



Department of Health
and Human Services

*Maine People Living
Safe, Healthy and Productive Lives*

Transition Plan for Complying with New HCBS Rules

SUBMITTED TO CMS APRIL 14, 2015

Maine Department of Health and Human Services

Office of MaineCare Services
Office of Aging and Disability Services

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Short Summary of the DHHS Transition Plan Process for Home and Community-Based Services (HCBS)

This Short Summary explains Maine’s Home & Community-Based Services (HCBS) Transition Plan. This Short Summary is a person friendly description of the HCBS Transition Plan.

What is this about?

This Short Summary discusses rules for services you get, and the State’s plan to make sure everyone understands them. We will be looking at what is happening now in Maine’s programs and how we will start talking to people about the plan.

What do I need to know?

This **Transition Plan** is required by the federal government as part of new Medicaid regulations. It tells the federal government how Maine will meet the new Medicaid rules. All states must follow the federal rules for the Medicaid program.

- Medicaid is a joint federal and state program that pays for certain medical and related services.
- In Maine, the Medicaid program is called **MaineCare**.
- An individual who gets services from MaineCare is called a **member**.
- The federal agency that is responsible for Medicaid is called the Centers for Medicare and Medicaid (“**CMS**”).

What are the new rules about?

The new rules are about certain home and Community-Based services. These services are sometimes called “**HCBS**” for short. HCBS are services that people get in a community setting and are a different option from institutional services such as a hospital, nursing facility or intermediate care facility.

There are many of types of home and Community-Based services and this can mean different things to different people.

What kinds of HCBS do the rules apply to?

These new rules apply only to certain kinds of services. In Maine, the rules apply to the **MaineCare “Waiver.”** The rules also apply to other kinds of services but Maine does not have any of those other services right now. Maine has six waivers. These waivers provide services to people who could get services in an institutional setting but choose instead to get their services in a community setting.

The new rules apply to any services that are paid for by the waiver. They may also apply to other places where waiver members get services.

Why were new rules made?

The reason for the new rules is to be sure that home and Community-Based services are provided differently than institutional services are provided. Even though the service is not provided by an institution, the setting may have qualities that feel like an institution to the person getting the services. The new rules look carefully at whether the setting for a service **isolates** the member from the community. Generally, being isolated means that a person is separated or treated differently from other people who live in the greater community.

In other words, this means the goal is to be sure that services are provided differently from institutional services. This is so that the person receiving services does not feel institutionalized or isolated. The new rules set out new standards and requirements about the settings where waiver members may get services so that this does not happen.

If these new rules are already final, what is happening now?

Even though the rules are final, there is a long process with many steps before any changes need to be made. A lot of information is still needed before anything happens. There will many of chances for the public, including members, their families, providers, and

advocates, to be involved and heard. Maine may have until **March 17, 2019** to complete all the steps that need to be made for the State to follow the new rules.

The first big step is that the Department of Health and Human Services (DHHS) must file the document, known as a Transition Plan, to CMS by **March 15, 2015**. This date is required for Maine by the new rules. The Transition Plan is a planning document that lists the steps Maine needs to take to follow the new rules.

What kind of changes may happen?

The new rules require Maine to look at all the different settings and decide if any of them have institutional qualities. CMS has given some guidance and examples about what this means. States must look at things like where the place is. States must look at other qualities that isolate the member from the greater community.

If the State decides some settings are like an institution, it can either

1. Stop the service in that setting for waiver members or
2. The State can present information to CMS about why the setting should be allowed for waiver members. In some cases, the provider may be able to make changes to meet the rule.

Here is an example:

Any service setting that is in the same building as a nursing facility is considered to feel institutional by CMS. In order to continue services in this setting for waiver members, such as adult day services, information will need to be given to CMS explaining why the service in that specific setting is not isolating or institutional in its feel to the members getting that service. CMS will review the information that is provided, and will make a decision about whether that setting is allowed under the new rules. If information is not given to CMS, the service at that site would need to end for waiver members.

Are there any other requirements?

The new rules have standards that apply to all services waiver members get. There are additional standards that apply to provider owned or controlled residential services. These standards relate to issues such as:

- community access
- member rights
- self-decision making
- choice of providers

There is more information about these standards, including the additional standards for provider owned or controlled residential settings, in the Transition Plan on page 1-3.

Are there any exceptions to the standards?

Settings cannot be “grandfathered” under the new rules. This means that all existing settings must comply with the new rules, and the State cannot choose to apply these new rules only to new or future providers.

In some cases, some of these requirements may be changed or modified if the modification can be:

- Supported by a specific assessed need;
- Justified in the person-centered service plan; and,
- Documented in the person-centered service plan.

Does the Transition Plan say which settings or providers meet the new rules?

The Transition Plan does not list specific waiver services providers. At this point, the Transition Plan talks about the different types of providers, such as group homes, shared living, and others who are serving waiver members.

Based on early information that has been looked at, very few providers will be considered institutional in nature, so most providers are probably still eligible to serve waiver members. It looks like most providers will be able to meet the new rules, though there may be some changes that are needed.

It is very important to understand that there is still a lot of work that needs to happen. More information is needed before any final decisions or findings are made. The process to get more information will involve talking to members, families and providers as well as a lot of other work.

What information is included in the Transition Plan?

The Plan includes details about the new requirements and the different waiver programs in Maine. It also tells CMS about what DHHS has done so far, what still needs to be done, and how DHHS will do it. It also sets out timeframes for all the work. CMS needs to approve this plan. Here is a page-by-page description of the Transition Plan.

1. Pages 1-5 of the Transition Plan

The Transition Plan starts by describing the new rules and the waiver programs in Maine. It lists some of the new standards that must be met. It also talks about the community forums that have been held to talk about the new rules.

2. Pages 6-9 of the Transition Plan

The Transition Plan talks about how DHHS asked Waiver members, providers, and others to tell DHHS if they agreed or disagreed with the Transition Plan. The Transition Plan also says how DHHS changed the Transition Plan after it received these suggestions.

3. Pages 9-12 of the Transition Plan

The Transition Plan talks about the work that DHHS has started. The first thing DHHS did was look through all written policy and rules and compare those rules to the new requirements. The Transition Plan says whether DHHS believes policy and rule changes will be required because of the new rules. It says whether those changes will be fairly

simple wording changes or whether it means there has to be a significant change in practice. The Transition Plan shows this review for every waiver program, looking at every new part of the rule.

Generally, this review showed that programs providing residential services will have more rule changes than programs serving people in homes they own or rent. A summary chart of the results is on pages 10-12 of the Transition Plan.

Here are some examples:

Maine's Section 19 Waiver rules say that a waiver member may not live in a hospital or nursing facility because these are institutional settings. That section of the rule does not talk about Intermediate Care Facilities (ICF), which are another kind of institution. This is called a "Technical Change" in the Transition Plan because adding ICF to that section of the rule does not impact, or change, services for anyone since no one on Section 19 lives in an ICF.

The rules for the Section 21 Waiver currently do not say whether members who share bedrooms need to have a choice of roommate, which is one of the new requirements. Adding this language to the rule might mean a change for members and providers, so this is called a "Significant Change" in the Transition Plan.

4. Page 13 of the Transition Plan

The same work was done to see if Maine has the ability to check, or verify, over time that the new rules will continue to be met. Based on a review of the current rules, most of the Waiver programs will need a better verification system so that Maine can be sure that all the requirements of the new rules are being met on an ongoing basis. That chart can be found on page 13 of the Transition Plan.

Here are a few examples of possible verification systems:

-Site reviews by DHHS's Division of Licensing and Regulatory Service

-In-home visits by care managers and care coordinators

-Safeguards in the claims system that would not allow claims to pay for waiver members in certain settings that are not allowed by the new rules (such as a nursing facility or ICF).

5. Pages 14-19 of the Transition Plan

Maine has also included a “best estimate” of the number of service settings that 1) meet the new rules right now; 2) could meet the new rules if some changes are made; 3) have qualities of an institution and do not meet the requirement’s new rules. “Best estimate” means that the information is based on the best information we have now but that more work needs to be done to be sure the information is correct. The Transition Plan describes each type of setting and gives the number of providers and members being served in those settings on pages 16-18. The Transition Plan lists provider types but does not list or name specific providers.

Based on preliminary, or early, information, DHHS believes that most of the settings either meet the requirements of the new rules or could meet the requirements if changes were made. DHHS believes a few settings may have institutional qualities which will require additional review; for example, if the service setting is located in the same building as a nursing facility. This summary is found on pages 18-19 of the Transition Plan.

As stated above, based on the preliminary information that has been looked at, very few providers will be considered institutional in nature and therefore not eligible under the rules to serve waiver members. It appears that most providers will be able to meet the new rules though there may be some changes that are needed.

It is very important to understand that there is still a lot of work that needs to happen and more information is needed before any final decisions or findings are made. The process to get more information will involve talking to members, families, and providers, as well as other work.

6. Pages 19-25 of the Transition Plan

The Transition Plan also sets out what DHHS needs to do to look at each setting more carefully to be sure about the information it has and to find out what changes need to happen for different providers. Some of the steps that DHHS plans to do after it files the Transition Plan and gets approval from CMS include:

- Site visits
- Provider surveys
- Member interviews

Pages 19-25 of the Transition Plan show the steps and the timeframes for each waiver program. There will be many chances for members, families, provider, advocates, and other people interested in the process to be involved and provide comments or opinions.

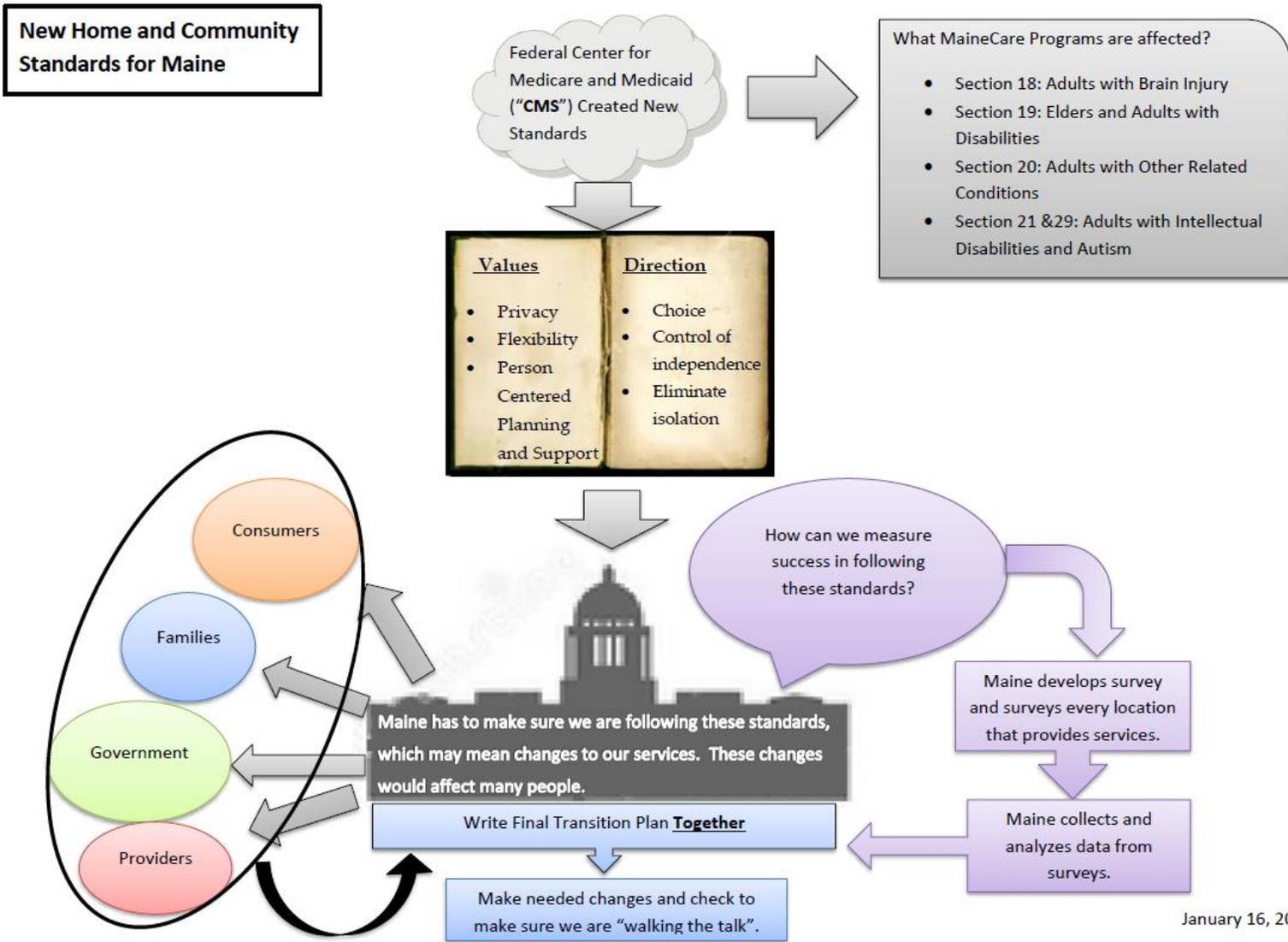
Until all of those steps are taken, Maine does not have a complete picture of all the changes that need to happen. Once all the information is collected, DHHS will give out this information in a report to the public. If necessary, DHHS will develop and file an updated Transition Plan to CMS. That updated Transition Plan would give more detail about the specific steps that will be taken to ensure that all settings meet the new requirements by March 2019.

7. Pages 26-45 of the Transition Plan

This section of the Transition Plan looks at each waiver program separately and summarizes all of the information by program. The different waiver programs are listed in the Table of Contents.

8. Pages 45-49 of the Transition Plan

This last section talks about the questions and comments that advocates, providers, and families asked about when they read the Transition Plan in December and January. This section also explains if DHHS changed the Transition Plan because of the questions or comments.



January 16, 2015

Introduction

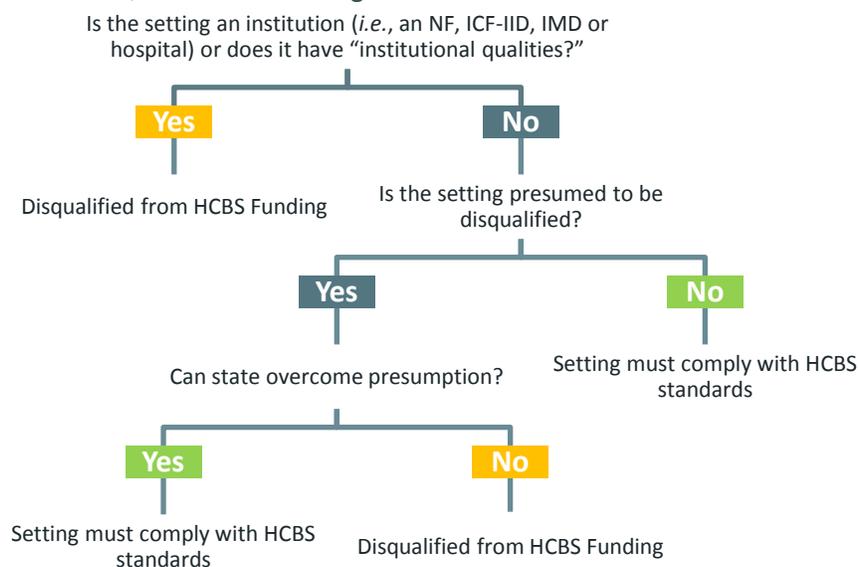
The Centers for Medicare and Medicaid Services (CMS) has implemented new rules governing Medicaid-funded Home and Community-Based Services (HCBS) authorized under §1915(c), §1915(i) and §1915(k) of the Social Security Act. The new rules set standards for person-centered planning, conflict-free case management, and the settings in which HCBS is provided. The rules became effective March 17, 2014. For the standards that apply to HCBS settings, DHHS must submit a “Transition Plan” to CMS that assesses Maine’s compliance status relative to the settings standards and provides a proposed work plan and timeline for ensuring that all settings in which HCBS services are provided comply with the new standards. This document outlines Maine’s plan based on the Department’s preliminary self-assessment of Maine’s compliance status, informed by feedback and input from stakeholders.

