# Home and Community-Based Settings: The Post Transition Landscape

August 2023

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CENTERS FOR MEDICARE & MEDICAID SERVICES

# Overview

- Provide a home and community-based services (HCBS) settings rule implementation status update, including proposed Corrective Action Plans (CAPs);
- Review ongoing monitoring requirements and considerations;
- Discuss ongoing compliance and heightened scrutiny considerations;
- Highlight promising practices for engaging providers, beneficiaries, and stakeholders;
- Share Oregon's experience; and
- Administration for Community Living (ACL) will share an overview of the importance of stakeholder input.

# HCBS Settings Rule Status Update, Including Proposed CAPs

# The Goal of the HCBS Settings Rule

- The HCBS Settings Rule was created to ensure that every person receiving Medicaid-funded HCBS has full access to the benefits of community living.
- It protects individuals' autonomy to make choices and to control the decisions in their lives, which most people take for granted. This includes controlling personal resources; ensuring a person's privacy, being treated with dignity and respect, and having freedom from coercion and restraint; deciding what and when to eat; having visitors; being able to lock doors; and having the protections of a lease or other legally enforceable agreement.
- The rule requires a person-centered process for receipt of HCBS, which means that the individuals receiving services direct the planning process and the plan reflects their own preferences and goals they have set for themselves.
- The rule is critical to CMS' broader efforts to expand availability and improve the quality of Medicaid-funded HCBS.

# Corrective Action Plans (CAPs)

- The transition period for regulation implementation ended on March 17, 2023 and states were able to request a time-limited CAP to come into compliance with requirements that were directly impacted by the COVID-19 public health emergency (PHE), such as:
  - Access to the broader community;
  - Opportunities for employment;
  - Options for a private unit and/or choice of a roommate; and
  - Choice of non-disability specific settings.
- States could also request a CAP to complete remediation related to the CMS heightened scrutiny site visit findings and/or for heightened scrutiny settings that had not yet received final adjudication from CMS.
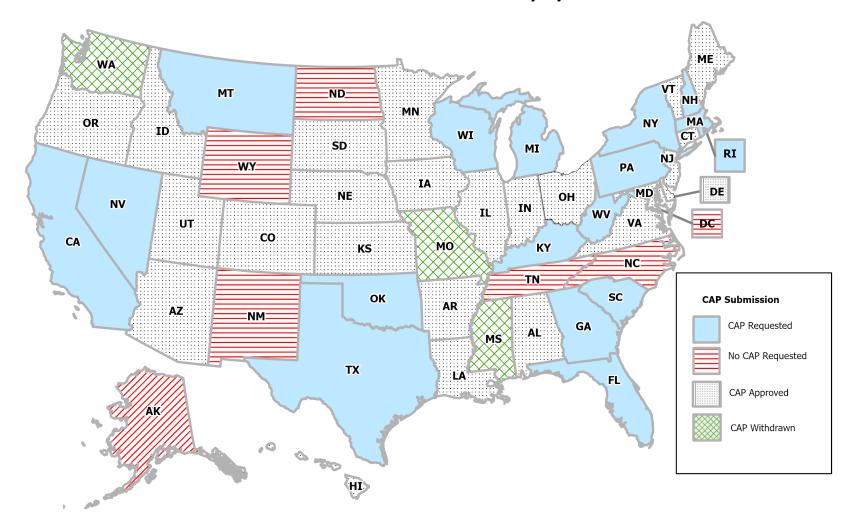- All CAPs will be approved effective March 17, 2023.

# CAP Status

- CAPs apply only to states' settings that were eligible for the transition period (setting types in the state's HCBS delivery system as of the effective date of the final rule).

- As of August 4, 2023:
  - 44 states requested a CAP
    - 24 states have an approved CAP
    - 3 states withdrew their CAP request
  - 7 states did not request a CAP

  - Proposed and approved CAPs are posted on Medicaid.gov: https://www.medicaid.gov/medicaid/home-community-based-services/statewide-transition-plans/index.html

# CAP Status (cont.)

## State CAP Submission Status as of 8/4/2023



**CAP Submission**

- CAP Requested
- No CAP Requested
- CAP Approved
- CAP Withdrawn

# CAP Monitoring and Oversight: CMS Responsibilities

- Schedules the initial conference call with the state to discuss:
  - CAP requirements/milestones
    - Including the state process for meeting the milestone criteria in the CAP;
  - CMS and state roles
    - Confirms ongoing meeting frequency (monthly, bi-monthly, quarterly, etc.);
    - Clarifies circumstances under which CMS will deem a particular task met.
- Conducts ongoing monitoring:
  - Provides feedback to the state via monthly monitoring meetings;
  - Ensures that the state is on track in meeting the goals and objectives of the CAP.
- Identifies any need to modify the CAP
- CAP remediation:
  - Determines milestone completion status;
  - Issues the CAP completion letter and publish on Medicaid.gov.

