



MAINE'S STATUS UPDATE FOR IMPLEMENTING THE FEDERAL HOME & COMMUNITY-BASED SERVICES RULE

VERSION III

January 19, 2023

Maine Department of Health and Human Services

Introduction

Maine has final approval of its Statewide Transition Plan (STP) and has made systemic changes within its waiver applications and corresponding Medicaid rules to ensure compliance with the federal Home and Community Based Services (HCBS) Settings Rule. The State's adherence to the final approved STP and systemic changes within the waiver system of care corresponding with promulgated Medicaid regulations, ensures compliance with the federal HCBS settings rule. In addition, the State continues to follow a process for technical assistance, ongoing provider reviews and monitoring in accordance with Maine's promulgated regulations governing the operation of HCBS settings.

The State attests that all providers have been assessed using MaineCare Benefits Manual, Ch. 1, Section 6, Global HCBS Waiver Person-Centered Planning and Settings Rule; the State's regulations governing provider compliance with the federal HCBS Settings rule. Accordingly, the State has issued Notice of Violation with accompanying due process rights to HCBS settings provisionally determined not to have met compliance with these regulations. At the exhaustion of the provider's right to appeal, the setting will be disenrolled from the HCBS system in accordance with the State's final determination of non-compliance.

The State is monitoring all approved provider-level remediation plans and attests that all HCBS settings will be compliant with the following regulatory criteria by the end of the transition period:

- Privacy, dignity, respect, and freedom from coercion and restraint; and
- Control of personal resources.

Similarly, the State attests that all HCBS provider-owned or controlled residential settings will be compliant with the following regulatory criteria by the end of the transition period:

- A lease or other legally enforceable agreement providing similar protections;
- Privacy in their unit, including lockable doors, and freedom to furnish or decorate the unit;
- Access to food at any time;
- Access to visitors at any time;
- Physical accessibility; and
- Person-centered service plan documentation of modifications to relevant regulatory criteria.

Ongoing Investments in Systems-Change Efforts around Person-Centered Planning and Conflict-Free Case Management

To support the state's work of building stronger provider capacity in the area of integrated community-based service delivery and compliance with Maine's Global Settings Rule, Maine has actively engaged in advancing systems-changes to assure consistent use of person-centered methods in service planning and case management processes. Over the past two years Maine consulted with HCBS subject matter experts (SMEs) to enhance current practice and develop new approaches to person-centered assessment and planning for all five HCBS waivers.

Section 19 system improvements included:

- In 2020 completed a gap analysis of its previous Person-Centered Planning Process;

- Following the gap analysis, Section 19 made changes to its Person-Centered Planning to include:
 - Improved process flow;
 - Development of a Person-Centered Planning Conversation Guide Assessment and Plan;
 - Development of a Person-Centered Planning Manual (August 2021);
 - Completed consultation and training with Service Coordination Agencies (SCAs) Care Coordination staff, members and Section 19 providers (Fall 2021);
 - Created an ongoing training plan related to Person-Centered practices;
 - Developed improved quality audit process for Person-Centered Planning;
 - Adoption of updated administrative rules¹ in May 2021 for the Section 19 Waiver, incorporating applicable requirements from the Federal HCBS Settings Rule. The new person-centered assessment and planning process was implemented January 1, 2022.

Sections 18, 20, 21, and 29, systemic improvements included the completion of a draft enhancement to Maine's Person-Centered Planning Process: Instruction Guide to:

- Integrate stakeholder input/feedback, including the HCBS Stakeholder Advisory Committee (June 2021).
- Broaden the assessment process to capture, in addition to needs, individual strengths and preferences learned through getting to know the participant.
- Address the Department of Health and Human Services' agreement with the Department of Justice to assure:
 - Services that participants receive are determined by their individual needs and preferences, and not by provider preference.
 - The person-centered planning process identifies the amount, frequency, and type of service necessary to ensure the participant receives adequate and appropriate services and supports in the most integrated setting appropriate to their needs.

