

## **Introduction**

The Alabama Medicaid Agency (AMA) is submitting a request for a Corrective Action Plan (CAP) on behalf of the Alabama Department of Mental Health Developmental Disabilities Division (ADMH-DDD), the operating agency for the State's Intellectual Disabilities (ID) and Living at Home (LAH) Waivers. This request for a CAP is inclusive of all settings, both residential and non-residential, in the two (2) Waiver programs.

In its presentation titled *HCBS Settings Rule Implementation – Moving Forward Toward 2023 and Beyond*, the Centers for Medicare and Medicaid Services (CMS) presented its recalibrated strategy, highlighting the importance of ensuring that the HCBS Settings Rule is implemented meaningfully for individuals receiving services while recognizing the realities of the COVID-19 Public Health Emergency (PHE) and its impact on providers, the workforce, and the State. The recalibrated strategy allows states to receive time-limited CAPs, upon request, for additional time to come into full compliance with the following HCBS rule requirements that have been impacted by the Public Health Emergency (PHE):

- Access to the broader community;
- Opportunities for employment;
- Option for a private unit and/or choice of a roommate; and
- Choice of non-disability specific settings

The State notes that, at this time, we are not requesting a CAP to apply to our small number of Adult Day Health programs and anticipate they will all be in full compliance by March 17, 2023. However, the future of the PHE remains uncertain. If there is a significant increase in COVID-19 restrictions in the upcoming months, this might change the compliance outlook. In that event, the State might need to request reconsideration.

## **State Attestation to HCBS Corrective Action Plan (CAP) Eligibility**

In order to be eligible for a CAP, the State must meet certain foundational criteria. These criteria and the State's attestation to its eligibility for each are described below:

1. *States must receive final Statewide Transition Plan (STP) approval by the end of the transition period.*

AMA submitted its final STP to CMS on July 29, 2022 and received comments from CMS on August 25, 2022. The State continues to address these comments and anticipates submitting the STP for final approval prior to December 31, 2022. Therefore, based on the current timeline, AMA expects final STP approval prior to the end of the transition period.

2. *Settings eligible for the CAP must be compliant with all HCBS rule requirements that have not been impacted by the PHE (i.e., the "mandatory requirements") by the end of the transition period. For all settings, these mandatory requirements include:*
  - *Privacy, dignity, respect, and freedom from coercion and restraint;*
  - *Control of personal resources*

*Additionally, all provider-owned and controlled settings must be in compliance with the following requirements:*

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

*Per CMS guidance, states may meet this requirement by confirming that they have assessed all providers for compliance with the above criteria and that where necessary, provider-level remediation plans are in place and are being monitored by the State.*

Per CMS guidance, the State confirms it has assessed all settings for compliance with the mandatory requirements and that settings that have not yet achieved full compliance have transition to compliance plans in place with ongoing monitoring to ensure remediation prior to the end of the transition period. In particular, as described in the State's STP submission, ADMH-DDD completed an initial round of self-assessments and validations beginning on October 1, 2014. However, after the initial round of validation reviews, ADMH-DDD concluded that all settings should be presumed institutional due to one or more practices and/or characteristics that were isolating in nature, and many were not yet otherwise fully compliant with all of the requirements of the HCBS Final Rule. In January 2019, ADMH-DDD finalized new HCBS settings self-assessment tools for residential and non-residential provider-owned settings, incorporating probes related to each HCBS requirement. Between April 1, 2019, and April 30, 2019, residential and non-residential providers completed and submitted self-assessments for each of their settings as well as each service provided within their settings. A round of validations were completed for all applicable settings. On-site validations ended on October 31, 2020.

ADMH-DDD also designed a Provider Transition to Compliance Plan (PTCP) template to identify setting-specific compliance issues, develop corresponding remediation activities with providers, and track providers' progress, facilitating collaboration between ADMH-DDD and providers on achieving full compliance. Partial compliance, minimal compliance, and noncompliance with any Final Rule standard prompted the development of specific remediation plans with the provider that were documented in a PTCP. All PTCPs were submitted by September 30, 2019 and continue to be monitored at this time.

