

**State of Oregon**  
**Oregon Health Authority/Oregon Department of Human Services**  
**Home and Community-Based Settings Compliance by Program Area**

**Oregon Health Authority**  
**Health Systems Division**

*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*

To ensure full compliance with CMS HCBS Rule across all program areas, Oregon promulgated global HCBS rules that may be found in Oregon Administrative Rule (OAR) chapter 411 division 004. These rules include all federal HCBS language to provide consistent governance over all of Oregon's HCBS settings and services under the 1915(c), 1915(k), or 1915(i) Medicaid authorities.

To strengthen compliance further, additional or clarifying language was added to each programs' setting-specific area to describe the requirements or practices expected due to HCBS regulations.

Health Systems Division (HSD) is responsible for providing oversight of 1915(i) HCBS community-based settings including services provided in someone's own or family home and in licensed Residential Treatment Homes and Adult Foster Homes serving the needs of individuals with behavioral health conditions. HSD amended both licensing service delivery and Medicaid payment rules to ensure that HCBS requirements were addressed for individuals regardless of payment source.

Most HSD processes described in Oregon's Statewide Transition Plan have not changed. However, HSD did change Independent and Qualified Agent (IQA) contractors in July 2019. The intent was to increase the quality and timeliness of services performed by HSD's IQA. A substantial review and revision to the Person-Centered Service Plan (PCSP) template was conducted and approved by OHA. The current IQA provides OHA with documentation through a Treatment Episode Monitoring Report. The IQA has been adequately instructed on their responsibilities to include data collection and reporting and OHA's IQA contract administrator works closely with the IQA to ensure compliance. Continuing

instruction occurs weekly to monthly. Contractual payments from OHA are conditioned on receipt of these reports.

Additionally, Oregon's 1915(i) HCBS State Plan Amendment (SPA) renewal was approved by CMS to be effective January 1, 2022 and increased services from three programs (Home Based Habilitation, HCBS Behavioral Habilitation, HCBS Psychosocial Rehabilitation) to the following nine programs:

1. Community -Based Integrated Supports (previously Home-Based Habilitation)
2. HCBS Residential Habilitation (Previously HCBS Behavioral Habilitation)
3. HCBS Psychosocial Rehabilitation for persons w. CMI (no major change)
4. HCBS In-Home Personal Care (new)
5. Community Transportation (new)
6. Home Delivered Meals (new)
7. Housing Support Services (new)
8. Transition Services (new)
9. Pet Eradication Services (new)

HSD is currently working to ensure rules are amended and promulgated for these services within both the HSD service delivery and Medicaid payment rules, as necessary. HSD is also working with a cross-divisional workgroup to execute an implementation project plan to implement these services across Oregon and to ensure adequate training and communication to internal and external stakeholders, Residential Specialists, providers, and consumers. Any needed revisions to current ongoing compliance processes will be reviewed and implemented to ensure the ongoing compliance of these 1915(i) services.

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

#### Licensing and Certification

On an ongoing basis, Oregon will assess providers' progress toward initial compliance for licensure and continuous compliance for renewed licensure with the HCBS regulations through reports, interviews and on-site inspections that

include information from and dialogue with providers and individuals receiving services.

Licensing and service delivery system staff are critical in ensuring providers' ongoing compliance with the HCBS regulations. HSD will continue to ensure that these staff members are adequately trained on the regulations and their role and duties in assuring ongoing compliance. The HSD Licensing and Certification Unit also holds bi-weekly unit meetings where licensors can be offered technical assistance regarding HCBS compliance. HSD has uploaded documents such as FAQs, stakeholder meeting notes, templates, training, and presentations to HSD's HCBS website for additional ongoing education, training, and technical assistance. HSD will continually upload additional documents as they are needed and developed. On-site trainings have been provided to licensors and county staff (residential specialist) about HCBS settings compliance and monitoring.

Licensing visits have been and are conducted through an ongoing, regulated processes supported by statute and rule. The licensing frequency for provider-owned, controlled or operated settings is as follows:

- HSD Adult Foster Homes - Annually;
- HSD Residential Treatment Homes - Biennially;
- HSD Residential Treatment Facilities - Biennially;

Each initial license and subsequent renewal includes the submission of an application with supporting documentation (to include the HCBS Self-Assessment Tool), reviewed by the licensing and certification compliance specialist to ensure continued compliance with programming and policies and procedures, and an on-site review conducted by the licensing and certification compliance specialist. Following the on-site review, a report is issued to the provider stating areas of deficiencies with rule requirements. Providers have 30 days to respond with a corrective action plan before the licensed is reviewed. Each setting often communicates with HSD during their licensing period with questions, concerns and issues and HSD often communicates with settings during their licensing period due to investigation of concerns or complaints.

Additional strategies to ensure initial and ongoing compliance include:

- Incorporating questions related to HCBS settings compliance into annual person-centered service planning processes;

- Case managers monitoring HCBS compliance during required case management contacts and monitoring visits (County Residential Specialists conduct monitoring activities for OHA, HSD);
- Oregon's existing quality assurance/quality improvement system will include ongoing HCBS setting compliance monitoring to ensure that settings continue to comply with the HCBS Setting Rule.

### Oregon's Office of Program Integrity

The OHA Office of Program Integrity (OPI) supports the responsible stewardship of Medicaid funds by auditing Oregon Medicaid providers and contractors for compliance with state and federal requirements, educating providers about Medicaid Program Integrity requirements, and providing oversight of Oregon's Medicaid operations. This work helps prevent fraud, waste and abuse in Oregon's Medicaid program so that these funds are used as intended--to support the health, safety and well-being of people in Oregon. OPI does audit Medicaid enrolled providers against HCBS rules and regulations and is looking to increase and expand these audits over the next few years.

### Person Centered Planning

The person-centered planning process incorporates individual choices and preferences for the settings where home and community-based services are provided. These preferences and choices are included in the PCSP that is reviewed at least annually.

Oregon's IQA is responsible to ensure medical necessity and assess for, initiate, develop, and ensure that all 1915(i) HCBS enrolled individuals receive a timely PCSP and that it is reviewed at least annually. Case managers employed by the IQA are required to develop PCSPs during a face-to-face meeting for any individual enrolled in and receiving 1915(i) HCBS State Plan services, including those individuals residing in their own or family home. The IQA does conduct periodic case reviews to ensure service plans address assessed needs, are updated annually, that there is or was choice among services and providers, and that all plans follow OAR and 1915(i) requirements and are delivered in accordance with the current and approved plan. Case reviews are conducted

through onsite visits, face-to-face interviews of participants and providers, document reviews, clinical documentation reviews and/or data analysis.

If certain individual's HCBS rights are called into question, the Provider works with the individual or their legal representative to assess the need for a possible modification to the condition. In Oregon we call this the Individually Based Limitation (IBL). All IBLs are required to be reviewed and approved by the individual/legal representative and the IQA prior to implementation and are also documented on the PCSP. IBL's may not exceed one-year, should be only implemented for the length of time required to assist the individual with the condition, and are regularly evaluated. The individual may also request an amendment or removal at any time.

### Heightened Scrutiny

In 2017, HSD developed an HCBS Heightened Scrutiny Identification Worksheet (HSIW) for residents, stakeholders, and the general public to "red flag" a setting that the state has not identified but may require heightened scrutiny. This worksheet was sent to each provider and uploaded to the HSD sub-page of Oregon's HCBS website for use by the public.

On an ongoing basis, when HSD receives an HCBS HSIW, HSD will work with licensors to determine if the HCBS criteria are met and remediate any areas of non-compliance able to be remediated. For areas not able to be remediated, such as location or structure, the provider will be given the opportunity to rebut the possible isolating effect. If HSD and its licensors determine that there are isolating effects unable to be remediated and the provider is unwilling to come into compliance, HSD will notify the provider that its contract to receive Medicaid funds will be terminated and notify its Medicaid recipients that they will need to transition to alternative settings. If HSD and its licensors determine that the provider has overcome the isolating effects, but the location and structure cannot be overcome, HSD will submit a heightened scrutiny evidence package to CMS for review and final determination.

