

# Home and Community-Based Settings Compliance Post-March 2023

May 2, 2023

# Webinar Overview

- Provide a home and community-based services (HCBS) settings rule implementation status update, including proposed Corrective Action Plans (CAPs);
- Review ongoing monitoring requirements and considerations; and
- Highlight promising practices for engaging providers, beneficiaries, and stakeholders.

# **Home and Community-Based Services (HCBS) Settings Rule Status Update, Including Proposed Corrective Action Plans (CAPs)**

# The Goal of the HCBS Settings Rule

- The HCBS Settings Rule was created to ensure that every person receiving Medicaid-funded HCBS has full access to the benefits of community living.
- It protects individuals' autonomy to make choices and to control the decisions in their lives, which most people take for granted. This includes controlling personal resources; being treated with privacy, dignity, respect, and freedom from coercion and restraint; deciding what and when to eat; having visitors; being able to lock doors; and having the protections of a lease or other legally enforceable agreement.
- The rule requires a person-centered process for receipt of HCBS, which means that the individuals receiving services direct the planning process and the plan reflects their own preferences and goals they have set for themselves.
- The rule is critical to CMS' broader efforts to expand availability and improve the quality of Medicaid-funded HCBS.

# Statewide Transition Plans (STPs)

- The HCBS Regulation went into effect on March 17, 2014. Due to several extensions, states had until March 17, 2023 to come into compliance with the regulation.
- Per 42 CFR §441.301(c)(6), states were required to develop a Statewide Transition Plan (STP) which served as a roadmap to describe how the state would ensure compliance with the regulation at both the state level and in their provider communities, providing transparency to stakeholders.
  - Approved STPs are available at <https://www.medicaid.gov/medicaid/home-community-based-services/statewide-transition-plans/index.html>
- STPs included settings assessments, remediation milestones, and associated timeframes.
- STPs are no longer in effect, though the processes they described, especially for ongoing monitoring, should continue.

# Corrective Action Plans (CAPs)

- The transition period ended on March 17, 2023 and states were able to request a time-limited CAP to come into compliance with requirements that were more directly impacted by the COVID-19 public health emergency (PHE).
- States had the opportunity to request a CAP for certain requirements, such as:
  - Access to the broader community;
  - Opportunities for employment;
  - Options for a private unit and/or choice of a roommate; and
  - Choice of non-disability specific settings.
- CMS asked states in its May 24, 2022 presentation to submit the following information in order to request a CAP:
  - Information on which criteria the state will need extra time to ensure full provider compliance;
  - The state's efforts to bring providers into compliance with those criteria, and the PHE-related impacts that created barriers to compliance; and
  - The state's plan to overcome encountered barriers, and the time needed to do so.

## CAPs (cont.)

- States could also request a CAP to complete remediation related to the CMS heightened scrutiny site visit findings and/or for heightened scrutiny settings that had not yet received final adjudication from CMS.
- CAPs are the mechanism through which states have identified milestones and timeframes to bring the remaining requirements into compliance.
- Completion dates for each milestone, and statewide compliance with the settings rule, will be noted in each CMS approved CAP.
- All CAPs will be approved effective March 17, 2023; for CAPs that receive approval after this date, the approval is retroactive to March 17, 2023.