In addition, in response to input from CMS, AMA and the public, ADMH-DDD has developed enhanced technical assistance and monitoring procedures, as described in the ADHM-DDD Quality Improvement Plan (QIP) that was attached to Alabama's STP submission. Since a CMS Heightened Scrutiny site visit in August 2022, ADMH-DDD has continued to develop and implement new strategies to ensure that the State will be able to accurately attest to the mandatory requirements status of every setting by March 17, 2023. Strategies in these areas include the development of a "Community of Practice" website for broad dissemination of information and technical assistance, as described further below, as well as training an expanded on-site review team to assist in future on-site monitoring for all settings. As of the date of this

document, approximately sixty (60) Monitors statewide have been identified, including ADMH-DDD regional and state level staff with monitoring experience as well as Advocates retained through an interagency agreement with the Alabama Council on Developmental Disabilities (ACDD). In ADMH-DDD's effort to achieve full compliance, these reviews will monitor all aspects of the Rule, although with some emphasis on determination of compliance with the mandatory requirements through February 2023.

- 3. States must also be able to show that their policies and procedures reflect the HCBS rule and that they have strived to achieve compliance to the fullest extent possible.*

As reflected in the STP submitted for final approval, the State has implemented significant revisions to policies and procedures, as described in the systemic assessment, to fully support the implementation of the HCBS requirements. In particular, ADMH-DDD has engaged in multiple strategies, including revisions to assessment processes, stakeholder engagement activities, provider training and ongoing monitoring of settings. In addition, during November 2022, ADMH-DDD completed a comprehensive review of provider policies and procedures for all providers. Key managerial and supervisory staff received in-depth training on both the non-negotiable categories identified by CMS requiring compliance by March 17, 2023, and the remaining categories included in this CAP request. These reviews were conducted by trained ADMH-DDD staff. All providers will receive a corrective action plan for immediate implementation, and must have fully compliant policies and procedures in place for all requirements by the end of the transition period on March 17, 2023.

### **HCBS Corrective Action Plan (CAP) Request**

For the ID and LAH waivers, the state of Alabama is requesting a CAP to address all of the HCBS rule requirements that CMS identified as CAP-eligible. As described in the next section, these have been the most impacted by ongoing workforce issues that have only been exacerbated by the COVID-19 (PHE).

As a result of the Heightened Scrutiny visits conducted by CMS in August 2022, though the State has not received a formal, written report from CMS documenting its findings or final determinations, the State understood in its conversations with CMS that ADMH-DDD's assessment processes required revisions to make accurate compliance determinations. While the State has implemented the aforementioned QIP that addresses these concerns, if CMS provides in their formal Heightened Scrutiny report additional issues with the State's process that the State is not currently addressing through the QIP, Alabama requests a CAP to address those.

### **HCBS Corrective Action Plan (CAP) Rationale**

As has been the case nationally, Alabama's I/DD system of supports and service has struggled with the sufficiency of its workforce for some time. In February 2020, the American Network of Community Options and Resources (ANCOR) conducted a survey of providers of community based I/DD services to glean a deeper understanding of how they experience the human and financial impacts of the Direct Service Provider (DSP) workforce crisis. The results of that survey revealed that, at alarming rates, providers were discontinuing services, turning away new referrals, delaying the launch of new programs, and struggling to adhere to quality standards. According to ANCOR, sluggish reimbursement rates and provider agency inability to compete with other entry-level industries have been credited for creating the workforce crisis.

In 2021, additional research completed by ANCOR found that the COVID-19 PHE had further negatively impacted a I/DD direct care workforce already in crisis. With the onset of the COVID-19 PHE and throughout the entire duration of the pandemic to date, the shortage has been exacerbated by new pressures and hazards of providing essential, close-contact services. While many private sector employers offered increased wages and hazard pay, community providers continue to rely almost exclusively on Medicaid funding and are thus paid wages that Medicaid reimbursement rates will permit.

