



MAINE'S CORRECTIVE ACTION PLAN FOR IMPLEMENTING THE FEDERAL HOME & COMMUNITY-BASED SERVICES RULE

VERSION I

December 1, 2022

Maine Department of Health and Human Services

Office of MaineCare Services

Office of Aging and Disability Services

Introduction

The State of Maine (State) is requesting a corrective action plan (CAP) extending the transition to compliance period for the federal Home and Community Based Service (HCBS) Settings Rule from March 17, 2023, to December 17, 2023, for those standards considered “flexible” under CMS guidance. The CAP would allow additional time for HCBS providers to complete the remaining flexible items within their transition to compliance plans with the State. This is a combined CAP for the following HCBS waivers: ME.1082, ME.0995, ME.0159 and ME.0467.

Maine has final approval of its Statewide Transition Plan (STP) and has made systemic changes within its waiver applications and corresponding Medicaid rules to ensure compliance with the federal HCBS Settings Rule. Additionally, to ensure ongoing compliance, Maine continues to follow a process for technical assistance and ongoing provider reviews and monitoring as outlined in Maine’s final STP. Of note, the state now considers provider-level remediation plans to be the corrective action plans for the providers.

HCBS providers in the State have made significant progress toward full compliance with all items within their provider setting-level transition to compliance plans. However, staff turnover and ongoing vacancies in the last two years have contributed to provider difficulty in remediating HCBS standards that are reliant on providers having sufficient staff.

The State’s goal in applying for a CAP is to provide sufficient time for providers to recruit, hire and train staff using the tools available from the state’s workforce initiatives, such as recruitment and retention bonuses, HCBS remediation grants, and innovation awards to build a sufficient workforce fully capable and prepared to advance optimal community inclusion and deliver maximum quality in fulfilling Federal HCBS settings requirements. Having the additional time allowed by a CAP will also promote full compliance with the state’s expectations for what constitutes meaningful evidence of remediation without compromise of the HCBS Standards or diminished performance.

In determining whether to request a CAP, the State in October 2022 sought recommendations and guidance, using CMS’ criteria and information, from the State’s HCBS Stakeholder Advisory Committee as well as from HCBS providers during the State’s monthly provider meeting. Participants in each of the meetings overwhelmingly supported an extension of the deadline to meet those HCBS settings standards considered “flexible” under CMS guidance.

Criteria for which the State Seeks Additional Time to Ensure Full Provider Compliance

The State is seeking an additional nine months past the transition period deadline of March 17, 2023, for the following HCBS setting standards where flexibility is possible under CMS guidance:

- Supporting full access to the greater community
- Supporting opportunities to seek employment and work in competitive, integrated settings
- Supporting opportunities to engage in community life
- Supporting opportunities to receive services in the community, to the same degree of access as individuals not receiving HCBS waiver services
- Ensuring option to receive HCBS waiver services in non-disability-specific settings
- Ensuring option for a private room or residential unit

- Ensuring best possible opportunities for individual initiative, autonomy and independence in making life choices, including but not limited to daily activities, physical environment, and deciding who to spend time with

In Provider Owned or Controlled Residential Settings:

- Individuals that share a unit/home have choice of housemates
- Individuals having freedom and support to control their own schedules and activities

State's Efforts to Bring Providers into Compliance and Public Health Emergency-related Barriers

The workforce shortage in the State has hampered providers' ability to submit required evidence of meaningful practice, which must span at least three days over a quarter. Staff turnover and ongoing vacancies in the last two years have contributed to provider difficulty in remediating HCBS standards that are reliant on having sufficient staff. Staffing has affected all services to some degree, especially provider owned or controlled residential settings where staffing challenges continue to require the flexibilities of the State's combined Appendix K that currently allows a provider's residential setting to meet 80 percent of authorized staffing levels. The standards related to building community relationships and opportunities to engage in competitive integrated employment are the most impacted by staffing shortages. This is reflected in the data the State continues to collect within the State's online HCBS compliance portal.

