

February 1, 2023

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Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: South Carolina HCBS Settings Rule Implementation

Dear Ms. Richardson:

South Carolina Department of Health and Human Services (SCDHHS) is providing information to CMS to document state and provider compliance with the regulatory criteria as outlined below. This information is compiled from South Carolina's approved Statewide Transition Plan (STP) and South Carolina Department of Disabilities and Special Needs (SCDDSN) Directives.

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.

- SCDHHS uses a Quality Improvement Organization (QIO), an additional contracted entity, quality assurance staff and other agency staff to continuously evaluate the operating agency's (SCDDSN) quality management processes to ensure compliance. The QIO conducts validation reviews of a representative sample of initial level of care determinations performed by the operating agency (SCDDSN) and all adverse level of care determinations for all waivers operated by SCDDSN. The additional contracted entity provides specific quality management tasks like provider agency operational audits. SCDHHS Quality Assurance (QA) staff review all critical incident reports, Abuse, Neglect and Exploitation (ANE) reports, results of QIO provider reviews and receive licensing/certification reviews upon completion and any received participant complaints. SCDHHS QA staff conduct periodic quality assurance reviews that focus on the CMS quality assurance indicators, performance measures, financial expenditures and appropriateness of services based on assessed needs.
- SCDDSN also utilizes the independent QIO to complete annual licensing inspections for all Day settings and certain residential settings (CTH Is, CTH IIs, and SLP IIs) contracted for operation by the agency. Any Community Residential Care Facilities (CRCFs) are

reviewed for licensing inspections by the South Carolina Department of Health and Environmental Control (SCDHEC). Many of the current licensing standards for SCDDSN include the HCBS settings requirements. In February 2017, SCDDSN created and made public a Provider Dashboard. It provides current information on a provider's contract compliance review, licensing review, special certifications or accreditations, the review cycle timing of the provider and whether there are any current contract enforcement actions in place.

- SCDDSN also conducts yearly licensing and certification reviews for non-residential settings and certain residential settings for which they are authorized to license. The contracted QIO performs these reviews. While the emphasis for this review is more on basic health, safety, and welfare standards, some of the key indicators are aligned with HCBS requirements.

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

- SCDHHS serves as the Administrative and the Operating Authority for four 1915(c) waivers: Community Choices (CC), Mechanical Ventilator Dependent, HIV/AIDS, and Medically Complex Children (MCC). The State also serves as the Administrative Authority for the 1915(c)/(b)(4) Palmetto Coordinated System of Care (PCSC) waiver operated by the South Carolina Continuum of Care. With the introduction of Healthy Connections PRIME, the state retains full operational and administrative authority of this program and the waivers of which it is a part. Performance requirements, assessment methods, and methods for problem correction related to PRIME are described more thoroughly in the three-way contract between CMS, the CICOs (MMPs) and the state.
- ***Development of the assessment tools and criteria.*** Two assessment tools were developed for SCDDSN settings based on the tools used for the provider self-assessments: one for all day services facilities licensed by SCDDSN and one for residential settings. The criteria used to create these tools is outlined in 42 CFR 441.301(c)(4). Additionally, SCDHHS used the exploratory questions issued by CMS for the settings requirements. SCDHHS worked with the contracted vendor to refine and finalize the assessment tools for the SCDDSN day services facilities and the SCDDSN residential settings. The assessment gathered data from observation, staff interviews and participant/resident interviews.
- ***Assessment review.*** Each setting assessment equally weighed all data gathered to complete it (observation, staff interview, participant/resident interview). Two levels of review were done on the settings' site visit assessments. First,

SCDHHS staff completed a global review of all the site visit findings by setting type. Second, individual settings' assessments were reviewed by SCDDSN staff with SCDHHS staff conducting an informal review on a sample of the ~~individual~~ assessments.

- SCDHHS and SCDDSN established a process for reviewing the individual settings' assessments and determining if settings were or were not in compliance with HCBS requirements. The day services (non-residential) setting assessment had six domains with specific questions ("indicators") in each domain. For any domain that had an area of non-compliance, the provider was to submit a Compliance Action Plan (CAP) indicating how that area of non-compliance was to be remediated for that setting. The residential setting assessment had ten domains with specific questions ("indicators") in each domain. For any domain that had an area of non-compliance, the provider was to submit a Compliance Action Plan indicating how that area of non-compliance was to be remediated for that setting. SCDDSN created CAP templates for all providers along with instructions to complete them. All CAPs were submitted to SCDDSN for review and approval.
- ***Final HCBS Compliance determination.*** The final level of HCBS compliance of individual settings was determined after independent site visits and full reviews were completed. SCDHHS, along with SCDDSN where appropriate, developed an individualized response by provider for each facility based upon the self-assessment and site visit. The agency leveraged responses from the self-assessment and site visit to identify gaps in compliance, as well as include any global policy or programmatic changes that are necessary for the provider to comport with the new HCBS standards.

To ensure overall compliance with the settings requirements for the waivers they operate, SCDDSN makes any necessary changes to their standards and directives that relate to settings where waiver services are provided, such as the residential habilitation standards and all Day Service standards documents. SCDDSN also uses a Quality Improvement Organization (QIO) to assess service providers for contract compliance and quality assurance. The key indicators utilized by the QIO that determine contract compliance and quality assurance for waiver service providers are updated to reflect any changes made in the standards and directives.