# CAP Monitoring and Oversight: State Responsibilities

- Provides ongoing status reports to CMS within agreed upon time frames, including:
    - Confirming milestone deliverables and evidence;
    - Emerging challenges and/or stakeholder concerns.
- Identifies any need to modify the CAP.
- CAP modifications may occur if:
    - The state or CMS discovers additional tasks required to demonstrate compliance with the settings criteria; and/or
    - The state determines (in consultation with CMS) that the established objectives, action steps and/or timelines in an existing CAP should be modified in order to meet the established goal.

# CAP Enforcement Mechanisms

- Full compliance is achieved when all Medicaid-funded HCBS are rendered in a compliant setting.
- Completion of the CAP will be granted after the state completes the activities described in the approved CAP, at which point the state will be in full compliance with all HCBS settings provisions of the regulation.
- In the event a state does not comply with or complete its CAP, CMS will use the enforcement flexibilities authorized under Medicaid rules including:
  - General Medicaid rules that apply to all authorities related to Federal Financial Participation (FFP) that permit deferrals or disallowances at 42 CFR Part 430 Subpart C; and
  - Strategies to ensure compliance under 1915(c) waivers including, but not limited to, enrollment moratoriums at 42 CFR §441.304(g)(3).

# Ongoing Monitoring Requirements and Considerations

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# Ongoing HCBS Settings Compliance: Overview

- States have mechanisms in place for ongoing monitoring, to detect areas of non-compliance, and to ensure continued systemic compliance with the HCBS settings criteria, as is true for all Medicaid provisions.
- States articulated their process for ongoing monitoring in Statewide Transition Plans (STPs), but ongoing monitoring is required for all HCBS waivers, state plan benefits, and 1115 demonstrations beyond March 17, 2023.
- Through waiver actions and state plan amendments, states will describe how functions such as case management, licensure and certification standards, beneficiary feedback and other options for ongoing monitoring will be used to identify and remediate any provider compliance issues.

# Ongoing HCBS Settings Compliance: Authorities Providing HCBS

- 1915(c) HCBS waivers, 1915(i) and 1915(k) state plan benefits, and 1115 demonstration authorities providing HCBS require information for ongoing monitoring and oversight of HCBS settings, including, but not limited to:
  - Where services are provided (settings);
  - How settings will meet, initially and ongoing, the settings requirements at 42 CFR §441.301(c)(4)-(5); 42 CFR §441.710(a); and 42 CFR §441.530;
  - The process by which states will monitor settings for compliance; and
  - The process by which states will address any non-compliance and remediation efforts.
- Specific requirements for each of the Medicaid authorities are listed in their respective technical guides, applications, and/or special terms and conditions, with links found in the Resource slides of this presentation.

# Ongoing HCBS Settings Compliance: Monitoring, Training, and Remediation

- States should provide ongoing training opportunities for providers to ensure compliance, which could include:
  - Person-centered thinking for all HCBS providers;
  - Annual refresher trainings for providers on the intent of the rule and how to practically apply the tenets of the rule.
- HCBS settings requirements should be included in all new provider training.
- State staff responsible for oversight and monitoring may also benefit from annual refresher trainings.
- If a state finds that a setting is out of compliance with the setting requirements, it should assist providers to achieve compliance and offer technical assistance as needed to support remediation.
- Beneficiary relocation should only be considered when the provider is unwilling or unable to remediate.

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# Ongoing HCBS Settings Compliance: HCBS Settings Requirements and Considerations for Unwinding from the PHE

- States that received CMS approval for Appendix K flexibilities related to the settings rule need to ensure ongoing compliance with the settings rule once the flexibility ends.
- States requested these flexibilities for settings that were not established by the effective date of the final settings regulation, and were therefore not covered by the transition period. These settings had to be in compliance with the regulatory criteria in order to begin HCBS provision.
- The COVID-19 PHE ended on May 11, 2023. CMS encourages states to notify their providers and settings that the PHE flexibilities will be ending.

# Ongoing HCBS Settings Compliance: Health & Welfare

- All HCBS authorities contain quality expectations.
  - 1915(c) HCBS waivers and 1915(k) CFC State Plan Options must provide assurances to CMS that the state has necessary safeguards to protect the health and welfare of participants receiving services.
  - 1915(i) State Plan HCBS benefit and the 1915(k) CFC State Plan Options require a quality improvement strategy that includes measures for quality of care and individual experience.
  - States that provide HCBS through an 1115 demonstration must provide similar information in the special terms and conditions (STCs).
- Ongoing monitoring of HCBS requirements support states in meeting waiver assurances and quality requirements.
- Ongoing monitoring of HCBS requirements can also support states' waiver incident management processes.

# Ongoing HCBS Settings Compliance: Health & Welfare (cont.)

- Ongoing monitoring of HCBS settings requirements can identify issues before they become critical incidents.
- All these efforts can feed into states' quality improvement strategies, whether to address specific performance measure deficiencies or to address overall systemic improvement and enhancement.
- The HCBS rule was designed to enhance the quality of HCBS and provide additional protections to beneficiaries.
- States can use ongoing monitoring, incident management, and quality assurance as three connected tools to support overall waiver quality.