Specifically, the research conducted by ANCOR found nationally:<sup>1</sup>

1. 77% of providers are turning away new referrals
2. 58% of providers are discontinuing programs and services
3. 84% of providers are delaying the launch of new programs and services
4. 81% of providers are struggling to achieve quality standards
5. 40% are seeing higher frequencies of reportable incidents
6. 92% of providers continue to grapple with the impact of the pandemic on recruitment and retention

In Alabama, ADMH-DDD began tracking key workforce numbers in October 2021. At that time, the provider workforce vacancy rate was 32.7%, and the turnover rate was 16.4%. ADMH-DDD has made the following efforts to assist providers during this crisis:

- Increasing the rates of waiver services with dollars made available through both the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the American Rescue Plan Act (ARPA) COVID-19 stimulus packages in order to pay direct service workers a higher wage. These increases began on May 1, 2020 and will continue until at least December 31, 2023
- Increasing the rates of targeted case management with the same stimulus dollars in order to recruit and retain quality support coordinators
- Contracting with national consultants Burns & Associates, a Division of Health Management Associates, to set rates to reflect the actual cost of providing services

These efforts have had little impact on the provider workforce vacancy rate, which current data show as 32%, but have had some positive effect on the employee turnover rate, which stands at 6.5%.

Overall, these workforce issues have impacted the ability of ADMH-DDD to fully address all HCBS requirements. For example:

- The demands of just sustaining a workforce that is adequate for health and safety have sometimes limited the ability of providers to focus on transforming their practices for promoting more individualized community integration and access, a component of the Rule that already, even with a full workforce, required a re-thinking of how to creatively use staff resources
- Without adequate staff to provide supports and supervision, providers have been unable to sustain the operation of residential settings. Overall, in December 2019, there were 942 HCBS certified settings. As of November 2022, that number had dwindled to 818. This reduction in overall capacity has negatively impacted the ability to provide an option for a private unit and/or

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<sup>1</sup> ([https://www.ancor.org/wp-content/uploads/2022/08/the\\_state\\_of\\_americas\\_direct\\_support\\_workforce\\_crisis\\_2021.pdf](https://www.ancor.org/wp-content/uploads/2022/08/the_state_of_americas_direct_support_workforce_crisis_2021.pdf)).

choice of a roommate. Likewise, the workforce shortages have impacted the availability of in-home supports for individuals who might prefer a non-disability specific residential setting

- The PHE resulted in new limitations on opportunities for employment. Individuals who were employed prior to the PHE often lost their jobs when businesses shut down early on and were not always called back when workplaces in the community began to re-open. This has continued to be complicated by the ongoing closures and curtailments of DD programs offering employment supports (e.g., work exploration, job coaching, supported employment)
- The workforce shortages have impacted the availability of provider staff to provide one-to-one and other individualized community access and integration supports. This has resulted in a slow rebound from the significant restrictions on community access that came at the height of the PHE.
- The vacancy rate is not the only story. The high rates of turnover have had a dramatic impact on the availability of experienced employees. While this rate has improved due to the efforts described above, providers for all types of services and supports continue to struggle with the increased demands of training new staff to competency and then retaining them
- Support Coordination services under the waivers are targeted case management, which are provided by 310 Agencies. These agencies have also experienced high staff turnover rates (still at 11.99% for the quarter ending September 30, 2022)) and recruitment challenges, which have negatively impacted the development and implementation of person-centered plans that are critical to the delivery of waiver services and HCBS compliance

### **Corrective Action Plan: Steps to Achieve Full Compliance**

Below, ADMH-DDD describes its plan to overcome the barriers described above and come into full compliance. The following strategies will address the identified barriers to compliance with community integration, competitive employment and other HCBS requirements impacted by the PHE and workforce shortage, and will also support sustaining compliance with the mandatory requirements.