- Waivers and Facility Services ongoing compliance – MCC Waiver. The Office of Waivers and Facility Services, formerly the Division of Community Options of SCDHHS, serves as the Administrative and the Operating Authority for the Medically Complex Children (MCC) waiver. Waivers and Facility Services utilizes Phoenix as its data system for this waiver. The State Medicaid Agency and the Care Coordination Services Organization (CSO) meets quarterly to monitor and analyze operational data and utilization from Phoenix to determine the effectiveness of the system and develop and implement necessary design changes. Annually, the Medicaid Agency and CSO will review trended data to evaluate the overall quality improvement strategy. This process allows a thorough assessment of areas needing improvement and areas of best practice. Systems improvement for statewide problems can be addressed through a variety of measures which include revision of policies and procedures allowing SCDHHS to ensure compliance with the new HCBS standards.
- Waivers and Facility Services ongoing compliance – SCDDSN operated waivers. SCDHHS maintains an Administrative Contract with SCDDSN that outlines responsibilities regarding SCDDSN's operations for the following waivers: Intellectual Disability/Related Disabilities (ID/RD), Community Supports (CS), and Head and Spinal Cord Injury (HASCI). The contract requires SCDDSN to submit any policy, procedure, or directive changes that are related to waiver operations to SCDHHS for review and approval. This secondary review allows for ongoing monitoring of systemic HCBS compliance.
- SCDHHS also uses a Quality Improvement Organization (QIO), an additional contracted entity, quality assurance staff, and other agency staff to continuously evaluate the operating agency's (SCDDSN) quality management processes to ensure compliance. The QIO conducts validation reviews of a representative sample of initial level of care determinations performed by the operating agency (SCDDSN) and all adverse level of care determinations. SCDHHS Quality Assurance (QA) staff conduct periodic quality assurance reviews that focus on the CMS quality assurance indicators and performance measures. To ensure compliance of quality and general operating effectiveness, SCDHHS will conduct reviews of the operating agency (SCDDSN). SCDHHS also utilizes its Division of Program Integrity, who works cooperatively with QA and Waiver staff, to investigate complaints and allegations of suspected abuse or fraud that may impact the system. Program Integrity also maintains a good working relationship with the Medicaid Fraud Control Unit at the Attorney General's office to investigate suspected fraud or initiate criminal investigations. Statewide problems can be addressed through different measures, including revisions of policy and/or procedures. These processes allow the state to take the necessary action to ensure compliance with the new HCBS standards.
- Ongoing Compliance – Adult Day Health Care (ADHC) Settings. The Long-Term Living (LTL) division of SCDHHS has waiver review as part of the overall LTL Quality Assurance (QA) Plan. This includes review of Adult Day Health Care settings that provide HCB services. Information is gathered and compiled from many data sources including

Provider Compliance Reports from SCDHHS staff, Adult Protective Services (APS)/critical incident reports, and provider reviews conducted at least every 24 months by SCDHHS staff (which includes reviews of ADHCs).

- Ongoing monitoring and compliance of ADHCs will be conducted in two ways: by a designated staff member of LTL to conduct on-site reviews and by a contracted vendor to collect participant feedback on their specific ADHC program. The reviews will begin 18-24 months after the initial assessment and compliance action period and will consist of an on-site visit to each facility to observe settings and participants' individual integration into the community. The staff member will utilize a questionnaire that contains the same components of the initial assessment to complete the on-site reviews. Currently, the state has a sanctioning policy ranging from corrective action plans up to termination. During the transition period up to March 17, 2024, the state will utilize the same sanctioning policy to address noncompliance with the HCBS regulatory requirements to allow for remediation. After that date, any provider who does not meet the HCBS Setting requirement during their Provider Compliance will no longer be able to provide Medicaid services. Tracking of compliance results will be stored in LTL's Phoenix system for easy reporting.

It is through these established systems of quality assurance review that ongoing compliance of HCBS standards will be monitored after the transition period ends March 17, 2024.

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.

- For participants served through DDSN-operated waivers, it is the policy of SCDDSN that people who receive services and/or their representatives acting on their behalf are assured their right to voice concerns, and that concerns are received without actions being taken against them for doing so. Remediation should be made through their direct service provider's policy regarding concerns.
- The procedure will be reflective of the values and principles of SCDDSN and will clearly delineate all steps in the process. People who receive services and their representatives will be provided with information about the process in a manner that is understandable to the person. Support will be provided, if needed to people who wish to express a concern but need assistance in understanding or following the process.

- All efforts will be made to resolve concerns at the most immediate staff level that can properly address the concern. Efforts will be made to promote trust and open communication at the local service level whenever possible.
- Concerns involving health and safety of people receiving services will receive immediate review and necessary action will be taken if the person's health or safety is at risk.
- People who receive services and/or their representatives expressing concerns should be encouraged to seek remediation through their direct service provider's policy regarding concerns.
- If a participant feels the setting is not in compliance with HCBS requirements, the participant and/or their representative can contact their assigned Case Manager to report their concern. The Case Manager will investigate the concern and determine next steps. If the concern is unable to be resolved at the Case Manager level, the participant and/or their representative can contact the SCDDSN Central Office, Waiver Administration Division at (803) 898-9729 or WaiverAdmin@ddsn.sc.gov.
- Follow up to a concern will include contact with the person or representative expressing the concern, review and research of the concern, efforts to mediate resolution, and documentation of all actions taken. The nature of the concern and the needs of the individual will factor into the time required for response, but generally, responses are provided within ten (10) business days.
- Facility Directors/Executive Directors/CEOs will be notified whenever a consumer concern involves their service area.