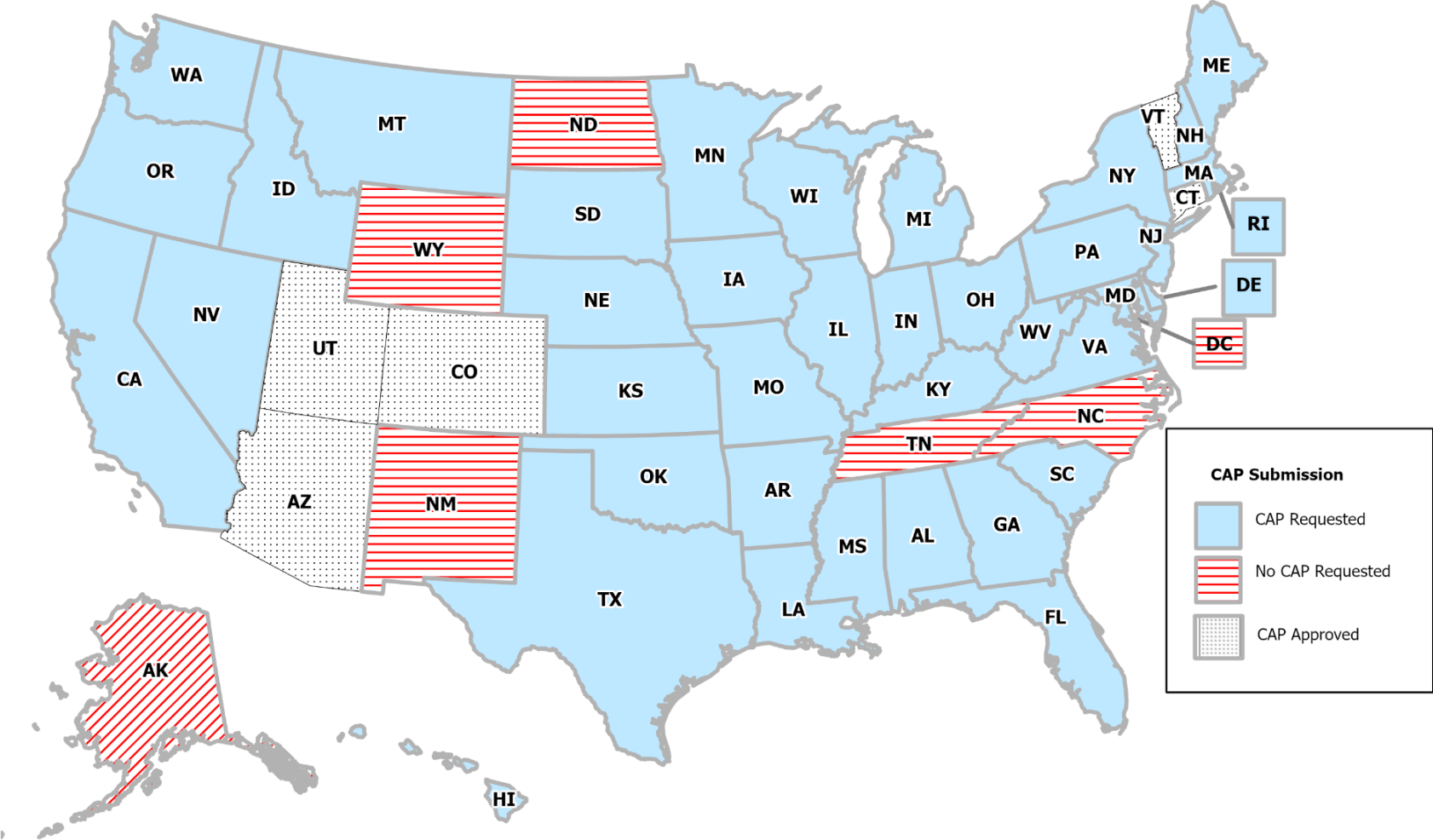
# CAP Status

- CAPs apply only to states' settings that were eligible for the transition period (setting types in the state's HCBS delivery system as of the effective date of the final rule).
- As of April 25, 2023:
  - 44 states requested a CAP
  - 7 states did not request a CAP
  - 5 states have an approved CAP
- Proposed and approved CAPs are posted on Medicaid.gov:  
<https://www.medicaid.gov/medicaid/home-community-based-services/statewide-transition-plans/index.html>



# CAP Status (cont.)

State CAP Submission Status as of 4/25/2023



# CMS' Review of State CAP Submissions

- CAP review criteria:
  - Confirmation of final STP approval status;
  - Identification of all HCBS waiver, state plan, and/or demonstration authorities covered by the CAP;
  - Confirmation that the CAP contains the required elements that CMS conveyed in the May 24, 2022 presentation, found on slide 6 of this presentation;
  - Verification of heightened scrutiny status;
  - Inclusion of measurable tasks or milestones with a timeline to accomplish each activity.
- Upon completion of its review, CMS reaches out to the state via email with feedback. In addition to communicating via email, CMS may request a call with the state.

