



Healthcare Financing Division
Home and Community-Based Services Section
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Stefan Johansson
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DELIVERED VIA EMAIL

Ref: LG-2022-047

Ms. Amanda Hill, M.S.
Health Insurance Specialist
Division of Long Term Services and Supports
Centers for Medicare and Medicaid Services

Re: Wyoming Final Compliance Status with Home and Community-Based Services Settings Rule

Dear Ms. Hill:

On May 24, 2022 and again on November 16, 2022, the Centers for Medicare and Medicaid Services (CMS) provided states with guidance on submitting compliance with the Medicaid Home and Community-Based Services (HCBS) Settings final rule that went into effect on March 2014. The Wyoming Department of Health, Division of Healthcare Financing, offers the following response.

Background

On March 17, 2014, the Centers for Medicaid and Medicare Services (CMS) promulgated new federal regulations (Final Rule) for Medicaid home and community-based settings (HCBS) requirements. The Wyoming Department of Health (WDH) is the single state agency designated to administer the Wyoming Medicaid program, and submitted a Statewide Transition Plan (STP) in accordance with the federal regulation.

The HCBS settings that are included in this STP include settings covered by the Community Choices Waiver (CCW), the Supports Waiver, and the Comprehensive Waiver programs. The settings for the Wyoming Children's Mental Health (CMH) waiver were reviewed by the WDH and are presumed to be compliant; therefore, they are not included in the STP.

The State of Wyoming received final approval of its STP on June 29, 2018.

Initial Settings Review and Compliance Determination

The WDH validated 100% of Comprehensive and Supports Waiver (DD Waiver) settings that were identified as requiring compliance with the Final Rule. This validation process included a comparison of a provider self-assessment tool, evidence submitted by the provider, and information from WDH databases. Information contained within WDH databases included the following:

- Incident Reports. Initial incident report information is submitted by the case manager or provider who witnessed or was responsible during the time of the incident. Follow up information, including any corrective action necessary on the part of the provider, was entered by WDH staff. This information was collected on an ongoing basis, but trends were monitored monthly.

- Provider Information (i.e., surveys and reports, corrective action). Information related to providers, including qualifications, certifications, and sanctions, was collected and submitted by WDH staff assigned to the provider. Information was entered at the time of the survey, or as corrective action was needed. Trends were monitored on a quarterly basis.
- Representative Sample, NCI Data, and Case Review. Information surrounding participant cases and satisfaction data was collected and submitted by WDH staff assigned to the participant's case. Information was entered as data was collected, and trends were monitored annually.
- Participant and guardian complaints. Complaints, follow-up, and resolution measures were entered into the database by the staff member who received the complaint.

WDH staff conducted on-site visits to DD and CCW settings between January 2016 and July 2017. These visits included a physical review of the setting, and a review of onsite documentation. In evaluating the compliance status of providers, WDH staff looked for:

- Evidence of institutional characteristics, such as cameras, standardized room décor, and indicators of seclusion such as empty rooms;
- Evidence of regimented meal times and meals being eaten in a congregate areas;
- Evidence of locks on doors, keys for participants, and appropriate staff members having access to keys;
- Evidence of participant's having visitors of their choosing at any time;
- Evidence that the setting is physically accessible to the participant; and
- Evidence of community integration, such as the setting's location in relation to small businesses, restaurants, entertainment, and religious and cultural venues.

Staff also reviewed participant individualized plans of care (IPC) to ensure that the plan was person-centered, and provider documentation to ensure the IPCs were executed properly.

WDH staff reviewed facility based procedures and policies, documentation of a participant's ability to choose from different settings, including non-disability specific settings. All providers were required to review and update policies to explain how they would ensure participant choice in these areas. Additionally, case managers were offered training on how to facilitate these discussions prior to IPC meetings.

Providers that own or control property used as residential settings were required to present their lease agreements for State review. Upon this review, the state ensured that housing laws were being followed. The Wyoming State laws considered during lease reviews are W.S. 1-21-1001 to -1016 (forcible entry and detainer), 1-21-1201 to -1211 (residential rental property), and 40-26-101 through -145 (fair housing act). For fair housing laws, which require cooperation with the State Department of Housing and Urban Development, the Department worked with a representative when HUD homes were involved. The Department also referred to HCBS legislation when reviewing lease agreements to ensure compliance.

Providers received a final report detailing their compliance. All providers had to address each area of non-compliance by developing a detailed transition plan, including milestones and target dates.

Current Compliance Status

In accordance with Wyoming's STP, the WDH Division of Healthcare Financing (Division) will complete the identified milestones and will be in full compliance with the federal regulations on or before March 17, 2023.

