centers of Excellence on Disabilities
  - Area Agencies on Aging
  - Aging & Disability Resource Centers
  - Centers for Independent Living
  - Long-Term Care Ombudsmen
  - Organizations representing individuals with mental illness or traumatic brain injury
  - Service coordinators
  - State licensure, certification and quality assurance entities
  - Advocacy organizations that include individuals who receive HCBS

# Opportunities for Collaboration with External Stakeholders

States are strongly encouraged to collaborate with external stakeholders in the implementation of the settings regulation in the following areas:

- General STP development;
- Specific policy or state rule language development;
- Development of new tools or documents;
- State's validation efforts;
- Training;
- Community integration;
- Ongoing monitoring; and
- Heightened scrutiny.

# Prioritizing Critical STP Activities to Ensure Compliance by March 17, 2023

- **CMS does not intend to extend the expiration of the transition period beyond this date.**
- States should be working backwards from this date to complete the following critical STP activities:
  - Assessments of provider compliance with the settings criteria;
  - Identification of needed provider remediation, monitoring of provider progress implementing modifications, and submission of information to CMS;

# Prioritizing Critical STP Activities to Ensure Compliance by March 17, 2023 (cont.)

- Determination of timing by when individuals will need to transition out of settings that won't achieve compliance by the end of the transition period, selecting among individually specific options available for receiving services in a compliant setting;
- Processes for ongoing monitoring and quality assurance to ensure continued compliance with the settings criteria; and
- Sufficient time allocated to ensure the posting of the STP for a minimum 30-day public comment period, including a review by the state of comments received, before submitting the updated version of the STP to CMS for consideration of final approval.

# Demonstrated Progress Toward Compliance Throughout the Transition Period/State Resources

- CMS is committed to supporting states in achieving compliance with the HCBS settings regulation and the successful implementation of their STPs by providing 1:1 interactions to clarify issues, answer questions, and offer guidance and direction in receiving final approval of their STPs.
- Other resources available to assist states in this process include Technical Assistance from CMS, Small Group Discussions with states, and CMS covering topics of interest or concern to states, and regularly scheduled state-only training webinars focused on issues pertinent to states in achieving compliance with the settings regulation.

# Additional Resources to Assist States

- To facilitate CMS' STP 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.

# Sample Checklist Based on CMS Guidance (1 of 4)

A sample checklist for state reviews might include questions such as:

- Did you submit information that demonstrates how the setting meets all the regulatory criteria of an HCBS setting?
- Did you review CMS' exploratory questions in the Toolkit to help the state determine the type of information to submit?
- Did you describe the setting's proximity to and scope of interactions in and with the broader community?

# Sample Checklist Based on CMS Guidance (2 of 4)

- Did you describe the state's review of a sample of individuals' daily activities, person-centered service plans (PCSPs), and/or interviews to determine if there is a variation in the scope, frequency and breadth of an individual's interactions and engagement in and with the broader community?
- Did you include a copy of the procedures (e.g., the types of activities, transportation and staffing in place) and services provided that indicate evidence of access to and demonstrated support for an individual's integration into community activities consistent with the PCSP?
- Did you describe processes in place or actions taken by Direct Support Professionals to support, monitor, improve, and enhance an individual's integration in and with the broader community over time?
- Did you provide a summary of examples of how individuals are involved in local community activities with people not receiving Medicaid HCBS?

# Sample Checklist Based on CMS Guidance (3 of 4)

- Did you describe procedures in place to routinely monitor individual access to services and activities in the broader community to the extent identified in the PCSP?
- Did you describe how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards as described in the waiver or state plan amendment or in community training policies and procedures established by the state?
- Did you describe the setting's proximity to public transportation and how transportation is facilitated?
- Did you include a description of the setting's remediation plan to achieve compliance by the end of the transition period, along with the state's oversight to ensure compliance of actions?

# Sample Checklist Based on CMS Guidance (4 of 4)

- Did you provide an attestation that the state reviewed provider-owned or controlled settings and concluded through observation during an onsite visit and/or through a sample of consumer interviews or through a review of PCSPs that any modifications to the settings criteria are documented in the PCSPs?
- Did you include a summary or other description of stakeholder comments received in response to the state's solicitation of public feedback?
- Did you describe how the state will monitor a particular setting to ensure completion of remediation?
- Did you identify the milestones for the completion of activities to bring the setting(s) into compliance and report to CMS in an agreed upon schedule on the progress toward achieving those milestones?