# Ongoing Settings Compliance and Heightened Scrutiny Considerations

# Ongoing HCBS Settings Compliance: Heightened Scrutiny

- One of the key components of STPs and approved CAPs is heightened scrutiny, described at 42 CFR §441.301(c)(5)(v), where both states and CMS review presumptively institutional settings and CMS determines whether the setting complies with the settings regulatory criteria.
- The three categories of settings presumed to have the qualities of an institution are:
  – settings in the same building as a public or private institution,
  – settings on the grounds of or adjacent to a **public** institution, and
  – settings with qualities that isolate Medicaid beneficiaries from the broader community of individuals not receiving Medicaid HCBS.
- Heightened scrutiny is the mechanism through which presumptively institutional settings may continue receiving federal funding for HCBS, if the state and CMS affirm that the setting adheres to all regulatory settings criteria.

# Ongoing HCBS Settings Compliance: Insights from CMS' Heightened Scrutiny Site Visits Background

- In calendar years 2022-2023, 14 states have received a site visit from CMS.
- CMS selected states based on presumptively institutional settings that states submitted or settings in the state that were identified by federal partners or stakeholders.
- The site visit team has visited non-residential and residential setting types across all three categories of presumptively institutional settings.
- The findings from the site visits suggest there are concerns with overall assessments for compliance with the settings criteria, not limited to assessments of presumptively institutional settings.
- In some states, the entities responsible for the assessment and ongoing monitoring of settings are more familiar with settings' day-to-day processes, whereas the entities conducting heightened scrutiny reviews may not have that same experience or familiarity, leading to flawed findings.

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# Ongoing HCBS Settings Compliance & Common Site Visit Findings: Person-Centered Service Plans

- CMS reviewed service plans in advance, as well as on-site. In several states, CMS found:
  - Settings may have a provider-specific care plan on-site, but they do not have the current service plans for all Medicaid HCBS beneficiaries who are served at the setting;
  - Individuals do not appear to have participated in the plan development and/or have not signed the plan; and
  - Plans often do not record what was important to individuals, their preferences or their goals.
  - There was often no indication in the plans that choice of services or settings options had been offered.
  - Restrictions that were not supported by a specific assessed need for the individual or justified in the individual's person-centered plan and, therefore, are not permissible under the regulations as an individual modification to the regulatory criteria.

# Ongoing HCBS Settings Compliance & Common Site Visit Findings: Provider-Owned or Controlled Settings: Identification

- CMS has found examples of states not identifying provider-owned or controlled settings as such if the setting is not formally owned by a provider of HCBS.
- CMS reminds states and stakeholders that the additional regulatory criteria found at 42 CFR §441.301(c)(4)(vi) also applies to settings controlled by a service provider.
  – This includes scenarios in which a provider has influence over whether an individual is accepted for residency.
  – This includes scenarios in which the landlord has influence over which service providers the individual in the setting uses.

# Ongoing HCBS Settings Compliance & Common Site Visit Findings: Restrictive Language in Lease, Residency Agreement, or Other Form of Written Agreement

- In a provider-owned or controlled residential setting, the lease, residency agreement, or other written form of documentation must provide protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law (42 CFR §441.301(c)(4)(vi)).
- CMS has found restrictive language in lease or residency agreements that is inconsistent with typical lease agreements, such as requirements for the individual to:
  – Work at the provider's worksite;
  – Pay the provider for lack of attendance at the worksite;
  – Move out during specified periods of time; and/or
  – Be evicted if the individual's needs increase even if resources were available to provide additional support.

# Ongoing HCBS Settings Compliance & Common Site Visit Findings: Additional Themes

- Common site visit findings include:

  – Access to visitors;

  – Community integration; and

  – Provider staff training on HCBS.

# Promising Practices for Engaging Providers, Beneficiaries, and Stakeholders

# Promising Practices: Support and Education for HCBS Providers-State Examples

- Development and distribution of educational materials such as:
  - Community integration tips sheet for providers with detailed examples for supporting individuals to be a part of their community and developing personal relationships, outside of individuals who are paid to provide services or other individuals who are also receiving services.
  - Community inclusion and integration fact sheet:
    - Contains definitions of community inclusion and integration, types of activities to promote community integration and inclusion, and how settings can ensure it is happening; and
    - Gives examples of what community inclusion and integration look like and what it does not look like (reverse integration, segregated activities in the community).

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# Promising Practices: Support and Education for HCBS Beneficiaries and Advocates-State Examples

- Most states include information on their Medicaid agency website or other operating agency website to provide updates on the status of implementation activities.
- Some states also include training and other informational materials specifically for HCBS beneficiaries, their supporters, and advocates.
- Examples include:
  - Videos in English and Spanish that explain HCBS provisions;
  - Virtual training on person-centered planning, thinking, and practice; and
  - Training on HCBS Settings Rule: Basics and Advocacy with the state's protection and advocacy agency.

