



Department of Medicaid

Mike DeWine, Governor
Jon Husted, Lt. Governor

Maureen M. Corcoran, Director

December 28, 2022

Ms. Melissa L. Harris
Deputy Director
Disabled & Elderly Health Programs Group
Centers for Medicare and Medicaid Services
7500 Security Boulevard, Mail Stop S3-14-26
Baltimore, Maryland 21244-1850

Dear Deputy Director Harris:

Thank you for the continued collaboration regarding the ongoing and continuous compliance requirements related to the Home and Community Based Services (HCBS) “settings” rule. And the important goals of the HCBS settings such as community integration, privacy, individual choice, and individual autonomy. Please accept the following narrative regarding Ohio’s approach to settings rule compliance.

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

Beginning in 2015, Ohio completed an initial assessment of the HCBS “settings” rule regulations to determine systemic and program specific regulations and processes requiring modification to achieve compliance with the HCBS settings rule requirements. This assessment process resulted in proposed changes to Ohio regulations, development of provider assessment and provider training tools.

Additional training and a re-review have already begun for providers related to the findings from the heightened scrutiny visits. If CMS approves the Corrective Action plan submitted by Ohio, then Ohio would also complete the following steps.

1. Ohio plans on hiring a vendor to provide training and assistance to waiver service coordinators, providers, and state staff that address these CAP specific requirements through person-centered planning improvements, specific trainings, and technical assistance availability.
2. Ohio plans to provide financial incentives to providers and their staff to work with the state’s training and assistance vendor to complete specific trainings.

Statute and Administrative Code Updates

Ohio identified and updated Ohio Administrative Code (OAC) regulations needed to assure incorporation of HCBS settings requirements for HCBS programs. Ohio added regulations to the OAC to require individuals enrolled in programs reside in settings that meet HCBS settings rule requirements, provider compliance with the regulations, and person-centered service planning activities to be completed in accordance with the federal regulations. Below is a listing of state statute and administrative code that have been updated or created in response to meet the HCBS settings rule requirements.

Ohio Departments of Medicaid and Aging Administered Programs adopted new regulations, essentially mirroring CFR

- Rule 5160-44-01 | Nursing facility-based level of care home and community-based services programs: home and community-based settings
- Rule 5160-44-02 | Nursing facility-based level of care home and community-based services programs: person-centered planning

ODM Administered Programs (Ohio Home Care, OhioRISE, MyCare waiver programs and Specialized Recovery Services and Supports)

- Rule 5160-45-01 | Ohio department of Medicaid (ODM) -administered waiver program: definitions
- Rule 5160-45-03 | Ohio department of Medicaid (ODM) -administered waiver program: individual rights and responsibilities
- Rule 5160-45-04 | Ohio department of Medicaid (ODM) -administered waiver program: provider enrollment process
- Rule 5160-43-07 | Specialized recovery services program compliance: provider monitoring, oversight, structural reviews, and investigations
- Rule 5160-45-06 | Ohio department of Medicaid (ODM) -administered waiver program: structural reviews of providers and investigation of provider occurrences
- Rule 5160-44-31 | Ohio department of Medicaid (ODM)-administered waiver programs: provider conditions of participation

Ohio Homecare Waiver

- Rule 5160-46-02 | Ohio home care waiver program: eligibility and enrollment
- Rule 5160-43-02 | Specialized recovery services program individual eligibility and program enrollment

Specialized recovery services

- Rule 5160-43-05 | Specialized recovery services program provider conditions of participation

MyCare Ohio Waiver

- Rule 5160-58-02.2 | MyCare Ohio waiver: eligibility and enrollment
- Rule 5160-58-03.2 | MyCare Ohio waiver: member choice, control, responsibilities, and participant direction.
- Rule 5160-58-08.4 | Appeals and grievances for "MyCare Ohio"
- Rule 5160-58-04 | MyCare Ohio waiver: covered services and providers

OhioRISE waiver

- Rule 5160-59-01 | OhioRISE: definitions
- Rule 5160-59-04 | OhioRISE home and community-based services waiver: eligibility and enrollment
- Rule 5160-59-05 | OhioRISE home and community-based services waiver: covered services and providers

Ohio Department of Aging administered waiver programs (Assisted Living and PASSPORT waivers)