The Division identified one CCW provider setting that is immediately adjacent to an institution, and completed a full review of the provider's setting in order to determine if it should be subject to the CMS heightened scrutiny process. This review, which included participant interviews, a comprehensive review of the facility's policies and practices, and an on-site visit, found that the facility was providing services that would be deemed institutional in nature.

The Mission of the Villa Assisted Living Facility was notified of these deficiencies, and given an opportunity to come into compliance with state and federal regulations. On October 25, 2022, Mission of the Villa notified the Division that they would not be able to come into compliance, and would begin the process to voluntarily terminate the services of the seven participants receiving services. These seven participants have been notified of this decision, and transitions should be completed by December 31, 2022.

Ongoing Compliance Report

In accordance with CMS guidance issued on May 24, 2022, the Division offers the following description of how Wyoming's oversight systems have been modified to embed the federal regulations into ongoing operations, how the Division assesses providers for initial compliance and conducts ongoing monitoring for continued compliance, and each participant's recourse to notify the Division of setting non-compliance and how the Division will address participant feedback.

The Division has overhauled its rules, systems, staff procedures, and practices in order to ensure compliance with this updated Federal regulation. A large portion of the work performed by Division staff members is focused on ensuring initial and ongoing case manager and provider compliance.

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.

Waiver Amendments

All components of the Final Rule were incorporated into the DD Waiver renewals that went into effect on April 1, 2019. All components of the Final Rule were incorporated into the CCW renewal that went into effect on July 1, 2021.

Administrative Rules

Wyoming Medicaid Rule Chapters 44-46, which govern the DD Waiver programs, were promulgated to include all federal requirements and went into effect on July 21, 2017. Chapter 45, which addresses provider standards, certification requirements, and sanctions for DD Waiver providers, establishes requirements related to participant rights, provider owned or controlled settings, and person-centered planning, which are explicitly tied to the settings rule.

Wyoming Medicaid Rule Chapter 34, which governs the CCW, is currently under review; however, the added federal requirements are not in the existing version of this Chapter. Due to delays caused by COVID-19 and organizational changes within the WDH, the promulgation of this rule has been continually delayed. Furthermore, due to the significant changes that will need to be made to this Chapter, the Division intends to engage stakeholders at every level of the promulgation process, including an informal public comment period to obtain feedback in earlier stages of drafting this Chapter. The Division intends to have this Chapter ready for informal public comment in early spring 2023. Although the rule is not yet in place, all CCW providers are being held to the federal regulation through Division policy. The Division has received guidance from CMS that the delay in

rule is not considered non-compliance with our STP; therefore, the Division is not seeking a CAP for activity.

Conflict-Free Case Management

The Division came into full compliance with conflict-free case management standards for the DD Waivers beginning July 1, 2015. The Division came into full compliance with conflict-free case management standards for the CCW as of July 1, 2021. All waiver documents, current and upcoming rules, and sub-regulatory guidance includes standards and expectations related to conflict-free case management.

System Improvements and Plan Monitoring

The Electronic Medicaid Waiver System (EMWS), which is the system that CCW and DD Waiver case managers use to develop person-centered plans, has been updated to ensure that all required information is included in participant plans of care. This includes a focus on participant strengths, preferences and cultural considerations, verification of informed consent, review of participant rights and verification that rights restrictions meet federal standards, identification of risk factors, and a concentration on participant goals and desired outcomes. Participants verify if they had choice in providers, settings, and services, and verify informed consent on any rights restrictions and the overall plan of care.

Additionally, electronic case manager documentation, which is housed in EMWS, has been updated to include specific case management requirements, including those related to operating conflict-free.

Benefit and Eligibility Specialists within the Division conduct quality improvement reviews of randomly selected plans of care. These reviews, which are also administered through EMWS, are conducted to ensure the components of person-centered planning requirements are demonstrated, and necessary verification of participant choice is present. These reviews include an audit of monthly case management documentation, which demonstrates their review of person centered service delivery, choice, participant concerns, and overall participant satisfaction.

Sub-regulatory Guidance

All required forms, documents, and manuals have been developed or updated to include federal requirements. These documents, which are legion, are mainly housed on the HCBS Document Library page of the Division website (<https://health.wyo.gov/healthcarefin/hcbs/document-library/>). Additional manuals and guidance are located on the respective [DD](#) and [CCW](#) Provider and Case Manager webpages, as well as the [Service Definitions and Rates](#) page.