The Department began its preliminary self-assessment process in June 2014 to determine how well its policies and practices complied with the new HCBS rules, to assess how well settings complied with the new standards, and to assess how well our quality assurance systems ensure that settings comply with the new HCBS standards. This self-assessment process included a review of existing Medicaid policy, licensing and other regulations, manuals, statutes, and other relevant documentation; a review of program data and interviews with program staff. Based on the results of that process, this document describes where we believe Maine currently appears to comply with the new rules; those areas we need to evaluate further and may need to change, and our proposed work plan and timeline for ensuring that all settings comply on an ongoing basis. This Transition Plan describes how this preliminary self-assessment process will be supplemented with provider surveys, site visits, assessments of member experience, and other more systematic methods of data collection.

Overview of New HCBS Rules

The new HCBS rules set new standards for HCBS services. In particular, they define standards for the physical characteristics of the settings in which HCBS may be provided. Settings that cannot meet these standards are disqualified as HCBS settings. The new rules also set standards for individual choice, autonomy, privacy, interaction with the broader community, and other protections. There are specific standards that apply to provider-owned or controlled residential settings. The next few pages provide an overview of the new HCBS rules. Figure 1 provides an overview of the tests that a setting must meet before it can be an HCBS setting.

Figure 1. Disqualified* and Qualified HCBS Settings Under New HCBS Rule



*A provider disqualified as an HCBS provider may still qualify to provide other Medicaid services.

Overview of HCBS Requirements

The new HCBS rules require certain “home and community-based services” to be provided in a way to ensure that, as much as possible, people receiving HCBS have the same rights and access to the same life experiences as anyone not receiving HCBS. The new rules apply to both the settings in which persons receiving HCBS live (*e.g.*, a group home, shared living arrangement or family centered home) and other settings in which they receive HCBS services (*e.g.*, adult day health services). These settings also appear to apply to provider-owned or controlled residential settings that are not reimbursed under the waiver but serve waiver members.

Automatically Disqualified Settings

The new rules **automatically disqualify** some settings from serving as HCBS settings. These include:

- Nursing facilities
- Psychiatric institutions (“IMDs”)
- Intermediate Care Facilities for Individuals with Intellectual Disability
- Hospitals
- Any other settings having the **qualities of an institution**

Presumed Disqualified Settings

Some settings are not automatically disqualified but are **presumed to be disqualified** (*i.e.*, presumed to have “institutional qualities”). These include settings:

- Located in publicly or privately operated facility that provides inpatient institutional treatment (*e.g.*, a program or unit co-located with a *privately or publicly* operated nursing facility).
- Located on the grounds of, or immediately adjacent to, a public institution (*e.g.*, a program sharing a campus with a *publicly* operated institution).
- Any other setting having the effect of isolating individuals receiving HCBS from the broader community of individuals not receiving HCBS (*e.g.*, a program sharing a campus with a *privately* operated institution might still be disqualified, if it has an isolating effect on people receiving HCBS). Settings that have an **isolating effect** include settings:
 - Designed to provide multiple types of services and activities on-site (*e.g.*, housing, day, therapeutic, social and recreational).
 - Where people receiving HCBS in the setting have limited interaction with the broader community.
 - That use or authorize interventions used in institutional settings or that are deemed unacceptable in Medicaid institutional settings. Settings designed specifically for people with disabilities, where individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many of the services in the setting, “might, but will not necessarily” have an isolating effect.

For those settings presumed to be disqualified, a state may choose to submit evidence to CMS to attempt to **overcome the presumption**. The evidence must document that the individual has the same degree of access to chosen activities as individuals not receiving Medicaid HCBS. In the absence of strong evidence, the presumption holds and the setting will be disqualified.

Standards that Apply to All HCBS Settings

All HCBS settings must:

- Be integrated in, and support access to, the greater community.
- Provide opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources.
- Ensure the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services.
- Be selected by the individual from different setting options, including non-disability specific settings and an option for a private unit if the individual lives in a provider-owned or controlled residential. The person-centered service plan must document the options based on the individual's needs, and preferences; and for residential settings, the individual's resources.
- Ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.
- Optimize individual initiative, autonomy, and independence in making life choices.
- Facilitate individual choice regarding services and supports, and who provides them.

Standards that Apply to All Provider-Owned or Controlled Residential HCBS Settings

In addition, **provider-owned or controlled residential settings** must meet an additional set of standards.

- The member must have a legally enforceable agreement with the same responsibilities and protections from eviction as all tenants have.
- Each individual has privacy in their sleeping or living unit.
- Units have lockable entrance doors, with appropriate staff having keys to doors as needed.
- Individuals sharing units have a choice of roommates.
- Individuals have the freedom to furnish and decorate their sleeping or living units.
- Individuals have freedom and support to control their schedules and activities and have access to food any time.
- Individuals may have visitors at any time.
- Setting is physically accessible to the individual.

Modifications of the additional requirements must be:

- Supported by specific assessed need.
- Justified in the person-centered service plan.
- Documented in the person-centered service plan.

The person-centered service plan must include documentation of modifications of the additional requirements including:

- Specific individualized assessed need.
- Prior interventions and supports, including less intrusive methods.
- Description of condition proportionate to assessed need.
- Ongoing data measuring effectiveness of modification.
- Established time limits for periodic review of modifications.
- Individual's informed consent.
- Assurance that interventions and supports will not cause harm.

At the time this plan was developed, Maine had seven approved §1915(c) HCBS waivers, and no §1915(i) or §1915(k) State Plan Amendments. Table 1 identifies these waiver programs by the section number for that part of the MaineCare Benefits Manual governing that particular waiver program. For example, the Other Related Conditions waiver is governed under §20 of the MaineCare Benefits Manual. Throughout this document, each waiver program is referred to by the relevant section number under the MaineCare Benefits Manual, with a shortened version of the waiver’s name, as indicated in the table below.

Table 1. Maine's Approved §1915(c) Waivers

| Program | Initial Approval | Most Recent Effective Date | Maximum Number of Members |
|---|------------------|----------------------------|---------------------------|
| §18 Home and Community-Based Services for Adults with Brain Injury* (ME 1082) | 2014 | 7/1/14 | 250 |
| §19 Home and Community Benefits for the Elderly and for Adults with Disabilities (ME 0276) | 1994 | 7/1/13 | 1643 |
| §20 Home and Community Services for Adults with Other Related Conditions (ME 0995) | 2013 | 5/1/13 | 25 |
| §21 Home and Community Benefits for Members with Intellectual Disabilities or Autistic Disorder (ME 0159) | 1987 | 7/1/10 | 2945 |
| §22 Home and Community Benefits for the Physically Disabled** (ME 0127) | 1989 | 7/1/09 | 160 |
| §29 Support Services for Adults with Intellectual Disabilities or Autistic Disorder (ME 0467) | 2007 | 1/1/11 | 1480 |
| §32 Waiver Services for Children with Intellectual Disabilities or Pervasive Developmental Disorders*** (ME 0864) | 2011 | 2/1/11 | 80 |

*Enrollment on the Brain Injury waiver began November 1, 2014. Currently seven members are enrolled under this waiver.

** As of December 27, 2014, § 22 was merged with §19 into a single waiver. *** §32 has been terminated as of 3/27/15.

Maine also has an §1115 demonstration waiver that provides case management and treatment to persons with HIV who would not otherwise be eligible for Medicaid. This demonstration program explicitly excludes Maine’s HCBS waiver programs and other LTSS as covered benefits and is therefore determined to be out of scope.

The new HCBS standards impact each of Maine’s waivers differently:

- The §1915(c) waiver authorizing the HCBS program for **adults with brain injury** under **§18** was approved (May 6, 2014) after the effective date of the new HCBS rules. Before approving this waiver, CMS determined its policies to already be in compliance with the new HCBS rules. Similarly, when CMS approved the §1915(c) waiver authorizing the **§20 Other Related Conditions** program (May 1, 2013); it was already applying most of the HCBS standards to new waivers. As a result, the approved waiver document for §20 also substantially complies with the new rules. Because both of these programs are small with active involvement of Department staff, the Department can verify that practice is in compliance with the new HCBS standards. This Transition Plan addresses some technical changes to policies and the Department’s plans for formalizing verification systems for ensuring compliance.
- The waiver program for **older adults and adults with disabilities** governed under **§19** does not allow any HCBS services to be provided in a provider-owned or controlled residential setting. The majority of services provided under this waiver program are provided in the waiver participant’s own home. CMS regulations allow states to presume that an individual’s home complies with the HCBS settings standards. However, §19 also covers adult day health services, which must also meet HCBS standards. Our analysis of §19 focuses primarily on adult day health services. Through its efforts to strengthen person-centered planning across programs, the Department will explore other program enhancements to ensure that

individuals living at home have access to the community to the same extent as individuals not receiving HCBS.¹

- **Section 21** is the waiver providing a comprehensive array of home and community-based services, including in-home supports, to **individuals with intellectual disability or autism**. In addition, some individuals receiving HCBS services under this waiver program also receive residential services as a Medicaid State Plan service, under **§97 Private Non-Medical Institutional (PNMI) services**.² Under this Transition Plan, the Department assumes that any setting in which an individual lives while receiving an HCBS service, whether or not the services are provided in that setting, must be compliant with HCBS standards.³
- **Section §29**, which provides community-based supports to **individuals with intellectual disability or autism**, provides in-home waiver services. Similar to **§21 (ID/A HCBS)**, settings in which Work Support and Community Support are provided must be in compliance. Also like §21, some individuals receiving HCBS services under this waiver program receive PNMI services funded as a Medicaid State Plan service. Again, the Department is treating any setting in which an individual lives while receiving an HCBS service as within the scope of settings that must comply with HCBS standards.⁴
- The §1915(c) waiver authorizing HCBS for **children with intellectual disabilities or autism** (governed under **§32**) has been terminated as of 3/27/15.

Our preliminary assessment of how well the settings impacted by these waiver programs comply with the new HCBS standards is outlined in SUMMARY FINDINGS FROM PRELIMINARY SELF-ASSESSMENT OF POLICY AND PRACTICE, starting on page 9.

¹ According to written guidance from CMS, “[t]he regulations allow states to presume that the enrollee’s private home or the relative’s home in which the enrollee resides meets the requirements of HCB settings.” CMS also noted that “[w]hile a private home may afford the individual a home-like setting, the person-centered plan and provision of appropriate services that support access to the greater community are critical components to ensure community integration, especially for individuals with limited social skills.” Centers for Medicare & Medicaid Services, *HCBS Final Regulations 42 CFR Part 441: Questions and Answers Regarding Home and Community-Based Settings* (undated), accessed on February 27, 2015 at: <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/q-and-a-hcb-settings.pdf>.

² Through the person-centered planning process, the Department ensures that there is no duplication between state plan-funded residential services and the Home Supports provided through the waiver.

³ The Department does not assume that all settings providing PNMI services must comply with HCBS standards, only those providing residential services to individuals receiving services under an HCBS waiver program.

⁴ See note 2 above.

Stakeholder Outreach and Engagement

The Department has used multiple strategies for informing stakeholders about the new HCBS rules and the implications for Maine, for responding to questions and concerns and to solicit input on our preliminary assessment of compliance. We are looking forward to fully engaging stakeholders during the Transition Plan implementation phase.

Outreach and Informational Webinars

On October 14, 2014 the Department initiated a public education and outreach campaign by disseminating a notice about a series of informational webinars targeting the four primary audiences identified in the table below.

| Audience | Program | Date |
|--------------------------|--|----------|
| Members & family members | Any | 10/27/14 |
| Service providers | §18, adults with brain injury §20, adults with other related conditions | 10/28/14 |
| Service providers | §19 and §22, older adults & adults with physical disabilities | 10/29/14 |
| Service providers | §21 and §29, adults with intellectual disability or autism | 10/31/14 |

Notice of these webinars was disseminated through the listservs of the Office of Aging and Disability Services (OADS) and the Office of MaineCare Services (OMS) and posted on OADS' website.⁵ Meeting materials providing an overview of the new rules were also posted on OADS' website.⁶ Stakeholders were invited to ask questions during the webinars, by contacting DHHS leads, or by submitting questions. The meeting materials included phone numbers and email addresses for three Department leads as well as OADS' email address for submitting questions.⁷

OADS and OMS also maintain a website for updates relating to the HCBS rules and the Transition Plan.⁸

Community Forum

Beginning December 12, 2014 OADS initiated a second round of outreach and engagement by issuing a notice of a community forum to be held on December 19, 2014. Notice of the public forum was published in the legal notice section of five major newspapers,⁹ disseminated through the OADS listserv, and posted on the OADS website. On December 15, 2014, OADS posted a draft of this Transition Plan on its website¹⁰ and disseminated it through the OADS listserv.

The statewide community forum took place on December 19, 2014. It was open to the public, linking multiple sites (the University of Maine at Augusta, the University of Maine at Orono, the University of Maine at Presque Isle, the

⁵ See OADS News page providing an overview of the new rule and announcing the webinar: <http://www.maine.gov/dhhs/oads/aging/news-details.shtml?id=629500>, accessed November 3, 2014.

⁶ See archived OADS News page posted October 22, 2014 and providing information about informational sessions and links to meeting materials: <http://www.maine.gov/dhhs/oads/aging/news-details.shtml?id=630012>, accessed February 27, 2015.

⁷ The Department is unable to report on the number of stakeholders participating in these webinars.

⁸ OADS' HCBS Regulatory Updates page is located at: <http://www.maine.gov/dhhs/oads/initiatives/HomeandCommunityBasedServicesRegulation2014.htm>. This page was created December 15, 2014.

⁹ Notice of the community forum was printed in the legal notice section of these newspapers: on Sunday, December 14, 2014, the Portland Press Herald/Maine Sunday Telegram, the Sun Journal, the Kennebec Journal, and the Morning Sentinel; and on Monday, December 15, 2014: the Bangor Daily News. The content of the published notice may be viewed in the Appendix on page 64.

¹⁰ The draft Transition Plan was posted on OADS HCBS Regulatory Updates page located at: <http://www.maine.gov/dhhs/oads/initiatives/HomeandCommunityBasedServicesRegulation2014.htm>.

