

STATE AND PROVIDER COMPLIANCE WITH REGULATORY SETTINGS CRITERIA

Description of how the state’s oversight systems (licensure and certification standards, provider manuals, person-centered plan monitoring by case managers, etc.) have been modified to embed the regulatory criteria into ongoing operations.

I. State Regulations

Assessment

MHD, DMH and DHSS reviewed all applicable state regulations to determine their compliance with the HCBS Final Rule and if revisions were needed to reflect federal regulations on HCBS settings. DMH and DHSS developed a crosswalk documenting their assessment of state regulation compliance with the HCBS Final Rule. The crosswalks document the following information: state regulations; applicable federal requirements; compliance status (compliant, partially compliant, non-compliant or silent); changes needed to bring language into compliance; remediation activities the state took to bring regulation(s) into compliance; and milestone dates. MHD reviewed each crosswalk and evidence of compliance to ensure that all aspects of the system are congruent with CMS expectations and will allow the State to operate HCBS programs in a manner that comports with the HCBS Final Rule. This assessment process involved reviewing state regulations concerning MHD, DMH, and DHSS located in: Missouri 13 CSR 70, Missouri 13 CSR 65-2, Missouri 9 CSR 45, Missouri 19 CSR 15, Missouri 19 CSR 30-81, and Missouri 19 CSR 30-90.

Remediation Strategies

MHD, DMH and DHSS filed changes to administrative rules as needed to reflect federal regulations on HCBS settings. This included the adoption and implementation of a new overarching HCBS Waiver Administration rule that details the CMS HCBS settings characteristics required for all 1915(c) waiver settings.

For additional details on the assessment and remediation of Missouri Code of State Regulations, reference the following in the approved Statewide Transition Plan:

Section 1: Assessment

Missouri Code of State Regulation (CSR) Assessment – page 9

DMH Waivers – page 9

DHSS Waivers – page 9

Section 2: Remediation Strategies – (Transition Plan page 30)

Missouri Code of State Regulation (CSR) Filing

DMH Waivers – page 30

DHSS Waivers – page 30, 31

II. Provider Manuals

Assessment

MHD, DMH, DHSS, and MMAC reviewed all manuals, policies, and procedures to determine their compliance with the HCBS Final Rule and if revisions were needed to reflect federal regulations on HCBS settings. DMH and DHSS developed crosswalks documenting their assessment of provider manuals, policies, and procedures compliance with the HCBS Final Rule. The crosswalks document regulations that are (a) compliant, and evidence of that compliance; (b) where modifications are needed to achieve compliance, or (c) silent.

The crosswalks included the following information: state regulations; applicable federal requirements; compliance status (compliant, non-compliant or silent); changes needed to bring language into compliance; remediation activities the state will conduct to bring provider manuals, policies, and procedures into compliance; and milestone dates. MHD reviewed each crosswalk and evidence of compliance to ensure that all aspects of the system are congruent with CMS expectations and will allow the State to operate HCBS programs in a manner which comports with the HCBS Final Rule. Results of the crosswalk are posted online on [DMH's website](#) in the Statewide Transition Plan section and [DHSS' website](#).

Remediation

MHD, DMH, and DHSS revised HCBS provider manuals, policies, and procedures to incorporate HCBS Final Rule requirements. The revisions clarified expectations of participants' control of their environment and access to the community. Revisions were made to provider manuals, policies, and procedures, including revisions to DMH waiver services definitions for Employment services, Day Habilitation, Community Integration, Personal Assistance, and Individualized Skill Development to enhance and support integration in the community.

For additional information regarding assessment and remediation of provider manuals, policies and procedures, reference the following in the approved Statewide Transition Plan.

