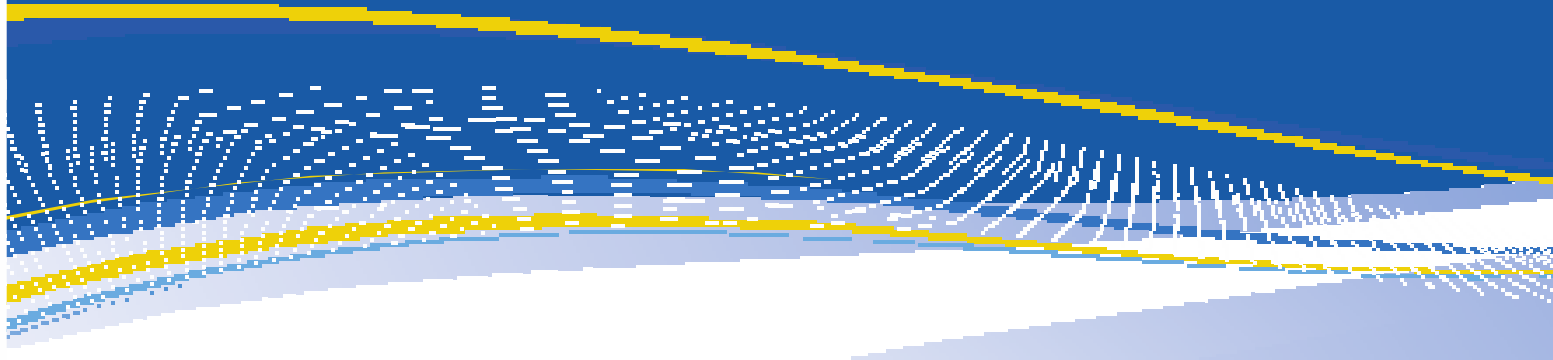


# Settings Considerations for Waivers and State Plan Amendments (SPAs)

**Division of Long-Term Services and Supports  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services**



# Objectives of the Training

- Review the state's responsibilities for monitoring remedial actions and ongoing monitoring for compliance with the home and community-based (HCB) settings rule;
- Discuss the headway states have made in systemic remediation changes to assess implementation in 1915(c) waiver submissions and/or 1915(i) State Plan Amendments (SPAs);
- Review the data report on the monitoring strategies used by states with final approval to achieve and maintain compliance with the settings rule;
- Consider incorporating HCB specific settings criteria into performance measures in the 1915(c) waiver submissions and the 1915(i) SPA's Quality Improvement Strategy, including current state examples for review.

# Six Criteria for Final Approval of the Statewide Transition Plan (STP)

- A comprehensive summary of completed and validated site-specific assessments, including aggregated outcomes completed;
- Draft remediation strategies with timelines for resolution by the end of the transition period (March 17, 2023);
- Detailed plan for identifying and evaluating those settings presumed to have institutional characteristics, including the qualities that isolate individuals receiving home and community-based services (HCBS).

# Six Criteria for Final Approval of the Statewide Transition Plan (STP) (cont.)

- Process for communicating with individuals who are currently in settings that cannot or will not come into compliance by March 17, 2023;
- Description of ongoing monitoring and quality assurance to ensure all settings remain in full compliance with the settings criteria in the future;
- Updated version of the STP is posted for minimum of 30-day public comment period.

# 5<sup>th</sup> Criteria for Final Approval: Monitoring and Quality Assurance: 5 Key Components Identified

1. Uses/supplements CMS Complete List of Standard Milestones and identifies reasonable timelines to implement and track progress toward complying with the settings rule by March 17, 2023.
2. Designs strategies for monitoring remedial actions at the state-level.
3. Develops strategies for monitoring provider-level remedial actions, including methods to verify provider compliance.
4. Identifies action steps to monitor ongoing compliance.
5. Develops methods to implement the monitoring process.

# Component 1: Using Milestones/Timelines to Track Progress Toward Compliance

## Milestones

The key steps to implementing and tracking the state's STP.

- The state should:
  - Detail the milestones for each step of the monitoring process and identify reasonable timelines for each milestone, using CMS Complete List of Standard Milestones.
  - Supplement the list to track internal milestone steps as needed.
  - Work collaboratively with CMS to identify areas that need strengthening with respect to the state's remediation and heightened scrutiny processes. Optional quarterly milestone reporting may assist states with this.