# Proposed CAP Trends

- While the majority of states requesting a CAP are requesting additional time to address specific settings regulations criteria (e.g., access to the broader community), many states are also requesting additional time to complete the heightened scrutiny process.
- The most commonly identified PHE-related barrier to implementation of the settings rule was the exacerbation of the workforce crisis, with many states noting initiatives to increase workforce wages.
- By and large, states anticipate completing their CAPs in calendar years 2023 or 2024.

# CAP Enforcement Mechanisms

- The state will report to CMS on progress with activities, milestones, and timeframes outlined in the approved CAP.
- Full compliance is achieved when all Medicaid-funded HCBS is rendered in a compliant setting.
- Closure of the CAP will be granted after the state completes the activities described in the approved CAP, at which point the state will be in full compliance with all HCBS settings provisions of the regulation.
- In the event a state does not comply with or complete its CAP, CMS will use the enforcement flexibilities authorized under Medicaid rules including:
  - General Medicaid rules that apply to all authorities related to Federal Financial Participation (FFP) that permit deferrals or disallowances at 42 CFR Part 430 Subpart C; and
  - Strategies to ensure compliance under 1915(c) waivers including, but not limited to, enrollment moratoriums at 42 CFR §441.304(g)(3).

# Ongoing Monitoring Requirements and Considerations

# Ongoing HCB Settings Compliance: Overview

- States are to have mechanisms in place for ongoing monitoring, to detect areas of non-compliance and to ensure continued systemic compliance with the HCBS settings criteria, as is true for all Medicaid provisions.
- States articulated their process for ongoing monitoring in Statewide Transition Plans, but ongoing monitoring is required for all HCBS waivers, state plan benefits, and 1115 demonstrations.
- Through waiver actions and state plan amendments, states will describe how functions such as case management, licensure and certification standards, beneficiary feedback and other options for ongoing monitoring will be used to identify and remediate any provider compliance issues.

# Ongoing HCB Settings Compliance: 1915(c) HCBS Waivers

- Appendix C-5 for 1915(c) HCBS waiver applications includes the following:
  - The state’s description of settings where waiver participants reside and receive HCBS demonstrates how the state will ensure that all HCB setting requirements at 42 CFR §441.301(c)(4)-(5) will be met and includes:
    - A list and explanation of the specific settings where individuals will reside;
    - A list and explanation of the specific settings where individuals will receive services;
    - The process that the state Medicaid agency used to assess and determine that all waiver settings meet the HCB settings requirements; and
    - The process that the state Medicaid agency will use to ensure that all settings will continue to meet the HCB settings requirements in the future.

– *Source: Page 153 of the 1915(c) HCBS Waiver Technical Guide*

# Ongoing HCB Settings Compliance: 1915(i) State Plan HCBS Benefit

- States using 1915(i) State Plan HCBS benefit must:
  - Assure that the State Plan HCBS benefit will be furnished to individuals who reside and receive HCBS in their home or in the community, not in an institution;
  - Explain how the settings will meet the settings requirements;
  - Describe the settings where individuals will reside and where individuals will receive HCBS;
  - Describe how the settings meet the settings requirements, at the time of submission and ongoing; and
  - Include in the quality improvement strategy how the state Medicaid agency will monitor to ensure that all settings meet federal home and community-based settings requirements, at the time of submission and ongoing.