The following two tables summarize the State's data regarding non-compliance with HCBS standards. For each HCBS standard, a provider-level setting must submit multiple items of evidence in order to substantially demonstrate compliance. The evidence required includes policies and procedures, evidence of practice, training and implementation.

Table I shows the percentage of residential HCBS settings that are non-compliant with the specified HCBS evidentiary standard.

Maine Non-Compliant Residential HCBS Settings: % of Non-Compliance on HCBS Standard	All Non-Compliant Residential Settings	1-2 Person Group Homes:	3-5 Person Group Homes:	6+ Person Group Homes:	Family Centered Homes:	Shared Living-Related Family Member Provider Settings:	Shared Living-Unrelated Provider Settings:
Total Non-Compliant Settings as of Sept 30, 2022	104	38	33	9	8	7	9
The setting is integrated in and supports full access to the greater community, opportunities to seek employment and work in competitive integrated settings, engage in community life, and receive services to the same degree of access as individuals not receiving Medicaid HCBS.	20.99%	21.7%	19.7%	30.56%	13.75%	26.43%	15.56%
The setting is selected by the individual from among setting options including non-disability specific settings.	16.83%	18.57%	15.15%	16.67%	15.63%	25%	11.11%
Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and deciding with whom to interact.	16.83%	13.57%	23.48%	25%	6.25%	14.29%	8.33%
Facilitates individual choice regarding HCBS waiver services and supports, and who provides them.	33.17%	38.57%	38.64%	30.56%	18.75%	14.29%	22.22%
Provider owned or controlled residential settings: Choice of roommates in shared settings.	15.84%	14.29%	33.33%	0%	0%	0%	0%
Provider owned or controlled residential settings: Individuals have freedom and support to control their own schedules and activities	14.85%	18.10%	15.15%	18.52%	4.17%	0%	18.52%

Table II represents the percentage of non-residential HCBS settings that are non-compliant with the specified HCBS evidentiary standard.

Maine Non-Compliant Non-Residential HCBS Settings: % of Non-Compliance on HCBS Standard	All Non-Compliant Non-Residential Settings	Community Supports Settings	Work Support -Group Settings
Total Non-Compliant Settings as of Sept 30, 2022	36	34	2
The setting is integrated in and supports full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, and receive services to the same degree of access as individuals not receiving Medicaid HCBS	36.93%	37.54%	26.47%
The setting is selected by the individual from among setting options including non-disability specific settings.	23.61%	20.59%	75%
Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and deciding with whom to interact.	36.11%	38.24%	0%
Facilitates individual choice regarding HCBS waiver services and supports, and who provides them	60.19%	58.82%	83.33%

Table III presents the total data for all HCBS settings by type as well as by unique providers subject to full compliance by March 17, 2023. Full compliance is measured by the provider-level setting having submitted acceptable evidence within each HCBS standard.

Table III: updated HCBS compliance data: 1,475 total settings

Maine HCBS Setting Types Subject to Full Compliance by March 17, 2023	Fully Compliant Settings as of Sept 30, 2022	Non-Compliant Settings as of Sept 30, 2022	Heightened Scrutiny Non-Compliant Settings	Non-Flexible HCBS Standards: Non-Compliance Remaining Among Non-Compliant Settings	Count of Unique Provider Agencies with Non-Compliant Settings as of Sept 30, 2022
1-2 Person Group Home	286	38	7	21.83%	19
3-5 Person Group Home	190	33	3	21.72%	15
6+ Person Group Home	23	9	3	26.54%	5
Family Centered Home	15	8	0	12.5%	8
Shared Living-Related Family Member Provider	455	7	0	20.63%	2
Shared Living-Unrelated Provider	274	9	0	14.81%	5
Community Supports, Work Supports, Clubhouse	92	36	30	37.2%	19
TOTALS:	1335	140	43	Residential: 20.76% Non-Residential: 37.2%	46 (unduplicated)

Heightened Scrutiny Settings

The above data includes those settings that have been determined to have isolating qualities and are therefore subject to Heightened Scrutiny. The State seeks additional opportunities to complete discussions with CMS and submission of its Heightened Scrutiny Settings. The State completed two separate postings of settings determined to have isolating qualities for public comment. After public comment, as outlined with the approved final STP, the executive steering committee makes a final determination on whether to submit the setting to CMS for heightened scrutiny review, seeking approval to maintain the settings for HCBS. The state has incorporated the same review process of non-flexible HCBS standards for settings subject to heightened scrutiny. The State notes there are no HCBS settings that are prong 1 or prong 2 settings as those settings are prohibited from delivering HCBS in the State. The state has fully assessed all settings against criteria prong 1, prong 2 or prong 3.