# Component 1: Using Milestones/Timelines to Track Progress Toward Compliance (cont.)

- States will use the milestone tracking system, and any supplemental milestones added by the state, to:
  - Monitor activities and the findings from each setting;
  - Describe state actions to bring non-compliant settings into compliance;
  - Identify required actions for those providers that fail to maintain compliance;
  - Share criteria with providers and stakeholders and solicit their input and feedback.
- CMS will track milestones in the STP website that is used for STP submission and will only track specific standard milestones.

# Component 2: Monitoring and Quality Assurance

The state is responsible for two key areas of monitoring:

- Implementation of remedial actions to achieve settings compliance, both at the state and provider levels (including verification of provider compliance) and
- Monitoring to ensure ongoing compliance: once remedial actions have achieved settings compliance, the state must continue to engage in monitoring and oversight activities to ensure ongoing compliance.



# Component 2: Strategies for Monitoring State-Level Remedial Actions

## State-level remedial actions:

- Verify that each milestone in the STP is being met according to established timelines.
- Track progress:
  - Be proactive if a milestone will not be met;
  - Notify CMS through the milestone tracking system if a milestone is delayed;
  - Review any associated milestones and make all necessary revisions, ensuring that all are completed by March 17, 2023.

# Component 3: Strategies for Monitoring Provider-Level Remedial Actions

## Provider-level remedial actions:

- How to accomplish?
  - Require regular reporting by providers on progress in each remedial action.
  - Require providers to submit revised policies and procedures for state review.
  - Seek input from individuals receiving HCBS and advocacy groups.

# Component 3: Strategies for Monitoring Provider-Level Remedial Actions: Verification of Provider Compliance

The state must verify provider compliance:

- Conduct follow-up to confirm completed actions;
- Validate provider self-assessment surveys;
- Use existing state oversight resources such as licensing surveys, certification and inspections, case managers' visits, site visits to make observations of settings;
- Use individual experience surveys linked to specific sites, desk audits, Managed Care Organization (MCO) reviews, advocacy group reviews;
- Consult with individuals receiving HCBS, families and advocacy groups for their opinions about specific setting compliance.

# Component 3: Strategies for Monitoring Provider-Level Remedial Actions: Verification of Provider Compliance (cont.)

- If the state finds that a setting is out of compliance with the setting requirements, it should consider taking the following steps to support provider remediation:
  - Report assessment results to the provider and identify provider actions needed to remedy areas of non-compliance;
  - Assist providers to achieve compliance and address issues that appear to be preventing compliance;
  - Require providers to implement corrective action plans to remedy non-compliance.

# Component 4: Action Steps to Monitor Ongoing Compliance

The state's 2<sup>nd</sup> key responsibility: monitoring to ensure ongoing compliance with the settings criteria:

- Include details in the STP about the monitoring processes that are clear to any reader. The STP should describe:
  - Who will conduct the monitoring;
  - The processes and tools that will be used;
  - The frequency of when the monitoring will occur;

# Component 4: Action Steps to Monitor Ongoing Compliance (cont.)

- How the state will integrate the settings criteria into existing state processes and procedures;
- What the state's monitoring process is for individual, private homes;
- Processes the state will use to continually assess settings versus processes used only to screen settings prior to enrollment.



# Component 5: Methods to Accomplish the Monitoring Process

- The state should determine the methods it will use to accomplish the monitoring process:
  - Site visits to make observations of settings;
  - Licensing and certification reviews;
  - Case manager visits;
  - Validated provider self-assessment surveys;
  - Consumer satisfaction surveys linked to specific sites;
  - Managed Care Organizations' performance monitoring.

# Component 5: Methods to Accomplish the Monitoring Process (cont.)

- Other options for the state to consider:
  - Educating stakeholders to assist in monitoring;
  - Providing individuals receiving HCBS with information targeted to their specific situation(s) that explains their rights and related provider requirements;
  - Including specific settings criteria performance measures into new and amended waivers and state plan amendments (SPAs).

# Statewide Transition Plan/1915(c) Waiver/1915(i) State Plan Amendment Review

Purpose of the review:

- Provide a summary of state specific information on systemic remediation related to proposed changes to 1915(c) waiver submissions and 1915(i) SPAs.
- 1915(c) waiver renewals or amendments and 1915(i) SPAs submitted by each state and approved by CMS were cross-walked with each state's STP to determine if proposed changes identified in the STPs have been implemented in the waivers or SPAs.

