



# Department of Public Health and Human Services

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**Greg Gianforte, Governor**

**Adam Meier, Director**

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TO: Home and Community Based Services (HCBS) Providers and Stakeholders

FROM: Home and Community Based Services Tri-Divisional State Transition Plan Workgroup, Montana Department of Public Health and Human Services (DPHHS)

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RE: Centers for Medicaid and Medicare (CMS) Home & Community Based Settings  
Criteria: Montana Tri-divisional HCBS Waiver Transition Plan

This communication is to inform Montana's HCBS providers and stakeholders on progress and future activities relating to HCBS settings work that has taken place since 2014. Currently, immediate HCBS provider and stakeholder action is not necessary.

## **Background**

As previously announced, Montana intends to comply with the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS) published regulations in the Federal Register (42.CFR 441.301(c)(4)-(6) related to HCBS settings for section 1915(c) and approved state plans providing HCBS under section 1915 (i). These rules require states to

develop and submit a transition plan identifying how their HCBS waivers and 1915 (i) state plans providing HCBS services will come into full compliance with these regulations.

Narrowing the focus to rules pertaining to 1915(c) waivers, requirements identified within will impact several areas of HCBS including but not limited to:

- All Residential and Non-Residential Settings
- Conflict-Free Case Management
- Provider-Owned Residential Settings
- Person-Centered Planning Process
- Service Plan Requirements

The goal of the HCBS final rules is to improve HCBS services and to maximize the opportunities for members to receive services in integrated settings and maintain the benefits of community living. The regulations also aim to ensure that individuals have a free choice of where they live and who provides services to them, as well as ensuring that individual rights are not restricted. While Medicaid HCBS has never been allowed in institutional settings, these new regulations clarify that HCBS will not be allowed in settings that have the qualities of an institution. To assist states in making this transition, CMS has published guidance to provide further information about settings in which HCBS may or may not be allowed.

### **Revisiting Highlights of Montana’s Compliance Activities**

As required by CMS, Montana’s draft transition plan (posted online for public view) addresses the areas of assessment, remediation, and public input. DPHHS will partner with Medicaid members, providers, provider associations, advocates, and other stakeholders throughout this process to allow for input into the process and to assure that members and providers have access to needed information to assist with transition activities.

#### **i. Assessment and Monitoring**

Montana is required to review and analyze all settings in which Medicaid HCBS services are delivered and to report the results to CMS. Montana has implemented a multi-faceted approach to the assessment process. Activities include:

- Assessing the types of settings where HCBS is provided;
- Identifying general categories of settings that are likely to comply and settings that are not yet, but could become compliant (heightened scrutiny);
- Assessing requirements and practices relating to ongoing monitoring systems across the waivers;
- The development of a provider self-assessment tool to compile baseline HCBS compliance information;
- State analysis of provider self-assessments and on-site validation reviews;
- The development of a member assessment tool to compile setting satisfaction information; and
- Ongoing quality assurance review processes that will target HCBS settings compliance criteria.

## ii. Next Steps

CMS has reviewed the initial HCBS Statewide Transition Plan submitted by Montana and has asked for additional details and clarifications on the process for meeting compliance with these regulations before they can provide final approval to Montana's Statewide Transition Plan.

- a. Complete comprehensive site-specific assessments of all home and community-based settings, implement necessary strategies for validating the assessment results, and include the outcomes of these activities within the STP.
- b. Draft remediation strategies and a corresponding timeline that will resolve issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the home and community-based settings rule transition period.
- c. Outline a detailed plan for identifying settings that are presumed to have institutional characteristics, including qualities that isolate HCBS beneficiaries, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under Heightened Scrutiny.
- d. Develop a process for communicating with beneficiaries who are currently receiving services in settings that the state has determined cannot or will not come into compliance with the home and community-based settings.
- e. Establish ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future.

## What to Expect

Earlier in the assessment process facilitated by DPHHS, several HCBS settings had been flagged as potentially a 'heightened scrutiny' setting. Since this time, CMS has applied amendments to the settings rule which will prompt Montana to revisit any setting determined not to initially comply for reassessment and validation efforts. Soon, a DPHHS representative will be contacting providers to advance Montana's compliance process. For settings that are found not to comply, the provider will be required to submit a corrective action plan to DPHHS that describes the steps to be taken and expected timelines to achieve compliance. The state will consider the scope of the transition to be achieved and the unique circumstances related to the setting in question as corrective action plans are reviewed. If a provider is unable or unwilling to remediate a setting, it may be necessary to transition an individual to a compliant setting. In any instance where an individual would need to move to an alternate setting, the individual will be given timely notice and afforded a choice of alternative providers through the person-centered planning process. Providers and stakeholders are encouraged to review information relating to HCBS settings; additional information is available by visiting the identified links below. In the meantime, DPHHS will take a series of steps to guide providers in making the transition to full compliance with HCBS settings.

## **Resources**

<https://dphhs.mt.gov/hcbs>

<https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-services-final-regulation/index.html>

<https://www.federalregister.gov/documents/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider>

<https://dphhs.mt.gov/amdd>

<https://dphhs.mt.gov/dsd>

<https://dphhs.mt.gov/sltc>

DPHHS extends appreciation to all HCBS providers and stakeholders for their continued commitment and supportive partnerships while Montana continues to navigate through the HCBS settings compliance initiative.