#### **Workforce Shortages**

ADMH-DDD has recently committed to the following plans to further address these barriers:

- Using the results of the Burns & Associates Study referenced above, the ADMH Commissioner submitted to the Governor an FY 2024 Budget request which includes \$11.1M to pay increases for Direct Support Staff at an average of \$14.51/hr and pay increases for Support Coordinators to an average of \$23.43/hr
- As described above, increased rates for waiver services, made available through dollars from both the CARES Act and ARPA COVID stimulus packages to pay direct service workers a higher wage, will continue until at least December 31, 2023
- Amend Waivers to Expand Self-Directed Services to allow immediate family members to serve as personal care and companion workers on a continuing basis. This will address workforce shortages which impacted the availability of eligible workers for families to employ, especially in rural areas of the state. Families advocated for these changes in town hall meetings held around the state in the spring and summer of 2022
- Amend Waivers to add Support Coordination as a waiver service. As previously indicated, the current delivery of Targeted Case Management has met with difficulties due to the workforce shortages and high turnover rates of the 310/Targeted Case Management Agencies. By adding support coordination as a waiver service, ADMH-DDD will have more options for service delivery and likewise, be better positioned for ensuring individuals are receiving and

benefitting from other waiver services identified in the person-centered plan. Similarly, the Waivers will be amended to allow for the contracting of other qualified entities to deliver support coordination services or the option to hire support coordinators to be directly employed by ADMH-DDD. These options will increase ADMH-DDD's ability to provide quality support coordination services to waiver recipients

### **Provider Training and Development**

- Results of policy and procedure reviews, as well as ongoing monitoring and certification, will be used to target training and other technical assistance needed by providers to address the requirements of the Rule beyond the mandatory requirements. Results of these activities will immediately be forwarded to the DDD Quality Assurance Staff, who will be responsible for identifying, developing and/or securing the identified training and other technical assistance needed. Monthly training and technical assistance opportunities will be offered to ensure immediate and ongoing response to these identified needs
- To further enhance technical assistance for providers, ADMH-DDD created an intranet site, referred to as the *HCBS Community*, which is a hub for HCBS providers to come to be informed, to share challenges, successes and best practices, to ask questions – and ultimately to be inspired and supported to implement the full requirements and spirit of the HCBS Settings Rule. The site requires a login to maintain the integrity of information and access to the materials provided therein. The home screen introduces the HCBS settings rule, then other components of the webpage include an overview of HCBS topics, a library of resources, community resources, success stories, model policies and procedures, strategies for provider staff training, development, recruitment and retention, a calendar identifying training opportunities, and the ability to ask a question or request technical assistance or training. The library is composed of resources pulled from national authorities to help guide the provider with implementation of the rule's requirements and is broken down by category for ease of access. Providers are also encouraged to submit any resources they have found and/or developed to share with others. Providers can submit this information for review by the Office of Quality Assurance, who will then share the information on the site. Similarly, providers can submit questions through the site, which will be routed to the Office of Quality Assurance, who will discuss with relevant staff to submit one answer on behalf of the Division. This allows for consistency in communication between the Developmental Disabilities (DD) Division and providers regarding implementation of the rule. These questions are aggregated and provided on the Frequently Asked Questions (FAQ) section of the site for providers to reference. Going forward, the State hopes to provide access to live and recorded training sessions and chats on topics of key needs