# 2020 Update: STP/1915(c) Waiver/1915(i) SPA Review: Systemic Remediation Report

- In 2020, the most recent STP submissions and waiver/SPA updates, as applicable, were again reviewed:
  - Reviews were completed for 46 states and the District of Columbia.
  - 42 of those states were also reviewed in 2018.
  - 21 of the 47 states reviewed currently have final approval; the remaining 26 have initial approval.

# Systemic Remediation Report: Summary Data

- 74% (35) of the states reviewed identified changes to waivers/SPAs as part of their transition plan:
  - 29% (10) of those had completed all the identified waiver changes at the time of the 2018 review;
  - Another 20% (7) of those have now completed all of their identified changes;
  - Leaving 18 states with waiver/SPA changes pending.

# Systemic Remediation: Findings

- The 2020 review found that 12 states had completed additional waiver/SPA changes that had been identified in their STP in the 2018 review since that review was completed. 4 of those states have now completed all identified waiver/SPA changes.
- 18 states, or 38% of those reviewed, still have waiver/SPA changes identified in their STP that have not yet been completed.



# Data Findings From States with Final Approval: Monitoring for Compliance (1 of 4)

- Of the twenty (20) STPs reviewed, ten (10) states referenced the use of data management systems to track setting-specific findings and remediation.
- Eight (8) states and three (3) operating agencies identified individuals, work units or committees regarding data management of the findings and follow-up.
- At least six (6) states specifically noted using newly created databases or spreadsheets to manage assessment findings.
- CMS and the states used milestone reporting to track progress to ensure all transition activities outlined in the STP will be completed by March 17, 2023.

# Data Findings From States with Final Approval: Monitoring for Compliance (2 of 4)

- Milestone reporting indicates that eleven (11) states have completed setting remediation; six (6) states are actively reporting progress and three (3) states are not yet due to report.
- All states required some amount of changes to state statutes, regulations, rules, policies and/or provider manuals to achieve alignment and compliance with the settings rule.
- States with final approval completed the site-specific assessment process to evaluate compliance with the settings criteria and described the plans for remediation through the transition period.

# Data Findings From States with Final Approval: Monitoring for Compliance (3 of 4)

- All states reviewed anticipated incorporating the HCBS settings rule into state statute, rule, policy, contract requirements, and/or other governing documents, collectively referred to as systemic remediation.
- The vast majority of states created new assessment tools to evaluate compliance with the settings criteria in residential and non-residential settings, confirming that monitoring remedial actions at the settings level may also require some changes to existing surveys or tools currently used to conduct provider oversight.

# Data Findings From States with Final Approval: Monitoring for Compliance (4 of 4)

- All states reviewed used some type of remediation or corrective action plan for individual providers or settings found to be non-compliant with the settings criteria.
- States provided different levels of detail regarding how each manage and track this data to ensure remedial or corrective actions have been completed.
- Some states specifically indicated that they would take advantage of current resources such as licensing or monitoring visits by the state to follow-up on those plans for settings needing some modification.

# Ongoing Monitoring Strategies Used by States with Final Approval: The Role of Case Management

- All states reviewed reference some role for the case management function in ongoing monitoring.
- How case management participates in ongoing monitoring for HCBS settings compliance may vary across HCBS programs within a state.
- Seventeen (17) states referenced case management in a traditional service monitoring role, including some elements of HCB settings criteria review.
- Rather than through regular monitoring, five (5) state programs specify the annual person-centered planning meeting, the service plan document, and/or the annual assessment tool as how the case manager will participate in ongoing monitoring.



# Ongoing Monitoring Strategies Used by States with Final Approval: Licensing and Certification

- During system review, all states identified changes to regulations as needed and expect to incorporate those changes into future licensing and certification reviews when effective.
- As expected, the frequency with which each setting will be reviewed as part of the ongoing monitoring strategy will vary across states and HCBS programs depending on the number of settings and workforce capacity of the state licensing and/or certification bodies.
- All states reviewed identify in the STP the entity that conducts the licensing and/or certification process.