Section 1: Assessment

Provider Manuals, Policies, and Procedures Assessment – page 9

Section 2: Remediation Strategies

Provider Manuals, Policies, and Procedures Revisions

DMH Waivers – page 31

DHSS Waivers – page 31

III. Annual Assessments, Reviews and Planning

Assessment

The State developed initial participant surveys. The surveys were developed utilizing the CMS exploratory questions modified for “easy read” along with input from self-advocates. The participant survey was the first assessment implemented to better understand how HCBS participants are integrated into the community, from the individual's perspective. In general, the participant survey was also intended to serve as a baseline snapshot of HCB setting compliance with the HCBS Final Rule. The surveys included identification of the setting type, so the State could utilize this information in follow-up to the setting. The surveys provided the option for anonymity or to include contact information if participants wished to have follow-up communication with the State. The State did an on-site assessment if requested, or if it was determined there was a need for one, based on the information provided.

The surveys cover all the criteria outlined in the federal HCBS rule.

On an ongoing basis, questions posed from the participant surveys will be incorporated into annual assessments and reviews.

For additional information regarding the annual assessment, review and planning process, reference the following in the approved Statewide Transition Plan:

Section 1: Assessment

Missouri HCBS Waiver Participant Survey

DMH Waiver – page 11, 12

DHSS Waivers – page 13, 14

Description of how the state assesses providers for initial compliance and conducts ongoing monitoring for continued compliance

I. Provider Monitoring
Assessment

The State developed initial provider self-assessment surveys by incorporating the CMS exploratory questions into an on-line survey. Existing HCBS Waiver providers were asked to complete an initial provider self-assessment survey. In an effort to assist providers with the completion of the provider self-assessments, the State released the “Missouri Exploratory Questions for Assessment of HCBS Waiver Settings” document to assist providers in identifying if services are integrated in and participants have access to supports in the community, including opportunities to seek employment, work in competitive integrated settings, engage in community life, and control personal resources. In addition, links to the provider self-assessment surveys were posted on the DMH and MMAC websites for provider access. DMH and MMAC performed on-site assessments on all providers that completed an initial self-assessment to validate responses.

MHD, DMH, DHSS and MMAC monitor the self-assessment process and utilize the process for ongoing compliance efforts. This process will continue on an ongoing basis.

For additional information regarding the provider monitoring self-assessment process, reference the following in the approved Statewide Transition Plan:

Section 1: Assessment

Provider Self-Assessment

DMH Waivers – page 15

DHSS Waivers – pages 15, 16

Update: The following is additional information regarding processes for DHSS Waivers:

- MMAC instituted an annual training webinar covering the HCBS Settings requirements. The Directors of all enrolled Adult Day Care and AIDS Waiver Attendant Care providers are required to attend the training.
- Following the annual webinar, all Adult Day Care and AIDS Waiver Attendant Care providers are requested to complete the Provider Self-Assessment before December 31st of each calendar year.
- MMAC implemented a HCBS Settings Requirements attestation form required to be completed by all Adult Day Care and AIDS Waiver Attendant Care and submitted prior to December 31st of each calendar year. Providers attest that they have trained all of their paid and volunteer staff on the HCBS Settings Requirements and that their facility is in full compliance with the requirements.

- Any Adult Day Care or AIDS Waiver Attendant Care providers who fail to attend the required annual training, complete the Provider Self-Assessment, or submit the required attestation form are referred to the MMAC Sanctions Committee for possible administrative action, up to and including suspension of their Medicaid payments or termination from participation in the state Medicaid program.

Heightened Scrutiny

MHD, DMH, DHSS and MMAC worked to develop processes to identify HCBS Settings for Heightened Scrutiny based on the CMS guidance. The processes help the State determine whether such settings in fact should be “presumed to have the qualities of an institution,” and if so, require submission of evidence to CMS in order to demonstrate that the setting does not have the qualities of an institution and that it does have the qualities of a home and community-based setting.

For additional information regarding the heightened scrutiny processes, reference the following in the approved Statewide Transition plan:

Section 1: Assessment

Heightened Scrutiny Evaluation of Existing HCBS Service Settings and Addresses

DMH Waivers – page 20, 21

DHSS Waivers – page 22, 23, 24

Ongoing Compliance/Monitoring Reviews

MHD, DMH, DHSS and MMAC developed processes for ongoing compliance and monitoring reviews.