Additionally for the Sections 18, 29, 21, and 29 waivers, and rolled out in June 2022, Maine integrated an Interim Person-Centered Plan in its health management record, Enterprise Information System (EIS), to address the Department of Health and Human Services' agreement with the Department of Justice assuring:

- The individual's Person-Centered Plan is informed by an assessment of functional needs and preferences, not provider preference.
- The person-centered planning process identifies the amount, frequency, and type of service necessary to ensure the participant receives adequate and appropriate services and supports in the most integrated setting appropriate to their needs.

¹ <https://www.maine.gov/sos/cec/rules/10/144/ch101/c2s019.docx> (accessed January 19, 2023).

- Providers of HCBS services will no longer enter goals directly into the Person-Centered Plan, but rather a proposed process for providers to develop individualized Service Implementation Plans (SIP) based on the goals, needs, and preferences identified in the Person-Centered Plan.

Maine provided training series through EIS starting in April 2022 to support the June 2022 roll out of the enhanced person-centered service plan. The training series included an updated instruction guide and consistent guidance for participants, families and providers that align with the intent and standards set forth in the HCBS Global Rule. Person-centered service planning tools are available on the Office of Aging and Disability Services (OADS) website along with recorded trainings, PowerPoint presentations and a frequently asked questions document.² Finally, the Department maintains a dedicated email address providing person-centric support and feedback to facilitate provider engagement, implementation and compliance.

The Department of Health and Human Services (DHHS) also implemented an ongoing assessment of training needs to ensure Sections 21 and 29 Person-Centered Service Planning practice is consistent state and federal settings standards.³ This training needs assessment included:

- DHHS conducted a 6-part virtual webinar series (totaling 10 hours) in January 2021. The webinar series included two, 2-hour sessions each for Case Managers and Waivers services providers and two, 1-hour sessions for Participants, family members, and Guardians.

Webinar topics included:

- Overview of HCBS Qualities and the HCBS Modifications process, including interface with 14-197 C.M.R. Chapter 5.
- What is a non-disability specific setting? Offering authentic choice of setting for Participants during the person-centered planning process, including at least one non-disability specific setting option.
- DHHS conducted a hybrid approach to learning including live webinar sessions and access to online training resources to promote person-centered thinking and planning in the Spring of 2022.

Moreover, effective May 22, 2022, the Office of MaineCare Services (OMS) adopted changes to MaineCare Benefits Manual (MBM), Chapter II, Section 21, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder including provisions for provider compliance with the HCBS Global Rule. Maine intends to propose similar provisions and revisions within Sections 18, 20, and 29 of the MBM and anticipates final adoption in 2023 or early in 2024.

Additionally, DHHS has continued to support an ongoing project to update the case-management information system to promote high quality, person-centered assessment and planning practices. DHHS

² See <https://www.maine.gov/dhhs/oads/providers/adults-with-intellectual-disability-and-autism/person-centered-planning>

³ 42 C.F.R. § 441.301(c)(1)

has included the acceleration of its efforts on this project in its proposed plan⁴ for the additional federal matching funds (FMAP) associated with the passage of the American Rescue Plan Act of 2021⁵ (ARP).

The proposed \$19 million earmarked for comprehensive HCBS information systems modernization includes:

- Extending a provider database to new HCBS provider types;
- Connecting Adult Protective Services data with HCBS data to better capture trends, opportunities and threats;
- Connecting residential providers to the state's Health Information Exchange;
- Procuring a learning management system (LMS) providing training for and tracking of the requisite direct support staff certifications including progress across MaineCare HCBS programs and a direct communication vehicle with the HCBS waivers direct support workforce; and
- Purchasing and distributing tablets to defray provider costs associated with electronic visit verification (EVV) compliance.

These coordinated initiatives are all designed to assure system-wide compliance with the Federal HCBS requirements for person-centered planning and high quality, empowering and truly person-centered experiences all for waiver participants.

The projects in the quality and accountability area will strengthen the states infrastructure for HCBS to include adopting and reporting on HCBS quality measures. This includes, under Section 9817, a plan by OADS to pilot the HCBS Consumer Assessment of Healthcare Providers and Systems Survey (CAHPS) in 2023. HCBS CAHPS is a survey created by CMS which evaluates the experience of care by individuals receiving long-term services and supports from state Medicaid HCBS Waiver programs. Results from the HCBS CAHPS survey will be used to inform future quality improvement efforts.