# Ongoing Monitoring Strategies Used by States with Final Approval: Participant Experience Surveys

- The majority of states have formally incorporated participant interview questions or a survey into the ongoing monitoring strategies.
- Ten (10) states or HCBS programs have included participant interviews in the licensing or certification reviews.
- Eight (8) states or HCBS programs will complete a participant interview or survey with all participants.
- Three (3) states will complete a participant experience survey on a sample of HCBS participants each year.

# Ongoing Monitoring Strategies Used by States with Final Approval: Private Homes

- Individual, privately-owned homes are presumed to be in compliance with the regulatory criteria of a HCBS setting.
- However, states should include private residences as part of their overall quality assurance framework when implementing monitoring processes for ongoing compliance with the settings criteria as well as any oversight provisions articulated in approved HCBS waivers or state plan amendments.

# Ongoing Monitoring Strategies Used by States with Final Approval: Private Homes (cont.)

- According to this data, the case management function is identified as the activity that ensures ongoing compliance.
- Five (5) state programs described the annual assessment and person-centered planning process as the single method to monitor private homes.
- Three (3) states also referenced monitoring incident and complaint reports as part of the ongoing monitoring strategy.
- Several states implemented participant experience surveys for all HCBS program participants during an annual touchpoint as an ongoing monitoring strategy.

# Consider Another Strategy for Monitoring: Use of Performance Measures

- Incorporate performance measures related to changes proposed in the state's STP or that support ongoing monitoring of specific settings criteria into:
  - Waiver assurances/quality improvement section of the appendices found in a state's 1915(c) waiver submissions and, if applicable,
  - Into the state's 1915(i) benefit quality improvement strategy.

# Consider Another Strategy for Monitoring: Use of Performance Measures (cont.)

- Performance measures developed by the state should be reflective of:
  - The specific objectives or proposed changes identified in its STP that the state wants to achieve; or
  - Should contain distinctive settings' characteristics that the state would like to track over time.

# Examples of Specific Settings Performance Measures: 1915(c) Waiver Submissions/Appendix A (1 of 7)

Use of Appendix A: Waiver Administration and Operation:  
Quality Improvement: Administrative Authority of the Single State Medicaid Agency:

- District of Columbia: People with Intellectual and Developmental Disabilities renewal waiver (HCBS IDD Waiver), DC.0307.R04.00, November 20, 2017:  
AA.a.1.a.PM3: Percentage of settings that meet HCBS settings requirements. Number of settings that meet the HCBS settings requirements (Numerator)/ Number of settings reviewed (Denominator).



# Examples of Specific Settings Performance Measures: 1915(c) Waiver Submissions/Appendix A (2 of 7)

- HI: HCBS Services for People with Intellectual and Developmental Disabilities (I/DD Waiver), HI.0013.R07.00, July 1, 2016: #/% of new approved waiver providers in full compliance with the HCBS settings requirements prior to service delivery. N: # of new approved waiver providers in full compliance with the HCBS settings requirements prior to service delivery. D: Total # of new approved waiver providers.
- #/% of waiver providers that are in full compliance with the HCBS settings requirements. N: # of waiver provider settings that are in full compliance with the HCBS settings requirements. D: Total # of waiver provider settings.

# Examples of Specific Settings Performance Measures: 1915(c) Waiver Submissions/Appendix A (3 of 7)

- MD: Home and Community-Based Options Waiver, MD.0265.R05.00, July 1, 2016: PM5: Percentage of assisted living providers receiving information and training on home and community-based setting requirements during the 5 year waiver cycle. N: number of assisted living providers receiving information and training on home and community-based settings for FY16-FY18. D: Number of enrolled assisted living providers.

# Examples of Specific Settings Performance Measures: 1915(c) Waiver Submissions/Appendix A (4 of 7)

- MI: MI Health Link HCBS Waiver, MI.1126.R01.00, December 13, 2019: Number and percent of residential/non-residential settings surveyed that comply with the HCBS Final Rule or as otherwise approved by CMS. Numerator: Number of residential/non-residential settings surveyed that comply with the HCBS Final Rule. Denominator: All residential/non-residential settings surveyed.

# Examples of Specific Settings Performance Measures: 1915(c) Waiver Submissions/Appendix A (5 of 7)

- OH: Individual Options Waiver, OH.0231.R05.00, July 1, 2019: PM A5: Number and percentage of reviewed residency agreements or leases which meet the specifications required by \*OAC 5123:2-9-02. Numerator: number of residency agreements or leases reviewed which meet all specifications as required by OAC 5123:2-9-02. Denominator: Total number of residency agreements or leases reviewed.