Prior to making a final referral to CMS for heightened scrutiny, HSD will:

- Prioritize on-site visits by the licensing staff

- Have each setting conduct an HCBS Provider Self-Assessment to assist the licensors in knowing which HCBS standards the setting is not meeting expectation
- Provide the setting an opportunity to rebut the presumption of institutional qualities due to the appearance of isolating individuals from the broader community or provide a comprehensive plan for compliance with the regulations with milestones to show measurable progress towards compliance.

## Residential Specialists

HSD also coordinates and collaborates with county Residential Specialists to assist with trainings and public engagement. HSD works closely with Residential Specialists as they are in the communities and often go on-site to these homes and facilities to offer training and technical assistance. Residential Specialists will continually assist with the HCBS implementation processes.

*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.*

Individuals who live in licensed residential settings in Oregon have the resource of the Oregon Residential Facilities Ombuds program (RFO). Individuals are informed of this resource and all residential settings are required to have available RFO information, including contact information. Individuals may contact the RFO for any questions or concerns they have, make a complaint to their services coordinator or call their local case management entity to report concerns. The RFO program also makes visits to residential homes in outreach efforts and as requested by individuals. HSD regularly collaborates with RFO when complaints cross over between providers and case management activities.

Other pathways to submit grievances include submission through OHA's and HSD's consumer complaint phone numbers, emails and physical addresses, provider and member services, and through licensing contacts.

All grievances received by HSD will be reviewed, investigated, and responded to in a timely manner. The process includes a review of reports and documentation, interviews with County staff, providers, HSD's IQA and consumers/legal representatives, and on-site inspections if identified as necessary to review the grievance. Outcomes of the review are communicated to the provider and consumer/legal representative and others as identified such as Residential Specialists and the IQA. If grievances are related to the inadequate delivery of services being billed for through Medicaid or Fraud, Waste and Abuse, referrals are sent to the OHA Office of Program Integrity and/or Oregon's Medicaid Fraud Control Unit.

**Oregon Department of Human Services  
Office of Developmental Disabilities Services**

- 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;

(language from the approved STP which still applies):

Ongoing provider compliance or non-compliance with HCBS regulations will be determined through the regular licensure and certification process that includes on-site review. Case managers must have a reciprocal interaction with individuals or their representative no less than once every three months. Individuals with three or more significant health and safety risks must have a monthly case management contact. At least one case management contact per year must be face to face. For individuals living in residential program settings, monitoring of services may be combined with site visits. Once a year, services specific to health, safety and behavior must be monitored, addressing questions established by ODDS. Checklists are used by case managers to document their findings during monitoring visits. Tools to guide case management staff in service monitoring are located on-line on the DD Staff Tools page under the “Service Monitoring Guidelines” category at: <http://www.dhs.state.or.us/spd/tools/dd/cm/>.

Case managers are responsible for ensuring the appropriate follow-up to monitoring. If a case manager determines that developmental disabilities services are not being delivered in compliance with HCBS requirements or as agreed in the person-centered service plan, or if service needs have changed, a case manager must initiate at least one of the following actions: update the person-centered service plan; work with provider to identify service delivery shortcomings for remediation; provide or refer technical assistance to an agency provider or common law employer for a personal support worker; seek corrective action, if needed, by referring provider to ODDS Licensing for review or for administrative support; or meet with the executive director or board of directors of the provider.

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

Initial and ongoing compliance are assessed through the embedded regulatory criteria as stated above. Initial licensure, certification, or endorsement requires compliance with Oregon Administrative Rules (OARs). OARs have been updated to incorporate the full range of federal HCBS regulations and requirements for all ODDS services and settings. ODDS licensing assesses initial compliance as part of the licensing, certification, and endorsement processes and ongoing compliance is addressed through the renewal processes. The licensing review process includes a comprehensive in-person on-site inspection by licensing staff, review of materials, observation, and interviews. Additionally, case management services conduct service and site monitoring intermittently throughout the person-centered plan year.

- 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.

Individuals have multiple options for making complaints and expressing concerns regarding HCBS standards.

Individuals are provided with an annual notification of rights, including the right to make a complaint. Complaints made are recorded and tracked at the case management entity level as well as the state administrative level (when the reports are made to ODDS). The complaints are investigated and researched by either the case management entity or ODDS as applicable. When there are concerns of licensing compliance, ODDS coordinates for follow up between the customer services coordinator and licensing team for a collective response to the concerns. The outcome of the complaint and investigation process is recorded. Individuals are notified of the outcome of the complaint investigation, including any remediation activities.

Case management monitoring is used to check in on individual satisfaction of services. In-person monitoring and contact with individuals generally occurs throughout the service plan year. Case managers are expected to provide follow-up activities when there are concerns or complaints related to conditions or service delivery.

ODDS Quality Assurance team conducts surveys and interviews as part of the biannual review of case management entities. Interviews and surveys include engagement of individuals receiving services.

Also, individuals who live in ODDS-licensed residential settings in Oregon have the resource of the Oregon Residential Facilities Ombudsmen (RFO) program. Individuals are informed of this resource and all residential settings are required to have available RFO information, including contact information. Individuals may contact the RFO for any questions or concerns they have, make a complaint to their services coordinator or call their local case management entity to report concerns. The RFO program also makes visits to residential homes in outreach efforts and as requested by individuals. ODDS regularly collaborates with RFO when complaints cross over between providers and case management activities.

# **Oregon Aging and People with Disabilities**

## ***Response to CMS HCBS Questions***

### **1. Description of how the state's oversight systems have been modified to embed the regulatory criteria into ongoing operations**

#### **- *Licensure and certification standards, provider manuals***

The Oregon Department of Human Services, Aging and People with Disabilities (APD), Safety, Oversight and Quality (SOQ) is responsible for licensing Community Based Care (CBC) settings (Assisted Living and Residential Care) and Adult Foster Homes (AFH). APD modified both licensing and Medicaid payment rules to ensure that HCBS requirements were addressed for Medicaid-eligible consumers and non-Medicaid consumers, as well. (See STP Appendices attachment; Appendix C) IT systems that track licensing compliance were modified to ensure consistent compliance or identification of areas of concern.

#### **- *Person-centered plan monitoring by case managers, etc.***

APD created a process for individuals who receive Medicaid services, whereby Case Managers assess each individual's needs and preferences. These are incorporated into a person-centered service plan that is reviewed at least annually. If the individual's HCBS rights are called into question, the Case Manager works with the individual, provider, etc., to assess the need for a possible modification to the condition. In Oregon we call this the Individually Based Limitation (IBL). If necessary, the Case Manager will begin the IBL process with the individual and incorporate it into the individual's Service Plan. The need for IBL is regularly evaluated. The individual may also request an amendment or removal at any time. Statewide trainings were provided for all Case Managers. (See APD-PT-19-020)

#### **See attachments:**

- APD 2016 HCBS Regional Training
- APD AFH Commercial Initial 516
- APD AFH Commercial Renewal 517

- APD CBC Provider Information Guide
- APD CBC Resident Group Interview Form
- APD CBC Resident Review Guidelines
- APD HCBS Provider Implementation Timeline
- APD Individual HCBS Rights Flyer
- APD Policies/Transmittals
  - APD-PT-19-020 SPAN 2780N
  - APD-PT-20-090 IBL
- STP Appendices
  - STP Appendix C provides Oregon Administrative Rules reviewed and amended to include HCBS requirements
  - STP Appendix E is a crosswalk/system remediation grid and applicable “Areas of Compliance and Regulation, Status, and Actions”

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

To ensure compliance at both initial licensing and at required renewals, SOQ modified IT systems to ensure there are specific reviews of the HCBS requirements. For initial licensing, SOQ Policy Analysts review Policy and Procedure of all new facilities, which include review of HCBS. Providers who do not meet the requirements will not receive a license and therefore will not receive a Medicaid provider number. For renewals, non-compliance results in “tags.” Each tag results in a corrective action plan, technical assistance and can result in fines and penalties.