New and Planned Changes to HCBS Waivers to Incentivize Stronger Focus on Individualized, Integrated Community-based Services

Maine is working on several strategies related to service definitions, reimbursement methodologies, and outcomes-based performance measurement to strengthen the system's ability to deliver services to more HCBS waiver participants in individualized integrated community-based settings.

Effective July 1, 2021, Maine sought to enhance opportunities for community integration by adding two new delivery options, under the umbrella of Community Supports in the Sections 20, 21 and 29

⁴ State of Maine Initial Plan for Implementation of American Rescue Plan Act of 2021, Section 9817 available at: <https://www.medicaid.gov/media/file/me-updated-spending-plan.pdf> (accessed January 19, 2023).

⁵ Public Law 117-2.

waivers, to support individualized needs and expand the use of Community Supports more broadly. The two new delivery options, “Community Only-Individual” and “Community-Only Group”, have distinct reimbursement rates, staffing ratio requirements and location of service delivery from facility-based Community Supports. Community Support- Community Only services occur only in community settings and not in a provider owned or controlled or a disability-specific setting to expand and enhance community integration opportunities for participants. OADS received approval from CMS to add these two integrated delivery options initially under the Appendix K, amended in November 2021. The first providers were approved in December 2021. The State is in the final process for the new community support delivery options to be permanent upon the effective end date of the states approved Appendix K.

DHHS has increased reimbursement rates for HCBS effective January 1, 2023, pursuant to Maine Public Law 2021, ch. 398, Part AAAA, An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain provisions for the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2021, June 30, 2022, and June 30, 2023.⁶ These increases reflect additional funding sought by DHHS to:

- Update the cost-of-living adjustments (COLA)
- Fund the labor components of rates to ensure they equal at least 125 percent of minimum wage.

These efforts collectively will help the state prepare for future systems transformation focused on improving person-centeredness, self-direction, individualization, inclusion, and quality.

Final Adoption of the Global HCBS Waiver Rule

The Department adopted the Global HCBS Waiver Person-Centered Planning and Settings Rule with an effective date of January 19, 2022.⁷ Despite the impact of COVID-19, this was accomplished just over one year after the target deadline of December 31, 2020, included in the initial STP.

Update on Other Remediation Needed to Address Systemic Assessment

Final adoption of the Global Rule addressed much of the systemic remediation necessary. Systemic remediation, beyond the adoption of the Global Rule, includes:

- Sections 18, 19, 20, 21 and 29 waiver changes and MBM rule changes: (1) to ensure alignment with the Global Rule; (2) to address ongoing monitoring including privately owned/leased homes and individualized integrated community settings where HCBS is delivered; and finally, (3) to address requirements for disability-specific non- residential settings for Sections 18, 20, 21, and 29.
 - Section 18 Update: MBM rule changes are anticipated to be adopted in 2023.

⁶ See [Updates on Part AAAA Reimbursement and Section 9817 HCBS Bonus Payments \(govdelivery.com\)](#) (accessed January 19, 2023).

⁷ <https://www.maine.gov/sos/cec/rules/10/144/ch101/c1s006.docx> (accessed January 19, 2023).