***Source: 1915(i) Application Template***



# Ongoing HCB Settings Compliance: 1915(k) Community First Choice (CFC) State Plan Option

- States with 1915(k) Community First Choice (CFC) State Plan Option must:
  - Indicate/describe the home and community-based settings in which CFC services and supports can be provided and
  - How the state assures compliance with home and community-based settings criteria.
- In the state plan amendment, states must describe the state's oversight and monitoring process for ensuring compliance of settings for both existing and newly identified settings. The description must address the following: frequency of monitoring efforts, how findings are communicated to providers, and activities to address findings (e.g. quality improvement plans and/or corrective action plans).

***Source: Community First Choice (CFC) State Plan Option Technical Guide***

# Ongoing HCB Settings Compliance: 1115 Demonstrations with HCBS

- States that provide HCBS through an 1115 Demonstration must provide similar information in the special terms and conditions (STCs).
- Current STC language:
  - *HCBS Settings Requirements. The state must assure compliance with the characteristics of HCBS settings as described in the 1915(c) and 1915(i) regulations in accordance with implementation/effective dates as published in the Federal Register.*

# Ongoing HCB Settings Compliance: Ongoing Monitoring after March 17, 2023

- Examples of state methods for ongoing monitoring include:
  - Incorporating settings-specific performance measures into the quality improvement section of the various appendices found in the 1915(c) waiver application, renewal, or amendment submissions;
  - Adhering to the quality improvement strategy in the 1915(i) State Plan HCBS benefit which also includes a requirement for the state to address how it will ensure that the HCBS settings requirements are met;
  - Ensuring compliance with the settings provisions as noted in the approved 1915(k) CFC state plan option; and/or
  - Incorporating the settings requirements into state policies and procedures including existing licensing, certification, credentialing, case management and, quality assurance processes.

# Ongoing HCB Settings Compliance: Ongoing Monitoring after March 17, 2023 (cont.)

- Additional 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, and/or 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.

# Ongoing HCB Settings Compliance: Monitoring and Provider Training

- The transition period has ended and states should already have shifted focus from transition work to the ongoing monitoring and compliance with HCBS requirements.
  - States should provide ongoing training opportunities for providers to ensure compliance.
  - Provider training could include:
    - Person-centered thinking for all HCBS providers, regardless if the service they provide is in a provider-owned or controlled setting, a person's home, or the community;
    - Annual refresher trainings for providers on the intent of the rule and how to practically apply the tenets of the rule.
  - HCBS settings requirements should be included in all new provider training.
- State staff responsible for oversight and monitoring may also benefit from annual refresher trainings.

# Ongoing HCB Settings Compliance: Monitoring and Provider Training (cont.)

- If a state finds that a setting is out of compliance with the setting requirements, it should consider taking the following steps to support provider remediation:
  - Report assessment results to the provider and identify provider actions needed to remedy areas of non-compliance;
  - Assist providers to achieve compliance and address issues that appear to be preventing compliance; and
  - Require providers to implement corrective action plans to remedy non-compliance.
- States should work with providers and offer technical assistance as needed to support remediation.
- Beneficiary relocation should only be considered when the provider is unwilling or unable to remediate.

# Ongoing HCB Settings Compliance: Insights from CMS' Heightened Scrutiny Site Visits Background

- In calendar years 2022-2023, approximately 14 states have received, or will receive, a site visit from CMS.
- CMS selected states based on presumptively institutional settings that they have submitted or settings in the state that were identified by federal partners or stakeholders.
- The site visit team has visited various settings including assisted living facilities (some with memory care units), adult day care centers, group homes, settings providing day services, sheltered workshops, intentional community/campus settings, and farmsteads.
- The site visit teams have visited all three categories of presumptively institutional settings:
  - 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 the effect of isolating Medicaid beneficiaries from the broader community of individuals not receiving Medicaid HCBS.

