



# Department of Medicaid

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Maureen M. Corcoran, Director

December 1, 2022

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:

Ohio thanks CMS for offering flexibility to states for select requirements of the Home and Community-Based Services (HCBS) "Settings Rule" for settings eligible for the transition period related to staffing shortages that have been substantially impacted by the Covid-19 public health emergency. Please accept the following request for a Corrective Action Plan (CAP) for additional time beyond March 17, 2023, for the requirements enumerated below.

### ***Specific Requirements to be Met by December 31, 2024***

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 and receive services in the community to the same degree of access as individuals not receiving HCBS services.
2. The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. These setting options are identified and documented in the person-centered services plan and are based on the individual's needs, preferences, and for residential settings, and resources available for room and board.
3. 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.
4. The setting facilitates individual choice regarding services and supports, and who provides them.
5. A legally enforceable agreement between the individual receiving services which provides protections that address eviction processes and appeals, specifies the responsibilities of the individual and the HCBS setting, and address the steps an individual must follow in order to request a review and/or appeal of the relocation that results in termination of the agreement.
6. An individual sharing a unit has a choice of roommates in that setting.

***State efforts to bring providers into compliance with these criteria***

1. Ohio as outlined in the Statewide Transition Plan (STP) has already developed a process to review existing providers for HCBS Settings Rule compliance.
2. Similarly, Ohio already has a process to ensure new providers also meet HCBS Settings Rule compliance.
3. Ohio has also previously engaged with waiver service coordinators to ensure person-centered service planning requirements would continue to be met.
4. Ohio has a provider compliance process in place outside of the iterative person-centered planning process to ensure providers are meeting Settings Rule requirements on a continuous basis.
5. Ohio is requiring additional effort by waiver service coordinators, provider related compliance staff that has already begun but will not complete for a few months.

***Pandemic Related Barriers Related to HCBS “Settings” Rule Compliance***

1. Foremost the pandemic related economic impacts on the labor market have been substantial. The ability to hire and retain staff has been substantially impaired by the pandemic and the related economic impacts. With available staff providers have been throughout the pandemic more focused on making on ensuring appropriate medical care for waiver participants.
2. Similarly, many providers faced substantial financial strain with increased wages from staff, inability to locate and hire willing staff, and the increased costs from other pandemic related activities.
3. Additionally, the resources and capacity of state staff have been similarly focused. Although it was incredibly helpful, the HCBS Settings Rule requirements were paused during the federal public health emergency which helped to allow state staff to focus on the pandemic itself and less so on the HCBS Settings Rule requirements.
4. In some instances, the State has also faced difficulty in hiring staff who perform HCBS Settings Rule related functions.
5. Many compliance related activities became virtual or through desk reviews as opposed to in-person reviews. In-person activities are more beneficial to ensure Settings Rule compliance.
6. Appropriately so, many additional stakeholders were less focused on HCBS Settings Rule requirements and more focused on other medical impacts of the COVID-19 pandemic.

***State Plan to Meet the Specific Requirements by December 31, 2024***

1. 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. 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 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 tweaked 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.

***In Conclusion***

Ohio thanks CMS for the opportunity to participate in a Corrective Action Plan that extends the amount of time for Ohio to ensure providers are following the specific HCBS Settings Rule requirements included in this CAP until December 31, 2024.

Sincerely,

Maureen M. Corcoran, Director