*\*OAC 5123:2-9-02: Establishes standards to ensure that home and community-based services waivers administered by the Ohio Department of Developmental Disabilities maximize opportunities for enrolled individuals to access the benefits of community living and receive services in the most integrated setting.*

# Examples of Specific Settings Performance Measures: 1915(c) Waiver Submissions/Appendix A (6 of 7)

- OH: PM A6: Number and percent of HCBS residential settings reviewed as part of ongoing review that meet all requirements of OAC 5123:2-9-02. Numerator: Number of HCBS residential settings reviewed that meet all requirements of OAC 5123:2-9-02. Denominator: Total HCBS residential settings reviewed.
- OH: PM A7: Number and percent of HCBS non-residential settings reviewed as part of ongoing review that meet OAC 5123:2-9-02. Numerator: Number of HCBS non-residential settings reviewed that meet all requirements of OAC 5123:2-9-02. Denominator: Total HCBS non-residential settings reviewed.



# Examples of Specific Settings Performance Measures: 1915(c) Waiver Submissions/Appendix A (7 of 7)

- OK: Advantage Waiver, OK.0256.R05.00, July 1, 2016: Number and Percent of Assisted Living (AL) and Adult Day Health (ADH) facilities that meet HCB settings requirements. Numerator: Number of AL and ADH facilities with HCB setting evaluations completed and compliant. Denominator: Total Number of ADH and AL facilities.



# Examples of Specific Settings Performance Measures: 1915(c) Waiver Submissions/Appendix C

Use of Appendix C: Participant Services: Quality Improvement: Qualified Providers:

- SD: South Dakota Family Support 360 Waiver, SD.0338.R04.00, June 1, 2017: Percentage of providers which continue to be in compliance with state and federal requirements. Numerator-Number of existing providers which continue to meet certification standards/Denominator-Number of total existing providers reviewed.
- Percentage of new providers in compliance with state and federal requirements prior to delivery of services. Numerator-Number of new providers who meet initial certification standards prior to the delivery of services. Denominator-Total number of new providers.

# Examples of Specific Settings Performance Measures: 1915(c) Waiver Submissions/Appendix G (1 of 3)

Use of Appendix G: Participant Safeguards: Quality Improvement: Health and Welfare:

- MO: Missouri Division of DD Community Support Waiver, MO.0404.RO3.00, July 1, 2016: The number and percent of individuals who were afforded due process for a restrictive intervention. (The number of individuals who were afforded due process for a restrictive intervention over total number who were referred for due process for a restrictive intervention).

[42 CFR 441.301(c)(4)(vi)(F)(7)]

# Examples of Specific Settings Performance Measures: 1915(c) Waiver Submissions/Appendix G (2 of 3)

- TN: Tennessee Self-Determination Waiver Program, TN.0427.R03.00, January 1, 2018: a.i.4. Number and percentage of participant satisfaction survey respondents who reported having sufficient privacy. (DIDD People Talking to People Survey question: Are you satisfied with the amount of privacy that you have?) Percentage = # of survey respondents reporting sufficient privacy/total # of waiver participants who responded to this participant satisfaction survey question.

[42 CFR 441.301(c)(4)(iii)]

# Examples of Specific Settings Performance Measures: 1915(c) Waiver Submissions/Appendix G (3 of 3)

- WA: Basic Plus Waiver, WA.0409.R03.00, September 1, 2017: G.c.4: % of waiver files containing Positive Behavior Support Plans (PBSPs) that involve physical/mechanical restraints with written approval by participant or legal rep.  $N = \#$  of waiver participant files reviewed that contain PBSPs that involve physical/mechanical restraints with written approval by the participant or legal rep.  $D = \#$  of waiver files reviewed that contain PBSPs that involve physical/mechanical restraint.

[42 CFR 441.301(c)(4)(vi)(F)(7)]

# Quality Improvement Strategy Section of the 1915(i) State Plan Amendment (1 of 6)

- CT: 17-0001 1915(i) State plan HCBS: Discovery Evidence (Performance Measure): 1. Number and percent of Assisted Living Agencies that meet HCBS settings requirements. 2. Number and percent of Residential Care Homes (RCHs) that meet HCBS settings requirements. 3. Number and percent of Adult Day Centers that meet HCBS settings requirements. Discovery Activity (Source of Data & sample size): 100% of RCHs and Adult Day Centers were surveyed in person by HCBS staff. The state regulations for Assisted Living fully comport with HCBS settings requirements and HCBS staff annually conduct in person evaluations of a minimum of 2 providers. Frequency: Continuously and ongoing. Settings questions are being embedded into the new Core Standardized Assessment that will be fully implemented in 2017. Approved 1/27/17. Effective 2/1/17-1/31/22.