- Rule 173-39-02 | ODA provider certification: requirements for providers to become, and to remain, certified
- Rule 173-39-02.16 | ODA provider certification: assisted living service
- Rule 173-39-03 | ODA provider certification: applying for certification
- Rule 173-39-03.1 | ODA provider certification: federal heightened scrutiny of provider settings with institutional characteristics
- Rule 173-39-03.2 | ODA provider certification: changes of ownership interest or organizational structure
- Rule 173-39-04 | ODA provider certification: structural compliance reviews
- Rule 173-39-05 | ODA provider certification: disciplinary actions

Assisted Living Waiver

- Rule 5160-33-03 | Eligibility for the Medicaid funded component of the assisted living program
- Rule 173-38-01 | Assisted living program (Medicaid-funded component): introduction and definitions
- Rule 5160-33-04 | Enrollment process for Medicaid-funded component of the assisted living waiver program
- Rule 173-38-03 | Assisted living program (Medicaid-funded component): enrollment and reassessment of individuals

PASSPORT Waiver

- Rule 5160-31-03 | Eligibility for enrollment in the PASSPORT HCBS waiver program
- Rule 173-42-01 | PASSPORT program (Medicaid-funded component): introduction and definitions
- Rule 173-42-06 | PASSPORT program (Medicaid-funded component): individuals' choices and responsibilities
- Chapter 173-39 | Provider Certification

Department of Developmental Disabilities Administered Programs (Individual Options, Level 1 and SELF waivers)

- Ohio Revised Code Section 5123.62 | Rights of persons with a developmental disability.
- Rule 5123-2-01 | Technology first
- Rule 5123-2-04 | Compliance reviews of certified providers
- Rule 5123-2-08 | Provider certification - agency providers
- Rule 5123-2-06 | Development and implementation of behavioral support strategies
- Rule 5123-2-07 | Personal funds of the individual
- Rule 5123-2-09 | Provider certification - independent providers
- Rule 5123-3-03 | Licensed residential facilities - person-centered planning
- Rule 5123-3-06 | Licensed residential facilities - compliance reviews, issuance of licenses, and adverse actions

- Rule 5123-4-02 | Service and support administration
- Rule 5123-4-04 | Resolution of complaints involving county boards of developmental disabilities and appeals of adverse action proposed or initiated by county boards of developmental disabilities
- Rule 5123-9-02 | Home and community-based services waivers - ensuring the suitability of services and service settings
- Rule 5123-9-13 | Home and community-based services waivers - career planning under the individual options, level one, and self-empowered life funding waivers.
- Rule 5123-9-14 | Home and community-based services waivers - vocational habilitation under the individual options, level one, and self-empowered life funding waivers.
- Rule 5123-9-15 | Home and community-based services waivers - individual employment support under the individual options, level one, and self-empowered life funding waivers.
- Rule 5123-9-16 | Home and community-based services waivers - group employment support under the individual options, level one, and self-empowered life funding waivers.
- Rule 5123-9-17 | Home and community-based services waivers - adult day support under the individual options, level one, and self-empowered life funding waivers.
- Rule 5123-9-30 | Home and community-based services waivers - homemaker/ personal care under the individual options and level one waivers.
- Rule 5123-9-32 | Home and community-based services waivers - participant-directed homemaker/personal care under the individual options, level one, and self-empowered life funding waivers.
- Rule 5123-9-33 | Home and community-based services waivers - shared living under the individual options waiver

Person Centered Planning and Monitoring

In response to the CMS HCBS settings rule heightened scrutiny site visits Ohio has engaged with waiver service coordinators to ensure person-centered service planning requirements will be met, including providing additional training and a new review tool. Waiver service coordinators will update the person-centered service plan as appropriate over the next few months for all HCBS participants served in provider owned or controlled settings. This process has already begun with a focus on presumed institutional settings first.

Ohio is requiring additional effort by waiver service coordinators to update person-centered service plans through an iterative process. This process may include provider related

compliance staff who need to, on an ad hoc basis, review provider compliance for the HCBS settings rule.

There will be a sampling of person-centered service plans by the state to ensure modifications are being appropriately addressed with a review of every plan in some instances.

