



DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

December 1, 2022

Ondrea Richardson
Centers for Medicare and Medicaid Services
Center for Medicaid and CHIP Services
Disabled and Elderly Health Programs Group
Division of Long Term Services and Supports
7500 Security Boulevard
Baltimore, MD 21244-1850

Dear Ms. Richardson:

The Centers for Medicare and Medicaid Services (CMS) has directed states to implement the Home and Community-Based Services (HCBS) Settings Rule (i.e., Final Rule) by March 17, 2023. The Maryland Department of Health (MDH) has completed assessments and validations for all residential and non-residential sites.

By way of this letter, Maryland is requesting a correction action plan (CAP) to allow additional time for non-compliant providers to come into compliance with the Final Rule. Specifically Maryland is requesting a six (6) month extension for the non-compliant medical day care sites and senior center plus sites; a 12-month extension for the non-compliant assisted living sites; and a 12-month extension for the non-compliant residential sites. The State requests that the aforementioned extensions be applied to the end of the transition period (i.e., medical day care sites six (6) months from March 17, 2023).

Maryland has been actively engaged with all providers across our eight (8) HCBS Waiver programs to ensure compliance with the Final Rule by March 17, 2023. Many of the providers have achieved full compliance with the Final Rule. However, the public health emergency (PHE) has created unforeseen challenges for several providers that provide services across our waiver programs; therefore, one hundred percent compliance has not yet been achieved. Factors such as the direct support professional workforce shortage, closure of sites during the PHE, and high staff turnover are the primary reasons why the remaining sites have not yet come into compliance. Specifically, the following settings have not reached one hundred percent compliance with all aspects of the Final Rule:

- Medical Day Care Centers - Twelve (12) out of 112 sites remain non-compliant which impacts 313 participants throughout the Medical Day Care Services Waiver, Model Waiver for Fragile Children, Community Pathways Waiver, Community Supports Waiver, Home and Community-Based Options Waiver, and the Waiver for Adults with Brain Injury. Several sites were closed to providing in-person services to participants during the PHE. The re-opening process has been slow and staffing has been limited in many cases, which has delayed participant access to the broader community for activities that the site intends to provide.
- Assisted Living Sites - Two hundred and fifty three (253) out of 547 sites remain non-compliant which impacts 52 participants throughout the Home and Community-Based Options Waiver. The non-compliant sites are experiencing a direct support professional workforce shortage reducing the number of staff members available to provide on-site and off-site activities. Additionally, the option for a private unit and/or choice of a roommate has not consistently been offered to participants.

- Residential Sites - Thirteen (13) out of 13 sites are non-compliant which impacts 49 participants receiving services in the Waiver for Adults with Brain Injury. This result is due to the direct support professional workforce shortage reducing the number of staff members available to provide on-site and off-site activities and to assist participants with seeking opportunities for employment. Additionally, the option for a private unit and/or choice of a roommate has not consistently been offered to participants.
- Residential Sites - Nineteen (19) out of 22 sites are non-compliant which impacts 28 participants in the Autism Waiver. This result is due to the direct support professional workforce shortage reducing the number of staff members available to provide on-site and off-site activities.
- Senior Center Plus Sites - Two (2) out of five (5) sites are non-compliant which impacts four (4) participants in the Home and Community-Based Options Waiver. This result is due to the direct support professional workforce shortage reducing the number of staff members available to provide on-site and off-site activities limiting participant access to the broader community.

The MDH will provide increased technical assistance to providers with non-compliant sites throughout the CAP period to attain full compliance with the Final Rule by the end of the extension period. The MDH will increase the engagement frequency with each non-compliant site, which may include virtual and in-person visits to provide training or further assess provider compliance with the Final Rule. The MDH has re-convened the bi-monthly council meetings to engage the provider community as well as other stakeholders to generate ideas to assist with the more complex issues such as the direct service professional workforce shortage. The State is committed to supporting all residential and non-residential sites to ultimately attain full compliance with the Final Rule.

Thank you in advance for your consideration. If you have any questions, please contact Lisa Toland, Chief, Division of Provider Enrollment, Claims and Compliance at (410) 767-5792 or Lisa.Toland@maryland.gov.

Sincerely,

Steven R. Schuh, Deputy Secretary
Health Care Financing and Medicaid

cc: Tricia Roddy, MDH
Marlana R. Hutchinson, MDH
Jamie Smith, MDH
Lisa Toland, MDH
Michele MacKenzie, CMS
Amanda C. Hill, CMS
Mary Marchioni, CMS
Ryan Shannahan, CMS