# Quality Improvement Strategy Section of the 1915(i) State Plan Amendment (2 of 6)

- DE: 19-003 1915(i) State plan HCBS. Discovery Evidence (Performance Measure) 1. The percentage of Pathways participants that are residing in settings that comply with HCB setting requirements. 2. The percentage of Pathways participants receiving Pathways services in settings that comply with HCB settings requirements. Discovery Activity (Source of Data & sample size): 1. Record Review. Representative Sample: Confidence Interval = 95%. Frequency: Continuously and ongoing. Approved 9/13/19. Effective: 1/1/20 (5 year renewal).



# Quality Improvement Strategy Section of the 1915(i) State Plan Amendment (3 of 6)

- DC: TN 19-007 1915(i) State plan HCBS: Discovery Evidence (Performance Measure) PM2. Adult Day Health services are delivered in settings that comply with requirements outlined in 42 CFR 441.710. Numerator: No. of day settings meeting requirements outlined in federal rules. Denominator: Total number of Adult Day Health settings reviewed to determine compliance.

# Quality Improvement Strategy Section of the 1915(i) State Plan Amendment (4 of 6)

- DC: PM 3. Participants receiving Adult Day Health Services reside in settings that comply with requirements outlined in 42 CFR 441.710 per the Provider Readiness Review process. Numerator: Number of participants' residential settings that comply with federal requirements per the Prospective Provider Application Tool. Denominator: Total number of participant residential settings assessed via the Prospective Provider Application Tool. Discovery Activity (Source of Data & sample size): Provider Readiness Review Data. Universe reviewed no sampling done. Frequency: Initially. Approved 3/18/20. Effective 4/1/20 (5 year renewal).

# Quality Improvement Strategy Section of the 1915(i) State Plan Amendment (5 of 6)

- ID: TN 17-0013 1915(i) State plan HCBS: Discovery Evidence (Performance Measure) Number and percent of providers whose Department-required self-assessment forms confirm that the provider's settings meet HCBS settings requirements as stated in this SPA and applicable CFR. a. Numerator: Number of HCBS providers whose self-assessment forms were approved by the Department or its designee. b. Denominator: Number of HCBS providers who submitted self-assessment forms for review and approval.

[continued on next slide]

# Quality Improvement Strategy Section of the 1915(i) State Plan Amendment (6 of 6)

## ID:

Discovery Activity (Source of Data & sample size) Data Source: Reports from contractor to the SMA, giving statistics regarding Department-approved self-assessment forms related to settings requirements and qualities, which all current providers of HCBS are required to complete as a condition of becoming a Medicaid provider, in accordance with IDAPA 16.03.10.318. Sampling Approach: 100% review of providers' self-assessment forms by the Department or its designee. Frequency: Continuously and ongoing. Approved: 4/12/18. Effective: 1/1/18-12/31/22.

# Resources

**CMS Baltimore Office Contact—Division of Long-Term Services and Supports:**

❖ [HCBS@cms.hhs.gov](mailto:HCBS@cms.hhs.gov)

**To request Technical Assistance:**

❖ [HCBSsettingsTA@neweditions.net](mailto:HCBSsettingsTA@neweditions.net)

# Resources (cont.)

- ❖ Frequently Asked Questions: HCBS Settings Regulation Implementation: Heightened Scrutiny Reviews of Presumptively Institutional Settings, CMS, March 22, 2019 at <https://www.Medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>.
- ❖ State Medicaid Director Letter SMD # 20-003 Re: Home and Community-Based Settings Regulation-Implementation Timeline Extension and Revised Frequently Asked Questions, July 14, 2020 at <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd20003.pdf>



# Questions and Answers

# Feedback

Please complete a brief survey to help CMS monitor the quality and effectiveness of our presentations.

Please use the survey link:

<https://www.surveymonkey.com/r/DLTSS-Waivers-SPAs>

**WE WELCOME YOUR FEEDBACK!**