Staff doing the licensure and certification are referred to as Licensors for AFHs and Surveyors for CBC settings. All staff have been trained on HCBS regulations. Both Licensors and Surveyors do onsite reviews of the provider’s compliance with HCBS regulations. Provider files and resident care plans/records are scrutinized to ensure all rights are maintained and appropriately documented.

APD also has a Licensing Complaint Unit (LCU). The LCU reviews complaints for residents, family members, ombudsman and case managers. Complaint

investigations can lead to more intensive interventions, corrective action, fines and penalties.

○ **For providers:**

- Licensors/Surveyors complete monitoring upon all initial licensures and ensure HCBS rules are met.
  - (See APD AFH Commercial Initial 516)
  - (See APD CBC Aspen Tags)
- The HCBS rules are confirmed as being in good standing with each renewal.
  - (See APD AFH Commercial Renewal 517)
  - (See APD CBC Aspen Tags)
- SOQ Policy Analysts provide technical assistance and training for any HCBS related complaints.
- Licensors/Surveyors follow up on and complete review of any HCBS-related complaints, including the writing of violations, if appropriate.
- Upon admission, the resident or their representative is given a copy of the Resident's Bill of Rights and Freedoms for signature.

**See attachments:**

- APD AFH Commercial Initial 516
- APD AFH Commercial Renewal 517
- APD CBC Aspen Tags
- APD CBC Provider Information Guide
- APD CBC Resident Group Interview Form
- APD CBC Resident Review Guidelines

**3. 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.**

Individuals, their family or friends, health care professionals or others have numerous ways to notify the state of non-compliance by a provider. Anyone may contact and/or file a complaint/grievance with:

- Case Manager, for individuals receiving Medicaid services
- Licensors (AFH) or Surveyors (ALF/RCF) or general SOQ email boxes

- Local APD or Area Agencies on Aging (AAA) office
- Adult Protective Services
- Safety, Oversight and Quality (SOQ)
- Email to:
  - Licensing Complaints (ALF/RCF)
  - Provider Complaint Resolution (AFH)
  - HCBS Oregon
- HCBS Website Comment Box
- Aging and Disability Resource Connection of Oregon (ADRC)
- APD Central office
- Oregon Health Authority
- Office of the Long-Term Care Ombudsman
- Governor's Advocacy Office
- Provider Advocacy Association (Oregon Health Care Association, LeadingAge Oregon, Independent Adult Care Home Association)
- Disability Rights Oregon and other legal service providers
- Secretary of State

All formal complaints about CBC settings are routed to the SOQ Licensing Complaint Unit for investigation. Complaints about AFHs are routed to the local Licensing staff for review and investigation. AFHs are required to post how a person can make a complaint, how to reach the Ombudsman's office, and local licensing contact information.

**See attachments:**

- APD Contact for HCBS Questions
- STP Appendices
  - STP Appendix F shows various means by which a consumer can contact APD
  - STP Appendix G illustrates methods APD has employed to reach out to individuals, and supply them with options for sharing concerns

**The following pages are APD-specific excerpts from Oregon's Approved Statewide Transition Plan (STP) that address the history behind the answers supplied above.**

## Oregon's Statewide Transition Plan *[APD-Specific Excerpts]*

### Phase I. Initial Systemic Regulatory Assessment (June- 2014 – January 2016) [APD-specific; pages 13 - 20]

Prior to the first submission of the Transition Plan, DHS and OHA completed an initial systemic assessment of Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), policies and contracts across three service delivery systems to determine regulatory compliance with the HCBS regulations; the delivery systems are OHA's Health Systems Division (HSD), formerly known as Addictions and Mental Health, DHS' Aging and People with Disabilities (APD), and DHS' Office of Developmental Disabilities Services (ODDS). In general, DHS' and OHA's initial systemic assessment led to the conclusion that ORSs, OARs, policies, and contracts aligned/complied with or were silent on the HCBS regulations. Areas that needed to be addressed are detailed below. However, key activities in the Transition Plan will further assess site specific compliance and remediate any remaining areas of concern.

The initial systemic assessment of ORSs, OARs, policies, and contracts specific to provider-owned, controlled, or operated residential HCBS settings was completed on August 4, 2014. The three service delivery systems reviewed ORSs 409, 410, 413, 427, 430, and 443, OARs (see [Appendix C](#)), policies, and contracts. This assessment led to the creation of an initial "global scorecard." The scorecard ([Appendix B](#)) evaluated rules and regulations related to provider-owned, controlled, or operated settings licensed/certified by APD, HSD and ODDS programs' licensing staff. These setting types include HCBS settings listed below and identified in Oregon's approved Medicaid State Plan Options and Waivers (see [Appendix D](#)).

The initial global scorecard was separately shared with the Stakeholder Committee at a meeting on August 5, 2014, then updated, and posted on Oregon's HCBS website (HCBS website) on March 9, 2015.

An individual's own or family home is presumed to meet the qualities of a home and community-based setting per CMS guidance and is not a provider-owned, controlled, or operated residential setting. Oregon provides HCBS to individuals residing in their own or family homes through the 1915(k) Community First Choice State Plan Option and 1915(c) HCBS Waivers operated by DHS, APD and ODDS and the 1915(i) HCBS State Plan Option operated by OHA, HSD. Individuals

receiving HCBS through these authorities who do not reside in their own or family home reside in provider owned, controlled or operated residential settings. Per ORS, unrelated caregivers who provide services in the caregiver's private residence are required to be licensed or certified as Foster Homes. As such, these settings must comply with HCBS requirements for provider-owned, controlled, or operated settings.

The state has a robust in-home services program that is offered to all individuals during the person-centered service planning process. As a result, over 50% of individuals receiving HCBS choose to receive their services in their own or a family member's home. Oregon's Governor and Legislature are focusing on investing in low-income housing to make in-home options more accessible. Having in-home services as an option meets the CMS expectation of a choice of a non-disability specific residential setting.

Upon release of CMS's guidance for non-residential settings, DHS and OHA completed the same initial systemic regulatory assessment for certified and unlicensed settings, such as employment and adult day programs, in which individuals receive HCBS to determine if the ORSs, OARs, policies and contracts for these settings were in compliance with the HCBS regulations. Settings where individualized services are provided in a typical community setting are presumed to comport with the HCBS requirements. DHS, APD Central Office staff conducted on-site visits to each Adult Day program to ensure full compliance with HCBS requirements.

Staff from the three service delivery systems reviewed pertinent ORSs, OARs (see [Appendix A](#)), policies, and contracts. The initial global scorecard was updated with the results of this initial systemic regulatory assessment of non-residential settings, which was completed on January 22, 2015. The OARs, policies, and contracts regulating services in non-residential employment and day service settings aligned/complied with or were silent on the HCBS regulation.

The initial global scorecard was not intended to be the final determination of individual site compliance or identification of any necessary site-specific changes, but it provided an initial snapshot of the regulatory status of Oregon's HCBS system during Phase I. Through the initial systemic assessment, DHS and OHA found that no immediate changes were necessary to its ORSs. However, since

submitting the initial Statewide Transition Plan on October 13, 2014, with the initial global scorecard, Oregon determined that changes were needed to OARs to remove any areas of ambiguity, better align with the HCBS regulations, and facilitate initial and ongoing provider compliance by establishing timelines for completion of activities in accordance with the Transition Plan.