University of Maine at Fort Kent, and the University of Southern Maine) through interactive video conferencing. Twenty-five people participated in person across all five sites, and 100 people listened in by phone.

The purpose of the forum was to provide an opportunity for a two-way dialogue about the Transition Plan, providing stakeholders the opportunity to ask questions about it and an informal forum for voicing their concerns. The forum also provided Department staff an opportunity to clarify their own understanding of stakeholder concerns. The dialogue was informal. Questions and concerns were noted but not recorded as formal comments.

Members were invited to submit informal written questions and comments by December 31, 2014, prior to the initiation of the formal public comment period. Informal questions and comments have been addressed in the Department's response to comments, below. The Department received informal written questions and comments from a total of three members of the public.

In response to requests from stakeholders, the Department also produced a plain language version of the Transition Plan, which was disseminated on January 15, 2015, as well as graphical representation of the objectives of the Transition Plan, which was posted on January 16, 2015. Both of these documents may be viewed on the Department's HCBS Regulatory Updates page.¹¹

Advisory Group Meetings

The Department convened an advisory group to begin a dialogue on implementing the new HCBS standards. The first meeting was scheduled for December 9 but was postponed until December 29 due to weather.

In addition to OADS staff members, representatives from the following organizations were invited to this meeting:

- Maine Health Care Association
- Disability Rights Center
- Maine Association of Community Service Providers
- Developmental Disabilities Council
- Speaking Up for Us
- The Home Care Alliance of Maine
- Community Housing of Maine
- Maine Association of Area Agencies on Aging
- Legal Services for the Elderly
- National Healthcare Associates
- Maine Developmental Service Oversight and Advisory Board
- Maine Long Term Care Ombudsman Program

Sixteen people were in attendance at the December 29 meeting. As we move forward with implementation, this advisory group will be replaced by four advisory groups with expanded membership. See WORK PLAN AND TIMELINE FOR ENSURING COMPLIANCE starting on page 19.

Opportunity for Formal Comments

The Office of MaineCare Services received formal public comments on the Transition Plan. On December 31, 2014, OMS provided legal notice of a public hearing and an opportunity to submit formal comments by publishing legal notice in five major newspapers and posting an announcement on the OMS' Policies and Rules webpage.¹² The published notice provided a link to the OMS webpage for obtaining a copy of the Transition Plan and for submitting public comments. Persons visiting the OMS webpage could download a copy of the draft Transition Plan, a graphical representation of the Transition Plan, and obtain information for viewing a copy of the Transition Plan at

¹¹ See note 8. The graphical document may also be accessed through OMS' Policy and Rules page. See note 13.

¹² See the Appendix on page 64 for information on the newspapers in which notice was published and the notice content.

any of the Department's regional offices or, obtaining a printed copy from OMS. The draft Transition Plan was posted on the Office of MaineCare Services Policies and Rules webpage December 31, 2014.¹³

A public hearing complying with Maine's Administrative Procedures Act (APA) was held January 16, 2015. Testimony from five members of the public was received and recorded. Formal written comments were accepted through January 31, 2015. A total of ten formal written comments were received by the January 31, 2015 deadline.

Technical Assistance on Compliance for Employment-Related Services

Maine is one of 15 states participating in the Employment First Leadership Mentoring Program (EFLMP) funded by the Office of Federal Employment Policy at the federal Department of Labor. Through that mentorship program, Dr. Lisa Mills (one of the five subject matter experts chosen to assist Maine), who has a focused responsibility for the HCBS Transition Plan, has reviewed the draft Transition Plan and drafted a report providing guidance on policy choices Maine could make to make the employment more integrated and accessible for persons receiving HCBS services. Her report was received February 16, 2015 and posted on the OADS' news webpage¹⁴ and on OADS' HCBS Regulatory Updates webpage. Dr. Mills recommendations were considered in revisions made to the report and will serve as a resource during the implementation phase of the Transition Plan.

Summary of Changes to Transition Plan Made in Response to Comments

In response to the comments we received, we have made several clarifications and substantive changes to the Transition Plan. These include:

- Clarifying that we have applied the HCBS standards to all of Maine's waivers.
- Clarifying the relationship between the HCBS settings standards and the Department's plans for strengthening the person-centered planning process and access to the community for persons living at home. Although any modification to the person-centered planning process made under this Transition Plan will only be incidental to complying with HCBS settings standards, the Department plans to continue to strengthen person centered planning across programs.
- Clarifying our intent with respect to submitting evidence to CMS for those settings presumed to be disqualified. The Department is not committed to submitting evidence for all settings presumed disqualified; only those that we believe do not isolate and can comply with the HCBS standards, with or without modification to the setting or provider practice.
- Recognize that, while only a small subset of Maine's adult day centers serve waiver participants, which adult day centers are serving waiver participants can change from time to time. We have modified the Transition Plan to expand the provider assessment process to include all adult day centers.
- Modified the Transition Plan to more clearly articulate a stakeholder process that incorporates stakeholder input throughout the implementation phase.
- Revised the Transition Plan to incorporate the input of multiple parties in designing the sampling methodology.
- Expanded the reach of training programs to include members and others as appropriate.

Other Changes to Transition Plan

In addition to the changes made in response to public comments, the following changes were made in response to corrections and comments of Department staff:

- The addition of a plain language explanation of the Transition Plan as well as a graphic representation of the Transition Plan.

¹³ The URL for the Transition Plan posting on OMS' webpage page is: <http://www.maine.gov/dhhs/oms/rules/transition-plan.shtml>. The notice on OMS' webpage may be viewed at this site or in the Appendix on page 64.

¹⁴ This document may be accessed on the OADS home page (<http://www.maine.gov/dhhs/oads/index.shtml>) and its HCBS Regulatory Updates page (<http://www.maine.gov/dhhs/oads/initiatives/HomeandCommunityBasedServicesRegulation2014.htm>).

- Corrections relating to data for, and the characterization of, Work Support settings.
- Updates for enrollments under §18 (Brain Injury) and §20 (ORC).
- Extended timelines for rulemaking, amending waivers, etc., to reflect more realistic timelines.

Summary Findings from Preliminary Self-Assessment of Policy and Practice

Criteria and Process

To assess compliance with the new rules, each new requirement was compared with existing policy including the most current waiver applications approved by CMS,¹⁵ the relevant section of the MaineCare Benefits Manual and licensing regulations for adult day health and assisted housing,¹⁶ certain statutes, and other related policies and procedures.

Maine policy was found to be compliant with the new HCBS rules applicable to settings when it captured all key elements of the new HCBS rules or when the specific requirements of the rule were not applicable to that waiver program. For example, when a waiver program does not provide services in a provider-owned or controlled residential setting, standards relating to residential settings were determined to be non-applicable.

In some cases, Maine policy does not address the specific requirements of the new HCBS rules or it is in conflict with those rules. In addition, the Department is also aware of certain situations where Maine policy might be substantially in compliance but current verification systems do not adequately ensure that providers are in compliance with the policy. In these situations, the Department has distinguished between the level of effort associated with bringing policy and practice into compliance. Where we believe the change in policy or practice is relatively minor, we identified the change as “technical.” Where we believe compliance requires a major change in policy or practice, we identified the change as “significant.” These criteria are summarized in Table 2.

Table 2. Criteria for Classifying Compliance Status – Policy and Practice

| | |
|-----------------------|--|
| Compliant – No Change | <ul style="list-style-type: none"> • The language of existing policy captures all key elements of the new HCBS rules; OR • The specific HCBS requirement does not apply to this waiver program (<i>e.g.</i>, the program does not provide services in a provider-owned or controlled residential setting, or the program does not cover work supports). |
| Technical Change | <ul style="list-style-type: none"> • The policy omits or is slightly inconsistent with a requirement under the new HCBS rules; AND • Current practice is believed to be consistent with the new rules or, if inconsistent, coming into compliance is not expected to have a significant impact |
| Significant Change | <ul style="list-style-type: none"> • The policy omits, or is significantly inconsistent with, the requirements under the new HCBS rules; OR • Current practice is believed to be inconsistent with the new rules and coming into compliance is expected to have a significant impact |

¹⁵ Medicaid waiver documents for all states may be accessed through CMS’ website: http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers_faceted.html.

¹⁶ All Maine Department of Health and Human Services rules may be accessed at: <http://www.maine.gov/sos/cec/rules/10/chaps10.htm>.

Findings

Table 3 provides an overview of our assessment of how well current waiver policy complies with the new HCBS rules. Detailed findings for each waiver, including citations to relevant policy, can be found in the appendices. See Table 2 for an explanation of the criteria used for each finding.

Table 3. Assessment of Compliance Status for Policy and Practice, by Waiver Program

| Type of Setting | Waiver Programs | | | | | |
|---|------------------|--------------------|--------------------------|-----------------------|-----------------------|--------------------------|
| | §18 | §19 | §20 | §21 | §22 | §29 |
| | Brain Injury | Elder/Adult | Other Related Conditions | Adults ID/Autism HCBS | Consumer Directed PAS | Adults ID/Autism Support |
| HCBS Settings | | | | | | |
| The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community to the same degree of access as individuals not receiving Medicaid HCBS. Including: | | | | | | |
| • Opportunities to seek employment and work in competitive integrated settings. | No Change | No Change | No Change | Significant Change | No Change | Significant Change |
| • Engage in community life. | No Change | Significant Change | No Change | No Change | No Change | No Change |
| • Control personal resources. | Technical Change | No Change | Technical Change | Significant Change | No Change | Significant Change |
| • Receive services in the community. | Technical Change | No Change | Technical Change | Technical Change | No Change | Technical Change |
| Is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. | Technical Change | No Change | Technical Change | Significant Change | No Change | Significant Change |
| • The setting options are identified and documented in the person-centered service plan. | Technical Change | Technical Change | Technical Change | Significant Change | No Change | Significant Change |
| • Are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. | Technical Change | No Change | Technical Change | Significant Change | No Change | Significant Change |
| Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. | No Change | Technical Change | No Change | No Change | No Change | No Change |
| Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. | No Change | No Change | No Change | Significant Change | No Change | Significant Change |
| Facilitates individual choice regarding services and | No Change | No Change | No Change | Significant Change | No Change | Significant Change |

| Type of Setting | Waiver Programs | | | | | |
|--|-----------------|-------------|--------------------------|-----------------------|-----------------------|--------------------------|
| | §18 | §19 | §20 | §21 | §22 | §29 |
| | Brain Injury | Elder/Adult | Other Related Conditions | Adults ID/Autism HCBS | Consumer Directed PAS | Adults ID/Autism Support |
| supports, and who provides them. | | | | | | |
| Standards that apply to provider-owned or controlled residential setting | | | | | | |
| The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and The individual has... same responsibilities and protections ...under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS member.... | No Change | No Change | No Change | Significant Change | No Change | Significant Change |
| Each individual has privacy in their sleeping or living unit: | No Change | No Change | No Change | Significant Change | No Change | Significant Change |
| <ul style="list-style-type: none"> Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. | No Change | No Change | No Change | Significant Change | No Change | Significant Change |
| <ul style="list-style-type: none"> Individuals sharing units have a choice of roommates in that setting. | No Change | No Change | No Change | Significant Change | No Change | Significant Change |
| <ul style="list-style-type: none"> Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. | No Change | No Change | No Change | Significant Change | No Change | Significant Change |
| Individuals have the freedom and support to control their own schedules and activities , and have access to food at any time. | No Change | No Change | No Change | Significant Change | No Change | Significant Change |
| Individuals are able to have visitors of their choosing at any time. | No Change | No Change | No Change | Significant Change | No Change | Significant Change |
| The setting is physically accessible to the individual. | No Change | No Change | No Change | No Change | No Change | No Change |
| Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. | No Change | No Change | No Change | Technical Change | No Change | Technical Change |
| The following requirements must be documented in the person-centered service plan: | No Change | No Change | No Change | Technical Change | No Change | Technical Change |

| Type of Setting | Waiver Programs | | | | | |
|--|-----------------|--------------------|--------------------------|-----------------------|-----------------------|--------------------------|
| | §18 | §19 | §20 | §21 | §22 | §29 |
| | Brain Injury | Elder/Adult | Other Related Conditions | Adults ID/Autism HCBS | Consumer Directed PAS | Adults ID/Autism Support |
| <ul style="list-style-type: none"> Identify a specific and individualized assessed need. | No Change | No Change | No Change | Technical Change | No Change | Technical Change |
| <ul style="list-style-type: none"> Document the positive interventions and supports used prior to any modifications to the person-centered service plan. | No Change | No Change | No Change | Significant Change | No Change | Significant Change |
| <ul style="list-style-type: none"> Document less intrusive methods of meeting the need that have been tried but did not work. | No Change | No Change | No Change | Technical Change | No Change | Technical Change |
| <ul style="list-style-type: none"> Include a clear description of the condition that is directly proportionate to the specific assessed need. | No Change | No Change | No Change | Technical Change | No Change | Technical Change |
| <ul style="list-style-type: none"> Include regular collection and review of data to measure the ongoing effectiveness of the modification. | No Change | No Change | No Change | Technical Change | No Change | Technical Change |
| <ul style="list-style-type: none"> Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. | No Change | No Change | No Change | Technical Change | No Change | Technical Change |
| <ul style="list-style-type: none"> Include the informed consent of the individual. | No Change | No Change | No Change | Technical Change | No Change | Technical Change |
| <ul style="list-style-type: none"> Include an assurance that interventions and supports will cause no harm to the individual. | No Change | No Change | No Change | Technical Change | No Change | Technical Change |
| Disqualified and Presumed Disqualified | | | | | | |
| <p>Disqualified settings: NF, hospital, ICF-IID, IMD and any other locations that have qualities of an institutional setting</p> | No Change | Technical Change | No Change | Technical Change | Technical Change | Technical Change |
| <p>Presumed disqualified: Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.</p> | No Change | Significant Change | No Change | Significant Change | No Change | Significant Change |

Preliminary Self-Assessment of Verification Systems

In order to ensure compliance, DHHS needs to have verification systems in place that monitor members’ experience of services, how providers deliver the services, and the characteristics of the settings in which services are provided. For example, existing licensing standards for residential settings might be part of the verification system. Case management programs that monitor the member’s experience of services might be another part of the verification system.

Based on an assessment of existing verification systems, we have categorized existing verification systems into three groups. In a number of cases, we believe our verification systems adequately ensure compliance with the new HCBS rules. However, in certain situations we have found the verification systems to be informal systems, without standard protocols for ensuring compliance. In these situations, we believe we need to develop standard protocols to ensure that these verification systems are consistent over time. Thus, we categorize those verification systems that are adequate and standardized as “In Place.” For those that are adequate but not standardized, we put in the “Formalize System” category. Finally, we put those verification systems that do not adequately assure compliance into the “Modify System” category. See Table 4.

Table 4. Criteria for Classifying Compliance Status – Verification Systems

| | |
|------------------|---|
| In Place | Existing verification systems adequately monitor member experience of services, provider practice, or settings characteristics to assure compliance with new HCBS requirements. |
| Formalize System | Existing verification systems adequately monitor member experience of services, provider practice, or settings characteristics but the systems are informal (non-standardized). |
| Modify System | Existing systems do not, or do not adequately, monitor member experience of services, provider practice, or settings characteristics. |

Table 5 provides an overview of the Department’s assessment of our capacity to verify compliance across waiver programs.