# Ongoing HCB Settings Compliance: Insights from CMS' Heightened Scrutiny Site Visits Background (cont.)

- The site visit team is composed of CMS, ACL, and New Editions staff.
- Up to two state Medicaid staff and/or state waiver operating agency staff per setting have participated in the site visits to date as observers.
- The team typically receives a tour of the setting, reviews person-centered services plans (PCSPs) and other documents on site, and speaks with HCBS beneficiaries and direct support professionals (DSPs).
- Following the visit, CMS provides the state with a debrief call and a site visit report that contains the findings and potential remediation strategies. The report also acknowledges promising practices.
- Final site visit reports are posted on Medicaid.gov at the following link:  
<https://www.medicaid.gov/medicaid/home-community-based-services/statewide-transition-plans/index.html>.



# Ongoing HCB Settings Compliance & Common Site Visit Findings: PCSPs

- CMS reviewed PCSPs in advance, as well as on-site. In several states, CMS found:
  - Settings do not typically have the current PCSP for all Medicaid HCBS beneficiaries who are served at the setting;
  - Individuals do not appear to have participated in the plan development and/or have not signed the plan; and
  - Individuals are functioning under provider-specific plans of care, or in some cases there are plans only known to the case manager and the individual.
  - Plans often did not record what was important to people, their preferences or their goals.
  - There was often no indication in the plans that choice had been offered, whether it was choice of setting, living location, employment or community integration or how the person managed their personal resources.
  - Restrictions were observed that were not supported by a specific assessed need for the individual or justified in the individual's person-centered plan and, therefore, are not permissible under the regulations as an individual modification to the regulatory criteria.

# Ongoing HCB Settings Compliance & Common Site Visit Findings: Provider-Owned or Controlled Settings: Identification

- CMS has found examples of states not identifying provider-owned or controlled settings as such if the setting is not formally owned by a provider of HCBS.
- CMS reminds states and stakeholders that the additional regulatory criteria found at 42 CFR §441.301(c)(vi) also applies to settings controlled by a service provider.
  - This includes scenarios in which a provider has influence over whether an individual is accepted for residency.
  - This includes scenarios in which the landlord has influence over which service providers the individual in the setting uses.

# Ongoing HCB Settings Compliance & Common Site Visit Findings: Additional Themes

- Common site visit findings include:
  - Access to visitors;
  - Community integration;
  - Provider staff training on HCBS; and
  - Lease or residency agreement.

# Ongoing HCB Settings Compliance & Common Site Visit Findings: Lease/Residency Agreements

42 CFR §441.301(c)(4)(vi): In a provider-owned or controlled residential setting, in addition to the qualities at 42 CFR §441.301(c)(4)(i) through (v), the following additional conditions must be met:

(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and **the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.** For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, **and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.**

# Ongoing HCB Settings Compliance & Common Site Visit Findings: Restrictive Language in Lease, Residency Agreement, or Other Form of Written Agreement

- CMS has found restrictive language in lease or residency agreements that is inconsistent with typical lease agreements.
- Examples of restrictive language in lease or residency agreements that the site visit team has seen during visits include requirements for the individual to:
  - Work on the provider’s worksite;
  - Pay the provider for lack of attendance at the worksite;
  - Move out during specified periods of time; and/or
  - Be evicted if the individual’s needs increase even if resources were available to provide additional support.

# What Must Be Included in a Residency Agreement

- The residency agreement must include at a minimum the same level of protections found in the jurisdiction's landlord tenant laws which may include:
  - Length of the agreement;
  - The amount of and when payment is due;
  - Use and return of security deposits;
  - Expectations for maintenance;
  - Notice before entry into a unit; and
  - Conditions that could initiate an eviction and the process to terminate an agreement, evict a tenant/resident and the process to appeal an eviction.

# Promising Practices for Lease/Residency Agreements

- Some states have worked to assure compliant leases and residency agreements by collaborating with providers and provider associations to develop templates for standard leases and/or residency agreements that are inclusive of all regulatory requirements.
- As states navigate the landlord/tenant law requirements, which may vary throughout the state and across local jurisdictions, states should consider consulting their legal team to ensure any template lease or residency agreement includes the required protections.
- States should offer provider training to ensure all the requirements of the lease/residency agreement template are met.