Initial and Ongoing Training Requirements

Providers and case managers of CCW and DD Waiver services are required to complete initial training requirements before being certified as Wyoming waiver providers. These trainings include information specific to federal and state rules and requirements. The Division holds bi-monthly support calls for providers and case managers, which include reminders about federal and state rules, as well as a training component that covers topic areas related to HCBS settings requirements, including privacy, dignity, and respect; freedom from coercion and restraint; participant rights; control of personal resources; and person-centered planning. Call notes, as well as the recordings and scripts for the trainings, are shared with the respective email lists and posted to the Division website.

Additionally, through funding made available through Section 9817 of the American Rescue Plan Act, the Division is working with the Wyoming Institute of Disabilities, Wyoming University Center of Excellence on Developmental Disabilities, to develop and implement in-depth case manager training on person-centered planning processes. Although this won't be implemented until April 1, 2023, this training will continue to promote the ongoing person-centered planning requirements.

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

Upon notification that an individual or entity is interested in becoming a CCW or DD Waiver provider, the Division sends them a welcome email that includes links to the relevant program rules, manuals, and guidance. If the interested individual or entity wishes to proceed after reviewing the materials, they are required to complete and submit an electronic application that includes demonstration of the various requirements that they must meet in order to become a CCW or DD Waiver provider. The application and all required documents are submitted through the Wyoming Health Provider (WHP) portal, and members of the Credentialing and Certification team review the submissions to ensure that all required information is present, current, and meets state and federal regulations.

Ongoing compliance is determined through regular certification renewals. The Division submitted the certification renewal checklist, which the Credentialing and Certification team uses to conduct regular certification renewals, to CMS for feedback in November 2021. CMS provided feedback that will be incorporated into the checklist in early 2023, prior to the March 17, 2023 compliance date.

An Incident Management Team has been established within the Division to review incidents and complaints, many of which are tied to rights restrictions and other setting related issues. This team is responsible for investigating incidents and complaints; providing provider technical assistance or corrective action; identifying root causes that may require individual or systemic education or changes; and providing appropriate follow up to ensure remediation of rule violations have been implemented and are ongoing.

Description of a beneficiary's recourse to notify the state of setting noncompliance (grievance process, notification of case manager, etc.) and how the state will address beneficiary feedback

The Division accepts complaints from participants, legally authorized representatives and family members, case managers, providers, and other stakeholders and community members. Complaints may be filed with the Division either verbally or in writing. The complaint portal can be found on the homepage of the Division website by selecting the "File a Complaint" link (<https://wyoimprov.com/complaintreport.aspx>.)

Wyoming Medicaid Rule Chapter 45 requires the case manager to review participant rights, including the process for filing a grievance or complaint with the Division, with the participant. The case manager must attest that they have completed this review as part of the annual plan of care renewal process. The case manager must maintain direct contact with participants on their caseload, and is required to follow up on concerns identified through incident reports and complaints.

Waiver documents, rules, and subregulatory guidance establish the requirement that providers have a complaint process, as well as policies and procedures that address how they will handle complaints. The policies and procedures must include:

- How the provider will attempt to resolve the complaint;
- How the provider will document actions, follow-up, and resolution of the complaint;
- How and when information will be shared with the complainant, legally authorized representative, and the case manager; and
- How the complainant will be informed of the process to file a formal complaint with the Division.

The Division's Incident Review Team reviews all complaints received, and conducts investigation as necessary. A complaint investigation may include a review of documents such as provider policies and procedures; service documentation and billing information; individual plans of care, positive behavior support plans, and protocols; employee training records and time cards; and documentation of provider incident reviews and responses. When investigating a complaint, the Division will speak with the complainant, legally authorized representatives as appropriate, provider staff members and case managers. Finally, if there is a significant and immediate health or safety concern addressed in the complaint, or if the complaint is related to a service setting, the Division will conduct an on-site investigation.

The Incident Management Team also refers complaints and incidents to other oversight and investigative entities as appropriate. The Long Term Care Ombudsman investigates, advocates, and mediates on behalf of adults who receive long term care services, to resolve complaints concerning actions or inactions that may adversely affect their health, safety, welfare or rights. Following an investigation, the Ombudsman reports findings and recommendations to the participant or participant's guardian and may report the findings to any other entity deemed appropriate. Complaints related to facilities licensed by the Division of Aging are investigated by that entity as well.

Conclusion

The Division appreciates the opportunity to provide this update. If you need further information or clarification, please contact Shirley Pratt at shirley.pratt@wyo.gov

Sincerely,



Lee Grossman, M.P.A.
Section Administrator, HCBS Section
Division of Healthcare Financing

cc: Jan Stall, Interim State Medicaid Agent and Senior Administrator
Shirley Pratt, HCBS Policy and Communications Unit Manager