Table 5. Overview of Findings for Verification Systems

| Type of Setting | Waiver Programs | | | | | |
|------------------------|--------------------|---|--------------------------|-----------------|-----------------------|-------------------|
| | §18 | §19* | §20 | §21 | §22* | §29 |
| | Brain Injury | Elder/Adult | Other Related Conditions | ID/Autism HCBS | Consumer Directed PAS | ID/Autism Support |
| Residential | | | | | | |
| • Verification Systems | • Formalize System | • No Change | • Formalize System | • Modify System | • No Change | • Modify System |
| Non-Residential | | | | | | |
| • Verification Systems | • Formalize System | • Modify or Expand Existing Verification System | • Formalize System | • Modify System | • In Place | • Modify System |

Preliminary Assessment of Settings

Criteria and Process

CMS requires states to provide a “best estimate” of the number of settings that are:

- Disqualified as an HCBS setting;
- Presumed disqualified as an HCBS setting;
- Not currently in compliance with the new rules but can come into compliance; and,
- Currently in compliance with the new rules.

To determine whether settings are disqualified or presumed disqualified, the Department generated provider lists from case files and our claims management system to identify providers and to capture residential providers funded under the Medicaid State Plan who are serving waiver members. These provider lists were reviewed by Department staff with knowledge of those settings to determine whether the setting is:

Disqualified: A nursing facility, psychiatric hospital (IMD), an Intermediate Care Facility for Individuals with Intellectual Disability (ICF-IID) or a hospital.

Presumed Disqualified: Located in a publicly or privately operated facility that provides inpatient treatment.

Presumed Disqualified: Located on the grounds, of or immediately adjacent to, a public institution.

Settings that have the “effect of isolating” waiver members from the broader community are also “Presumed Disqualified.” The Department has not yet conducted a comprehensive and detailed assessment to determine whether any setting has “the effect of isolating.” As discussed later in this document (see our discussion of the Transition Plan starting at page 19), we plan to conduct a provider self-assessment survey and onsite survey during the transition period. Onsite surveys will include interviews with program members to ensure that the Department captures information about how members experience services. If, during this process we identify a setting that has an isolating effect that cannot be remedied, we will reclassify that setting as Presumed Disqualified and modify our Transition Plan accordingly.

For those settings not disqualified or presumed disqualified, we classified the setting as “Compliant” or “Compliance Possible” depending on whether we found our policy and practices to be in compliance or our verification system adequate to ensure compliance. For example, if we found our policy to be noncompliant or our current verification system does not adequately ensure compliance, we grouped all HCBS settings for that program (i.e., settings not Disqualified or Presumed Disqualified) in the noncompliant but “Compliance Possible” category. During the transition period, it is likely that the in depth assessment of settings will reveal that some of the settings we have categorized as “Compliance Possible” should be categorized as “Compliant.” Verification systems will also be improved in order to ensure compliance on an ongoing basis.

When our policy was found to be compliant or requiring only technical modifications and our verification systems were adequate for ensuring compliance, we categorized the settings as “Compliant.”

Types of Residential Settings

Services provided under Maine’s HCBS waiver programs are provided in a variety of settings. In addition, some HCBS waiver members reside in residential settings that are funded as a State Plan service while they receive their HCBS waiver services. The new HCBS rules also appear to apply to these settings.¹⁷ See Table 7 and Table 8 for a representation of the types of residential and non-residential settings associated with each waiver program.

¹⁷ See Final Rule, U.S. Department of Health and Human Services, “Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and

Table 6 provides an overview of the criteria used for classifying settings within these categories.

Table 6. Criteria for Classifying Compliance Status – Verification Systems

| | |
|-----------------------|---|
| Compliant | Settings are believed to comply with HCBS rules because: <ul style="list-style-type: none"> We believe policy and practice are compliant or any required changes are technical; AND We believe our verification system adequately assures compliance with the HCBS rules; AND The setting is not disqualified or presumed disqualified. |
| Compliance Possible | Settings are believed to be noncompliant but can be brought into compliance with changes in policy or practice or modifications to program or setting because: <ul style="list-style-type: none"> We believe current policy or practice requires significant change OR our verification system does not adequately assure compliance with HCBS rules; AND The setting is not disqualified or presumed disqualified. |
| Presumed Disqualified | Settings are located in a publicly or privately operated facility that provides inpatient treatment. |
| Disqualified | Settings are nursing facilities, psychiatric institutions, ICFs-IID, or hospitals. |

Waiver services provided in the member’s own home are assumed to be in compliance with the new HCBS rules. Two of Maine’s waiver programs (§19 and §22) currently are provided only in the member’s privately owned or leased home. It is anticipated, however, that as part of this planning process additional program enhancements will be considered to better ensure community integration for members served by these programs to the same extent as individuals not receiving HCBS.

Four of Maine’s six waivers provide services in some form of provider-owned or controlled residential setting, including the waivers serving adults with brain injury (§18) and adults with other related conditions (§20), and both waivers serving adults with intellectual disabilities or autism (§21 and §29). Provider-owned or controlled settings include group homes, shared living arrangements, family-centered homes, and Private Non-Medical Institutions (PNMIs). Each type of these residential sections is described on the following pages.

Table 7. Type of Residential Settings Where Services May Be Provided by Waiver Program

| Type of Residential Setting | Waiver Programs | | | | | |
|---|-----------------|-------------|--------------------------|-----------------------|-----------------------|--------------------------|
| | §18 | §19 | §20 | §21 | §22 | §29 |
| | Brain Injury | Elder/Adult | Other Related Conditions | Adults ID/Autism HCBS | Consumer Directed PAS | Adults ID/Autism Support |
| Not Provider-Owned or Controlled | | | | | | |
| • Own Home or apartment | √ | √ | √ | √ | √ | √ |
| Provider-Owned or Controlled | | | | | | |
| • Group homes | √ | - | √ | √ | - | - |
| • Family-Centered Support Homes | - | - | - | √ | - | - |
| • Shared Living | - | - | - | √ | - | - |

Home and Community-Based Services (HCBS) Waivers.” Volume 79, Number 11 of the U.S. Federal Register at pages 2960 and 2968. This rule and other background information may be accessed at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>.

| | | | | | | |
|-----------------|---|---|---|---|---|---|
| • PNMI's* | - | - | - | √ | - | √ |
| • Work settings | - | - | - | √ | - | √ |

*If checked, the waiver permits waiver members to reside in a PNMI. The PNMI is not funded as a waiver service but is funded under the Medicaid State Plan. Although permitted, no waiver members under §20 currently reside in a PNMI.

Group Homes

A group home is a provider-managed residential service location for which the provider routinely employs direct support staff to provide direct support services. A group home may serve up to six individuals.

This model is available only to persons participating under three waivers: §18 (adults with brain injury), §20 (adults with other related conditions), or §21 (adults with an intellectual disability or autism). These settings may or may not be licensed.¹⁸ Licensing is voluntary for settings with two or fewer beds. Based on the Department’s analysis, no persons served under §18 are residing in a group home at this time. Six group homes serve individuals receiving services under §20 and 554 group homes serve individuals served under §21.

| Waiver Program | Settings | Members |
|----------------|----------|---------|
| §18 | 2 | 7 |
| §20 | 17 | 17 |
| §21 | 554 | 1322 |

Source: Maine Department of Health and Human Services.

Shared Living Arrangements

A Shared Living Arrangement is a residential model in which services are provided to a member by a person who meets all of the requirements of a Direct Support Professional, with whom that member shares a home. The home may belong to the provider or the member. Shared Living is similar to adult foster care except that there is an expectation of a more cooperative sharing of space and supports between adults. Only one member may receive services in a Shared Living arrangement unless a relationship between two members pre-exists the Shared Living arrangement and the Shared Living arrangement is approved by the Department. The individual becomes part of Shared Living provider’s life, family, home and community. Shared Living Arrangements where a family member provides support are included in this category of provided-owned or controlled residential setting. These settings are not licensed.

This model is available only to persons participating under §21 (ID/A HCBS) waiver. We have identified 537 settings in which Shared Living Arrangement services are provided to 541 members under the §21 (ID/A HCBS) waiver.

| Waiver Program | Settings | Members |
|----------------|----------|---------|
| §21 | 537 | 541 |

Source: Maine Department of Health and Human Services.

Family-Centered Support Arrangements

A Family-Centered Support Arrangement is a residential model designed to provide enhanced home support to a member in a family environment, with the family and the member sharing a home that is not owned by the member or member’s family. This model is being phased out; no new Family-Centered Support programs have been approved since 2007. These settings are not licensed.

This model is available only to persons participating under §21 (ID/A HCBS) waiver. Based on our analysis, there are 96 group home settings and 147 members under §21 receive services in these settings.

| Waiver Program | Settings | Members |
|----------------|----------|---------|
|----------------|----------|---------|

¹⁸ Maine Department of Health and Human Services rule, 10-144 Code of Maine Rules, Chapter 113, *Regulations Governing the Licensing and Functioning of Assisted Housing Programs*. Accessed November 6, 2014 at <http://www.maine.gov/sos/cec/rules/10/chaps10.htm>.

| | | |
|-----|----|-----|
| §21 | 96 | 147 |
|-----|----|-----|

Source: Maine Department of Health and Human Services.

Settings That Provide Private Non-Medical Institutional (PNMI) Services

PNMI services are residential services funded as a Medicaid State Plan service under §97 of the MaineCare Benefits Manual¹⁹ (i.e., not an HCBS waiver service). PNMI services are provided in group homes with 24/7 staff.²⁰ Some individuals who receive certain HCBS services reside in PNMI.

Based on our analysis of MaineCare claims data, some beneficiaries served under §21 and §29 (both serving adults with an intellectual disability or autism) waivers currently reside in a PNMI.

| Waiver Program | Settings | Members |
|----------------|----------|---------|
| §21 | 21 | 62 |
| §29 | 62 | 197 |

Source: Maine Department of Health and Human Services.

Only PNMI serving members participating in Maine’s affected HCBS waiver programs are impacted by this new rule.

Types of Non-Residential Settings

Several waiver programs also provide services in non-residential settings targeting specific disability groups, including adult day programs (§19) and center-based community support services (§20, §21 & 29) and work supports provided to mobile work crews or enclaves (§21 & 29). Community Supports and Work Supports are also provided in community-based settings.

Table 8. Type of Non-Residential Settings Where Services May Be Provided by Waiver Program

| Type of Non-Residential Setting | Waiver Programs | | | | | |
|-----------------------------------|-----------------|-------------|--------------------------|-----------------------|-----------------------|--------------------------|
| | §18 | §19 | §20 | §21 | §22 | §29 |
| | Brain Injury | Elder/Adult | Other Related Conditions | Adults ID/Autism HCBS | Consumer Directed PAS | Adults ID/Autism Support |
| Not Disability-Specific | | | | | | |
| • Community settings | √ | - | √ | √ | - | √ |
| • Work settings | √ | - | √ | √ | - | √ |
| Disability-Specific | | | | | | |
| • Adult day health centers | - | √ | - | - | - | - |
| • Center-based community supports | - | - | √ | √ | - | √ |
| • Group work settings | - | - | - | √ | - | √ |

According to our analysis, 23 members access adult day health services in 12 adult day centers. There are 125 center-based settings that provide Community Supports. Recently, the Department began authorizing services to members who access Work Support as part of group as a separate and distinct service effective, January 1, 2015. Approximately 165 individuals work in a group setting such as an enclave, mobile work crew, or agency-owned business. These groups range in size from two to six. The Department has identified 43 unique providers

¹⁹ The PNMI relevant here are those reimbursed under Appendix C (Medical and Remedial Service Facilities) and Appendix F (Non-Case Mixed Medical and Remedial Facilities) under Section 97 of Chapter III in the MaineCare Benefits Manual. PNMI reimbursed under Appendix C serve persons with a need for assistance with activities of daily living, nursing, monitoring, or certain other supports. PNMI reimbursed under Appendix F serve persons with intellectual disabilities and brain injury and other population groups.

²⁰ Like some group homes, PNMI are also licensed under Maine Department of Health and Human Services rule, 10-144 Code of Maine Rules, Chapter 113, *Regulations Governing the Licensing and Functioning of Assisted Housing Programs*.

authorized to provide Work Support. Maine has approximately 15 to 20 settings in which Work Support is provided as a group.

In addition, the §20, Other Related Conditions waiver allowed a number of individuals to transition out of a nursing facility into a home and community-based setting. During the person-centered planning process three of those individuals chose to continue receiving the same center-based Community Supports they had been receiving in the nursing facility. These three settings overlap with those identified under §21 (ID/A HCBS) and §29 (ID/A Support).

| Waiver Program | Type of Setting | Number of Settings | Number of Members |
|----------------|---------------------------------|--------------------|-------------------|
| §19 | Adult Day Health Centers | 12 | 23* |
| §21 & §29 | Center-Based Community Supports | 125 | 3468** |
| §21 & §29 | Group Work Settings | 20 | 165 |

Source: Maine Department of Health and Human Services.

*This number represents the number of Section 19 members receiving this service as of December 2014. It does not represent the total number of adult day centers enrolled with MaineCare to provide this service. Although the Department anticipates assessing all 23 adult day centers enrolled as qualified providers of this service under §19, priority will be given to those sites actively serving waiver members and the Transition Plan focuses on these providers.

**This number includes the number of persons participating in each Community Support setting. If a member accesses Community Supports in more than one setting that member is counted more than once. This number does not include three individuals who access center-based Community Supports under §20 (ORC) waiver program. The settings in which these three individuals are served are included in the number of settings serving §21 and §29 members.

Findings

Table 9 provides a best estimate of the number of provider-owned or controlled residential settings that are Disqualified or Presumed Disqualified, the number of settings we have categorized as Compliance Possible, and the number of settings we find to be Compliant. As discussed above, settings categorized as “Compliance Possible” are treated as noncompliant because current policy is inconsistent with the new rules or because current verification systems cannot confirm compliance.

Table 9. Best Estimate of Number of Provider-Owned or Controlled Residential Settings by Compliance Status, by Waiver Program

| Type of Setting | Waiver Programs | | | | | |
|------------------------------|-----------------|-------------|--------------------------|----------------|-----------------------|-------------------|
| | §18 | §19 | §20 | §21 | §22 | §29 |
| | Brain Injury | Elder/Adult | Other Related Conditions | ID/Autism HCBS | Consumer Directed PAS | ID/Autism Support |
| In compliance | 2 | NA | 17 | 0 | NA | 0 |
| Compliance Possible | 0 | NA | 0 | 1208 | NA | 55 |
| Presumed Disqualified | 0 | NA | 0 | 0 | NA | 7 |
| Disqualified (institutional) | 0 | NA | 0 | 0 | NA | 0 |

Table 10 provides a best estimate of the number of disability-specific non-residential settings that are Disqualified or Presumed Disqualified, the number of settings we have categorized as Compliance Possible, and the number of settings we find to be Compliant. Again, some settings categorized as “Compliance Possible” may be in compliance with the new HCBS rules. However, we are unable to confirm compliance because current policy is either silent or inconsistent with the new HCBS rules or current verification systems can not verify compliance with those rules.