### **Other Transformative Activities Intended to Support the CAP**

- The State has recognized that ADMH-DDD is in need of a more robust quality management strategy for routine review, sampling and identification of problematic trends for HCBS implementation. Under the direction of a newly hired Quality Assurance Director, ADMH-DDD is in the process of designing a quality management system that will ensure a more formal and routinized strategy for sampling of system outputs and outcomes. As described below, this will be completed in concert with a contract with the Center for Quality Leadership (CQL) for FY 23. Training activities CQL is contracted to complete that impact the quality initiatives include a review, revision and updating of the current online QDDP training

modules and the creation of staff development training on integrated quality management systems and basic skills required for quality oversight staff. Despite successes in past years to eliminate all institutions, further transformative work is needed to eliminate institutional cultures and practices prevalent in the I/DD community-based service system and likewise, be fully compliant with the HCBS rule. In this regard, ADMH-DDD has committed to a very comprehensive and broad-based plan that addresses procedures employed in HCBS settings and underlying cultural biases that are barriers to compliance. These barriers result in not only individuals not being afforded the full benefit of waiver services, but more importantly, not having the opportunity to realize their full potential, including full inclusion into their communities. As part of the plans to address these issues, ADMH-DDD has entered a two-year contract with Amy E. Tabor, Organizational Dimensions founder, to conduct an extensive review and provide recommendations of rights policies, procedures, and practices of both ADMH-DDD and HCBS providers; revise current guidelines for Human Rights Committees (HRC) employed by HCBS settings; and conduct training of ADMH-DDD staff, HCBS providers and HRCs related to recognizing institutional/unintentional restrictions as well as ensuring rights protections and effective oversight

- As submitted with the State’s STP, ADMH-DDD has an ongoing QIP, which will continue throughout the CAP period. The QIP addresses deficiencies in critical systems related to person-centered planning, compliance monitoring and certification as follows:
  - To ensure support coordination service delivery is compliant with the HCBS rule and departmental policies and standards and to provide oversight and monitoring of PCP development and implementation
  - To ensure certification and licensure standards and procedures address the HCBS rule, and, further, to ensure that certification and licensure staff are competent in the interpretation, application, and enforcement of requirements
  - To ensure Regional Office staff are competent in the interpretation, application, and enforcement of HCBS requirements and further, to ensure standardization across all Regions

### **Proposed Milestones**

Given the slowness of the workforce to recover in the face of previous rate increases, it remains difficult to predict the future trajectory of workforce recovery with the implementation of the additional financial measures. However, the State anticipates that the additional timeframe provided by the CAP will give ADMH-DDD and the provider network the opportunity to continue to develop more effective and creative strategies, through enhanced training and technical assistance, for utilizing the existing workforce to fully implement the HCBS requirements impacted by the CAP. The following milestones are proposed for consideration:

December 31, 2022:	Revise and Submit Final STP
December 2022 – February 2023:	Identify Any Fully Remediated Settings Not in Need of CAP
December 2022 - December 2023:	Implement CAP Strategies
March 2023 - December 2023:	Monitor Settings for Compliance with CAP Requirements
January 2024 – March 2024:	Final Transition Period for Participants in Noncompliant Settings

### **AMA Oversight and Reporting**

AMA will continue to provide oversight of all operating agency HCBS compliance activities and will actively monitor any CAP approved by CMS, including milestones reporting to CMS on and as agreed-upon schedule, but no less frequently than quarterly.

Currently, AMA meets with ADMH-DDD bi-weekly to discuss HCBS updates and concerns and provides training to staff and providers as requested. As part of the QIP submitted with the Alabama STP, AMA receives quarterly HCBS reports from ADMH-DDD that includes all topics addressed in the QIP. To ensure accurate and reliable data gathering and compliance determinations, AMA is also sampling ADMH-DDD provider policies, procedures, and monitoring reports for agency oversight. If AMA identifies concerns with ADMH-DDD compliance findings, AMA meets with ADMH-DDD to address these concerns and update those determinations.

Specifically for the CAP, ADMH-DDD will also provide monthly quantitative and qualitative reports on each of the milestones identified above. AMA will continue to meet with ADMH-DDD bi-weekly to address any lagging milestones or emerging concerns, and will continue to review a sample of all monitoring outputs and determinations of compliance, including Heightened Scrutiny packets.