- Section 19 Update: MBM rule changes⁸ were adopted May 2, 2021, which included person-centered planning requirements and a requirement that “All professional and other qualified staff must be trained upon hire, prior to the provision of services to a participant, and annually thereafter, regarding HCBS requirements” (§ 19.08-8). In response to the systemic assessment findings, the new person-centered assessment and planning process adopted January 1, 2022, includes domains that address community integration and integrated employment.
- To ensure each participant’s experience is consistent with Federal HCBS Settings Rule general standards, the state intends to conduct an annual Individual Experience Assessment (IEA) interview with all Section 19 participants beginning in March of 2023. DHHS will begin conducting telephonic interviews directly with participants outside of their person-centered planning or service delivery. Results would be available in real time for OADS managers to review. There would also be an ability for OADS managers to flag areas that need further review/follow up with Care Coordinators to correct situations where participants’ experiences are not fully consistent with HCBS standards.
- Additional MBM rule changes necessary will be incorporated into rulemaking with anticipated adoption in 2023/early 2024.
- Section 20 Update: MBM rule changes are anticipated to be adopted in 2023.
- Section 21 Update: Waiver changes have been completed and approved by CMS. An updated MBM rule was proposed on August 10, 2021. A public comment period was held ending January 31, 2022. This amended rule was adopted on May 22, 2022.
- Section 29 Update: MBM rule changes are anticipated to be adopted in 2023.
- [Licensing – 10-144 C.M.R. Chapter 113: Regulations Governing the Licensing and Functioning of Assisted Housing Programs.](#) Statute and rule both require that providers under 10-144 CMR Ch 113 use the Standard Contract that is included as Appendix A of the rule. Statute does allow providers to draft an addendum to the contract or agreement for assisted living services so long as that addendum does not contain provisions that violate a state law or rule or federal law or regulation and is consistent with the rules adopted by the state applicable to the type of assisted living services provided.
- [Rule - 14-197 C.M.R. Chapter 5: Regulations Governing Behavioral Support, Modification and Management for People with Intellectual Disabilities or Autism in Maine.](#) Chapter 5 has been amended to clarify that when a Person experiencing Challenging Behavior receives MaineCare HCBS waiver services regulated, in part, under the Global HCBS Waiver Rule, the provision of supports authorized shall comply with the Global HCBS Waiver Rule. The amended rule has been proposed and is in the process of promulgation with a final adoption date of March 2023.
- [Rule: 14-197 C.M.R. Chapter 12: Reportable Events System.](#) The systemic assessment identified the need to ensure emergency restraints must be reported, consistent with the Federal HCBS

⁸ <https://www.maine.gov/sos/cec/rules/10/144/ch101/c2s019.docx> (accessed January 19, 2023).

Settings Rule requirement assuring participants experience freedom from restraint. The State has updated training and provided technical assistance to ensure emergency restraints are reported through the Reportable Events System as required by HCBS providers.

Initial Compliance Assessment

For Sections 18, 20, 21, and 29, the State developed a new provider application and onboarding process to ensure any new applicant seeking to deliver HCBS services complies with the State's Global Rule in advance of service delivery. Applicants must submit an application and supporting documentation, (i.e., policies and procedures) to the Office of Aging and Disability Services for review against all regulatory requirements. To support new providers in meeting initial expectations the state created a new provider application and onboarding resources web page ([Onboarding Resources | Department of Health and Human Services \(maine.gov\)](#)). [Provider Application and Onboarding Resources | Department of Health and Human Services \(maine.gov\)](#)).

Strategy for Ongoing Monitoring & Quality Assurance

For Sections 18, 20, 21, and 29, after the new provider on-boarding process is complete, the new provider is included with the list of all eligible providers selected for on-going monitoring of compliance with the Federal HCBS Settings Rule general standards, reflected in the state's Global HCBS Waiver Rule. As described in the final approved Statewide Transition Plan (STP), Maine will implement a multi-pronged approach for on-going compliance monitoring including individual experience assessments, desk-level review procedures and on-site visits during 5- year compliance monitoring cycles.

The following is a general description of on-going monitoring procedures of provider compliance with the state's Global Rule for residential (group home, shared living and/or family centered) and non-residential service (center-based, clubhouse and/or work support) settings.

Observation Period

Minimally, each observation period follows a 5-year cycle and includes either a desk-level or on-site review. The first 5-year cycle of on-going compliance monitoring will begin with desk-level review procedures. The second 5-year cycle will include on-site visits. Each 5-year observation period targeting desk-level or on-site reviews will alternate thereafter. Providers will have the benefit of participating in a desk-level review in one cycle and an on-site review in the next cycle. However, should a monitoring activity suggest that a provider may be out of compliance with a specific requirement, OADS may increase monitoring frequency until such time as the provider is able to demonstrate compliance.