Because there is almost complete overlap between the settings providing Community Supports and Work Supports to §20, §21 and §29, the settings for all three waivers are grouped together here and will be addressed as a group during the transition process.

Table 10. Best Estimate of Number of Disability-Specific Non-Residential Settings by Compliance Status, by Waiver Program

| Type of Setting | Waiver Programs | | | |
|------------------------------|-----------------|-------------|---------------------------------------|-----------------------|
| | §18 | §19 | §20, §21 & §29 | §22 |
| | Brain Injury | Elder/Adult | Other Related Conditions, ID & Autism | Consumer Directed PAS |
| In compliance | 0 | 0 | 562* | NA |
| Compliance Possible | 0 | 9 | 145** | NA |
| Presumed disqualified | 0 | 3 | 0 | NA |
| Disqualified (institutional) | 0 | 0 | 0 | NA |

* This number includes the individuals who receive Work Supports but not as part of a group or Community Supports but not in a center.

**This number includes 125 center-based community-support settings and 20 group work settings serving individuals under these three waivers.

Work Plan and Timeline for Ensuring Compliance

Table 11 provides a summary overview of our findings from the preliminary self-assessment. Based on our analysis, we believe the majority of Maine’s waiver programs are largely in compliance or require technical changes in order to come into compliance. This section describes the Department’s plan for implementing these changes.

Table 11. Overview of Expected Impact of New HCBS Rules on Current Policy, Practice and Verification Systems

| Type of Setting | Waiver Programs | | | | | |
|------------------------|---------------------|---|---------------------------------|-----------------------|-------------------------------|---|
| | §18 Brain Injury | §19* Elder/Adult | §20 Other Related Conditions | §21 ID/Autism HCBS | §22* Consumer Directed PAS | §29 ID/Autism Support |
| Residential | | | | | | |
| • Policy & Practice | • Technical Change | • Technical Change | • Technical Change | • Significant Change | • Technical Change | • Significant Change |
| • Verification Systems | • Formalize System | • No Change | • Formalize System | • Modify System | • No Change | • Modify System |
| • Settings | • No Change | • No Change | • No Change | • Compliance Possible | • No Change | • 55 Compliance Possible Settings • 7 Presumed Disqualified Settings |
| Non-Residential | | | | | | |
| • Policy & Practice | • Compliant | • Significant Change | • Technical Change | • Significant Change | • Compliant | • Significant Change |
| • Verification Systems | • Formalize System | • Modify or Expand Existing Verification System | • Formalize System | • Modify System | • In Place | • Modify System |
| • Settings | • No Change | • 9 Compliance Possible • 3 Presumed Disqualified Settings | • Compliance Possible | • Compliance Possible | • No Change | • Compliance Possible |

*Neither §19 nor §22 provide services in provider-owned or controlled residential settings. Under §19 adult day health services are provided in provider-owned or controlled non-residential settings; §22 does not cover any services in a provider-owned or controlled setting. Services provided in an individual's own home are presumed to be in compliance with new HCBS rules. Subject to CMS approval §19 and §22 will be consolidated into one waiver program, all covered under a revised §19.

Stakeholder Engagement

The Department will convene four advisory groups organized around four groups of settings:

- Employment settings (small groups);
- Community settings (centered-based Community Supports and Adult Day Centers);
- Waiver-funded residential settings; and
- Medicaid State Plan-funded residential settings.

The advisory groups will be responsible for advising the Department on implementing the stages described below.

Assessment of Settings

Each advisory group will provide guidance on the design and implementation of the assessment of settings. Issues to be addressed for each group of settings include:

- Developing a provider self-assessment survey;
- The sampling strategy for validating the self-assessment survey;
- Designing the onsite survey protocol, including the interview protocol for the waiver participants receiving services in that setting; and
- Evaluating the findings to assess compliance.

Based on the findings resulting from this process, the Department will determine whether to submit evidence to CMS to overcome the presumption that a setting is disqualified. The Department will also identify any setting having an “isolating effect” that cannot be remedied by change in policy, practice or modification to the setting. In the event the Department decides to submit evidence to the CMS to overcome the presumption that a setting is disqualified or the Department decides to reclassify a setting as Presumed Disqualified setting, the Department will modify its Transition Plan in accordance with CMS requirements.

Bringing Settings into Compliance

Based on the policy analysis and the settings assessments, each advisory group will provide guidance on the remedial steps necessary for bringing Department policy and the settings into compliance. Issues to be addressed for each group of settings include:

- Working with CMS to revise waivers;
- Revising Maine policy, including licensing regulations;
- Modifying tools, procedures and manuals; and
- Developing training and educational resources.

Developing Verification Systems

To ensure that compliance is maintained on an ongoing basis, each advisory group will provide guidance on developing systems to monitor and verify compliance. Verification systems will focus on monitoring:

- The physical characteristics of settings;
- Provider practice at each setting; and,
- Member experience of services within each setting, including protection of rights.

Work Plans and Timelines

The following work plan provides a template for how the work will progress for each of the four categories of settings. It is possible that the pace of progress will vary across each type of setting. However, the time allocated is our best estimate of how long these tasks will take.

For §21 (ID/A HCBS) and §29 (ID/A Support), Maine is currently in the process of implementing the Supports Intensity Scale (SIS) as a resource allocation tool. Implementation of the SIS is well aligned with the new HCBS rules, providing the waiver member with greater flexibility and choice. However, implementation is also a significant undertaking and will be the primary focus of the Department, providers, and waiver members over the next several months. As a result, the Department is proposing to CMS that implementation of some activities be delayed until at least July 1, 2015, when we expect the SIS to be fully implemented. Our draft transition for §21 and §29 reflects this proposed timing.

For §32, Waiver Services for Children with Intellectual Disabilities or Pervasive Developmental Disorders; there is no need to assess current practice or providers because the waiver has been terminated.



WORK PLAN AND TIMELINE TEMPLATE FOR EACH CATEGORY OF SETTINGS

| Action Item | Description | Start Date | End Date | Sources | Key Stakeholders | Intervention/Outcome |
|---|---|-------------------|--------------------|--|---|--|
| Identify Noncompliant Settings | | | | | | |
| Develop provider self-assessment survey | Tool will be used by providers to evaluate compliance with HCBS rules | April 1, 2015 | June 30, 2015 | Advisory group input, HCBS guidance; self-assessment tools from other states | OADS, OMS, providers, members and advocates | Draft web-based provider self-assessment survey |
| Test and refine tool | | July 1, 2015 | August 31, 2015 | Advisory group input, draft tool, providers | OADS, OMS, providers, members and advocates | Assessment tool vetted by key stakeholders |
| Providers conduct self-assessment survey | All providers submit provider self-assessment to OADS | September 1, 2015 | November 30, 2015 | Assessment tool, providers serving §21 or §29 waiver members | OADS, OMS | Providers complete self-assessment |
| Compile and analyze self-assessment data | Identify service providers who meet, do not meet, or could come into compliance with HCBS standards | December 1, 2015 | January 31, 2016 | Self-assessment data | OADS, OMS | Report documenting compliance status for all providers |
| Validate survey response | Validate 5 percent random sample of self-assessments | February 1, 2016 | June 30, 2016 | Self-assessment data, OADS staff, provider and member interviews | OADS, OMS, providers, members | Validated survey response for 5 percent sample |
| Compile validated self-assessment survey | Compare initial assessment data to validated data. Compile results | July 1, 2016 | August 31, 2016 | Validated survey data | OADS, OMS | Report of findings, accuracy, and reliability of tool and data. |
| Identify sites presumed disqualified or potentially having an isolating effect on members; conduct follow-up site visits as necessary | Collect data on settings identified through survey and other sources | September 1, 2016 | September 30, 2016 | Validated survey data | OADS, OMS, providers, members | Report summarizing findings from site visits identifying presumed disqualified settings. |
| Disseminate report | Formally present survey and site visit results to | October 1, 2016 | Ongoing | Advisory group input, reports site visits and survey results | OADS, OMS, providers, members and advocates | Public awareness of findings for survey and site visits |



WORK PLAN AND TIMELINE TEMPLATE FOR EACH CATEGORY OF SETTINGS

| Action Item | Description | Start Date | End Date | Sources | Key Stakeholders | Intervention/Outcome |
|---|---|------------------|-------------------|---|--|---|
| | stakeholders and make available on website | | | | | |
| Design Remediation | | | | | | |
| Develop and submit updated Transition Plan to CMS, if necessary | If relevant, identify any settings identified as presumed disqualified settings; conduct public comment on revised plan | October 1, 2016 | February 27, 2017 | Advisory group input, assessment results, stakeholder comment | OADS, OMS, providers, members, and advocates | Transition Plan vetted by key stakeholders |
| Submit waiver amendments to CMS | Modify waiver to be consistent with HCBS rules | March 1, 2017 | November 30, 2017 | Advisory group input, current waivers, new HCBS rules | OADS, OMS, providers, members, and advocates | §21 and §29 waivers amended to be consistent with HCBS rules |
| Revise Medicaid policy | Revise Medicaid policy to be consistent with HCBS rules | March 1, 2017 | November 30, 2017 | Advisory group input, MaineCare Benefits Manual, new HCBS rules | OADS, OMS, DLRS, providers, members, and advocates | MaineCare Benefit Manual revised to be consistent with HCBS rules |
| Revise other regulations, as applicable | Revise regulations governing rights, licensing, etc. as applicable | March 1, 2017 | November 30, 2017 | Advisory group input, rights, licensing and other regulations, new HCBS rules | OADS, OMS, DLRS, providers, members, and advocates | Regulations governing rights restrictions revised to address expanded requirements under HCBS rules |
| Modify tools, manuals, and tools | Incorporate policy changes into operational documents and systems | December 1, 2016 | December 30, 2017 | Advisory group input, existing provider standards, manuals, protocols, etc. | OADS, OMS, DLRS, providers, members, and advocates | Tools, manuals, and other operational details modified to facilitate and enforce compliance |
| Modify Verification System | | | | | | |
| Develop member experience assessment tool | Tool will be used by case managers to ensure that members' experience of care is consistent with rules | January 1, 2016 | December 30, 2017 | Advisory group input, HCBS rules, models from other states | OADS, OMS, DLRS, providers, members, and advocates | Tool for measuring member experience to ensure compliance with HCBS rules |
| Develop a | Tool will be used to | January 1, 2016 | December 30, | Advisory group input, HCBS rules, | OADS, OMS, DLRS, | Protocol for reviewing |



WORK PLAN AND TIMELINE TEMPLATE FOR EACH CATEGORY OF SETTINGS

| Action Item | Description | Start Date | End Date | Sources | Key Stakeholders | Intervention/Outcome |
|---|--|-----------------|-------------------|--|--|---|
| standardized protocol for reviewing the person-centered plan | ensure person-centered planning process offers choice | | 2017 | models from other states | providers, members, and advocates | person-centered plan to ensure compliance with HCBS rules |
| Develop a protocol for monitoring services consistent with rules | Tool will be used for monitoring services provided to members | January 1, 2016 | December 30, 2017 | Advisory group input, HCBS rules, models from other states | OADS, OMS, DLRS, providers, members, and advocates | Protocol for monitoring services to ensure compliance with HCBS rules |
| Work with DLRS to modify licensing survey to capture compliance with new HCBS rules | Modify licensing survey to capture information relevant to compliance with new rules | January 1, 2016 | December 30, 2017 | Advisory group input, HCBS rules, models from other states | OADS, OMS, DLRS, providers, members, and advocates | Revised licensing survey to ensure compliance with HCBS rules |
| Implement Remediation | | | | | | |
| Conduct training and education | Design and implement plan for incorporating necessary training and education into provider enrollment orientation and provider employee training; provide training | January 1, 2018 | June 30, 2018 | Training programs | OADS, OMS, DLRS, providers, members, and advocates | Providers, members, OADS and OMS staff educated on new policies |
| Implement verification systems | Implement and test verification systems, monitor impact on members and impact on provider and Department staff | July 1, 2018 | February 28, 2019 | Modified verification systems | OADS, OMS, DLRS, providers, members, and advocates | Department tests verification tools and verifies settings comply with HCBS settings standards |
| Outreach and Engagement | | | | | | |
| Public comment – Ongoing Input | Convene stakeholder groups to guide design and implementation of provider assessment | March 2015 | Ongoing | Public comment and State's response documents | OADS, OMS, DLRS, providers, members, and advocates | Ongoing public input into Transition Plan implementation |



WORK PLAN AND TIMELINE TEMPLATE FOR EACH CATEGORY OF SETTINGS

| Action Item | Description | Start Date | End Date | Sources | Key Stakeholders | Intervention/Outcome |
|--|--|-------------------|-------------------|---|------------------|---|
| | process, remedial actions and development of verification systems | | | | | |
| Public comment – on Revised Transition Plan | Make public notice on revised Transition Plan. Collect public comments on revised Transition Plan through multiple methods (including in person, fax, email and website submission). | November 1, 2016 | December 31, 2016 | Transition Plan | OADS, OMS | Public notice posted with Transition Plan, comments collected |
| Public comment - Collection and plan revisions | Incorporate changes to the revised Transition Plan based on public comments | January 1, 2017 | February 28, 2017 | Public comment and State's response documents | OADS, OMS | Revised Transition Plan incorporating public comments |
| Post revisions to Transition Plan | Post the rationale behind any substantive change to the Transition Plan | February 28, 2017 | Ongoing | Revised Transition Plan with rationale | OADS, OMS | Posted rationale |
| Public comment retention | Store public comments and state responses for review by CMS and public | February 28, 2017 | Ongoing | Public comment and State's response documents | OADS, OMS | Public comments stored |

Detail for State Level Assessment

Waiver Services for Adults with Brain Injury (§18) and Other Related Conditions (§20)

Maine has two relatively new Home and Community-Based Services (HCBS) waivers. The HCBS waiver program serving adults with Other Related Conditions (ORC) was first approved in 2013. This program serves persons age 21 and older with cerebral palsy, epilepsy, or another condition closely related to intellectual disabilities that manifested before the individual reached age 22.²¹

The HCBS waiver program serving adults with brain injury offers a similar set of services to adults age 18 or older with an acquired brain injury. Both programs provide direct support services in a variety of settings, including provider-owned or controlled settings, an individual’s own home, community settings and employment settings.

While each program serves a different population group and covers a different combination of services, the program design and many policies and practices are the same across both programs. Unless otherwise noted, the assessment results below apply to both programs.

Policy and Practice

Table 12 and Table 13 provide an overview of the Department’s assessment of how well policy and practice under these two waivers align with the new HCBS rules. Because both of these waiver programs are relatively new, the policies governing these programs are largely in compliance with the new HCBS rules. Our comparison of current policy with the new HCBS rules identified the need for only minor technical changes, including modifying policy to clarify that:

- Program members not under guardianship have control over their personal resources.
- The person-centered planning process reinforce an individual’s right to receive services not provided to the setting in which the individual lives.
- Program members are given the option for a non-disability specific setting and an option for a private unit in a residential setting. The options are documented in the plan and are based on the individual’s needs and preferences and resources are available for room and board.

