



Kristin Pono Sousa, Medicaid Program Director
Executive Office of Health and Human Services
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Mr. Ralph F. Lollar
Division of Long-Term Services and Supports
Centers for Medicare and Medicaid Services
7500 Security Boulevard, Mail Stop S2 14-26
Baltimore, Maryland 21244-1850

Dear Mr. Lollar,

The Rhode Island Executive Office of Health and Human Services (EOHHS), as the single State Medicaid Agency, is submitting this Corrective Action Plan to request an extension for compliance with certain criteria of the HCBS Settings Rule past March 17, 2023.

The landscape for HCBS in Rhode Island changed significantly with the onset of the COVID-19 pandemic. The State was experiencing direct care staff shortages across the healthcare sector long before the pandemic. These staff shortages were exacerbated by the pandemic and the accompanying impact on congregate settings and frontline workers. While the State is working to attract and retain direct care staff by increasing wages and reinvesting American Rescue Plan Act funding in our HCBS workforce, meaningful change will take additional time. Similarly, many staff at the State level were deployed to manage the urgency of the pandemic and mitigate its negative impact on all the individuals we support, limiting the State's ability to maintain momentum with long-term systems change. Our provider community also shifted focus throughout the pandemic to maintain staffing, minimize community transmission, and ensure adequate access to necessary services. While the State strives to fully reform all settings and continues to work diligently to redesign its system of long-term services and supports (LTSS), there is still room for growth to ensure that State policies are fully implemented and put into practice. Accordingly, the State requests an extension to achieve full compliance with the following criteria:

1. **Integration.** The State has ensured that settings are physically integrated within the community so that settings are not isolated or grouped within neighborhoods away from non-HCBS residences and community activities. As noted in the Statewide Transition Plan, the State also closed two (2) residential settings which could not achieve compliance with the Settings Rule. Further, through the person-centered planning process and annual service plan meetings, the State ensures that employment is regularly discussed and individuals who express an interest in working are given the opportunity to access competitive, integrated employment. The State also closed its sheltered workshops as required by the U.S. Department of Justice (DOJ) Consent Decree. However, the State recognizes that there are opportunities to enhance integration opportunities with respect to individuals' ability to fully engage in community activities at the locations and times and for the duration that individuals desire. Current staffing ratios do not allow for the one-on-one



staff support that would permit total flexibility, but the State is working to improve individuals' ability to communicate their desired activities and facilitate access to these activities through the person-centered planning process. Providers are required to assist with community mapping, community navigation, and linking individuals to opportunities in their communities that are of interest. The State requests additional time to ensure that improvements in the workforce can fully support community integration.

2. **Choice/setting selection.** With respect to individuals' choice of services, by whom such services are provided, and where services are provided—including the choice of a non-disability specific setting—the State is actively working to achieve full compliance. Through the LTSS redesign efforts and No Wrong Door approach, the State has implemented person-centered options counseling to both educate participants and their caregivers about the array of programs and settings that are available and empower individuals to lead decisions about how they receive services. With the statewide implementation of conflict-free case management on the horizon, the State will soon be better situated to ensure that individuals are in the best position to freely choose their providers and services and select the supports that work best for them.
3. **Schedule control.** As with the integration criteria, staff shortages do not allow for individuals to have full control over their day-to-day activities if they do not have one-on-one support. Providers have taken steps to maximize flexibility and choice in scheduling for individuals with shared supports by pairing individuals who are compatible and are interested in the same types of activities. The State has also ensured that provider policies support meaningful control over scheduling where flexibility is achievable, such as allowing individuals to eat when they want, facilitating schedule changes if desired, and encouraging interpersonal relationships and visitors. With additional time to build workforce capacity, the State can ensure that providers prioritize schedule control, in particular with respect to activities outside of the setting.

The State requests to align compliance for these criteria with the timeline DOJ Consent Decree timeline of June 30, 2024. This would unify the parallel *Olmstead* and HCBS Final Rule compliance efforts for individuals with intellectual/developmental disabilities, meanwhile giving the State additional time to confirm compliance for all other provider types. This additional time would enable the State to conduct a post-pandemic round of consumer surveys, with site visits and remediation as necessary.

In addition to the above-enumerated criteria, the State is also requesting an extension for heightened scrutiny conversations with CMS. The State has identified six (6) settings for heightened scrutiny—all assisted living residences co-located with nursing facilities. The State also closed two (2) residential settings that could not overcome the institutional presumption. Following identification, the State completed site visits and is currently working to submit rebuttal packages for each setting. As noted in the Statewide Transition Plan, the State plans to submit these rebuttal portfolios by the end of the transition period to demonstrate why the State believes these settings overcome the presumption and comply with the Settings Rule. However, the State is awaiting CMS notification of site visits and subsequent negotiations. The State remains cognizant that a heightened scrutiny review by CMS may result in additional work to bring settings into compliance or potential closure(s). If, following a site visit, CMS disagrees with the State's



assessment, the State will need additional time to address any deficiencies. There is a strong likelihood that this would occur after the end of the transition period. The State requests an extension for one (1) year after the State receives written notice of the results of CMS' site visit to address and correct any deficiencies identified by CMS.

Thank you for your continued partnership and support on this important project.

Respectfully,

Kristin Pono Sousa
Medicaid Director

Cc: Ondrea Richardson, CMS/CMCS