Provider Sample Frame Procedure

Prior to initiating the 1st 5-year observation cycle, a sample frame will be created for all eligible HCBS providers. A randomizing applet will determine the order that providers will be selected for a compliance monitoring activity. Once a complete sample frame of eligible providers has been randomized, the eligible provider list will be divided evenly across the 5-year cycle. For example, if there is a total of 300 eligible providers, then 60 providers will participate in annual compliance monitoring until the 5 year-cycle is complete. This sampling protocol results in 100% of providers participating in either a desk-level or on-site review depending on the focus of the 5-year cycle. The sample frame will be updated no later than the end of 4th year in the current observation period to remove ineligible

providers and include new providers in the next 5- year cycle. Once a 5-year cycle is complete, then the next 5-year cycle is alternated with a different type of monitoring activity.

Desk-Level Review Sampling Procedure

When a provider is selected for desk-level review, the reviewer will confirm the total number of provider operated settings by setting type (i.e., residential and/or non-residential services) for each waiver. A sample size calculator at 95% confidence will be used to determine the count of individual setting records to be randomly selected by setting type.

On-Site Visit Sampling Procedure

On-site visits will include a site survey and individual experience assessment interview with a select number of waiver participants. Prior to conducting an on-site visit with a selected provider, the reviewer will confirm all provider operated eligible setting types by waiver. Once a list of provider-operated eligible setting types by waiver is confirmed, an observation probe model will be implemented. The observation probe will include randomly selecting one setting by setting type for each waiver for an on-site visit. In other words, each provider agency will have a site visit arranged for one setting for each setting category offered in residential (group home, shared living and/or family centered) and non-residential service (center-based, clubhouse and/or work support) settings. Settings visited will be randomly selected for each waiver and setting type. An observation probe for each setting type by waiver per agency will be conducted. The results from the initial observation probe will determine if additional site visits are need for further evaluation of compliance with HCBS settings requirements. For example, if a provider agency operates 150 settings in total which serve section 18, 20, 21 and 29 in both group homes and shared living, then probe observations will occur for each waiver group home and each waiver shared living for a total of seven different settings (three group homes for each waiver (Section 18, 20, 21) and two shared living settings (one for section 21 and one for section 29). If a setting type includes services for more than one waiver simultaneously (e.g., a group home serves both section 18 and section 21 waiver members), then one observation at that setting will meet the requirement for both waivers. A similar approach would be applied if the agency operates different types of non-residential settings.

- Provider agencies must submit a plan of corrective action⁹ for substantial compliance deficiencies in one or more of the state’s Global HCBS Person-Centered Planning and Settings Rule standards.
- As plans of correction are submitted, the state will review the plans and accompanying documentation and approve or deny the corrective action plans in writing. Providers may can request an informal review and subsequent adjudatory hearing if a provider has been directly and adversely affected by a decision made by the Department. DHHS may follow up to ensure providers have implemented the approved corrective action plans.

Other Types of HCBS Settings the State could Presume Compliant During the Transition Period

The Section 19 waiver does not utilize provider owned or controlled residential settings or disability-

⁹ MBM Ch. I, Sec. 1, § 1.20-1Q.

specific non-residential settings. All services in the Section 19 waiver and some services in the other four waivers are delivered in privately-owned/leased homes and other individualized integrated community settings that are not provider owned or controlled and/or not disability-specific settings. However, DHHS must still address ongoing monitoring for these settings, when the provision of HCBS occurs, to ensure each participant's experience is consistent with the state's Global HCBS Waiver Rule. Therefore, beginning in March of 2023, DHHS intends to operationalize implementation of the following approach:

- 1) Conduct annual Individual Experience Assessment (IEA) interviews, using random sample approach, to establish the extent to which participant experience is consistent with provisions set forth in the state's Global Rule. The Department will conduct interviews according to the following schedule:
 - a. In Section 19, a random, representative sampling of Section 19 waiver participants will be interviewed annually.
 - In Section 19, this process will not be conducted as part of the PCP process, but instead is planned as a stand-alone process conducted telephonically. Results will be available in real time for OADS LTSS managers or quality assurance staff to review.
 - b. In Sections 18, 20, 21 and 29, a provider agency will be selected once every five years and in the selected year, all waiver participants served by the selected provider agency will receive an IEA. OADS managers will flag areas that need further review/follow up with Care Coordinators and/or providers to correct situations where participants' experiences are not fully consistent with the Global HCBS Waiver Rule.
 - In Sections 18, 20, 21, and 29, case managers will conduct IEAs as part of their case management monitoring functions.
- 2) Any substantial discrepancies between the aggregate participant responses for the provider agency and compliance with one or more of the standards in the state's Global HCBS Waiver Rule, will result in the provider being contacted by the OADS regional quality assurance team to determine whether the provider has evidence that supports affirmative compliance with the standard(s) in question. If not, the provider will be required to implement an approved plan of correction.¹⁰
- 3) As plans of correction are submitted, the state will review the plans and accompanying documentation and respond via a letter to the provider. Follow-up by DHHS will occur to ensure corrective actions, once approved, are implemented.

Case Management/Care Coordination Agencies

OADS will conduct a review of a 10% randomly selected sample of person-centered service plans (PCPs/PCSPs), including HCBS Rights Modifications, from each case management/care coordination agency every three years. These reviews will further strengthen the state's existing approach to ensuring continued compliance with person-centered service planning requirements in the state's Global HCBS Waiver Rule.

¹⁰ *Ibid.*

- OADS will provide a report to the agency under review on the findings of the review and assessment. Any deficiencies in substantial compliance with the state’s Global HCBS Waiver Rule standards will result in the State issuing written notices of deficiencies¹¹ and requiring the provider to submit and implement plans of corrective action as approved by the Department.
- As plans of correction are submitted, the state will review the plans and accompanying documentation and respond via a letter to the provider. Follow-up by DHHS will occur to ensure corrective actions, once approved, are implemented.

The above approach to ongoing monitoring within the MaineCare HCBS waiver system will assure that all MaineCare HCBS settings are regularly monitored on an ongoing basis for full compliance with the Global HCBS Waiver Rule.

DHHS, including OMS and OADS, recognizes that a key component of ongoing monitoring is also the provision of continued technical assistance and training opportunities for providers, Care Coordinators/Case Managers, participants, and their allies (e.g., family, friends, and guardians). DHHS is committed to continue working with all of these stakeholders and advocates to determine what strategies can be deployed to continue to facilitate the use of promising practices in waiver service provision to ensure continuous quality improvement in the state’s HCBS waiver programs.

Beneficiary Recourse to Report Non-Compliance

There are multiple ways beneficiaries can notify the state of provider non-compliance:

- Beneficiaries can notify their case manager/care coordinator and address complaints through the person-centered service planning process.
- For Sections 18, 20, 21, and 29, Beneficiaries can file a grievance form or verbally notify the provider or case manager and they will fill out the form for the beneficiary. This process includes an option to request mediation. Case managers are required to document the grievance, notify Disability Rights Maine, and to work quickly to try to resolve the complaint. If the grievance cannot be resolved at Level I - case manager, it will be referred for Level II - OADS Program Administrator review and if the decision is not acceptable or not received in a timely manner a Level III - Formal Administrative Hearing can be requested.
- At any point in the process the beneficiary can contact the Disability Rights Maine Advocates for support in the process.

Reports of non-compliance will be reviewed and investigated by the appropriate agency based on the nature of the report. Any complaint of substantial non-compliance in one or more of the state’s Global Rule standards, will result in the provider being contacted by the OADS regional quality assurance team to determine whether the provider has evidence that supports affirmative compliance with the standard(s) in question. The provider will be required to implement an approved plan of correction in

¹¹ *Ibid.*

the absence of evidence of compliance. As plans of correction are submitted, the state will review the plans and accompanying documentation and approve or deny the corrective action plans in writing. Follow-up site visits may occur as a result of the review with providers to ensure corrective actions, once approved, are implemented. If additional site visits are required, the provider will receive additional communication summarizing the visits and findings.