Through the initial systemic regulatory assessment of ORSs, OARs, policies and contracts, DHS and OHA determined that all of Oregon's regulations met the following components of the HCBS regulation:

- The setting is selected by the individual, or their representative, from among all available options, including non-disability specific settings, unless there are court-mandated restrictions that prohibit the individual from being served in a particular setting, which would be articulated in the individual's person-centered service plan.
- The setting choice is identified and documented in the person-centered service plan and is based on the individual's needs and preferences.
- The service delivery system facilitates individual choice regarding services and supports, and who provides them.

At the same time, DHS and OHA determined that service-delivery system regulations for most residential setting types met the following components of the HCBS requirements:

- Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
  - In limited circumstances, some individuals may need appropriate supports that include restraints. Restraints must meet all requirements set forth in the CMS-approved HCBS Medicaid authorities, as applicable, ORS, and OARs.
- Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- The unit or dwelling can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, substantially similar responsibilities and protections from eviction.
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

- The setting is physically accessible to the individual.

Based on the initial regulatory assessment, Oregon, with stakeholder and public input, drafted and finalized a set of over-arching Oregon Administrative Rules that govern HCBS setting requirements across the three delivery systems. Oregon Administrative Rule Chapter 411, Division 004 ([http://arcweb.sos.state.or.us/pages/rules/oars\\_400/oar\\_411/411\\_004.html](http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_411/411_004.html)) became effective on January 1, 2016, as identified in the Statewide Transition Plan timeline.

Additionally, each service delivery system has amended specific program rules for full alignment/compliance with the over-arching OARs for all HCBS settings and federal HCBS settings regulations.

With the implementation of OAR Chapter 411, Division 004 and revised program-specific rules, DHS and OHA have determined that Oregon's regulations align/comply with the HCBS regulations.

**Regulations governing the following settings fully comply with the federal requirements (see [Appendix D](#) for funding authority detail):**

- APD Certified Adult Day Services;
- APD Assisted Living Facilities (includes endorsed Memory Care Facilities);
- APD Residential Care Facilities (includes endorsed Memory Care Facilities);
- APD Specialized Living Programs;
- APD Adult Foster Homes;

Specific changes found to be necessary for 1915(c) waivers, and 1915(i) and 1915(k) State Plan Amendments will occur after the State completes the site-specific assessment phase.

To demonstrate Oregon's current level of regulatory compliance with the HCBS regulation, OHA and DHS have created a crosswalk that clearly outlines:

- How each section of the regulations aligns with the HCBS regulation;
- The title, code, and sub-code for each policy identified; a general description of each policy and its relevance to the HCBS regulation; and

- Key aspects of the HCBS regulation that should be taken into consideration when reviewing the specific policy.

The crosswalk replaces the initial global scorecard as Oregon’s final determination of systemic regulatory compliance. The crosswalk can be found in [Appendix E](#).

**LICENSED/CERTIFIED HCBS SETTINGS SUBJECT TO REGULATORY ASSESSMENT:  
NUMBER OF SITES AND TOTAL STATEWIDE CAPACITY PER SETTING TYPE**

*APD Licensed/Certified Sites and Capacity*

	<b>Adult Foster Homes</b>	<b>Assisted Living Facilities (ALF)</b>	<b><u>ALF with endorsed Memory Care Facility</u></b>	<b>Residential Care Facilities (RCF)</b>	<b><u>RCF with endorsed Memory Care Facility</u></b>	<b>Adult Day Services</b>	<b><u>Specialized Living</u></b>
# of Sites	1692	220	4	116	176	15	14
Capacity (Beds/Slots)	7502*	14847*	114*	4910*	6315*	181	188

\*Includes Non-Medicaid/Private Pay capacity

Though Oregon’s regulations fully align/comply with the HCBS regulation, during the site-specific assessment and remediation phases, (Phases II through IV), DHS and OHA will work to assure that each provider-owned, controlled or operated residential site meets the following additional requirements:

- Each individual has privacy in their sleeping or living unit.
- Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
- Individuals sharing units have a choice of roommates in that setting.
- Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.
- Individuals receiving services in residential settings are able to have visitors of their choosing at any time.

Certain non-residential sites may need to adapt and change to comply with the HCBS regulations.

## Phase II. Statewide Training and Education Efforts (July-2014 – March 2022) [APD-specific pages 28 - 33]

### *Program-specific Trainings and Public Engagement*

As mentioned above in Phase I. and Phase II., DHS and OHA created a statewide HCBS website for individuals, families/guardians, providers, advocates, stakeholders, service delivery system staff, and the general public. APD, ODDS and HSD also created their own program-specific webpages embedded in the statewide HCBS website. Each program-specific webpage contains provider status reports, information regarding individually-based limitations (modifications to conditions), training information and materials, heightened scrutiny information and other relevant information. Individuals visiting these sites are encouraged to provide feedback via a feedback form on the site or by sending an email to the HCBS email box.

The program specific webpage can be found here:

<http://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCBS/Pages/APD.aspx>

A description of each specific program's training and public outreach efforts is found below.

#### DHS, APD:

DHS, APD convened focus groups for consumers to inform them of the changes resulting from the HCBS requirements and to elicit their feedback and insights. Additionally, APD convened program specific stakeholder group to advise and assist in the HCBS settings statewide transition process. Stakeholders include advocacy groups such as the Long-Term Care Ombudsman, Disability Rights Oregon, Alzheimer's Association, AARP, Brain Injury Alliance of Oregon, and provider groups such as the Oregon Health Care Association, LeadingAge Oregon, Oregon Rehabilitation Assoc, and the Independent Adult Care Home Association. Training and collaboration have been provided during the transition period with both consumer and provider advocacy organizations and State/County regulatory groups. The goal is to engage all interested parties in assisting APD in reaching full compliance with HCBS and in identifying areas of concern and gaps in current services.

Additionally, APD has been providing ongoing HCBS training and technical assistance at regularly scheduled APD Case Manager and Managers' meetings. APD will continue to provide additional HCBS training on a regular basis to HCBS providers, advocacy groups, regulatory groups and Case Managers for the duration of the transition period.

Please see [Appendix H](#) for a list of trainings conducted by APD.

## Phase III. Provider Self-Assessment, Individual Experience Assessment, and Validation Activities (July 2015 – June 2019) [APD-specific; pages 34 - 48]

### Provider Self-Assessment Tool (July 2015 – February 2016)

In [Phase I](#) of the Transition Plan, DHS and OHA described how they assessed systemic regulatory compliance with the settings requirements for each type of provider-owned, controlled, or operated HCBS setting authorized and funded under 1915(c) waivers, and 1915(i) and 1915(k) State Plan Options. Phase III of the Transition Plan details how DHS and OHA determine initial compliance with the settings requirements for individual sites within each type of provider-owned, controlled, or operated HCBS setting.

In consultation with Stakeholders and partners, DHS and OHA developed a Provider Self-Assessment Tool (PSAT) for provider-owned, controlled, or operated residential settings and a separate assessment for non-residential settings. To initially assess residential settings, DHS and OHA utilized an existing contract held by OHA to conduct the Provider Self-Assessment Tool (PSAT) survey and the Individual Experience Assessment survey described below. Non-residential Provider Self-Assessment Surveys for ODDS were conducted by the ODDS program.

For residential settings, the contracted entity contacted every provider or provider agency that provides HCBS in a provider-owned, controlled or operated residential setting. The provider for each site received a web link to the PSAT with instructions and required timelines for completion. HCBS providers were encouraged to complete the PSAT online. If the provider was unable to complete the PSAT online, paper PSATs were available upon the provider's request. Every

provider or provider agency of HCBS in provider-owned, controlled, or operated residential settings was required to complete a PSAT for each individual HCBS site they operate or control. Providers were encouraged to include the individuals receiving services, their family members/representatives, advocates and others in their assessment process. DHS and OHA provided guidance to providers on how to accomplish this activity. Some of the guidance included fact sheets, instructions, and FAQs.

