



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

Med-QUEST Division
Health Care Services Branch
P. O. Box 700190
Kapolei, Hawaii 96709-0190

December 1, 2022

Ms. Amanda Hill, M.S.
Health Insurance Specialist
Division of Long Term Services and Supports
Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services

Dear Ms. Hill:

This letter is to notify the Centers for Medicare & Medicaid Services (CMS) of the Corrective Action Plan (CAP) for the Home and Community Based Services Final Rule. The attached CAP will address the following:

- 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 Public Health Emergency-related impacts that created barriers to compliance,
- The state's plan to overcome encountered barriers, and the time needed to do so, and
- The state's request to authorize additional opportunities to complete discussions with CMS for presumptively institutional settings for a heightened scrutiny.

Please contact Jon Fujii at jfujii@dhs.hawaii.gov, should you have any questions.

Sincerely,

Judy Mohr Peterson, PhD
Med-QUEST Division Administrator

Introduction

This document is submitted to fulfill the requirements of the Home and Community Based Services (HCBS) Final Rule Corrective Action Plan (CAP). This CAP will address the following:

- 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 Public Health Emergency (PHE)-related impacts that created barriers to compliance,
- The state's plan to overcome encountered barriers, and the time needed to do so, and
- The state's request to authorize additional opportunities to complete discussions with CMS for presumptively institutional settings for a heightened scrutiny.

1115 Waiver Demonstration, QUEST Integration

The State of Hawaii has assessed HCBS providers for compliance with required regulatory criteria of the HCBS Final Rule. Health Plans are in the process of implementing ongoing compliance monitoring as part of contracting requirements. Health plans and HCBS providers have received guidance from the state regarding necessary documentation to demonstrate evidence of compliance during the initial contracting and recredentialing process. Health plans will continue to provide technical assistance to HCBS providers throughout this process to ensure ongoing compliance with the HCBS Final Rule.

1915(c) HCBS Waiver for Individuals with Intellectual and Developmental Disabilities

The State of Hawaii has assessed all 1915(c) HCBS waiver provider agencies for compliance with required regulatory criteria of the HCBS Final Rule. All provider-level remediation plans have been received and assessed, and it is anticipated all settings will be in compliance with required criteria by the end of the transition period. Waiver participants served by providers who could not meet the federal requirements have been transitioned to different provider agencies or will be transitioned prior to March 2023. Implementation of remediation activities are being monitored by the Department of Health-Developmental Disabilities Division (DOH-DDD), the operating agency for the 1915(c) HCBS waiver on behalf of the Department of Human Services-Med-QUEST Division (DHS-MQD).

1915(c) HCBS waiver provider agencies were required to submit completed evidence templates (Attachments 1 and 2), associated policies and procedures, and documentation that demonstrate evidence of compliance with the HCBS Final Rule. Feedback to the agencies was provided and where needed, remediation plans were required. DOH-DDD has provided one-on-one intensive technical assistance throughout this process. Provider agencies worked with their individual settings and implemented internal monitoring and trainings on the policies and competencies

aligned with state and federal requirements. DOH-DDD has initiated onsite validation of ongoing compliance in individual settings through certification and monitoring visits.

I. Information on which criteria the state will need extra time to ensure full provider compliance

1115 Waiver Demonstration, QUEST Integration

New HCBS Provider Self-Assessment and Validation

The state will need additional time to validate the new providers. DOH-MOD has identified about 265 new providers that have not complete a self-assessment survey. In 2020, the state launched a new web-based provider enrollment system called HOKU (Hawaii's Online Kahu Utility). With the new enrollment system, providers were instructed to enroll, update, and make changes to their Medicaid account online. This includes uploading the necessary documents for provider validation such as the HCBS Provider Self-Assessment Survey. DHS-MOD will be sending each identified provider a letter and copy of the survey for completion. Once the survey is received in the HOKU system, DHS-MOD will conduct an onsite assessment to validate the setting. Continuous outreach and technical assistance will be available to support this catch-up phase.

Provider-Owned or Controlled Residential Settings

All provider-owned or controlled residential settings are expected be compliant with the following regulatory settings criteria by the end of the transition period. The state will need additional time to work with another state agency, the Department of Health, Office of Health Care Assurance (DOH-OHCA) to promulgate administrative rules that will give regulatory weight to enforcing compliance.