Table 12. §18 (Brain Injury) Policy and Practice Compliance Status Detail

| HCBS policy standard | Policy Change | Practice Change | Verification System |
|---|---|------------------|-------------------------------|
| HCBS SETTING | | | |
| The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community to the same degree of access as individuals not receiving Medicaid HCBS. | | | |
| Including: | | | |
| <ul style="list-style-type: none"> • Opportunities to seek employment and work in competitive integrated settings. | No Change. Approved Waiver Application App. C-1/C-3 Work Support - Individual. See also §18.05-03, §18.05-10. | No Change | Formalize verification system |
| <ul style="list-style-type: none"> • Engage in community life. | No Change. §18.05-4 and §18.05-9 | No Change | Formalize verification system |
| <ul style="list-style-type: none"> • Control personal resources. | Modify §18 to ensure that individuals living in unlicensed settings, not under guardianship, have control over personal resources. | No Change | Formalize verification system |

²¹ MaineCare Benefits Manual, Chapter II, §20.03-2.

| HCBS policy standard | Policy Change | Practice Change | Verification System |
|---|--|---|--|
| <ul style="list-style-type: none"> Receive services in the community. | Modify §18 to require the person-centered planning process to reinforce an individual’s option to receive services from providers not tied to the setting in which the individual lives. | No Change | Formalize verification system |
| <p>Is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting.</p> <ul style="list-style-type: none"> The setting options are identified and documented in the person-centered service plan. Are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. | Modify §18 to require that individuals be given option for a non-disability specific setting and an option for a private unit in a residential setting; documented in plan; based on needs and preferences & resources available for room & board | Develop training program/ communication plan to ensure that case managers and providers understand how to comply with requirements. | Formalize verification system |
| Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. | No Change. Approved Waiver Application App. C-2 (c)(ii), App. G-1 (d), App. G-2 (b), and App. F-3 (a) | No Change | Formalize verification system |
| Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. | No Change. Approved Waiver Application App. C-2 (c)(ii): | No Change | Formalize verification system |
| Facilitates individual choice regarding services and supports , and who provides them. | No Change. Approved Waiver Application App. C-2 (c) (ii). | No Change | Formalize verification system |
| PROVIDER-OWNED OR CONTROLLED | | | |
| For a provider-owned or controlled residential setting. | | | |
| <p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and</p> <p>The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS member, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</p> | No Change. Approved Waiver Application App. C-2 (c)(ii); 10-144 CMR Ch. 113, 5.3 (Level I) | No Change | <p>For licensed settings, DLRS verification.</p> <p>Formalize verification system</p> |
| <p>Each individual has privacy in their sleeping or living unit:</p> <ul style="list-style-type: none"> Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. Individuals sharing units have a choice of roommates in that setting. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. <p>Individuals have the freedom and support to control their own schedules and activities, and have access to food at any</p> | No Change. Approved Waiver Application App. C-2 (c)(ii); | No Change. | <p>Formalize verification system</p> <p>For licensed settings, incorporate standards into licensing survey</p> |

| HCBS policy standard | Policy Change | Practice Change | Verification System |
|--|--|-----------------|-------------------------------|
| time. | No Change. Approved Waiver Application App. C-2 (c)(ii); | No Change. | Formalize verification system |
| Individuals are able to have visitors of their choosing at any time. | | | |
| The setting is physically accessible to the individual. | | | |
| Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. | | | |
| The following requirements must be documented in the person-centered service plan: | | | |
| <ul style="list-style-type: none"> Identify a specific and individualized assessed need. | | | |
| <ul style="list-style-type: none"> Document the positive interventions and supports used prior to any modifications to the person-centered service plan. | | | |
| <ul style="list-style-type: none"> Document less intrusive methods of meeting the need that have been tried but did not work. | | | |
| <ul style="list-style-type: none"> Include a clear description of the condition that is directly proportionate to the specific assessed need. | | | |
| <ul style="list-style-type: none"> Include regular collection and review of data to measure the ongoing effectiveness of the modification. | | | |
| <ul style="list-style-type: none"> Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. | | | |
| <ul style="list-style-type: none"> Include the informed consent of the individual. | | | |
| <ul style="list-style-type: none"> Include an assurance that interventions and supports will cause no harm to the individual. | | | |
| PRESUMED NOT HCBS SETTING | | | |
| Disqualified settings: NF, hospital, ICF-IID, IMD and any other locations that have qualities of an institutional setting. | No Change | No Change | No Change. |
| Presumed disqualified: Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution , or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. | No Change. | No Change | Formalize verification system |

Table 13. §20 (ORC) Policy and Practice Compliance Status Detail

| HCBS policy standard | Policy Change | Practice Change | Verification System |
|---|--|-----------------|------------------------|
| HCBS SETTING | | | |
| The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community to the same degree of access as individuals not receiving Medicaid HCBS. | No Change. §20.04-2, §20.05-6, §20.05- | No Change | Formalize verification |
| Including: <ul style="list-style-type: none"> Opportunities to seek employment and | | | |

| HCBS policy standard | Policy Change | Practice Change | Verification System |
|--|---|---|--|
| work in competitive integrated settings. | 17, §20.06-6 | | system |
| <ul style="list-style-type: none"> Engage in community life. | No Change. §20.05-5 | No Change | Formalize verification system |
| <ul style="list-style-type: none"> Control personal resources. | Modify §20 to ensure that individuals living in unlicensed settings, not under guardianship, have control over personal resources. | No Change | Formalize verification system |
| <ul style="list-style-type: none"> Receive services in the community. | Modify §20 to require the person-centered planning process to reinforce an individual’s option to receive services from providers not tied to the setting in which the individual lives. | No Change | Formalize verification system |
| Is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. | Modify §20 to require that individual be given option for a non-disability specific setting and an option for a private unit in a residential setting; documented in plan; based on needs and preferences & resources available for room & board | Develop training program/ communication plan to ensure that case managers and providers understand how to comply with requirements. | Formalize verification system |
| <ul style="list-style-type: none"> The setting options are identified and documented in the person-centered service plan. | | | |
| <ul style="list-style-type: none"> Are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board. | | | |
| Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint. | No Change. Approved Waiver Application App. C-2 (c)(ii), App. G-1 (d), App. G-2 (b), and App. F-3 (a) | No Change | Formalize verification system |
| Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. | No Change. Approved Waiver Application App. C-2 (c) (ii). | No Change | Formalize verification system |
| Facilitates individual choice regarding services and supports , and who provides them. | No Change. Approved Waiver Application App. C-2 (c) (ii). | No Change | Formalize verification system |
| PROVIDER-OWNED OR CONTROLLED | | | |
| For a provider-owned or controlled residential setting. | | | |
| The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS member, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law. | No Change. Approved Waiver Application App. C-2 (c)(ii); 10-144 CMR Ch. 113, 5.3 (Level I) | No Change | For licensed settings, DLRS verification. Formalize verification system |
| Each individual has privacy in their sleeping or living unit: | No Change. Approved Waiver Application App. C-2 (c)(ii); | No Change. | Formalize verification system |
| <ul style="list-style-type: none"> Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. Individuals sharing units have a choice of | | | |

| HCBS policy standard | Policy Change | Practice Change | Verification System |
|--|---|-------------------|-------------------------------|
| roommates in that setting. <ul style="list-style-type: none"> Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. Individuals have the freedom and support to control their own schedules and activities , and have access to food at any time. Individuals are able to have visitors of their choosing at any time. The setting is physically accessible to the individual. | | | |
| Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: <ul style="list-style-type: none"> Identify a specific and individualized assessed need. Document the positive interventions and supports used prior to any modifications to the person-centered service plan. Document less intrusive methods of meeting the need that have been tried but did not work. Include a clear description of the condition that is directly proportionate to the specific assessed need. Include regular collection and review of data to measure the ongoing effectiveness of the modification. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. Include the informed consent of the individual. Include an assurance that interventions and supports will cause no harm to the individual. | No Change. Approved Waiver Application App. C-2 (c)(ii); | No Change. | Formalize verification system |
| PRESUMED NOT HCB SETTING | | | |
| Disqualified settings: NF, hospital, ICF-IID, IMD and any other locations that have qualities of an institutional setting. | No Change. | No Change. | No Change. |
| Presumed disqualified: Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution , or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. | No Change | No Change | Formalize verification system |

Verification Systems

Both programs are designed to include careful and direct oversight by the Department, with verification of compliance built into the program’s operation. Both programs are administered through a Care Monitor, a professional employed by DHHS. The Care Monitor is responsible for enrolling the individual into the ORC program, including identifying functional needs for services, developing a preliminary care plan and service budget, and

working with the individual to identify the appropriate residential option.²² The Care Monitor is also responsible for monitoring the services provided to the individual to ensure that they are meeting the health and safety needs of the member.²³ The Care Monitor provides direct feedback to providers to assure that services are in compliance with program requirements. The Care Monitor participates in the person-centered planning process to ensure that choice is available; the residential agreement is compliant, etc. As the Brain Injury waiver is fully implemented, we anticipate that this program design will provide the same level of compliance.

Although we are confident that our verification systems are effective, to ensure consistency across members and providers and over time, the Department will formalize its oversight by developing more standardized checklists and tools for the Care Monitor to use for monitoring member experience and provider services.

Settings

Table 14 provides an overview of the settings in which §18 (Brain Injury) and §20 (ORC) service may be provided.

Table 14. Type of Settings for §18 and §20 Waiver Programs

| Type of Setting | §18 Brain Injury | §20 Other Related Conditions |
|-----------------------------------|---------------------|------------------------------------|
| Residential Settings | | |
| Not Provider-Owned or Controlled | | |
| • Own Home or apartment | √ | √ |
| Provider-Owned or Controlled | | |
| • Group homes | √ | √ |
| • Family-Centered Support Homes | - | - |
| • Shared Living | - | - |
| • PNMI | - | - |
| Non-Residential Settings | | |
| Not Disability-Specific | | |
| • Community settings | √ | √ |
| • Work settings | √ | √ |
| Disability-Specific | | |
| • Adult day health centers | - | - |
| • Center-based community supports | √ | √ |
| • Work settings | √ | √ |

*These waivers permit waiver members to reside in a PNMI. The PNMI is not funded as a waiver service but is funded under the Medicaid State Plan. Although permitted, no waiver members under §20 currently reside in a PNMI.

Residential Settings. Both of these waiver programs offer residential services in a group home. While enrollment under §18 (Brain Injury) has begun, currently there are no waiver members residing in group homes. Before enrollment can begin, the setting must be in compliance with these waiver standards, which have already been determined in compliance with CMS requirements.

²² MaineCare Benefits Manual, Chapter II, §20.04-1(E).

²³ MaineCare Benefits Manual, Chapter II, §20-02-6.

Table 15. Number of Residential Settings and Members for §18 and §20 Waiver Programs

| Type of Setting | §18 Brain Injury | | §20 Other Related Conditions | |
|-----------------|---------------------|---------|---------------------------------|---------|
| | Settings | Members | Settings | Members |
| Group homes | 2 | 7 | 17 | 17 |

The residential setting is selected by the individual. The Department’s Care Monitor assists the member with this process by reviewing all options available. As discussed above, the Care Monitor has hands-on oversight of the program, allowing the Department to verify that the residential settings providing services under these waiver programs comply with the new HCBS rules. Based on Department knowledge of these residential settings, we are able to confirm that for those PNMI’s serving persons under §18, none are disqualified, two are Presumed Disqualified because they are part of a building that provides institutional treatment, and 15 are categorized as “Compliance Possible” because they are out of compliance with current policy but it is assumed they can be brought into compliance. For the six group homes serving persons under §18, all are compliant.

See Table 16 for detail on these findings.

Table 16. Best Estimate of Compliance Status for Provider-Owned or Controlled Settings (§18-20)

| Status | Provider-Owned or Controlled Residential Settings | |
|-----------------------|--|-----|
| | §18 | §20 |
| Compliant | 2 | 17 |
| Compliance Possible | 0 | 0 |
| Presumed Disqualified | 0 | 0 |
| Disqualified | 0 | 0 |

Non-Residential Settings. Three individuals receiving services under the §20 (Other Related Conditions) have chosen to receive Community Support services in a center-based setting. See Table 17 for detail on these findings.

Table 17. Number of Non-Residential Settings and Members for §18 and §20 Waiver Programs

| Type of Setting | §18 Brain Injury | | §20 Other Related Conditions | |
|--------------------------------|---------------------|---------|---------------------------------|---------|
| | Settings | Members | Settings | Members |
| Center-Based Community Support | 0 | 0 | 2 | 3 |

Again, the Department’s Care Monitor assists the member with selecting these settings and is able to verify that these settings comply with the new HCBS rules. Based on Department knowledge of these non-residential settings, we are able to confirm that none are Disqualified or Presumed Disqualified, two are categorized as Compliance Possible and none are categorized as Compliant.

See Table 18 for detail.

Table 18. Best Estimate of Compliance Status for Center-Based Community Support Settings (§18 (Brain Injury) & §20 (ORC))

| Status | Center-Based Community Support Settings | |
|-----------------------|---|-----|
| | §18 | §20 |
| Compliant | 0 | 0 |
| Compliance Possible | 0 | 2 |
| Presumed Disqualified | 0 | 0 |
| Disqualified | 0 | 0 |

Remedial Actions

The Department will take the following remedial steps to ensure that compliance is ongoing:

- Make the technical policy changes to §18 (Brain Injury) and §20 (ORC) as identified above.
- Develop a training program and communication plan as necessary to ensure providers know how to comply with these modifications.
- Formalize its verification system by developing tools and criteria for ensuring compliance with state and federal law.
- Conduct a comprehensive and detailed assessment of Presumed Disqualified and Compliance Possible settings to compile evidence to overcome the presumption of disqualification or bring the settings into compliance.

Waiver Services for Older Adults and Adults with Disabilities (§19 & §22)

Maine has had two waivers that serve older adults and adults with physical disabilities. Section 22 covered consumer directed personal assistance services and a few other supportive services. These services were available to persons needing a nursing facility level of care who have cognitive function sufficient to direct their own services. Section 19 provides a broader set of services and includes a family directed personal support option.

In July 2014, the Department submitted for public comment a proposed rule that blends these two waiver programs into one by repealing §22 and amending §19. These changes were subject to CMS approval and the merger was finalized December 27, 2014. For the purpose of this analysis, we continue to treat the two waiver programs as separate. However, because the two programs are very similar, except as otherwise indicated, the discussion below applies to both waiver programs.

Policy and Practice

With the exception of the minor technical change to specifically exclude IMDs as a possible setting, both §19 (Elder/Adult) and §22 (Consumer Directed) are considered compliant with all requirements as they apply to residential and in-home services under the new HCBS rules. Section §22 is also compliant with all requirements as they relate to non-residential services. We note, however, that program enhancements may be considered to ensure that §19 and §22 waiver services provide community integration to the same extent as individuals not receiving HCBS.

We find that policies governing adult day health services, covered under §19, require a technical change in order to bring these policies into full compliance. Adult day health services are health and social services provided to promote the optimal functioning of the member. Services are delivered according to an individual plan of care at a licensed adult day health site.²⁴ Almost all of the new HCBS requirements for nonresidential HCBS settings are already addressed in adult day licensing regulations and verified through the Division of Licensing and Regulatory Services with the following exceptions:

²⁴ MaineCare Benefits Manual, Chapter II, §19.01-3.