Providers were required to complete and return the PSAT to DHS and OHA within 60 calendar days of receipt. The contracted entity conducted follow-up calls to providers and provider agencies to ensure completion of the PSAT.

While there was not a financial penalty levied against a residential provider for failing to complete a PSAT, providers who did not respond were addressed as follows:

- APD providers who did not respond to the PSAT were sent letters stating that due to lack of response, the provider is presumed to be out of compliance with the HCBS regulations until site visits determined their actual compliance status.

By December 31, 2018, every provider-owned, controlled or operated residential HCBS setting will have received an on-site review from state or local service delivery staff. During on-site reviews responses from the IEA are used as a tool to help validate the PSAT results and inform the state of individual site compliance with the HCBS setting requirements. This process is further described below in “Validation of Assessment Results”.

## Individual Experience Assessment (July 2015 – February 2016)

DHS and OHA did not assume any of the individual HCBS sites met the HCBS requirements. In consultation with Stakeholders, DHS and OHA developed and conducted the Individual Experience Assessment (IEA) for individuals receiving Medicaid-funded HCBS services in provider-owned, controlled, or operated residential settings and non-residential settings.

The IEA focused primarily on whether the individual feels his or her service experiences align with what is required in the settings requirements. The

questions asked in the IEA were very similar to those asked in the PSAT but worded more simply. In addition to questions about residential settings, the IEA contained questions specifically related to employment and day services. The IEA and PSAT were conducted simultaneously and linked with unique identifiers (described in the Validation section) so the results were comparable in time. As with the PSAT, DHS and OHA utilized the existing contract held by OHA to conduct the IEA in tandem with the PSAT. The contracted entity sent the IEA to every individual receiving Medicaid-funded HCBS in a provider-owned, controlled or operated residential setting. Individuals had the choice of completing the IEA online or via paper.

Individuals were not required to complete the IEA but with advice and feedback from Stakeholders and the state's contracted entity, DHS and OHA determined ways to maximize individual participation in the IEA process. During the response period, if an individual did not respond to the initial survey, the state's contracted entity contacted individuals via mail up to three additional times to encourage participation and offer technical assistance. A toll-free phone line was also established for individuals to call if they required assistance in completing the IEA. Information regarding the IEA was also presented at each regional forum conducted by DHS and OHA (Described in [Phase II.](#)).

During the analysis phase of IEA results, DHS and OHA gained vital insight about how individuals receiving services perceived their experiences both with the service delivery system and their service provider. Additionally, the IEA asked if the individual felt that they could select their services from all available service options and all available providers. Responses to critical questions related to the additional requirements for provider-owned, controlled, or operated settings provided DHS and OHA with a foundational understanding of actual on-the-ground compliance specific to each site.

The IEA indicated if it was completed by the individual, the family, the individual's guardian, or others. Individuals were encouraged to complete the IEA themselves but were permitted to choose an individual to assist them with filling out the IEA. IEA responses were also used as supplemental information to help prioritize the order of on-site visits. All settings receive on-site reviews as part of the initial validation and ongoing compliance monitoring process as described below.

## Validation of Assessment Results (November 2015 – December 2018)

DHS and OHA have used several ways to validate the PSAT and determine initial site compliance. The first tool of validation was the IEA. The IEA and the PSAT were linked with a unique identifying number that allowed the contracted entity to match the IEA response with the relevant PSAT for comparison. The unique number did not contain any identifiable protected health or personal information.

DHS, OHA and the contracted entity made every effort to obtain responses from at least one individual residing at each provider site. DHS and OHA received most of results of the completed PSATs and IEAs on 02/05/16.

Based on analysis and evaluation of the PSAT and IEA responses, DHS and OHA provided initial feedback to providers advising of any issues that require remediation during the transition period.

Due to the rate of return of IEAs, DHS and OHA took approximately 3 months to compile, analyze and compare the results of the PSATs and IEAs. The number of PSATs and IEAs responses received by each service delivery system and its validation activities:

### DHS, APD:

- 1,475 providers (out of a total of 2,242 surveys sent out, equaling a 66% response rate)
- 3,226 adult individuals (out of a total of 10,908 surveys sent out, equaling a 30% response rate)

APD providers who did not respond to the PSAT were sent letters stating that due to lack of response, the provider is presumed to be out of compliance with the HCBS regulations until on-site visits determined their actual compliance status. These sites were marked as “Pending Regulatory On-site Visit” on the online “Provider Status Report.”

APD derived initial HCBS compliance status for provider owned, controlled or operated settings from one or more of the following sources: Provider Self-Assessment Tool, pre-Heightened Scrutiny evidence reviews, pre-Heightened Scrutiny onsite reviews, information provided on Individual Experience Surveys, and/or onsite visits from regulators (Licensors/Surveyors).

APD Licensors/Surveyors conduct on-site reviews of residential provider owned, controlled or operated sites. Multnomah County licenses its own Adult Foster Homes and conducted its own site visits using their county licensors. The DHS, APD program on-site assessments are completed using a state-mandated HCBS compliance assessment form which was based upon the overarching HCBS OARs. APD's HCBS compliance assessment form is available to CMS upon request. APD's HCBS criteria were incorporated into ASPEN (Automated Survey Processing Environment), the current Licensor/Surveyor system for reporting compliance for all APD residential providers. Most Oregon counties reported AFH compliance data using a web-based tool until 6/1/17, when they all moved to ASPEN (with the exception of Multnomah County, which is still using the web-based tool).

APD-licensed Adult Foster Homes are on a one-year cycle for regulatory on-site visits, while Assisted Living Facilities, Residential Care Facilities, Adult Day Services and Specialized Living Programs are on a two-year cycle.

APD Central Office staff conducted on-site visits to each non-residential Adult Day program to ensure full compliance with HCBS requirements.

The status was posted on Oregon's HCBS, APD website (<http://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCBS/Pages/APD.aspx>) in August 2016 and updated regularly thereafter. Since then, every APD setting, regardless of whether they completed and returned the Provider Self-Assessment Tool, has received at least one on-site visit to validate the initial findings of setting compliance.

APD will continue to perform on-site visits to ensure HCBS compliance throughout the state's transition period.

#### Statewide Aggregation of Validation Results:

After IEA and PSAT responses and results from initial site visits were compiled, analyzed, and compared, DHS and OHA sorted individual sites into one of four CMS-defined "buckets":

- Meets Expectations;
- Expected to Meet Expectations;
- Requires Heightened Scrutiny; and
- Will Not Meet HCBS Requirements.

Sites that were identified as requiring heightened scrutiny are addressed below in Phase IV. Heightened Scrutiny Process.

The aggregate number of individual sites sorted into each of the identified “buckets” is listed below. Additionally, APD, ODDS and HSD have published HCBS provider status reports showing levels of compliance at their program-specific HCBS websites. These reports are updated on a regular basis to show current compliance status. The reports can be found here:

<http://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCBS/Pages/APD.aspx>

<http://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCBS/Pages/ODDS.aspx>

<http://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCBS/Pages/HSD.aspx>

DHS and OHA are leveraging existing organizational partners such as the Governor’s Advocacy Office, adult protective service staff, licensing staff and case managers to assist in validation of assessment results and ongoing provider compliance as described in [Phase V](#). below. Staff from these entities will report concerns or areas of inconsistency. The reports from these staff members will allow the centralized State HCBS team to compare complaints, issues and allegations against providers.