- *Lease or residency agreement with eviction protections [42 CFR 441.301(c)(4)(vi)(A)]*
- *Privacy in their unit, including lockable doors, and freedom to furnish or decorate the unit [42 CFR 441.301(c)(4)(vi)(B)(1-3)]*
- *Access to food at any time [42 CFR 441.301 (c)(4)(vi)(C)]*
- *Access to visitors at any time [42 CFR 441.301 (c)(4)(vi)(D)]*
- *Physical accessibility [42 CFR 441.301 (4)(vi)(E)]*

Documentation of Service Plan Modifications

All Health Plan Health Coordinators and providers are expected be trained on the following regulatory criteria by the end of the transition period. The state will need additional time to work with Health Plans to finalize and implement the revisions made to the states' standardized Health and Functional Assessment and Person-Centered service plan documentation to reflect compliance.

- *Person-centered service plan documentation of modifications to relevant regulatory criteria [42 CFR 441.301(c)(2)]*

1915(c) HCBS Waiver for Individuals with Intellectual and Developmental Disabilities

The state has largely addressed all required criteria of the HCBS final rule. The state requests additional time to work with another state agency to promulgate two administrative rules that will give regulatory weight to enforcing compliance as well as reducing conflicts between licensing standards and payment policy for settings serving Medicaid recipients.

Lease or other legally enforceable residency agreement with similar protections

The state is confident that residency agreements that meet federal requirements will be in place by the end of the transition period. Extra time is needed to fully promulgate two Hawaii Administrative Rules to support ongoing compliance at the regulatory level. DOH-DDD has set clear expectations, conducted trainings, and provided technical assistance to ensure compliance for this criterion. Provider agencies are aligning their policies and practices with DOH-DDD and HCBS final rule requirements. Where needed, provider agencies will be able to choose to use a model residency agreement with state eviction protections drafted jointly by DOH-DDD and DHS-MQD. DOH-DDD will ensure that every residential setting has submitted evidence of compliance within thirty (30) days, working collaboratively with the Residential Habilitative provider agencies to support caregivers to complete this activity. As needed, DOH-DDD will use the Plan of Correction (POC) process for settings that do not submit a copy of their agreement and an attestation that each resident/ representative has entered into the agreement and will sanction non-compliant settings prior to March 17, 2023.

To ensure sustainable practices and enforceable regulatory requirements, the state must address several underlying administrative rules that are under revision but not yet promulgated. Specifically, Chapter 89, Hawaii Administrative Rules, entitled "Developmental Disabilities Domiciliary Homes", and Chapter 100.1, Hawaii Administrative Rules, entitled "Adult Residential Care Homes" do not specify this requirement and require adoption of new rules. DOH-DDD and DHS-MQD have worked with the DOH-OHCA, which performs state licensing activities on healthcare facilities and settings, to crosswalk and provide draft language to harmonize these regulations with HCBS final rule requirements. While most 1915(c) waiver participants who live in residential settings choose to live in Adult Foster Homes certified directly by the DOH-DDD under Chapter 321-11.2, Hawaii Administrative Rules, entitled "Adult Foster Homes," which have been revised to align with the final rule, the remaining two regulations have not yet been submitted for the approval process by DOH-OHCA.

- *Freedom to control schedule;*
- *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; and*
- *Physical accessibility.*

As listed above, the state is confident that these criteria will be met in the individual settings, however, the current Hawaii Administrative Rules for "Developmental Disabilities Domiciliary Homes" and "Adult Residential Care Homes" contain conflicting language and need to be updated to support enforcement. The state is respectfully requesting additional time to work with DOH-OHCA to promulgate the revised rules.

1915(c) waiver provider agencies have submitted evidence of policies and procedures for all residential settings. Full compliance at the agency level is anticipated by March 17, 2023. State staff are currently visiting 100% of individual residential settings to validate remediation efforts and ensure each setting is compliant. Settings and provider agencies, as warranted, are required to submit a POC for any outstanding issues. For each non-compliant setting, provider agencies are required to implement the POC and provide attestation of full compliance to DOH-DDD within forty-five (45) days, prior to March 17, 2023.