State's Strategy and Timeframes for Full Compliance

The State invested in a support strategy to help providers meet compliance by: providing ongoing technical assistance and directed transition to compliance planning, ARPA Section 9817 investment in the workforce, and grants (also funded through Section 9817) to assist providers with their costs related to complying with the HCBS Settings Rule based on the results of setting validation and approved remediation plans for their settings. These three core efforts were designed to support providers to make the necessary changes with the goal of embracing systemic reform. As a result of these efforts, over 90% of the provider level settings met full compliance with all the items identified for remediation.

The remaining 140 settings have been assigned to a subject matter expert (SME) from the operating agency, the Office of Aging and Disability Services (OADS). Those 140 settings received a notice informing them of the opportunity for them to submit evidence up until the deadline of December 2, 2022, to meet non-flexible HCBS standards. The State continued the use of provider settings transition to compliance plans (TTCP) and progress update templates in an excel format that clearly identified all evidentiary items that reflect meaningful compliance with the HCBS settings rule. The provider utilizes the TTCP to track review and approval by the State of evidence to remediate non-compliant items. The state outlined the items that are non-flexible for both residential settings and non-residential settings.

ADS SMEs have provided technical assistance to each provider for settings that have had additional items for which they needed to demonstrate full compliance of non-negotiable settings criteria by December 2, 2022. For any items in which evidence has not demonstrated full compliance for non-negotiable settings criteria, a notice of disenrollment for the setting and a notice of relocation will be issued the week of December 17, 2022. The provider will receive the notice of disenrollment and accompanying appeal rights and the member will receive a notice of relocation. Both notices will provide the deadline of March 17, 2023, for the setting to be closed as a setting delivering HCBS.

The state has reviewed several settings in which evidence of full remediation has been submitted and those settings have reached full compliance with all of the criteria. While the state anticipates more settings will reach this achievement, most settings will meet the non-negotiable criteria and have remaining negotiable items within their transition to compliance plan that will require ongoing remediation.

Systemic Reform

The State's adherence to the final approved Statewide Transition Plan (STP) and systemic changes within waiver system of care corresponding with promulgated Medicaid regulations ensures compliance with the federal HCBS settings rule. In addition, the State continues to follow a process for technical assistance, ongoing provider reviews and monitoring as outlined in the final STP to ensure ongoing compliance.

The State confirms and attests that all providers have been assessed using the State regulations implementing HCBS Settings rule, MaineCare Benefits Manual, Ch. 1, Section 6 and where necessary, provider-level remediation plans are in place and being monitored by the state. The State attests that all settings within the state will be compliant with the following regulatory settings criteria by the end of the transition period:

- Privacy, dignity, respect, and freedom from coercion and restraint;
- Control of personal resources.

Additionally, all provider-owned or controlled residential settings will be compliant with the following regulatory settings criteria by the end of the transition period:

- 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; and

- Person-centered service plan documentation of modifications to relevant regulatory criteria

Lastly, the State's ongoing monitoring starts with an onboarding process for new providers as well as review of new construction settings. Any applicant seeking to become a HCBS provider submits an application along with supporting documentation, such as policies and procedures, to the Office of Aging and Disability Services for first review. The application and supporting documentation are reviewed for compliance against all regulatory requirements as any new settings must immediately comply with the State's HCBS Global Settings rule. To support new providers in meeting initial expectations the state has created a new provider application and onboarding resources process ([Provider Application and Onboarding Resources | Department of Health and Human Services \(maine.gov\)](#)).