DHS and OHA continue to publicize and provide ongoing opportunities for the public to submit feedback on providers’ initial and ongoing compliance and/or progress. As a key component, DHS and OHA ask advocacy organizations, such as the Oregon Long Term Care Ombudsman, to inform DHS and OHA if the Ombudsmen and/or other advocates express concerns about providers’ attestations and residents’ perception regarding HCBS compliance.

To further assist in validation activities and assure ongoing compliance, DHS and OHA actively engage with individuals receiving Medicaid-funded HCBS as specified in this plan, their families and their advocacy organizations on an ongoing basis to gather their opinion and insight on how providers are complying with the HCBS requirements.

The aggregate number of individual sites per program:

**DHS, APD:**

<b>HCBS Compliance Status</b>	<b>AFH</b>	<b>ALF</b>	<b>ALF-MCC</b>	<b>RCF</b>	<b>RCF-MCC</b>	<b>Specialized Living</b>	<b>Adult Day*</b>	<b>Totals</b>
Meets Expectations	689	203	1	67	57	16	20	<b>1,053</b>
Expected to Meet Expectations	753	12	3	54	115	0	0	<b>937</b>
Required Heightened Scrutiny	0	2	0	0	3	0	0	<b>5</b>
Will Not Meet Requirements	0	0	0	0	0	0	0	<b>0</b>
<b>Subtotals</b>	<b>1,442</b>	<b>217</b>	<b>4</b>	<b>121</b>	<b>175</b>	<b>16</b>	<b>20</b>	<b>1,995</b>

\*Adult Day is non-residential.

## Phase IV. Heightened Scrutiny Process – Initial and Ongoing (October 2014 – Ongoing) [APD-specific; pages 49 - 69]

### State’s Review and Process for Heightened Scrutiny Submission to CMS (October 2014 – Ongoing)

Throughout [Phases III](#) and [IV](#) of the Transition Plan, DHS and OHA will assess each site to determine if it meets the HCBS settings requirements or requires CMS’s Heightened Scrutiny.

With the August 2017 STP submission, the state submitted evidence to CMS for heightened scrutiny for sites meeting the criteria below:

1. Any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment, or in a building located on the grounds of, or immediately adjacent to, a public institution, which the state believes overcomes the institutional presumption and meets the requirements of a home and community-based setting.
2. Any setting regardless of location that has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community.

To initially identify sites that fell into category 2, the APD and HSD identified “red flag” responses to specific questions asked in the Provider Self-Assessment Tool and Individual Experience Assessment (Phase III.) that indicated a site may have institutional qualities due to the effect of isolating an individual receiving HCBS

from the broader community. The questions asked by the State on the PSAT and IEA that could indicate isolation were derived from CMS regulatory language, guidance and suggested exploratory questions. Copies of the PSAT and IEA tool are available to CMS upon request.

In the APD and HSD programs, a provider who had “red flag” indicators based on PSAT and IEA responses was not automatically sorted into the “bucket” of providers identified as requiring CMS’ heightened scrutiny. There were several steps taken before evidence is submitted to CMS. These steps include prioritizing on-site visits by the licensing and service delivery system staff and providing the site an opportunity to rebut the presumption of institutional qualities due to the appearance of isolating individuals from the broader community or provide a comprehensive plan for compliance with the regulations with milestones to show measurable progress towards compliance.

Prior to submission to CMS of the August 2017 STP and list of identified sites requiring heightened scrutiny, DHS and OHA conducted a 30-calendar day public notice and comment period. The public notice included information about how individuals could request a printed copy of the STP and provide input on those sites identified as requiring CMS’ heightened scrutiny. The process used by DHS and OHA to commence the 30-calendar day public notice and comment period is identified in [Appendix F](#).

The process used to submit the first round of heightened scrutiny evidence to CMS is summarized below.

#### *Heightened Scrutiny Process used for first submissions to CMS:*

- Conducted an initial, off-site review of licensing and service delivery system records to determine if the site is in the building of, on the grounds of, or adjacent to an institution. (October 2014)
- Worked with stakeholders to create specific criteria indicating isolation characteristics to identify which sites will require heightened scrutiny (October 2014 -June 2015).
- Used the Provider Self-Assessment Tool (PSAT), Individual Experience Assessment (IEA) responses, and additional activities to help determine if a site meets the definition of an HCBS setting and begin heightened scrutiny review process. (September 2015 – April 2016)

- Notified identified affected providers of state's determination that site(s) must be reviewed to determine if the site must go through the heightened scrutiny process. (May 2016 – May 2017)
- Required identified providers of sites that appeared to require heightened scrutiny to submit sufficient evidence to the state rebutting that presumption. (May 2016 –May 2017)
- Conducted on-site review of sites ***initially*** determined to require heightened scrutiny. (May 2016 – May 2017)
- Determined, based on evidence provided and results of on-site review, if sufficient evidence was provided to seek heightened scrutiny from CMS, or if the site does not meet HCBS requirements. (May 2016 - Ongoing)
- Compiled a report of the sites that ***initially*** require heightened scrutiny (as of June 1, 2017). (May 2016 – May 2017)
- Commenced public notice and comment period including posting information on each service site determined to require CMS' heightened scrutiny. Information posted both on Oregon's HCBS website and made available in non-electronic format to those requesting. (June 2017 - July 2017)
- Revised Transition Plan to address public input, if necessary. (July 2017)
- Submitted amended Transition Plan to CMS, including evidence and justification of individual sites that appear presumptively non-HCBS for CMS' heightened scrutiny. (August 2017)
- Provided opportunity for sites to request an Administrative Review of DHS's and OHA's determination that a site ***does not*** meet HCBS requirements and ***will not*** go through CMS's heightened scrutiny process. (August 2017 – September 2017)
- Expected receipt of CMS response to DHS and OHA's site-specific amended Transition Plan. (September 2017)

Using the same criteria above, DHS and OHA anticipate that, based on regular licensing/certification and other on-site visits, the identification of sites requiring heightened scrutiny and submission of evidence to CMS will be a rolling, ongoing process. The evidence found during the site visits will be submitted to CMS. Throughout the transition period and ongoing, prior to submission of evidence packages to CMS for sites identified as requiring heightened scrutiny, DHS and OHA will commence 30 calendar day public notice and comment periods using the process identified in [Appendix F](#).

On June 1, 2018, OHA received an invitation from the Federal HCBS Team requesting that Oregon participate in a pilot program developed by CMS and its Federal partners to inform the Heightened Scrutiny process. Oregon accepted the invitation to participate in the pilot program and submitted further evidence requested by the Federal HCBS Team to support OHA, HSD's determination that the four sites it submitted for heightened scrutiny meet the HCBS settings regulations. The additional evidence was submitted to the Federal HCBS Team on September 26, 2018. Oregon has not yet received a response nor has the Federal HCBS Team requested additional evidence on the OHA, HSD sites or the sites submitted by DHS, APD and DHS, ODDS for heightened scrutiny.

The ongoing process used to submit heightened scrutiny evidence to CMS is summarized below.

#### *Ongoing Heightened Scrutiny Process:*

- Determine and implement ongoing remediation strategies and next steps. (July 2016 – July 2017)
- Implement ongoing, rolling process for identification of sites and submission of evidence packages to CMS requiring heightened scrutiny. (August 2017 – Ongoing)
- Identify sites during regular licensing/certification and/or monitoring reviews that may require heightened scrutiny. (August 2017 - Ongoing)
- Require providers of identified sites to submit sufficient evidence to the State rebutting the presumption that the site does not meet HCBS setting requirements. (August 2017 – Ongoing)
- Determine if evidence provided is sufficient to seek CMS' heightened scrutiny or if the site does not meet HCBS requirements. (August 2017 - Ongoing)
- Commence public notice and comment period including posting information on each service site that has been determined to require CMS' Heightened Scrutiny. Information posted both on Oregon's HCBS website and will be made available in non-electronic format to those who request it. (August 2017 – Ongoing)
- Submit evidence and justification of compliance of individual sites that appear presumptively non-HCBS to CMS for Heightened Scrutiny. (August 2017 - Ongoing)

- Provide opportunity for sites to request the state's Administrative Review of DHS's and OHA's determination, upon notice of determination, that a site **does not** meet HCBS requirements and **will not** be submitted to CMS for heightened scrutiny. (August 2017 – Ongoing)
- Expected receipt of CMS response to Heightened Scrutiny evidence packages. (September 2017 - Ongoing)

## Service Delivery Systems' Heightened Scrutiny Evidence Summary

DHS, Aging and People with Disabilities (APD) Program:

All APD residential settings were reviewed against all HCBS settings criteria.