For DMH waivers, DMH will conduct ongoing reviews to establish and monitor levels of compliance. DMH will incorporate requirements of the HCBS Setting Rule into existing review processes and quality integrated functions: Provider Relations Reviews; Quality Enhancement Reviews including National Core Indicators; Targeted Case Management Technical Assistance Coordinator Reviews; Service Monitoring by Support Coordinators; Licensure and Certification Reviews; and Community Living Coordinator. The quarterly/annual monitoring processes include on-site, face to face assessments of providers with waiver participants. DMH held and will continue to hold various trainings and workshops for department personnel, including quality integrated function personnel, providers, and TCM entities. DMH [provider trainings](#) are on the DMH HCBS website under the Trainings Section.

For DHSS waivers, MMAC will conduct ongoing reviews of enrolled Adult Day Care and AIDS Waiver Attendant Care providers to establish and monitor levels of compliance. MMAC will incorporate settings requirement information into its pre-enrollment and revalidation site visits of all HCBS providers, and survey the Adult Day Care and AIDS Waiver Attendant Care providers during these visits. MMAC will also provide information about the setting requirements during on-site audits and investigations of HCBS providers.

For additional information regarding ongoing compliance and monitoring reviews, reference the following in the approved Statewide Transition Plan:

Section 2: Remediation Strategies

Operating Agency Processes

DMH Waivers – Ongoing Compliance/Monitoring Reviews – page 35, 36, 37, 38

DHSS Waivers – Ongoing Compliance/Monitoring Reviews – pages 40, 41

II. Provider Enrollment

MHD, DMH, DHSS and MMAC incorporated assessment of settings into existing processes for provider enrollment. MHD, DMH, DHSS, and MMAC educate providers on the HCBS Final Rule as part of the enrollment process. Operating agencies use resources and tools such as the Missouri Exploratory Questions for Assessment of HCBS Residential Waiver Settings. The requirements of the Home and Community-Based Federal Rule will be incorporated into Provider Enrollment Tools and the Provider Agreements. The State will evaluate through the heightened scrutiny process any new settings for enrollment that have an institutional or isolating quality.

For additional information regarding the provider enrollment processes, reference the following in the approved Statewide Transition Plan:

Section 1: Assessment

Provider Enrollment Process Assessment

DMH Waivers – page 28, 29

DHSS Waivers – page 29

Section 2: Remediation Strategies

Incorporate Education and HCBS Waiver Compliance Understanding into Provider Enrollment

DMH Waivers – page 32

DHSS Waivers – page 32, 33

Update: The following is an addition to the “Incorporate Education and HCBS Waiver Compliance Understanding into Provider Enrollment” information for DHSS waivers.

- MMAC personnel who audit or investigate HCBS providers receive annual training regarding the Final Rule and settings requirements.

Provider Update Meetings and Trainings

DMH Waivers – page 33

DHSS Waivers – page 33

Description of a beneficiary’s recourse to notify the state of provider non-compliance (grievance process, notification of case manager, etc.) and how the state will address beneficiary feedback.

Missouri’s approved Statewide Transition Plan includes information regarding notification of provider non-compliance. The information in the approved transition plan is as follows:

Section 2: Remediation

Operating Agency Processes - DMH Waivers – page 37

Ongoing Compliance/Monitoring Reviews

Review of ISP Guidelines: Individuals are provided information on rights upon entry to the waiver and annually during the individual support planning process. The support coordinator will provide a rights brochure, developed by the division, to the individual and guardian. In addition, information is posted on the division's web-site:

- The DMH Consumer Rights brochure does not have specific language to comply with the final HCBS federal rule for anonymity. After reviewing the DMH Consumer Rights brochure, the Department will include the DMH website URL on the brochure and a statement in regards to the ability to make anonymous reports to Office of Constituent Services (OCS).
- The Division Individual Rights document does not have specific language to comply with the final HCBS federal rule for anonymity. After reviewing the rights brochure developed by the division, a statement in regards to the ability for individuals to make anonymous reports to OCS was included.