# Person-Centered Service Planning and Lease/Residency Agreements Connection

- States have an obligation to complete reassessments of the person's functional needs annually and when the person's support circumstances change significantly (found at 42 CFR §441.301(c)(3) for 1915(c) HCBS waivers, 42 CFR §441.725(c) for 1915(i) State Plan HCBS benefit, and 42 CFR §441.540(c) for 1915(k) CFC state plan option).
- If an individual's needs change and exceed the amount of support or specific services available in a particular setting, the state must engage the person-centered service planning process to ensure that services provided meet the person's needs.



# Ongoing HCB Settings Compliance: HCBS Settings Requirements and Considerations for Unwinding from the Public Health Emergency (PHE)

- As states prepare to unwind and/or make temporary or permanent changes to HCBS programs, it is critical that states ensure the changes are in compliance with the settings regulations.
- Examples of settings requirements that states need to unwind include:
  - Appendix K/Appendix K COVID Addendum flexibilities for 1915(c) HCBS Waivers allowing HCBS to be provided in institutional settings and/or waiving the visitors settings criterion;
  - Disaster Relief SPA flexibility to expand settings where services may be provided; and
  - 1135 flexibility to waive HCBS settings requirements.

# Ongoing HCB Settings Compliance: HCBS Settings Requirements and Considerations for Unwinding from the Public Health Emergency (PHE) (cont.)

- States that have received CMS approval for public health emergency (PHE)-related flexibilities related to the settings rule (e.g., 1915(c) waiver Appendix K amendments) will need to ensure ongoing compliance with the settings rule once the flexibility ends.
- States requested these flexibilities for settings that were not established by the effective date of the final settings regulation, and were therefore not covered by the transition period. These settings had to be in compliance with the regulatory criteria in order to receive federal reimbursement for HCBS.
- The U.S. Department of Health and Human Services is planning for the COVID-19 PHE to end on May 11, 2023. CMS encourages states to notify their providers and settings that the PHE flexibilities will be ending.

# Promising Practices for Engaging Providers, Beneficiaries, and Stakeholders

# Promising Practices for Provider Remediation

- States must verify provider compliance and can complete verification by conducting follow-up to confirm completed actions; validating provider self-assessment surveys; using licensing surveys, certification and inspections, case managers' visits, site visits, desk audits, managed care organization (MCO) reviews, and advocacy group reviews; and consulting with individuals receiving HCBS, families and advocacy groups for their opinions about specific setting compliance.
- If the state finds that a setting is out of compliance with the setting requirements, it should consider taking the following steps to support provider remediation:
  - Report assessment results to the provider and identify provider actions needed to remedy areas of noncompliance;
  - Assist providers to achieve compliance and address issues that appear to be preventing compliance; and
  - Require providers to implement corrective action plans to remedy non-compliance.

# Promising Practices for Remediating Settings to Overcome the Institutional Presumption (1 of 3)

- Providers can work to increase engagement with the broader community by:
  - Developing partnerships with community-based entities, resulting in inclusion in the broader community;
  - Establishing a community-based advisory group;
  - Implementing a broad range of services and supports, programming, and multiple daily activities to facilitate access to the broader community that allows for each individual to be able to select from an array of individual and/or group options and control their own schedule. Such activities should:
    - Promote skills development and facilitate training and educational opportunities among HCBS beneficiaries designed to attain and expand opportunities for community-based integration (including volunteering, social and recreational activities, and competitive integrated employment);

# Promising Practices for Remediating Settings to Overcome the Institutional Presumption (2 of 3)

- Expose beneficiaries to community activities and situations comparable to those in which individuals not receiving HCBS routinely engage; and/or
- Promote greater HCBS beneficiary independence and autonomy.
- Implementing organizational changes that:
  - Assure the required level of support, including appropriate staffing, and adequate transportation options to offer both group and individualized options that facilitate optimal community engagement based on individual preferences (as articulated in beneficiary person-centered services plans); and/or

# Promising Practices for Remediating Settings to Overcome the Institutional Presumption (3 of 3)

- Decentralize staff structures to promote greater flexibility and encourage staffing focused on individuals' access to and participation in the broader community rather than centralized insular staff models focused around a specific facility/site.
- Expanding strategies for increasing beneficiary access to transportation, including through existing public transportation, friends/family, and volunteer organizations to activities in the broader community. This could include providing transportation in a way that promotes ease of access and optimizes individuals' ability to select their own options and make decisions about their services and supports.