- Although licensing regulations protect member rights consistent with the new HCBS rules, they do not explicitly require adult day health centers to notify members about their rights. This change is identified as Technical because modification to policy and practice is expected to be minor.
- Licensing regulations do not currently require adult day health centers to support member engagement with community members who are not persons in need of home and community-based services. This change is identified as Significant because the Department cannot at this time ensure that adult day health centers are providing programming that supports community engagement. However, the Department believes that many do.

In addition, we will modify §19 (Elder/Adult) to ensure that any adult day health center having the effect of insulating individuals from the broader community are disqualified as an HCBS setting. This policy change is identified as Significant because there are currently some settings which are Presumed Disqualified because they are co-located in a nursing facility. However, subject to the completion of an analysis of each site, the Department anticipates submitting evidence to overcome the presumed disqualification based on the physical location of the provider.

Table 19. §19 (Elder/Adult) Policy and Practice Compliance Status Detail

| HCBS policy standard | Policy Change | Practice Change | Verification System |
|--|--|---|--|
| HCBS SETTING | | | |
| The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community to the same degree of access as individuals not receiving Medicaid HCBS. Including: | | | |
| <ul style="list-style-type: none"> • Opportunities to seek employment and work in competitive integrated settings. | NA | NA | NA |
| <ul style="list-style-type: none"> • Engage in community life. | Modify 10-144 CMR Ch. 117 to require adult day centers to offer opportunities for members to engage in community life. | Develop training program/ communication plan to ensure that providers understand how to comply with requirements. | Modify licensing survey to ensure that programming is offered that supports community engagement |
| <ul style="list-style-type: none"> • Control personal resources. • Receive services in the community, | NA | NA | NA |
| <ul style="list-style-type: none"> • Receive services in the community, | No Change | NA | NA |
| Is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. | No Change | Ensure that SCA documents options in person-centered service plans. | |
| <ul style="list-style-type: none"> • The setting options are identified and documented in the person-centered service plan. • Are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. | Adult day health is a community-based alternative to in-home personal support services, selected at the option of the individual receiving §19 waiver services. §19.07(C)(2) The Service Coordination Agency (SCA) is responsible for helping the member to select an available adult day providers, when more than one option is available. 10-144 CMR Ch. 117, §8.5 Adult day health services are based on an individual's needs, strengths and resources. | | |
| Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. | Modify 10-144 CMR Ch. 117 to require adult day centers to post/notify members about rights identified under licensing. Rights addressed under 10-144 CMR Ch. | Develop training program/ communication plan to ensure that providers understand how to comply with requirements. | Modify licensing survey to ensure that rights are posted/members are notified of rights. |

| HCBS policy standard | Policy Change | Practice Change | Verification System |
|--|--|-------------------------|-------------------------|
| | <p>117, §6.9 and §§ 7.2.5 -7.2.9.</p> <p>Program required to protect rights of each member including right to be free from interference, coercion, discrimination or reprisal for exercising rights. Has right to personal privacy for medical treatment, personal care and telephone conversations. Has the right to voice grievances. The right to be free from physical and chemical restraint for purposes of punishment or to accommodate needs of staff.</p> | | |
| <p>Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p> | <p>No Change</p> <p>10-144 CMR Ch. 117, 7.2 Member has right to choose activities consistent with his/her interests, assessments and service plans.</p> <p>10-144 CMR 6.8: The rooms shall be furnished with sufficient comfortable non-folding chairs, non-folding tables, rocking and reclining chairs.</p> <p>10-144 CMR 6.10: Every part of the building intended for member use must meet applicable State and Federal guidelines for handicapped accessibility.</p> <p>10-144 CMR 6.11: The program space shall be kept clean and shall be maintained in a condition that ensures the health and safety of members. Members shall be able to move freely from room to room, with no barriers or hazards impeding free movement.</p> | <p>No Change</p> | <p>No Change</p> |
| <p>Facilitates individual choice regarding services and supports, and who provides them.</p> | <p>No Change</p> <p>Under its license an adult day services program is required to provide certain services and may offer certain optional services. 10-144 CMR Ch. 117, 9.3 and 9.4</p> | <p>NA</p> | <p>NA</p> |
| PROVIDER-OWNED OR CONTROLLED | | | |
| <p>For a provider-owned or controlled residential setting....</p> | <p>NA</p> | <p>NA</p> | <p>NA</p> |
| <p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS member, and that the document provides protections that address eviction processes and appeals comparable to those provided under the</p> | <p>NA</p> | <p>NA</p> | <p>NA</p> |

| HCBS policy standard | Policy Change | Practice Change | Verification System |
|---|---|-----------------|--|
| jurisdiction's landlord tenant law. | | | |
| Each individual has privacy in their sleeping or living unit: | NA | NA | NA |
| <ul style="list-style-type: none"> Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. | NA | NA | NA |
| <ul style="list-style-type: none"> Individuals sharing units have a choice of roommates in that setting. | NA | NA | NA |
| <ul style="list-style-type: none"> Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. | NA | NA | NA |
| Individuals have the freedom and support to control their own schedules and activities , and have access to food at any time. | NA | NA | NA |
| Individuals are able to have visitors of their choosing at any time. | NA | NA | NA |
| The setting is physically accessible to the individual. | NA | NA | NA |
| Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. | NA | NA | NA |
| The following requirements must be documented in the person-centered service plan: | NA | NA | NA |
| <ul style="list-style-type: none"> Identify a specific and individualized assessed need. | NA | NA | NA |
| <ul style="list-style-type: none"> Document the positive interventions and supports used prior to any modifications to the person-centered service plan. | NA | NA | NA |
| <ul style="list-style-type: none"> Document less intrusive methods of meeting the need that have been tried but did not work. | NA | NA | NA |
| <ul style="list-style-type: none"> Include a clear description of the condition that is directly proportionate to the specific assessed need. | NA | NA | NA |
| <ul style="list-style-type: none"> Include regular collection and review of data to measure the ongoing effectiveness of the modification. | NA | NA | NA |
| <ul style="list-style-type: none"> Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. | NA | NA | NA |
| <ul style="list-style-type: none"> Include the informed consent of the individual. | NA | NA | NA |
| <ul style="list-style-type: none"> Include an assurance that interventions and supports will cause no harm to the individual. | NA | NA | NA |
| PRESUMED/NOT HCBS SETTING | | | |
| <p>Disqualified settings: NF, hospital, ICF-IID, IMD and any other locations that have qualities of an institutional setting</p> <p>Disqualified settings: NF, hospital, ICF-IID, IMD and any other locations that have qualities of an institutional setting.</p> | Modify §19 to exclude IMDs and other settings having “institutional qualities” | NA | Claims system does not allow residential providers to be reimbursed for claims involving a member receiving services under §19. The statewide independent assessing agency and the service |

| HCBS policy standard | Policy Change | Practice Change | Verification System |
|--|--|---|--|
| | | | coordination agency both verify that the member does not live in a provider-owned or controlled residence. |
| Presumed disqualified: Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. | Modify §19 to exclude adult day health services that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS consistent with HCBS rules. | Three adult day health settings categorized as Presumed Disqualified. The Department will submit evidence to overcome this presumption. | Incorporate standards into adult day licensing survey to capture information for compliance. |

Verification Systems

Maine verifies that members do not reside in provider-owned or controlled residences in several ways. Maine’s MMIS system includes safeguards which do not allow residential providers to be reimbursed for claims involving a member receiving services under §19. The statewide independent assessing agency also completes a face-to-face assessment at the time of initial eligibility and annually thereafter and verifies that the member does not live in a provider-owned or controlled residence. This is also verified by the Service Coordination Agency at home visits.

Specific to adult day health services, the Division of Licensing and Regulatory Services is responsible for verifying compliance with all licensing standards. Further refinement of this process is expected (for example, requiring the licensure process to identify and flag adult day health centers that are located in a nursing facility).

Settings

Table 20 provides an overview of the settings in which services are provided under this program.

Table 20. Type of Settings for §19 Waiver Programs

| Type of Setting | §19 Elder/Adult | |
|----------------------------------|-----------------|--|
| Residential Settings | | |
| Not Provider-Owned or Controlled | | |
| • Own Home or apartment | √ | |
| Provider-Owned or Controlled | | |
| • Group homes | - | |
| • Family Centered Support Homes | - | |
| • Shared Living | - | |
| • PNMs | - | |
| Non-Residential Settings | | |
| Not Disability-Specific | | |
| • Community settings | - | |
| • Work settings | - | |
| Disability-Specific | | |
| • Adult day health centers | √ | |

| | | |
|-----------------------------------|---|--|
| • Center-based community supports | - | |
| • Work settings | - | |

Residential Settings. Neither waiver covers services provided in provider-owned or controlled residential settings. Almost all covered services are provided in an individual’s privately owned or leased home. Members lose their eligibility for waiver services if they become an inpatient in a hospital or a resident in a nursing facility, an intermediate care facility for individuals with intellectual disability, assisted living, an adult family care home, a PNMI, or any residential care facility or supported living arrangement, regardless of payment source (private or MaineCare).²⁵ Although not specifically excluded, services under this waiver program may not be provided to a member residing in an IMD. Compliance is verified by the Department through its MMIS system, as well as by the Assessing Services Agency and the member’s Service Coordination Agency.

Non-Residential Settings. Section 19 covers adult day health services which are provided in adult day health centers licensed under Maine regulation.

Based on our analysis of MaineCare data (including assessment, enrollment and claims information), there are 22 active providers of adult day health services enrolled under the Section 19 waiver. Twenty-three §19 waiver members have current service authorizations for adult day health services in twelve different centers. See Table 21.

Table 21. Number of Non-Residential Settings and Members for §19 Waiver Program

| Type of Setting | §19 Older Adults and Adults with Disabilities | |
|--------------------------|---|---------|
| | Settings | Members |
| Adult day health centers | 12 | 23 |

Of those twelve centers, we have categorized nine as Compliant Possible because we do not currently verify that adult day health centers offer opportunities for members to engage in the community. Three adult day health centers are presumed disqualified because they are co-located with a nursing facility. See Table 22 for detail.

Although these adult day health centers are co-located with nursing facilities, we believe these settings can overcome the presumption that they are institutional services. Adult day health programs often have created strong partnerships with the community to promote social, leisure, physical and educational activities that reach beyond the program members. The Department also believes these services are an important community-based option for older adults and adults with disabilities who select these services as an alternative to receiving personal support services at home. Waiver members who choose this option typically prefer the social engagement offered in the adult day health setting to spending time in their own home. These adult day health services also serve as respite for family members, allowing the family to continue supporting the waiver member at home rather than in a residential care or nursing facility. Most importantly, unlike persons residing in an institutional setting, waiver members who participate in adult day health programs are not isolated from the broader community. Instead, they return each day to their own homes and their own families. Maine is also waiting for further guidance and clarification from CMS regarding non-residential settings and will evaluate these settings in light of that guidance once it is issued.

As part of our Transition Plan, we will conduct site visits and interview members to compile evidence to submit to CMS. Maine may also choose to compile evidence on all providers of adult day health services who are co-located

²⁵ MaineCare Benefits Manual, Chapter II, §19.03(I) and (J).

with a nursing facility and who are enrolled to provide services with Section 19 members, regardless of whether they are currently serving a Section 19 member at the time of this transition.

Table 22. Best Estimate of Compliance Status for Adult Day Health Centers (§19)

| Status | Adult Day Health Centers §19 |
|-----------------------|------------------------------|
| Compliant | 0 |
| Compliance Possible | 9 |
| Presumed Disqualified | 3 |
| Disqualified | 0 |

Remedial Actions

The following remedial steps will be taken to address the compliance issues identified in the previous section.

Current policy will be made to ensure that these programs are fully compliant with the new HCBS rules. In particular:

- Current waiver policy will be modified to specifically prohibit the delivery of HCBS waiver services to persons residing in an IMD.
- Current licensing policy will be modified to specifically require adult day health centers to notify members of their rights under licensing regulations.
- Current waiver policy will be modified to disqualify any adult day health center having the effect of isolating waiver members from the broader community.
- Conduct a comprehensive and detailed assessment of adult day health centers to assess compliance and compile evidence to overcome the presumption of disqualification.

We will work with Maine’s Division of Licensing and Regulatory Services to ensure that the licensing survey for adult day health centers is coordinated with HCBS compliance standards.

The timeline and tasks connected to these remedial actions are described in detail starting on page 19.

Waiver Services for Adults with Intellectual Disabilities or Autistic Disorder (§21 & §29)

Both §21, Home and Community Benefits for Members with Intellectual Disabilities or Autistic Disorder and §29, Support Services for Adults with Intellectual Disabilities or Autistic Disorder are addressed in this section. Both waivers serve adults age 18 and older who meet clinical criteria for intellectual disability or autistic disorder and are medically eligible for services provided in an intermediate care facility for persons with intellectual disabilities.

Section 21 (ID/A HCBS) provides a comprehensive array of Home and Community-Based Services (HCBS) that are provided in a variety of settings, including provider-owned or controlled residential settings, an individual’s own home, community settings and employment settings.

Section 29 (ID/A Support) provides a similar array of services, except that this waiver does not provide services in a provider-owned or controlled residential setting; persons served under §29 live with their family or on their own. This program was recently modified to cover Home Support provided in a member’s home, but Home Support in a provider-owned or controlled setting is not available under this waiver.

While each program covers a different combination of services, many policies and practice are the same across both programs. Unless otherwise noted, the description below applies to both programs.

Policy and Practice

Many aspects of current Maine policy align well with the new HCBS rules. Maine currently has strong protections for individual rights and a strong philosophical approach toward person-driven services and community integration. However, this assessment identified a number of opportunities for improving both policy and practice

to come into compliance with the new HCBS rules. As indicated in Table 23, we identified a number of policy clarifications or modifications needed to bring §21 (ID/A HCBS) and §29 (ID/A Support) waiver programs into compliance with the new HCBS rules. In addition, while we believe that many residential providers share our commitment to community integration and person-driven services, our current verification systems do not allow us to ensure compliance. These modifications are described in detail in Table 23.