# Promising Practices for Beneficiary Complaints and Feedback

- States provided CMS with information on how regulatory settings criteria have been incorporated into state-level oversight and enforcement, how providers have been assessed for regulatory compliance, and how beneficiaries have an identified point of contact to report concerns about provider compliance.
- State examples for beneficiary complaint processes:
  - Case manager as the contact to report concerns about provider compliance:
  - On-line portals to report directly;
  - Dedicated 1-800 numbers and/or staff to receive and track complaints
  - Requirements for health plans to have complaints procedures; and/or
  - Outreach to beneficiaries and training to make sure consumers know their rights.
- If a state makes different or additional opportunities available for beneficiaries to discuss provider concerns, transparency to stakeholders is strongly encouraged.
- The state information will be posted to Medicaid.gov.

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# Communication and Support for Beneficiaries when a Provider will not be Compliant

- CMS required states to include a detailed strategy in their STPs to assist participants receiving services from providers not willing or able to come into compliance with the settings regulations.
  - The strategies contain the timeline and description of the processes for assuring that beneficiaries, through the person-centered planning process, are given the opportunity, the information and the supports necessary to make an informed choice among options for continued service provision, including in an alternate setting that aligns with the regulation.
- State examples of promising practices for notification to beneficiaries and transition process:
  - Participants receive in-person notice of the need to transition:
    - Face-to face visits with beneficiaries, family members, and/or guardians.
  - Participant visits to settings options and/or roommate selection explicitly built into the transition process.

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# Communication and Support for Beneficiaries when a Provider will not be Compliant (cont.)

- State examples of post-transition monitoring for individuals who transition due to settings non-compliance:
  - State-level review of documentation on any participants that transition;
  - Participant surveys within 30 days of the transition; and
  - Weekly case manager contact with the participant and weekly reports to the state Medicaid agency on the status of the transition process.
- Other promising practices:
  - Beneficiaries receive information on available advocacy support and state HCBS contacts;
  - One state added community transition services to two 1915(c) HCBS waivers so participants relocating to a less restrictive setting have needed services and supports in place in advance of the transition; and
  - Posting transition training materials, policies, and/or manuals on-line.

# Stakeholder Engagement

- States should be continuing to engage stakeholders beyond the transition deadline.
  - Stakeholders include beneficiaries, self-advocates, advocates, families;
  - Engagement is MORE than just public comment periods;
  - Engagement is MORE than annual service plan reviews or individual experience surveys (even though those tools contribute to overall monitoring of compliance); and
  - Engagement could include active, ongoing workgroups or advisory committees, and/or regular town halls (these can be done virtually or via large conference calls).
- Stakeholder engagement is key to effective implementation and ongoing maintenance of settings criteria.

# Oregon Department of Human Services: Home and Community-Based Settings

August, 2023

Anna Lansky, Interim ODDS Director

Jane-ellen Weidanz, APD Deputy Director of Policy

# Home and Community-Based Settings Rule is Issued in 2014

Oregon had to implement a plan for all HCBS programs and services in Oregon in one cohesive plan.

Traditionally, Oregon HCBS programs have operated fairly independently, differentiated by the populations served:

Office of Developmental Disabilities Services (ODDS)

Aging and People with Disabilities (APD)

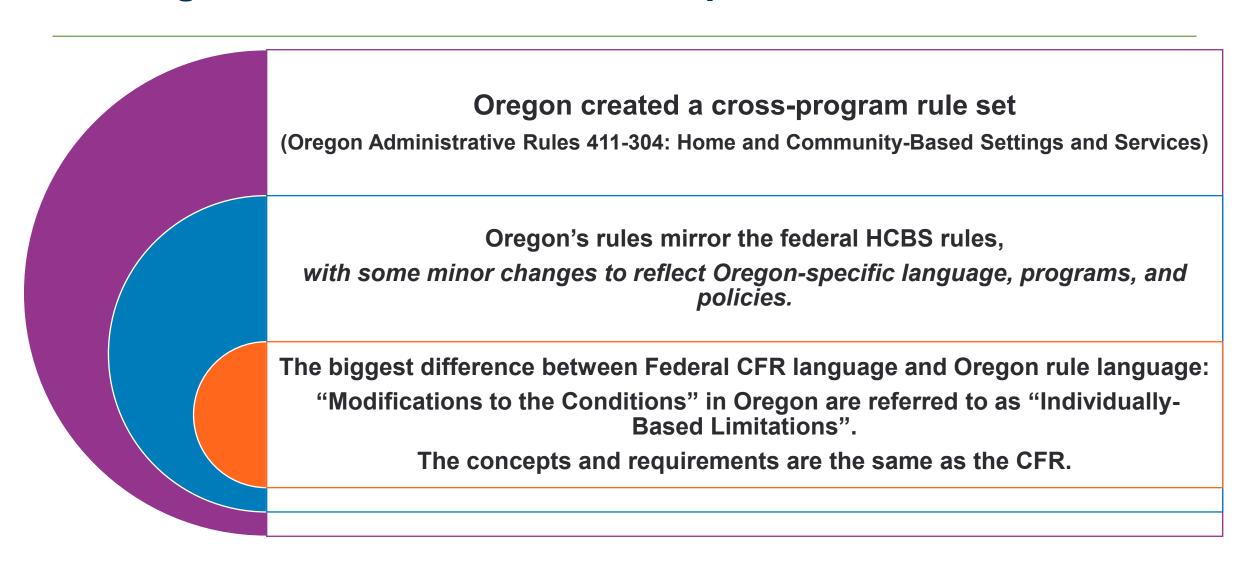Health Systems Division (Adult Mental Health Services) (OHA)