Additionally, the state will review every person-centered service plan related to a finding from the heightened scrutiny site visits. The state will also sample additional person-centered service plans to ensure HCBS settings rule compliance from both the other presumed institutional settings and from other provider owned or controlled settings that are not presumed institutional.

Provider Manuals/Training

The State and/or their designees have provided training and technical assistance to care coordination entities, provider oversight entities and existing and newly applying HCBS provider owned and controlled service providers. Through the CMS on-site HCBS settings review report, as well as state staff observations, it is apparent additional training is needed. The State has proposed the following action plan through the Corrective Action Plan submitted December 1, 2022:

1. Dependent on CMS CAP approval, Ohio plans on hiring a vendor to provide training and assistance to waiver service coordinators, providers, and state staff that address these specific requirements through person-centered planning improvements, specific trainings, and technical assistance availability.
2. Dependent on CMS CAP approval, Ohio plans on financially incentivizing providers and provider staff to work with the state's training and assistance vendor to complete specific trainings.
3. Ohio has already required all person-centered service plans be reviewed and appropriately updated for the remainder of the HCBS Settings Rule requirements by January 2023 where feasible but under no circumstances later than March 17, 2023. This will undoubtedly also improve the State's compliance regarding the specific requirements included in this Corrective Action Plan (CAP) request.
4. Ohio has also already required provider related compliance staff to re-review all provider owned and controlled settings in many instances by January 2023 but under no circumstance later than March 17, 2023, for HCBS Settings Requirements not included in this CAP request. Again, this will also improve the State's compliance regarding the specific requirements included in this CAP request.
5. Ohio has altered forms used by provider related compliance staff and waiver service coordinators to better ensure HCBS Settings Rule requirements are met by providers. This includes both the specific requirements included in this request for a CAP and all other Settings Rule requirements that are not included in this CAP request.

Description of how the state assesses providers for initial compliance and conducts ongoing monitoring for continued compliance

Initial Compliance

Beginning in 2016, 100% of existing HCBS settings were evaluated to determine compliance with settings criteria.

Settings were categorized into one of four categories at the time of the review:

Settings that currently met the HCBS setting characteristics

The State ensured that existing settings met HCBS setting characteristics. The State assured settings would continue to meet the HCBS characteristics by adopting new and modifying current Ohio Administrative Code rules and modifying the State's HCBS ongoing provider oversight function.

Settings that did not meet HCBS characteristics for provider-owned or controlled setting but may with modifications

The settings categorized as "may meet with modifications" developed remediation plans because of either a provider self-assessment (ICF-IID system) OR an on-site assessment by State staff or its designee (NF-based LOC system). Using a combination of desk review and on-site reviews, the State reviewed 100% of remediation plans to determine proposed action steps and timeframes will result in compliance with the regulation no later than the end of the transition period.

ICF-IID System: Using the HCBS Setting Evaluation Tool developed with stakeholders representing county boards of developmental disabilities, providers of residential and non-residential services, individuals receiving services, and advocates, State personnel used the tool during on-site reviews of all settings (residential and non-residential), including adult foster care, shared living, and group employment support settings, to validate the provider self-assessments.

NF-based LOC system: The on-site review included reviews of documentation including the provider's strategic plan, policies and procedures, and staff training. The review also took into consideration the location of the setting and whether it appeared to be integrated into the broader community. Interviews were conducted with individuals receiving services, direct support professionals, and family members to gather information about the types of opportunities for access to the community that are available.

Settings that are presumed to have the effect of isolating individuals and may be subject to heightened scrutiny process

The settings categorized as “presumed to have the effect of isolating individuals” underwent an on-site evaluation conducted by State staff. The outcome of the on-site evaluation verified if the setting met one of the three prongs, collected evidence of compliance, and when remediation was indicated, determined whether the proposed action steps and timeframes would result in compliance with the regulation no later than the end of the transition period.

The State ensured that existing settings that are subject to heightened scrutiny come into full compliance with the HCBS characteristics by adopting a new HCBS settings rule, modifying existing OAC rules, establishing standards and defining acceptable evidence of compliance, provider remediation plans, on-site assessments which include the individual’s experience residing in the setting, and modifying the State’s HCBS ongoing provider oversight function.