II. The state's efforts to bring providers into compliance with those criteria, and the PHE-related impacts that created barriers to compliance

1115 Waiver Demonstration, QUEST Integration

State's Efforts to Bring Providers into Compliance

The state accomplishments to bring providers into compliance include:

- Revision to the Medicaid provider service agreement and enrollment process
- Revision to health plan contract requirements
- Revision to health plan and provider contract process in the health plan manual
- Development of health plan provider evidence tool used for contract revalidation
- Development of health plan member satisfaction survey and implementation of HCBS CAHPS survey for quality improvement and ongoing validation

The state will continue to leverage the following strategies to ensure the advancement of skills and practices, and ongoing compliance with the HCBS final rule:

- In-person, onsite validations
- Provider training
- Technical assistance
- Process for Beneficiary Recourse to Report Provider Noncompliance
- Person-Centered Organization and Planning Framework

The state will continue to convene regular meetings and develop a joint workplan with the DOH-OHCA to promulgation of revised regulations for

- Adult Day Care (ADC)
- Adult Day Health (ADH)
- Assisted Living Facility (ALF)
- Adult Residential Care Home (ARCH)/Expanded ARCH (E-ARCH)
- Community Care Foster Family Home (CCFFH)

The state will also assist in the revision of DOH-OHCA monitoring tools for settings noted above to support new practices and expectations for obtaining a state license or certification.

1915(c) HCBS Waiver for Individuals with Intellectual and Developmental Disabilities

State's Efforts to Bring Providers into Compliance

Since the promulgation of the HCBS final rule in 2014, the state has implemented major changes throughout its service system for individuals with intellectual and developmental disabilities and has made significant gains in supporting people to have the full life they choose in their community. DOH-DDD has strengthened community integration practices and service quality through measured strategies including improving the skills of the workforce, enhancing the service array, developing quality management practices, and increasing partnerships with participants and families. Starting with the 2016 waiver reauthorization and continuing with the 2021 reauthorization DOH-DDD has implemented changes to historic practices to modernize the service system.

Notable achievements include:

- Comprehensive rewrites of service requirements to support compliance with CMS' 2014 final rule on community integration and to better document service expectations.
- The adoption of a standardized assessment instrument and establishment of assessment-informed individual supports budgets to ensure the fair and consistent allocation of resources.
- The completion of a comprehensive rate study that recommended significant increases in provider payment rates, the funding for which was approved by the Hawaii State Legislature.
- The design, development, and implementation of a new Information Technology Case Management solution named *INSPIRE*, which supports service delivery through an integrated case management platform with secure data sharing that manages many of DOH-DDD's business processes including critical incidents.
- The adoption of Charting the LifeCourse person-centered planning, which is fully integrated into the *INSPIRE* solution.

Specific to the criteria noted in Section I, the state will continue to convene regular meetings and will develop a joint workplan with DOH-OHCA to expedite the promulgation of revised regulations for the Hawaii Administrative Rules for

"Developmental Disabilities Domiciliary Homes", and "Adult Residential Care Homes." As well, the state will assist in the revision of monitoring tools for DOH-OHCA and training for settings to support new practices and expectations.

The state will continue to leverage the following strategies to ensure the advancement of skills and practices, and ongoing compliance with the HCBS final rule:

- **Hawaii Administrative Rule for Adult Foster Homes (AFH)**
The Hawaii Administrative Rule (HAR) for Adult Foster Homes (AFHs) has been revised to reflect the requirements of the final rule. The changes made to the HAR were reflected in the certification tool and process for AFHs and the certification team is currently using the updated tool to perform the certification of AFHs. The certification staff are working with the AFHs who are not found to be compliant with the final rule via the certification process.
- **Trainings**
The state has trained and will continue to provide trainings and practice supports for ongoing compliance of the final rule open to all stakeholders. In addition, providers and caregivers received targeted trainings on understanding and implementing the final rule.
- **Virtual Open Houses**
Over the past two years, the state held at least monthly "Open House" technical assistance sessions for providers. These sessions were designed to allow for open discussions, problem solving, and technical assistance for providers with the state.
- **Contracts**
The state has contracted with a vendor with subject matter expertise in the HCBS final rule over the past three years to provide consultation, guidance, and assistance to the state, providers, caregivers, participants, and families. This work included wide-scale training and technical assistance, co-design of the evidence template, help in reviewing provider documentation, suggestions for remediation plans, and training and support for onsite validation.
- **Technical Assistance**
Providers were given the option to receive one-on-one technical assistance (TA) from the state to assist them in developing, revising, and implementing policies and procedures that align with the final rule. One-on-one TA was provided to providers who requested it and providers identified by the state as needing additional support.
- **Technical Assistance Specific to Restrictive Interventions**
The providers' policies and procedures (P&P) related to restrictive interventions were reviewed, and the state provided feedback to providers on areas in need of improvement. One-to-one TA is being provided to all providers to develop or revise their Restrictive Interventions P&Ps to align with the DOH-DDD

Restrictive Interventions P&Ps. A trend across many providers was the idea that Restrictive Interventions P&Ps were not needed because the participants they serve do not have behavior support plans. The TA is helping providers understand the necessity of having an adequate P&P in place to be prepared for situations that may arise.