# Programs Came Together to Establish Common Values, Language and Expectations for Implementation of HCBS



## Example:

- **Oregon programs had to establish a common term for people who receive services.**
- **Variations used included service recipient, client, consumer, patient, etc.**
- **"Individual" became the consensus term for people receiving HCBS in Oregon.**

# Oregon Establishes Rules for Implementation of HCBS

**Oregon created a cross-program rule set**

**(Oregon Administrative Rules 411-304: Home and Community-Based Settings and Services)**

**Oregon's rules mirror the federal HCBS rules,**

***with some minor changes to reflect Oregon-specific language, programs, and policies.***

**The biggest difference between Federal CFR language and Oregon rule language:**

**"Modifications to the Conditions" in Oregon are referred to as "Individually-Based Limitations".**

**The concepts and requirements are the same as the CFR.**

# In Addition to the Regulatory Foundation, Oregon Developed an Education and Communication Plan

## The plan was multi-faceted and included the following:

| Creation of cross-program and program-specific community partner groups | Publishing infographic materials for at-a-glance visual references to the new rules | Statewide roadshows with travel to all counties in Oregon, providing in-person community forum and education sessions offered in day and evening times | Webinars and technical assistance sessions for providers | Meeting with case management entities and provider organizations |

Participants included individual service recipients and their families, community service providers, case managers, provider organizations, advocacy organizations, and other members of the community.

# Pre-COVID-19 HCBS Setting Status

## Convened joint process with broad representation

- Individuals receiving HCBS and their advocates [Disability Rights Oregon, Legal Aid Services of Oregon, Oregon Law Center, Long-Term Care Ombudsman]
- State advisory councils
- Provider associations and motivated providers

## Program specific representation was also critical

- Each program met with their providers and provider advocacy groups
- Additional advocacy organizations
- Examples included:
  - AARP, Alzheimer's Association of Eastern Oregon; Center for Independent Living, Case Managers, Governor's Commission on Senior Services, Licensing/Regulatory staff, staff from various counties, Service Employee International Union 503

# An Emphasis was Placed on Taking Macro-Level HCBS Concepts and Putting them into Micro-Level Examples and Application

**Providers and other community members had many fears about how the new rules would impact their ability to safely support individuals.**

→

**Education campaigns focused heavily on explaining the rules and how they might apply in home settings. Many examples were provided.**

→

**Curriculum focused on opportunities to support an individual to successfully enjoy their freedoms rather than how to put limits in place.**

*"How do we get to a yes?"* when providing support:

Start with a foundation in safe, socially-appropriate experiences related to personal freedoms and build on these opportunities to enhance independence and personal growth of individuals needing support.

# Timelines were Developed & Compliance Deadlines Set

With a focus on the implementation of the provider-owned, controlled or operated settings, ODDS set a firm expectation of settings-based rule compliance by September 1, 2018.

Following the September 2018 deadline, all settings and services were required to meet all HCBS regulations. This timeline was included in regulatory updates to Oregon Administrative Rules and enforced through the licensing process*.

ODHS – APD; ODDS; OHA- Health Systems Division

# Closing Sheltered Work Settings in Oregon

Sheltered Work (SW) settings isolate people with disabilities to perform work.

Oregon made an early determination that Sheltered Work settings are not HCBS compliant.

Research shows that segregated SW settings make it more difficult to access competitive integrated employment.

Closed to ensure ongoing HCBS and ADA compliance.

ODHS – APD; ODDS; OHA- Health Systems Division

# HCBS Provider Assessment & Transformation Plans

Oregon assessed all employment service settings with an online provider self-assessment tool (ensures due process and sufficient time for transformation).

Sheltered workshop settings required to develop ODDS-approved transformation plan (hire job developers, offer community work experiences, notice timelines, family information nights and communication plan, etc.). Received technical assistance.