Settings that cannot meet the HCBS characteristics

Initial HCBS Settings Reviews of Medicaid service providers: The State did not determine any settings were unable to meet the HCBS characteristics upon completion of the review of existing service providers. However throughout various stages of this review, over 150 settings voluntarily terminated their provider contracts.

Ongoing HCBS Setting Compliance Monitoring

Residential and non-residential settings serving individuals in Ohio’s HCBS delivery systems to be monitored beyond the transition period through scheduled provider compliance reviews and ongoing reviews completed by entities responsible for program care coordination and service authorization activities. Event-based reviews continue to be conducted upon receipt of complaints from individuals/guardians, community members, or others.

In the event a setting that previously demonstrated evidence of compliance cannot (or does not) subsequently produce acceptable evidence of compliance, the State’s established relocation team, led by the State Long-Term Care Ombudsman and/or entities responsible for program care coordination, will work with individuals to transition them to a setting of their choice that meets the HCBS characteristics.

New Residential and non-residential HCBS service setting applicants:

An initial on-site assessment is conducted for all new settings that provide residential and non-residential HCBS.

- For all settings applying to serve individuals in an Ohio HCBS program, the assessment is conducted prior to the entity being issued a Medicaid provider agreement to furnish HCBS waiver services.

- For individuals enrolled on an Ohio HCBS program, the entity responsible for care coordination and/or service authorization will ensure that new settings comply with the HCBS settings standards prior to adding the service to the individual's service plan. If a setting's non-compliance prevents a service from being added to an individual's plan, the individual will be afforded due process in accordance with Ohio Revised Code 5101:6-1 through 5101:6-9.

All HCBS service providers newly applying to become a service provider are assessed and verified to meet HCBS settings requirements prior to approval to become a Medicaid waiver service provider. Sites unable to meet HCBS settings requirements are prohibited from becoming new service providers. Providers meeting criteria for Heightened Scrutiny may not receive approval until the outcome of the CMS HS review has been determined and approval is received.

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.

Ombudsman

In conjunction with the State Long Term Care Ombudsman Office, the State employed a public education and outreach campaign on the HCBS settings characteristics, including communicating the process for individuals to raise concerns regarding the community nature, or lack thereof, of a specific setting. There also was guidance developed for ombudsman representatives, case managers, and waiver Service coordinators when educating individuals about HCBS settings and person-centered planning. Additional guidance was developed to provide guidance to individuals receiving Assisted Living or Adult Day Services in the Assisted Living, PASSPORT, Ohio Home Care and MyCare Ohio Waivers.

The State recognizes protection and advocacy entities are key partners in ongoing compliance by informing individuals of their right to file a complaint regarding a specific setting and/or to report directly to the State any concerns with a setting's ability to comply. Upon receiving a report by an individual or another entity, the State will initiate a formal review, as appropriate.

Using the existing complaint processes, individuals have the right to file a complaint regarding a specific setting. Individuals may report complaints through their care coordination entity, long term state ombudsman and/or to report directly to the State any concerns with a setting's ability to comply. Upon receiving a report by an individual or another entity, the State will initiate a formal review, as appropriate.

Case Manager

The case manager or waiver service coordinator also is an independent resource that the consumer can notify of any ongoing issue whether it is related to the HCBS settings rule or not.

The waiver service coordinator serves as an invaluable resource for the HCBS participant to help with authorizing paid supports, locating and informing the HCBS participant about community related resources, acting as support when there are provider related concerns including the HCBS settings rule, and just and a trusted confident to the HCBS participant. The waiver service coordinator is expected to make referrals to the appropriate entity depending on the instance, whether that is the Ombudsman, licensing agency, provider compliance, or protective services. The waiver service coordinator frequently reaches out the HCBS participant for regular assessments and check-ins and is also available by phone, in-person, or electronically as the HCBS participant needs or concerns arise.

Conclusion

Again, Ohio wants to thank CMS for their continued support and partnership related to compliance with the HCBS settings rule requirements. Ohio is committed to ensure all the requirements such as community integration, privacy, individual choice, and individual autonomy are and continue to be met.

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen M. Corcoran". The signature is fluid and cursive, with a long horizontal stroke at the end.

Maureen M. Corcoran, Director