A key initiative designed to build alternatives to restrictive interventions has been implemented through the DOH-DDD ARPA Positive Approaches trainings and organization change efforts. The initiative will support 1915(c) waiver providers to become more trauma-informed and improve their ability to provide physical and emotional safety for participants. Training will be provided for community stakeholders through an organizational change framework that is person-centered and applies positive approaches to addressing challenging behaviors, specifically by equipping stakeholders with strategies to improve understanding of behavior, recognize strengths, and establish a system of trauma-informed care that treat people with dignity and respect.

- **Consultations**
State staff have been available to providers throughout the past several years to consult on provider-requested topics. Consultations range from guidance on specific indicators of the final rule to guidance and feedback on broader, agency-wide issues related to service delivery and community integration.
- **Evidence Template Reviews**
As described, DOH-DDD issued residential and non-residential Evidence Templates for providers to submit with supporting documents to demonstrate compliance with the HCBS final rule. The templates and supporting documents were reviewed and the state provided feedback to providers on areas in need of improvement. While the majority of providers had documentation of participants' rights, the state identified common areas that required additional work: lack of policies and procedures to train direct support workers and caregivers on implementation to ensure participant's rights are upheld; and how providers are ensuring consistent quality in the delivery of services for all participants served.
- **"Countdown to Compliance" Newsletter**
Over the past year, the state has sent bi-monthly e-newsletters to providers that included the remaining timeline in the transition period, an overview of activities occurring in the state, updates in the transition process, upcoming training and technical assistance opportunities, and links to resources.
- **P&P and HCBS Rights Modification Plan**
DOH-DDD developed a policy and procedure (P&P) for case managers and providers to guide their practice and better understand the boundaries and parameters of the requirement, and to guide the circle of supports in the process of determining the need for a modification in the participant's ISP. The HCBS Rights Modification Plan which is attached to the ISP includes the required

documentation when a modification is approved, including frequency of periodic reviews.

- **Site Validations**

The state continues to do validations at every provider-owned or operated non-residential and residential setting. The state provides feedback to providers on areas in need of improvement through a required POC. Upon receipt of the POC from the provider, the state reviews and approves or continues working with the provider until they reach compliance.

- **Process for Beneficiary Recourse to Report Provider Noncompliance**

The state has a policy and procedure (P&P) for consumer complaints, as well as a dedicated section to receive, track, investigate, and resolve complaints filed by participants, guardians, and families. A brochure explaining the process is given to participants and families and the information is also located on the DOH-DDD website.

- **Person Centered Planning Framework**

The adoption of the Support to Families, LifeCourse framework has been seminal in advancing person-centered practices in the 1915(c) waiver in Hawaii. DOH-DDD participates in the National Community of Practice and has current contracts with the University of Missouri at Kansas City, Institute for Human Development to facilitate the development of online curricula for building person-centered practices, one for case managers and one for providers.

III. The state's plan to overcome encountered barriers, and the time needed to do so

As noted above, the state will continue to convene regular meetings and develop a joint workplan with DOH-OHCA to promulgate the revised regulations for the settings that apply. As well, the state will assist in the revision of monitoring tools for DOH-OHCA and training for settings to support new practices and expectations.

As well, the state will continue the site validations throughout the transition period and work with providers on Plans of Correction until the provider reaches compliance. To build competencies and reinforce the value of community integration and personal rights, DOH-DDD is planning a new training series with focused modules for our various stakeholders including participants and families, caregivers, providers, case managers and state staff who conduct monitoring.

The state requests a timeline, until December 31, 2023, to fully promulgate the licensing regulations and to complete all other activities to come into compliance.

IV. Request to authorize additional opportunities to complete discussions with CMS for presumptively institutional settings for a heightened scrutiny review and have yet to receive final adjudication

The heightened scrutiny package was submitted for CMS consideration on June 14, 2022. Upon further review and based on clarifications that CMS has offered since the initial validation of settings in 2017, the state recommends withdrawing the current heightened scrutiny package and submitting an updated packet to allow for additional technical assistance, training, and implementation of the program's policy and procedure changes, and revalidation by the state. Additionally, the prior heightened scrutiny package and analysis was not offered for public comment; this process will also occur under the CAP. The state requests additional time in this CAP to complete these discussions with CMS.