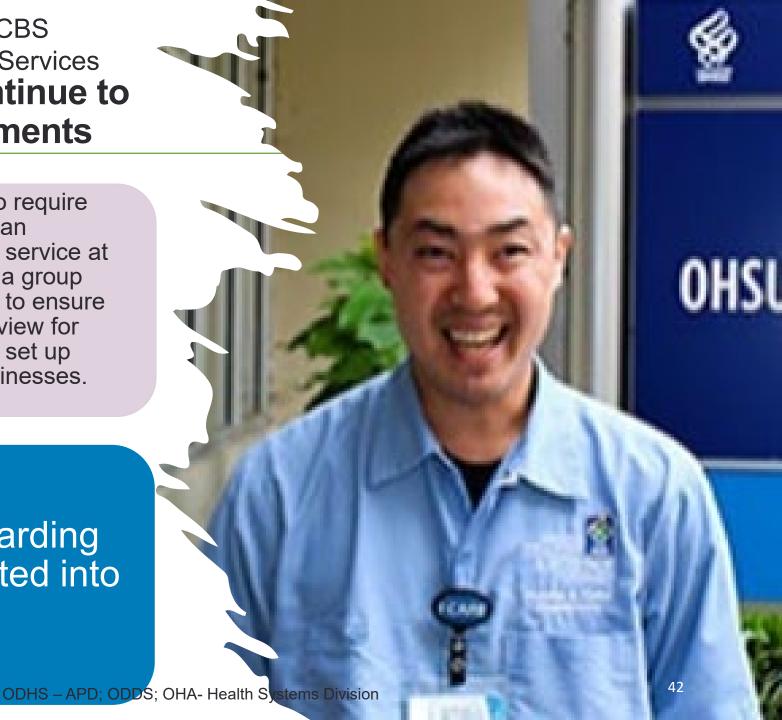All settings required to be compliant by 09/01/2018.

Extension for 3 largest sheltered workshops granted through 03/01/2020 (more intensive TA and support to transition).

ODHS – APD; ODDS; OHA- Health Systems Division

Office of Developmental Disabilities HCBS Compliance for Employment and Day Services
**Assuring work settings continue to meet HCBS setting requirements**

**Provider self-assessment and licensure.**

- Oregon continues to require providers complete an assessment for any service at a provider site or in a group setting. Opportunity to ensure due process and review for providers looking to set up provider owned businesses.

CMS HCBS guidance regarding new construction incorporated into Oregon processes.

ODHS – APD; ODDS; OHA- Health Systems Division

# Area of Challenge: Modifications to the Conditions

## Individually-Based Limitations
## (Modifications to the Conditions)

With the nuanced nature of supporting individuals with activities of daily living and safety support, this area was difficult to navigate in identifying what type of structure or support would be considered a limitation to a personal freedom.

Oregon took the approach of mirroring the federal requirements for when a limitation is applied and created a form that requires entry of information specific to each component. The form must be consented to by the individual and authorized by a case manager. The individual is informed of their rights to withdraw consent. The form is the attached to and becomes part of the person-centered services plan.

# Area of Challenge: Negative, Fearful Reactions

**Negative reactions, usually out of fear or concern of a negative or unsafe outcome.**

People expressed fears for how the rules would be practically implemented. Oregon education campaigns helped to explain roles and responsibilities, including those for individuals when exercising freedom and living with others in a community-based setting.

## Locks on Doors-

- Providers raised major concerns about the cost and operational barriers to implement locks. Oregon held a firm position that the default expectation is all residents will have locks on their bedroom doors and individuals may opt not to use them. With this firm expectation, providers have complied with the expectation.

## Visitors at Any Time-

- If there is a visitor who is posing an active safety risk to the household, that person can be asked to leave.
- The person having the guest over still needs to practice courtesy to the other housemates regarding things such as volume and respect for personal space of others.

## Control of Schedule and Activities-

- Individuals are encouraged to self-direct their routine and activities, but also need support to identify when things can reasonably happen, factoring resources such as transportation, cost of an activity, business hours, personal obligations (such as work), etc.
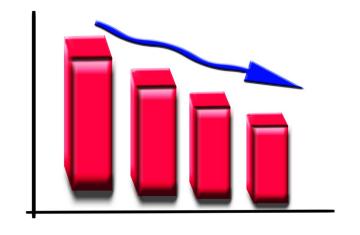
# Area of Challenge: COVID Impacts

## Workforce shortage and staff turnover

Turnover is a major problem in 54% of LTCFs

Nurses with less than 1 year experience in 29% in CBC facilities

In some case management entities 50% of the staff were not there prior to COVID

## Training efforts were reduced during COVID



## Additional pressure to serve more complex individuals in HCBS

For APD, hospital discharge delays led to increasingly complex individuals (substance use disorders, harmful behaviors, and mental illness) being referred to HCBS.

# Head Start Going into the Transition Plan Process

Oregon benefitted from having an established culture and values that honor:

**Individual direction**

**Person-centeredness**

**Community-based living**

# Inherent structures in place prior to the implementation of the federal HCBS regulations, including:

Community-Based Residential Service Settings:  Oregon had long since closed all institutional settings for IDD and moved individuals into community living situations.  For APD, creation of the HCBS system started in the early 1980s, reducing reliance on institutional settings. Oregon statute addressing zoning and concentration of licensed or certified residential home settings.

Oregon state statute declaring individual rights:  Many of the affirmed rights in the legislation, based decades earlier, are similar in concept and application as HCBS regulations.

Person-centered service planning: Oregon had already implemented a robust person-centered service planning process. The requirements of the new HCBS regulation were already present in current ODDS service planning policies and only minor changes were needed for APD.

Residential Facilities Ombudsman (RFO) and Long Term Care Ombudsman (LTCO):  These programs were at the table as a community partner and served as an advocacy organization for individuals in services.

# Promising practices

## Care Plans

Example: After a 7/2022 compliance visit that generated many findings, a provider hired a consultant to revamp their care plans.