# Promising Practices for Beneficiary Complaints and Feedback (1 of 4)

- Last year CMS requested states provide, by January 1, 2023, information on how regulatory settings criteria have been incorporated into state-level oversight and enforcement, how providers have been assessed for regulatory compliance, and how beneficiaries have an identified point of contact to report concerns about provider compliance.
- For beneficiary complaints, many states identify the case manager as a contact for the beneficiary to report concerns about provider compliance.
- Some states also describe options beyond case management like on-line portals to report directly, 1-800 numbers, requirements for health plans to have complaints procedures, a dedicated staff to receive and track complaints, and outreach to beneficiaries and training to make sure consumers know their rights. One state notes a *no wrong door* approach to file a complaint.



# Promising Practices for Beneficiary Complaints and Feedback (2 of 4)

- State example #1:
  - 1-800 numbers, with dedicated lines for reports of abuse, exploitation, and neglect, residential settings, and adult family home or assisted living facilities.
  - Annual issuance of a copy of client rights, the client complaint process, and contact information to file a complaint at the time of the person-centered service planning meeting.
  - Beneficiaries may notify the state of provider non-compliance by phone or email by contacting their case worker. Additionally, when specific to a residential setting, the investigative agency, the Compliant Response Unit, may be notified by the client. When the state receives a complaint, the state follows the processes identified in the STP for provider remediation.

# Promising Practices for Beneficiary Complaints and Feedback (3 of 4)

- State example #2:
  - My Rights videos and other resources for beneficiaries in multiple languages. Materials are publicized through several channels including a state informational memo, newsletters, and social media.
  - A dedicated section to the state’s HCBS settings final rule website where a beneficiary may ask a question or report a concern.
  - Beneficiaries can report concerns to their case managers; planned tool/checklist for case managers.
  - Survey for beneficiary, family, and advocates.
  - Department-wide complaint line.

# Promising Practices for Beneficiary Complaints and Feedback (4 of 4)

- If a state makes different or additional opportunities available for beneficiaries to discuss provider concerns, transparency to stakeholders is strongly encouraged.
- CMS will post the information states submitted on January 1, 2023 to [Medicaid.gov](https://www.Medicaid.gov).

# Promising Practices for Stakeholder Engagement (1 of 3)

- States should continue to engage stakeholders beyond the transition deadline.
  - Stakeholders include beneficiaries, self-advocates, advocates, families;
  - Engagement is MORE than just public comment periods;
  - Engagement is MORE than annual service plan reviews or individual experiences surveys (even though those tools contribute to overall monitoring of compliance); and
  - Engagement could include active, ongoing workgroups or advisory committees, and/or regular town halls (these can be done virtually or via large conference calls).
- Stakeholder engagement is key to effective implementation and ongoing maintenance of settings criteria.

# Promising Practices for Stakeholder Engagement (2 of 3)

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

# Promising Practices for Stakeholder Engagement (3 of 3)

- The Administration on Community Living (ACL) has a network of organizations that can be a resource to connect with key communities in your state. ACL has actively engaged with their stakeholders with the following actions:
  - Engaging DD Act Partners (DD Councils, UCEDDs, P&As) across the country who have already been highly engaged with the Settings Rule;
  - Building up knowledge of and interest in the Settings Rule within the Independent Living networks (CILs); and
  - Significant and major focus on engaging with and supporting self-advocates.
- States should leverage and engage with these organizations to ensure ongoing compliance.