The APD program conducted reviews of 2,179 providers of HCBS, using a variety of means: responses to the PSAT, information gathered from regulatory on-site visits, and/or evidence submitted by individual providers. APD analyzed the results from these activities and preliminarily sorted the settings into the following categories: setting meets HCBS, is expected to meet HCBS with corrective action, or needs to go through the Heightened Scrutiny review process. *Refer to the [APD Provider Initial Status Report](#) and [APD Provider Initial Status Report Cover](#) on Oregon's HCBS APD website.*

Of the 2,179 providers reviewed, APD identified 291 residential settings that needed to go through its initial Heightened Scrutiny review process: 184 Residential Care Facilities (RCF), 15 Assisted Living Facilities (ALF), and 92 Adult Foster Homes (AFH). [NOTE: There were 293 residential settings made up of 184 RCF, 15 ALF, and 94 AFH; however, 2 AFHs closed before Heightened Scrutiny reviews were completed, thus reducing the overall number to 291.] A sub-group of RCF and ALF included 169 secured/locked Memory Care Communities that specialize in the care of individuals with Alzheimer's/Dementia.

These 291 settings were selected for review based on the setting's proximity to an institution or by a provider selecting a facility description on the PSAT ("red flag response") that gave the appearance that the setting may be isolating in nature. APD required those identified settings to submit evidence including information and evidence regarding the physical site, the services provided in the setting and the setting's programmatic operations to rebut the presumption of isolating individuals. Based on that evidence, a subset of those settings was required to respond to additional questions.

APD program staff completed an off-site, internal review of all the materials and focused on the following four areas that were deemed indicators of potential isolation:

- Setting’s physical location - the setting location potentially has the effect of isolating;
- Individual access to the community - services are all brought on-site, and individuals are not allowed or encouraged to use alternative services in the community;
- Individual access to visitors at any time - visitors are not allowed or are only allowed at specified times; and
- Provider support of individual independence - individuals are prohibited from leaving the setting or not encouraged to leave the setting.

A “yes” answer to any of the areas listed above identified the setting as needing more intensive review. Information and evidence received from the setting was reviewed and validated by the Licensing/Survey team that has direct knowledge of the operations of these specific settings.

Based on the above-described Heightened Scrutiny review process, all settings were sorted into the following three categories:

- Meets HCBS
- Expected to Meet HCBS with corrective actions/education
- On-site Review Needed

The following is the breakdown from this phase of the Heightened Scrutiny review process:

<b>Setting Type</b>	<b>Meets HCBS</b>	<b>Expected to meet HCBS</b>	<b>On-site Review Needed</b>
Residential Care Facility (non-memory care)	10	8	0
Assisted Living Facility (non-memory care)	4	6	2
Residential Care Facility – Memory Care	44	119	3
Assisted Living Facility – Memory Care	0	3	0
Adult Foster Home	36	56	0
<b>Total</b>	<b>94</b>	<b>192</b>	<b>5</b>

APD’s initial review of submitted documentation identified the following sites as meeting at least one of CMS’s criteria for Heightened Scrutiny:

1. Any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment,
2. Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or
3. Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

<b>Setting Name</b>	<b>County</b>	<b>Setting Type</b>	<b>Summary of Potentially Isolating Elements (#3 above)</b>
Brookdale Roseburg	Douglas	RCF with Memory Care	Secured/locked and surrounded by a brick wall sound barrier
Gardens at Laurelhurst Village, The [Avamere]	Multnomah	ALF	Campus of three city blocks, proximity to hospital and Nursing Facility
Middlefield Oaks Memory Care	Lane	RCF with Memory Care	Secured/locked and 350 feet from community hospital, within a commercial zoning area
Pioneer Place	Malheur	ALF	Proximity to Nursing Facility
Spruce Point Memory Care	Lane	RCF with Memory Care	Zoning is mixed use, professional office, institutional; proximity to hospital

On-site visits were conducted at each of the five identified sites to verify whether each site had the effect of isolating individuals from the broader community, to record findings, determine if the presumption could be overcome, and develop remediation strategies. During the on-site visits, all five sites listed above were reviewed for all HCBS criteria to determine whether each site meets or is

expected to meet HCBS requirements. Additionally, APD posted the five sites online requesting public input about their effect of isolating others. While APD believes the five sites listed above will meet HCBS criteria and overcome the presumption of isolating, APD submitted evidence to CMS as they appear to meet the criteria developed by CMS for Heightened Scrutiny review. Should a facility not be able to meet HCBS compliance as expected, APD will use the same processes and procedures that are used for any other regulatory or non-regulatory deficiency, such as voluntary closure. If by July 1, 2021, a facility has not met HCBS requirements, APD will begin notifying residents within 30 days of that notice or determination. During the period from July through December 2021, case managers will work with individuals to identify other setting options.

### *Memory Care Review Discussion and Rationale*

Due to the secure/locked nature of Oregon's Memory Care Communities, special attention was given to these settings. Oregon considered whether its specialty care settings designed for Alzheimer's/Dementia could overcome the presumption of exhibiting institutional or isolating qualities. The secure/locked setting potentially negatively affects one's ability to control one's own schedule, access the community, and could be viewed as a restraint in the strictest interpretation.

Ultimately, the state concluded that these settings could overcome the presumption based on the following rationale.

Oregon's system of Long-Term Supports and Services (LTSS), including HCBS options, has long valued independence and choice.

The state has a robust in-home services program that is offered to all individuals during the person-centered service planning process. As a result, over 50% of individuals receiving Medicaid-funded LTSS choose to receive their services in their own or a family member's home. Having in-home services as an option meets the CMS expectation of a choice of a non-disability specific residential setting.

If a provider-owned, controlled or operated residential setting is chosen, individuals have a choice of a non-secure/unlocked setting, a secured/locked setting, or an institutional nursing facility setting.

Given these choices, some individuals choose the specialty care provided in a secure/locked setting that best meets the individual's specific need.

HCBS regulations require that individuals receiving Medicaid-funded HCBS have the same degree of access of individuals not receiving Medicaid-funded HCBS. For Oregon Memory Care Facilities, individuals receiving Medicaid represent about 40% of the census while individuals paying privately occupy about 60% of the census. These figures indicate that MCC are a service setting used by non-Medicaid individuals at a higher rate than Medicaid recipients, thus meeting the requirement of the same degree of access.

Finally, the state believes that many secure/locked MCC can meet the HCBS regulations by assuring two important criteria that Oregon intends to regulate, monitor, and enforce:

- That individuals have regular opportunities and support to access the greater community; and
- A person-centered planning process that places individually-based limitations to the rules (modifications to the conditions), thereby meeting the requirements set forth in Federal regulations. The rights of individuals residing in secure/locked settings who do not require the same level of security as others will be protected and accommodated, i.e. individual will be provided a mechanism to bypass the secure/locked nature of the setting.

In applying this rationale, Oregon is only submitting for Heightened Scrutiny those secure/locked MCC settings that have additional factors such as location, proximity to institutions, or other criteria that may have the effect of institutionalizing or isolating.