Review of Missouri DMH-Office of Constituent Service website. The DMH Client Rights brochure and other information regarding consumer rights and abuse/neglect is posted on this website. The site also has a consumer safety video which discusses abuse and neglect and the reporting and investigation process, as well as the brochure Keeping Mental Health Services Safe which is a written version of the video. In the Frequently Asked Questions section on the website, it does state and answer the question: What should I do if I suspect that a mental health client or family member may have been the victim of abuse or neglect? You may call the toll free number at 1-800-364-9687 and ask for the Office of Constituent Services. The office encourages everyone to make the contact for the safety of all clients. All calls will be kept confidential and the caller can choose to remain anonymous.

- Review of Comprehensive Waiver Application states that the Division of DD Consolidated Contract requires that each provider give participants the name, address, and phone number to the DMH Office of Constituent Services. Each consumer is informed that they have the right to contact this office with any complaints of abuse, neglect, or violation of rights. Review of the contract did not reflect this requirement. It is recommended that this statement be added to the contract to include the statement that an anonymous complaint can be made to the Office of Constituent Services.

Section 2: Remediation

Operating Agency Processes – DHSS Waivers – page 13

- The HCBS Participant Choice Statement allows for a participant to report a concern. All concerns reported are relayed to MMAC for provider review.
- Ongoing, any participant complaint regarding the setting will be immediately forwarded to MMAC. Upon annual reassessment, DHSS staff review the requirements and rights of an ADC participant. If a participant reports the setting is non-compliant, this information is sent to MMAC who investigates the setting.

Ongoing Compliance/Monitoring Reviews – page 41

- DHSS will continue to reassess HCBS participants, including those receiving the Adult Day Care service and AIDS Waiver Attendant Care services. All participants authorized for HCBS shall have a reassessment completed within 365 days of the last level of care determination. For participants receiving an Adult Day Care service, DHSS or its designee shall perform face-to-face reassessments with the participant utilizing the InterRAI HC and the HCBS Care Plan and Participant Choice Statement to establish continued eligibility of services and compliance with the HCBS Settings Rule. For AIDS Waiver participants, DHSS will administer an annual participant survey and case management staff will perform face-to-face reassessments with

participants and include review of compliance with the HCBS Settings Rule. Any concerns with specific settings shall be reported to MMAC.

The below are additional options for a beneficiary's recourse to notify the state of noncompliance in addition to what is in the Statewide Transition Plan (noted above).

Home and Community Based Services Referral Form

In addition to the above information contained in the Statewide Transition Plan, the State developed the [*Home and Community Based Services \(HCBS\) Referral for Review of Settings Form*](#). This form was posted to [MHD's website](#). There is also a link to the form on [DMH's website](#) and DHSS' website. It is available to anyone, including individuals, family members, providers, and state staff, who identifies an issue with a setting. The form is completed by the identifying party and submitted to MHD. If the individual and/or family members do not wish to complete the Form, they may contact MO HealthNet Division at 573-751-6944 for assistance, or, for DMH Waivers, contact their support coordinator. Upon receipt of the form/information, MHD will review the information and determine the appropriate course of action.

DMH Office of Constituent Services

Individuals are able to make anonymous reports to Department of Mental Health's (DMH) Office of Constituent Services (OCS), and notify the state of provider noncompliance with the HCBS Settings Rule. Individuals are able to state the issue and describe what situation or rule they believe an HCBS waiver service provider is not compliant with. All reports or complaints are processed with the applicable Division of Developmental Disabilities (DD) Regional Office or State Operated Program, and Division of DD administration is copied. OCS also enters the complaint into the DMH Event Management Tracking (EMT) system. Within 10 business days of receipt, designated Division of DD staff review the reported issue and complete follow up action to address the reported issue. The follow up action is documented in the EMT system. Designated Division of DD staff and the Division of DD Consumer Safety Coordinator review documented action and determine when follow up is complete.