# Promising Practices for Achieving Final Approval: Remediation Strategies

- Remediation Plans and Self-Assessments:
  - 5 states required providers to regularly report on updates to their remediation plans/progress; and
  - 6 states created a database or online system to store, track, and analyze remediation plan and self-assessment data.
- Information Dissemination:
  - 3 states developed and disseminated tools for specific provider types to support remediation; and
  - 4 states created HCBS settings regulation-specific websites and email addresses;

# Promising Practices for Achieving Final Approval: Remediation Strategies (cont.)

- Provider Training:
  - 6 states created robust provider training resources to expand capacity in the provider base; and
  - 2 states used expert advisory groups to develop provider training tools.
- Stakeholder Involvement:
  - 5 states formed stakeholder groups to develop provider training tools; and
  - 2 states included stakeholders in transition teams or focus groups.
- Use of Tiered Standards:
  - 2 states considered implementing tiered standards to encourage the use of more inclusive services.

# Promising Practices for Achieving Final Approval: Monitoring Strategies

- States referenced the use of data management systems to track setting-specific findings and remediation.
- States completed the site-specific assessment process to evaluate compliance with the settings criteria and described the plans for remediation through the transition period.
- States created new assessment tools to evaluate compliance with the settings criteria.
- All states used some type of remediation or corrective action plan for individual providers or settings found to be non-compliant with the settings criteria.

# Promising Practices for Achieving Final Approval: Monitoring Strategies (cont.)

- All states reference some role for the case management function in ongoing monitoring.
- The majority of states have formally incorporated participant interview questions or a survey into the ongoing monitoring strategies.
- States incorporated performance measures related to changes proposed in the state's STP waiver assurances/quality improvement section of the appendices found in a state's 1915(c) waiver submissions and, if applicable, into the state's 1915(i) state plan benefit quality improvement strategy.

# Ensuring Compliance Through Ongoing Monitoring AFTER

## March 17, 2023

- Incorporate settings-specific performance measures into the quality improvement section of the various appendices found in the 1915(c) waiver application, renewal or amendment submissions.
- The quality improvement strategy in the 1915(i) state plan HCBS benefit also includes a requirement for the state to address how it will ensure that the HCBS settings requirements are met.
- States should consider options for ongoing monitoring such as incorporating the settings requirements into state policies and procedures including existing licensing, certification, credentialing, case management and quality assurance processes.

# Ensuring Compliance Through Ongoing Monitoring AFTER

## March 17, 2023 (cont.)

- Examples of state monitoring activities include on-site or virtual visits to observe settings and individual integration into the community, review of records, interviews of staff and individuals served; provider self-assessment surveys that are validated; consumer satisfaction surveys linked to specific areas; 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.

# Moving Forward

- While recognizing the all encompassing role that the PHE has imposed to protect the health and safety of Medicaid participants, CMS, with their state partners, need to ensure that implementation of the HCBS settings rule, including design and implementation of the STP to achieve final approval, continues as a top priority for this year.
- Ensuring compliance with the requirements of the HCBS settings rule should continue to be considered as states implement approaches for using the increased federal funds for HCBS available under Section 9817 of the American Rescue Plan Act of 2021. For example, using federal funding for capital investments such as non-disability specific housing options.
- States should currently be considering how they will continue to ensure compliance with the settings rule beyond March 17, 2023, with a focus on provider assessments and trainings, and activities to further ongoing monitoring of provider compliance.

# Resources

- ❖ CMS Baltimore Office Contact—Division of Long-Term Services and Supports:  
[HCBS@cms.hhs.gov](mailto:HCBS@cms.hhs.gov)
- ❖ To request Technical Assistance:  
[HCBSsettingsTA@neweditions.net](mailto:HCBSsettingsTA@neweditions.net)
- ❖ Exploratory Questions to Assist States in Assessment of Residential and Non-Residential Home and Community-Based Service (HCBS) Settings available in the CMS Toolkit found at:  
<https://www.medicare.gov/medicaid/home-community-based-services/guidance/home-community-based-settings-requirements-compliance-toolkit/index.html>

# Resources (cont. )

- ❖ The Home and Community-Based Services Training Series has a number of trainings focused on various aspects of STP Implementation: <https://www.medicaid.gov/medicaid/home-community-based-services/home-community-based-services-training-series/index.html#hcb>
- ❖ Home and Community-Based Settings Requirements: New and Notable, June 26, 2015: <https://www.Medicaid.gov/new-and-notable/index.html>

# Questions?

# Feedback

Please complete a brief survey to help CMS monitor the quality and effectiveness of our presentations.

Please use the survey link:

<https://www.surveymonkey.com/r/9YF3TQS>

**WE WELCOME YOUR FEEDBACK!**