# Promising Practices for Stakeholder Engagement: Establishing Strategic Partnerships to Facilitate Collaboration Across State Agencies

- The goal of strategic partnerships across state agencies is to establish a collaborative, cooperative effort to ensure ongoing monitoring of HCB settings is successful, and all settings can stay compliant with the HCBS settings criteria or receive the necessary support to remediate findings, by:
  - Ensuring representation from all critical, relevant agencies;
  - 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; and
  - Coordinating out-of-state placements, between the sending and receiving states, to ensure particular settings are compliant in the receiving state.

# Promising Practices for Stakeholder Engagement: Educating External Stakeholders Is Key!

- Educate **ALL** members of the stakeholder community on the settings criteria and the state's process(es) for ongoing provider monitoring 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!



# Summary

- The HCBS Settings Rule ensures basic requirements for individuals receiving Medicaid HCBS.
- States are completing work under CAPs to bring their HCBS delivery systems into full compliance for requirements directly impacted by the PHE.
- Heightened scrutiny obligations remain beyond the transition period.
- Robust ongoing monitoring is key to ensuring that settings remain compliant.
- States should consider how to leverage stakeholders to strengthen ongoing monitoring processes, and ensure robust beneficiary complaint and feedback processes.

# Resources (1 of 4)

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)

The Home and Community-Based Services Training series has trainings focused on various aspects of STP and HCBS implementation:

- [Home & Community Based Services Training Series | Medicaid](#)

Medicaid Home and Community-Based Services Settings Regulation: Fitting the Pieces Together

- <https://www.medicare.gov/medicaid/home-community-based-services/downloads/hcbs-settings-fitting-pieces-together-feb2023.pdf>

## Resources (2 of 4)

HCBS Settings Regulation Implementation: A National Conversation about Statewide Transition Plans

- <https://www.medicaid.gov/medicaid/home-community-based-services/downloads/hcbs-rule-stp-conversation.pdf>

May 24, 2022 Presentation: HCBS Settings Rule Implementation – Moving Forward Toward March 2023 and Beyond

- <https://www.medicaid.gov/medicaid/home-community-based-services/downloads/hcbs-settings-rule-imp.pdf>

Themes Identified During CMS' Heightened Scrutiny Site Visits

- <https://www.medicaid.gov/medicaid/home-community-based-services/downloads/themes-identified-during-cms.pdf>
- <https://www.medicaid.gov/media/146861> (recording)

## Resources (3 of 4)

Frequently Asked Questions (FAQs): Home and Community-Based Settings  
Regulation Implementation: Heightened Scrutiny Reviews of Presumptively  
Institutional Settings: SMD # 19-001, issued on March 22, 2019

- <https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>
- <https://www.medicaid.gov/sites/default/files/2019-12/hs-faq.pdf> (slides)

1915(c) Waiver Technical Guide

- [https://wms-mmdl.cms.gov/WMS/help/version\\_36\\_1915c\\_Waiver\\_Application\\_and\\_Accompanying\\_Materials.zip](https://wms-mmdl.cms.gov/WMS/help/version_36_1915c_Waiver_Application_and_Accompanying_Materials.zip)

1915(i) Template

- [https://www.medicaid.gov/sites/default/files/2019-12/1915i-application\\_0.pdf](https://www.medicaid.gov/sites/default/files/2019-12/1915i-application_0.pdf)

# Resources (4 of 4)

## 1915(k) Technical Guide

- [https://www.medicaid.gov/sites/default/files/2019-12/cfc-technical-guide\\_0.pdf](https://www.medicaid.gov/sites/default/files/2019-12/cfc-technical-guide_0.pdf)

## STPs, Heightened Scrutiny Documents, and HCBS Settings Corrective Action Plans:

- <https://www.medicaid.gov/medicaid/home-community-based-services/statewide-transition-plans/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/QMRPGPY>

WE WELCOME YOUR FEEDBACK!