## Training

Enhancing online trainings to meet adult learning needs

Tracking system shows which providers and case managers have taken HCBS trainings

Allows providers to use online training for their staff

Allows attestation of compliance and training progress to be verified at next onsite licensing visit
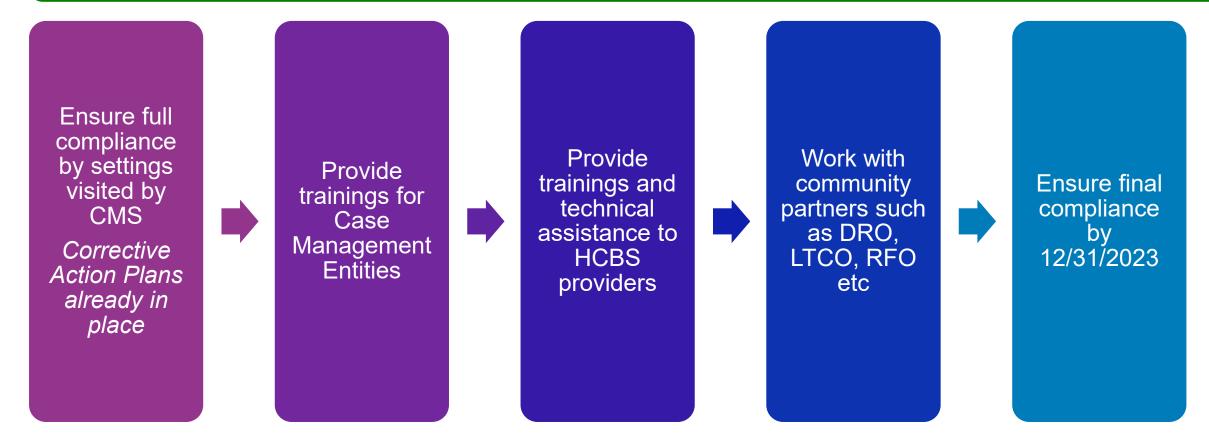
## Build it into normal process

Build HCBS as part of the regulatory framework which builds in accountability

Makes it part of doing the "daily job" rather than something else

# HCBS Setting Implementation Status Update

Recent CMS site visit showed that COVID has impacted compliance and understanding of HCBS

Ensure full compliance by settings visited by CMS

*Corrective Action Plans already in place*

➤

Provide trainings for Case Management Entities

➤

Provide trainings and technical assistance to HCBS providers

➤

Work with community partners such as DRO, LTCO, RFO etc

➤

Ensure final compliance by 12/31/2023

# Implementation and maintenance will be an ongoing effort.

Addressing physical accessibility-

With increased challenges accessing affordable housing, providers are balancing economic use of space and maintaining a community-living home with physical accessibility to the spaces for individual residents.

Evolution of Person-Centered Planning-

Moving from a services-based planning to a LifeCourse model which honors an individual's community-living life plan with services identified to support their goals.

# Implementation and maintenance will be an ongoing effort.



Supporting individuals in community living life events and transitions- establishing a system that supports individuals receiving services while also supporting individuals with disabilities who are parenting minor children or aging.

Adapting services in a manner that utilizes technology while also adhering to person-centered and privacy expectations.

Ensuring that case management entities and LTSS providers fully embrace and internalize HCBS

ODHS – APD; ODDS; OHA- Health Systems Division

# Resources



**Oregon HCBS Webpage**
**https://www.oregon.gov/odhs/providers-partners/Pages/hcbs.aspx#:~:text=Home%20and%20community-based%20services%20%28HCBS%29%20provided%20opportunities%20for,or%20developmental%20disabilities%2C%20physical%20disabilities%20and%2For%20mental%20illnesses.**

Infographics, Training Materials, Transition Plan, & Links to Individual Programs Forms, Examples, Technical Assistance Information and Contact Information

**Oregon Administrative Rules**
https://www.oregon.gov/DHS/SENIORS-DISABILITIES/SPPD/APDRules/411-004.pdf

# Why is Stakeholder Input Important?


Administration for Community Living

**Foundational Value**

- Nothing about us, without us

**Practical Reality**

- Individuals with disabilities and families can see what state agencies can not
- Input needed to meet legal requirements

# The Stakeholders

PEOPLE WITH DISABILITIES,
THEIR FAMILIES, FRIENDS, AND NEIGHBORS

ADVOCACY GROUPS:
Self-advocate groups
Parent groups
Sibling groups
Legal and policy advocacy groups

AGING AND DISABILITY NETWORKS:
State Independent Living Councils
Centers for Independent Living

Protection & Advocacy Systems
State Ombudsman
State Councils on Developmental Disabilities
University Centers for Excellence in Developmental Disabilities

# ACL's Activities to Support Stakeholder Engagement

- Working with aging and disability networks to support local stakeholder engagement
- Webinars
  - HCBS Rule series
  - Waiver Application series:  Getting the Services You Need from the Waiver
- ACL blogs and policy roundups
  - Sign up for ACL updates at acl.gov