#### *APD Ongoing Efforts:*

APD greatly values input from consumers, stakeholders and the public regarding the identification of providers who have institutional qualities, such as isolating individuals from the broader community. There are multiple methods for communicating concerns, including phone, email, website, etc. As such, a visual illustration showing how APD invites comments by the public is attached in [Appendix G](#) of this STP.

Based on evidence presented, the Director for the Aging and People with Disabilities Program will decide whether a setting will move forward for Heightened Scrutiny.

# Phase V. Initial Transition Period Review and Remediation Activities (May 2015 – March 2022)

[APD-specific; pages 79 - 82]

Initial compliance and remediation processes used by DHS, APD:

## *APD Residential Settings:*

APD regulatory staff conducted on-site reviews for all APD HCBS provider-owned, controlled or operated settings. Following the on-site reviews, APD requested further documentation from settings that appeared to have isolating qualities. A team of compliance and policy experts from DHS and OHA was utilized to review all provider compliance documentation. Settings determined not to be in full compliance with HCBS regulations were required to create a plan for how they will achieve compliance, similar to a plan of correction used for OAR violations. This format allows providers and Licensors/Surveyors from the Office of Safety, Oversight, and Quality (SOQ) to use a familiar process to correct deficiencies in a non-threatening, supportive environment, while providing technical assistance. Licensors/Surveyors are monitoring these plans and providers are expected to achieve full compliance by July 1, 2020.

For settings that are not in compliance as of that date, regulatory staff may utilize a full range of corrective actions, including civil penalties, fines, putting conditions on licenses, non-renewal of licenses, suspensions and ultimately revocation of the licenses. APD will begin closing actions due to non-compliance with HCBS, which includes giving appropriate notices to facilities and residents and restricting admissions to prevent individuals from moving into non-compliant settings. Communication will begin in July 2021, to affected individuals and will be ongoing through December 2021. The final 30-day notice of facility closure will occur for remaining individuals in January 2022. After appropriate notice, Medicaid contracts will be ended, Medicaid payments will stop, and individuals will be moved to compliant settings no later than March 17, 2022. SOQ will be responsible for closure of facilities that are non-compliant with HCBS requirements. They will work closely with APD HCBS policy experts and the Medicaid Contracts Unit to coordinate closure activities in an orderly manner.

Based on initial reviews, APD expects all facilities will meet the HCBS settings requirements by the July 1, 2021 deadline. However, if any facilities must close due to non-compliance with the HCBS settings requirements, there is an adequate vacancy rate to accommodate any unanticipated closures.

*APD Non-residential Settings:*

APD has validated non-residential settings (Adult Day Services) HCBS settings compliance via on-site reviews. APD has a dedicated Central Office Policy Analyst who oversees contracts, certifications and facility standards of non-residential settings. This Policy Analyst, as part of the licensing/certification process, will continue to monitor each setting and address on an annual basis, any issues found, as appropriate, using the processes described in this STP.

*Individual and Privately-Owned Homes:*

APD case managers are required to monitor person-centered service plans directly (talking to or seeing the individual) once every three months and indirectly (talking to or seeing caregivers or monitoring plan activities) monthly when no direct monitoring occurs. At these contacts, case managers assess and monitor for risks for individuals residing in their own, private home. It is incorporated into the direct and indirect monitoring responsibilities and case managers are required to take steps to mitigate any risks, including violations of individuals' rights or freedoms. HCBS expectations are being communicated and incorporated into ongoing training and case management duties. Case managers visit consumers in their own homes at least annually.

## Phase VI. Ongoing Compliance and Oversight (May 2015 – Ongoing) [APD-specific; pages 92 - 98]

On an ongoing basis, Oregon will assess providers' progress toward and continuous compliance with the HCBS regulations through reports, interviews and on-site inspections that include information from and dialogue with providers and individuals receiving services.

Licensing and service delivery system staff are critical in identifying the need for and requiring providers' compliance plans, assuring measurable progress towards compliance as identified in the compliance plan, and ensuring providers' ongoing compliance with the HCBS regulations. DHS and OHA will continue to ensure that these staff members are adequately trained on the regulations and their role and duties in assuring initial and ongoing compliance.

Licensing/certification visits are conducted on an ongoing, regulated basis. The licensing/certification frequency for provider-owned, controlled or operated settings is as follows:

- APD Certified Adult Day Services - Biennially;
- APD Assisted Living Facilities (includes endorsed Memory Care Facilities) - Biennially;
- APD Residential Care Facilities (includes endorsed Memory Care Facilities) - Biennially;
- APD Specialized Living Programs - Biennially;
- APD Adult Foster Homes - Annually;

Once initial compliance is achieved, strategies to ensure ongoing compliance will include:

- APD and ODDS programs conducting National Core Indicator surveys on an annual basis;
- Incorporating questions related to HCBS settings compliance into annual person-centered service planning processes;
- Case managers monitoring HCBS compliance during required case management contacts and monitoring visits (County Residential Specialists conduct monitoring activities for OHA, HSD);
- Ongoing licensing inspections, including HCBS-regulations specific checklists/assessments, conducted by licensing staff; and

- Oregon’s existing quality assurance/quality improvement system will include ongoing HCBS setting compliance monitoring to ensure that settings continue to comply with the HCBS Setting Rule.

#### DHS, APD Ongoing Compliance Process and Monitoring:

APD convenes compliance meetings with its internal policy experts and compliance experts regularly. This group includes staff and management from APD Policy, DHS Provider Enrollment Unit, SOQ Licensors and Surveyor policy staff and managers, and information technology. These meetings are ongoing and there is no anticipated end date to these meetings.

Regular training and technical assistance forums are being provided to service delivery system staff to address questions and inform staff about available tools as they become available (i.e., system enhancements in Oregon ACCESS and ASPEN, website FAQ documents, Consumer Bill of Rights documents, and checklists). Training has been provided to all State and County regulatory oversight staff (Licensors and Surveyors). HCBS settings compliance assessment and validation materials follow the form and function of familiar compliance tools to ensure ease of understanding and use.

Following initial on-site reviews, Residential Care Facilities and Assisted Living Facilities are formally reviewed for license renewal every two years. Adult Foster Homes are formally reviewed for license renewal annually. All Medicaid-contracted settings are routinely visited by case managers. Many facilities have Long-Term Care Ombudsman volunteers assigned, or one could be assigned, if a setting is determined to need additional oversight.

#### Ongoing Stakeholder Engagement:

Throughout the transition period, DHS and OHA will continue to engage Stakeholders and utilize other avenues to evaluate progress, identify areas of concern, and propose solutions. This transition process will be transparent to Stakeholders and the broader public and ensure progress towards successful implementation of the activities identified in the to assure lasting compliance. On a regular basis, the statewide stakeholder committee (described in the “Statewide Transition Plan Preparation” section above) is convened and an in-person meeting is held. Each service delivery system convenes a sub-group of program-specific stakeholders in the months when the statewide stakeholder

committee is not meeting. The statewide committee and program-specific committees are comprised of individuals, individual-advocate groups, providers, provider-advocate groups, contractors, service delivery system personnel and state staff.

Additionally, the state created a website Comment box (for people with no email account) and an HCBS-specific email box for anyone to submit questions, concerns or comments. DHS and OHA created the HCBS website for overarching statewide topics and sub-sites for each program area that contain specific information pertaining to individuals and providers for that program/service delivery system. The state also regularly sends out HCBS-relevant information via Director/Administrator Messages, provider alerts, transmittals and newsletters. Providers who are members of advocacy groups received information from those groups. The Licensing staff sent letters to providers who are not members of advocacy groups, explaining the HCBS rules and changes, and directing them to Oregon's HCBS website. SOQ Licensor/Surveyor policy staff direct phone numbers were also provided.