# Stakeholder Success

- Helped to create a nationwide conversation about the HCBS Settings Rule
- Communicated with stakeholders in other states for assessment of their experience and best advice
- Successfully advocated for CMS review of certain settings
- Success in advocating for conflict-free case management statewide
- Successfully advocated for an independent monitoring system in which people with disabilities, family members, friends and other citizens conduct the participant interviews

# State Changes in Response to the Rule

- Incorporating the rule into state code and enforcing through licensing
- Building the rule into provider enrollment qualifications
- Building compliance with the rule in Medicaid provider agreements
- Adding service definitions to their waivers that support integration
- Changes to person-centered planning to ensure that all entities responsible for developing PCPs are addressing the full range of rights in the Settings Rule
- Requiring participant assessment tools
- Freezing payment to settings and disenrolling providers they determine do not meet the rule and putting in place transition plans to enable people to move to a setting that meets the rule

# Summary

- The HCBS Settings Rule ensures basic requirements for individuals receiving Medicaid HCBS.
- CMS celebrates the important work that has happened, and acknowledges the work still ahead.
- States are completing work under CAPs to bring their HCBS delivery systems into full compliance for requirements directly impacted by the PHE.
- Heightened scrutiny obligations remain beyond the transition period.
- Robust ongoing monitoring is key to ensuring that settings remain compliant.
- States should consider how to leverage stakeholders to strengthen ongoing monitoring processes and ensure robust beneficiary complaint and feedback processes.

# Resources (1 of 5)

CMS Baltimore Office Contact—Division of Long-Term Services and Supports:
- HCBS@cms.hhs.gov

To Request Technical Assistance:
- HCBSettingsTA@neweditions.net

The Home and Community-Based Services Training series has trainings focused on various aspects of STP and HCBS implementation:
- Home & Community Based Services Training Series | Medicaid

STPs, Heightened Scrutiny Documents, and HCBS Settings Corrective Action Plans:

- https://www.medicaid.gov/medicaid/home-community-based-services/statewide-transition-plans/index.html

# Resources (2 of 5)

HCBS Settings Regulation Implementation: A National Conversation about Statewide Transition Plans, March 2022

- https://www.medicaid.gov/medicaid/home-community-based-services/downloads/hcbs-rule-stp-conversation.pdf

HCBS Settings Rule Implementation – Moving Forward Toward March 2023 and Beyond, May 2022

- https://www.medicaid.gov/medicaid/home-community-based-services/downloads/hcbs-settings-rule-imp.pdf

Themes Identified During CMS' Heightened Scrutiny Site Visits, November 2022

- https://www.medicaid.gov/medicaid/home-community-based-services/downloads/themes-identified-during-cms.pdf

- https://www.medicaid.gov/media/146861 (recording)

# Resources (3 of 5)

Medicaid Home and Community-Based Services Settings Regulation: Fitting the Pieces Together, February 2023

- https://www.medicaid.gov/medicaid/home-community-based-services/downloads/hcbs-settings-fitting-pieces-together-feb2023.pdf

Home and Community-Based Settings Compliance Post-March 2023, May 2023

- https://www.medicaid.gov/medicaid/home-community-based-services/downloads/hcb-settings-comp-post.pdf

Frequently Asked Questions (FAQs): Home and Community-Based Settings Regulation Implementation: Heightened Scrutiny Reviews of Presumptively Institutional Settings: SMD # 19-001, issued on March 22, 2019

- https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf

- https://www.medicaid.gov/sites/default/files/2019-12/hs-faq.pdf (slides)

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# Resources (4 of 5)

1915(c) Waiver Technical Guide

- https://wms-mmdl.cms.gov/WMS/help/version_36_1915c_Waiver_Application_and_Accompanying_Materials.zip

1915(i) Template

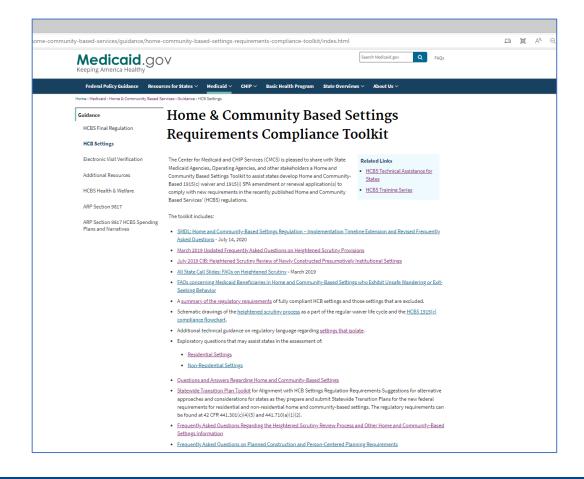- https://www.medicaid.gov/sites/default/files/2019-12/1915i-application_0.pdf

1915(k) Technical Guide

- https://www.medicaid.gov/sites/default/files/2019-12/cfc-technical-guide_0.pdf

# Resources (5 of 5)

CMS Home & Community Based Settings Requirements Compliance Toolkit

- [Home & Community Based Settings Requirements Compliance Toolkit | Medicaid](#)

# Questions