Table 23. §21 (ID/A HCBS) and §29 (ID/A Support) Policy and Practice Compliance Status Detail

| HCBS Policy Standard | Policy Change | Practice Change | Verification System |
|---|--|---|--|
| Standards that apply to all HCBS Settings | | | |
| The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community to the same degree of access as individuals not receiving Medicaid HCBS. Including: | No Change to policy needed. (See 34-B MRSA §5610) | NA | NA |
| <ul style="list-style-type: none"> Opportunities to seek employment and work in competitive integrated settings. | Modify approved waiver application to eliminate “enclave” as option. Person-centered planning process provides opportunity for seeking employment in competitive, integrated settings. | NA | Ensure document review protocol for person-centered plan ensures compliance with this standard |
| <ul style="list-style-type: none"> Engage in community life, | No Change to policy needed. (See 21.04-2, 21.05-2, 21.05-1 & App. I) | NA | Ensure case manager monitors member experience for compliance with these standards |
| <ul style="list-style-type: none"> Control personal resources. | Modify §21 and §29 to provide greater clarity regarding the individual’s right to control his or her personal resources, including a personal checking or savings account, when a representative payee is not involved. | Develop training program/ communication plan to ensure that case managers and providers understand how to comply with requirements. | Ensure case manager monitors member experience for compliance with these standards |
| <ul style="list-style-type: none"> Receive services in the community. | Modify §21, §29 and PCP manual to require the person-centered planning process to reinforce an individual’s option to receive services from providers not tied to the setting in which the individual lives. | NA | Ensure case manager monitors member experience for compliance with these standards |
| Is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. | Modify §21, §29 and PCP manual to require PCP process to include settings options that include a non-disability specific setting and a private unit. | Develop training program/ communication plan to ensure that case managers and providers understand how to comply with requirements. | Ensure document review protocol for person-centered plan ensures compliance with this standard |
| <ul style="list-style-type: none"> The setting options are identified and documented in the person-centered service plan. | Modify §21 and §29 and PCP manual to require documentation of setting options | | |
| <ul style="list-style-type: none"> Are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board. | Modify PCP manual to require the PCP process to include education on resource options available for financing room and board | | |
| Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint. | No Change to policy needed.(34-B MRSA §5605(1), 34-B MRSA §5605(14-A), 34-B MRSA §5605(3), 14-197 CMR Ch. 8, 14-197 CMR Ch. 12) | NA | Ensure case manager monitors member experience for compliance with these standards |
| Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. | Modify §21 and §29 and PCP manual to incorporate standards relating to control over daily activities, physical environment and with whom to interact. | Develop training program/ communication plan to ensure that case managers and providers understand how to comply with requirements. | Ensure case manager monitors member experience for compliance with these standards |
| Facilitates individual choice regarding services and supports , and who provides them. | Modify §21 and §29 to require staff to facilitate choice | Develop training program/ communication plan to ensure that case managers and providers understand how to comply with requirements. | Ensure case manager monitors member experience for compliance with these standards |

| HCBS Policy Standard | Policy Change | Practice Change | Verification System |
|--|---|---|---|
| Standards that apply to provider-owned or controlled residential setting | | | |
| <p>The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and;</p> <p>The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS member, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p> | <p>Modify §21 and §29 to require unlicensed residential facilities to use a residential agreement that satisfies new HCBS requirements.</p> | <p>Develop training program/communication plan to ensure that case managers and providers understand how to comply with requirements.</p> | <p>For licensed settings, DLRS verification.</p> <p>For unlicensed settings, develop checklist for case manager review of residential agreement</p> |
| <p>Each individual has privacy in their sleeping or living unit:</p> <ul style="list-style-type: none"> • Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. • Individuals sharing units have a choice of roommates in that setting. • Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. <p>Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</p> <p>Individuals are able to have visitors of their choosing at any time.</p> <p>The setting is physically accessible to the individual.</p> | <p>Modify §21 and §29 to be consistent with these standards</p> | <p>Develop training program/communication plan to ensure that case managers and providers understand how to comply with requirements.</p> | <p>Ensure case manager monitors member experience for compliance with these standards</p> <p>For licensed settings, incorporate standards into licensing survey</p> |
| <p>Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan.</p> | <p>Modify 14 CMR 197, Ch. 5: Expand scope of behavioral interventions/protected rights to include rights relating to privacy, control over environment, access to food, etc.</p> | <p>Develop training program/communication plan to ensure that case managers and providers understand how to comply with requirements.</p> | <p>Ensure case manager monitors member experience for compliance with these standards</p> <p>Ensure document review protocol for person-centered plan ensures compliance with this standard</p> |
| <p>The following requirements must be documented in the person-centered service plan:</p> <p>Identify a specific and individualized assessed need.</p> | | | |
| <ul style="list-style-type: none"> • Document the positive interventions and supports used prior to any modifications to the person-centered service plan. | <p>Modify 14 CMR 197, Ch. 5 to require documentation of positive interventions and supports used prior to any modifications</p> | <p>Develop training program/communication plan to ensure that case managers and providers understand how to comply with</p> | <p>Ensure document review protocol for person-centered plan ensures compliance with this standard</p> |

| HCBS Policy Standard | Policy Change | Practice Change | Verification System |
|--|--|--|--|
| Document less intrusive methods of meeting the need that have been tried but did not work. | Expand scope as described above | Develop training program/ communication plan to ensure that case managers and providers understand how to comply with requirements. | Ensure case manager monitors member experience for compliance with these standards Ensure document review protocol for person-centered plan ensures compliance with this standard |
| <ul style="list-style-type: none"> • Include a clear description of the condition that is directly proportionate to the specific assessed need. | | | |
| <ul style="list-style-type: none"> • Include regular collection and review of data to measure the ongoing effectiveness of the modification. | | | |
| <ul style="list-style-type: none"> • Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. | | | |
| <ul style="list-style-type: none"> • Include the informed consent of the individual. | | | |
| <ul style="list-style-type: none"> • Include an assurance that interventions and supports will cause no harm to the individual. | | | |
| Standards that define settings presumed to not be HCB settings | | | |
| Disqualified settings: NF, hospital, ICF-IID, IMD and any other locations that have qualities of an institutional setting. | Modify §21 and §29 to exclude IMDs and other settings having “institutional qualities” | NA | Incorporate standards into licensing survey |
| Presumed disqualified: Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. | Modify §21 and §29 to prohibit reimbursement to provider-owned or controlled residential and non-residential settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS consistent with HCBS rules. | For 7 Presumed Disqualified PNMI, collect information to determine whether to submit evidence to overcome presumption of disqualification. | Incorporate standards into licensing survey |

Verification Systems

Currently, person-centered plans are reviewed by supervisors, caseworkers, quality assurance staff and resource coordinators. However, the Department does not currently use standardized review criteria or processes. The case manager is responsible for monitoring the member’s experience of services. The Department is beginning to implement service reviews to assure that service delivery complies with existing standards. The Department will modify these verification systems to ensure that they are compliant with the policy changes identified above.

Group homes and PNMI are licensed by the Division of Licensing and Regulatory Services (DLRS). The Department will ensure that the licensing survey captures relevant information for confirming compliance with the new HCBS rules. The Department will ensure that all other necessary verification systems are in place to ensure compliance.

Settings

Table 24 provides an overview of the settings in which services are provided under §21 (ID/A HCBS) and §29 (ID/A Support).

Table 24. Type of Settings for §21 (ID/A HCBS) and §29 (ID/A Support) Waiver Programs

| Type of Setting | §21 Adults with ID/Autism HCBS | §29 Adults with ID/Autism Support |
|---|--------------------------------------|---|
| Residential Settings | | |
| Not Provider-Owned or Controlled | | |
| • Own Home or apartment | √ | √ |
| Provider-Owned or Controlled | | |
| • Group homes | √ | - |
| • Family-Centered Support Homes | √ | - |
| • Shared Living | √ | - |
| • PNMI's | √ | √ |
| Non-Residential Settings | | |
| Not Disability-Specific | | |
| • Community settings | √ | √ |
| • Work settings | √ | √ |
| Disability-Specific | | |
| • Adult day health centers | - | - |
| • Center-based community supports | √ | √ |
| • Work settings | √ | √ |

*These waiver permits waiver members to reside in a PNMI. The PNMI is not funded as a waiver service but is funded under the Medicaid State Plan.

Provider-Owned or Controlled Residential Services. As discussed, §21 provides Home Support in a variety of settings, including several types of provider-owned or controlled settings. In addition, both of these programs provide waiver services to individuals residing in PNMI's, which are reimbursed as a Medicaid State Plan (non-waiver) service. See Table 25 for the number of settings and waiver members by the type of setting and waiver program.

Currently, waiver members under §21 and §29 are not prevented from selecting non-waiver provider-owned or controlled residential settings. As a result, a number of §29 waiver members are served in residential settings funded as PNMI services under §97 of the MaineCare Benefits Manual.

Table 25. Number of Residential Settings and Members for §21 (ID/A HCBS) and §29 (HCBS Support) Waiver Programs

| Type of Setting | §21 Adults with ID/Autism HCBS | | §29 Adults with ID/Autism Support | |
|-------------------------------|-----------------------------------|---------|--------------------------------------|---------|
| | Settings | Members | Settings | Members |
| Group homes | 554 | 1322 | 0 | 0 |
| Family-Centered Support Homes | 96 | 147 | 0 | 0 |
| Shared Living | 537 | 541 | 0 | 0 |
| PNMI's | 21 | 62 | 62 | 197 |

Seven of these PNMs are categorized as Presumed Disqualified because they are co-located with a nursing facility. Because our policy requires significant changes in order to come into compliance and because our current verification system does not adequately ensure compliance with the new HCBS rules, we have categorized all remaining settings as “Compliance Possible.”

Table 26. Best Estimate of Compliance Status for Provider-Owned or Controlled Residential Settings (§21 & §29)

| Status | Provider-Owned or Controlled Residential Settings | |
|-----------------------|---|-----|
| | §21 | §29 |
| Compliant | 0 | 0 |
| Compliance Possible | 1208 | 55 |
| Presumed Disqualified | 0 | 7 |
| Disqualified | 0 | 0 |

Non-Residential Services. Both of these waiver programs also cover services provided in disability-specific non-residential settings. Community Support may be a center-based service and members have limited access to typical community activities. Currently there are 125 center-based Community Support providers. Work Supports are delivered as a group service to members who are part of an enclave, work crew or an agency-owned business. A group may include two to six members and the majority are paid sub-minimum wage under a federal and state Special Work Certificate. There are at least 165 members who access Work Supports as part of a group. The Department has identified 43 unique providers authorized to provide Work Support and of these 12 as a group. The number of settings in which Group Work Supports are provided is between 15-20 settings.

| Type of Setting | §21 & 29 Adults with ID/Autism HCBS | |
|--------------------------------|-------------------------------------|----------|
| | Settings | Members* |
| Center-Based Community Support | 125 | 3468 |
| Group Work Settings | 20 | 165 |

*Members may be counted more than once if they participate in more than one program or have more than one job.

** The Department has identified 43 unique providers authorized to bill for Work Support and estimates that Work Supports are provided in 15-20 group settings.

Based on the Department’s analysis of provider lists, we have identified no Disqualified or Presumed Disqualified Settings. However, because current verification systems cannot ensure that these settings comply with the new HCBS rules, we have categorized these settings as “Compliance Possible.” See Table 27.

Table 27. Best Estimate of Compliance Status for Community and Work Support Settings (§21 & §29)

| Status | Community Support Settings §21 & §29 | Work Support Support Settings §21 & §29 |
|-----------------------|--------------------------------------|---|
| Compliant | 23 | 539* |
| Compliance Possible | 125 | 20** |
| Presumed Disqualified | 0 | 0 |
| Disqualified | 0 | 0 |

* The Department estimates that 539 individuals receive Work Supports in compliant settings.

**The Department has identified 43 unique providers authorized to bill for Work

Support and estimates that Work Supports are provided in 15-20 group settings.

Remedial Actions

The following remedial steps will be taken to address the compliance issues identified in the previous section.

Current policy will be revised to ensure that these programs are fully compliant with the new HCBS rules. In particular:

- The Department will conduct a comprehensive and detailed assessment of Presumed Disqualified settings and Compliance Possible settings to determine whether Presumed Disqualified settings can over the presumption of disqualification with change in policy or practice or with a modification to the setting and to identify other settings that may have an isolating effect.
- Current waiver policy and licensing regulations will be modified as identified in Table 23.
- Verification systems will be modified or developed to ensure compliance with the new HCBS rules.

The timeline and tasks connected to these remedial actions are described in detail starting on page 19.

A Summary of Comments and the Department's Response

Below summarizes all informal and formal questions and written comments submitted in December and January, as well as all testimony made at the January 16, 2015 public hearing. The Department's response indicates any changes made to the Transition Plan in response to the comments.

General Comments on Transition Plan

Comment: One commenter noted that while Maine has been in the forefront of promoting community-based services and supports for people with intellectual disability or autism there can always be improvement. This commenter embraced change. Another commenter noted that it is laudable that the Department has acknowledged that significant change needs to happen. This commenter noted that despite numerous laws many persons accessing HCBS do not experience genuine community settings or lifestyles. This commenter noted that while many embrace the rhetoric of person-centered services, many services continue to be segregated, secluded, discriminatory and counter to the goals of individualized supports. (3, 5)

Response: The Department appreciates these commenters' recognition of Maine's commitment to HCBS. Like other states, Maine must ensure that the HCBS services created to replace institutional services meet the objectives of HCBS programs, the Americans with Disabilities Act and other protections and services for individuals with disabilities. The new HCBS rules were written to ensure that HCBS meet a minimum standard for ensuring autonomy, choice, access to the community, and other qualities that people without disabilities expect in their lives. While the Department still needs to gather information about current settings and practice, the Department anticipates that the new HCBS rules will lead to significant changes in current practice for at least some providers. (No change was made to the Transition Plan in response to these comments.)

Comment: Another commenter requested that the Transition Plan provide more detail on how the Department will come into compliance and how waiver programs will come into compliance sooner than March 2016. (9)

Response: The Department acknowledges that the Transition Plan does not provide specific detail on how all settings will come into compliance. As the Department continues to emphasize, the Transition Plan is a starting point, based on a state level assessment of policy and practice. The next phase involves a provider-level assessment during which providers and consumers will have an opportunity to provide information about how well individual settings comply with these standards. We anticipate stakeholders will have significant involvement in designing this provider-level assessment process and cannot speed up the process without reducing the opportunity for stakeholder input. We anticipate that the information collected through this assessment process will identify specific members and providers who will be directly affected by these changes. It is clear that training and education of providers, members, and State staff will be a critical component going forward. (No change was made to the Transition Plan in response to this comment.)

Comment: A commenter expressed her concern that Maine seems to have only given its full attention to the Sections 21 and 29 waivers (serving adults with intellectual disability or autism). This commenter requested that DHHS conduct a thorough analysis of all of its waiver programs. (9)

Response: The Department agrees that the new rules apply to all Maine's waiver programs. It was not the intent of the Department to imply that any of the waivers are exempt from these requirements. This commenter assumes that a review of policy and program elements for the other waivers did not occur. This is not a correct assumption. A review did occur and technical changes were identified as being necessary as part of our preliminary assessment. (We have modified the Transition Plan to clarify that we have applied the HCBS standards to all of Maine's waivers.)

Comment: A commenter expressed concern that the Department was trying to create an exception that does not exist. This commenter believes the Department was suggesting that the settings rules do not apply to services not provided in a provider-owned or controlled setting.

Response: The Department acknowledges that the HCBS rules apply to the settings in which HCBS services are provided. However, the HCBS rules also allow the Department to presume an individual's own home or the home of a family member in which the individual resides is compliant with the settings standards.²⁶ *(No change was made to the Transition Plan in response to this comment.)*

Comment: While the waiver application for Section 18 was submitted after the effective date of the rule there is no information contained within the application to suggest how Section 18 complies or how it will comply with the rule. There was no indication of what entity determined Section 18 was in compliance with the new rules. Another commenter questioned the appropriateness of presuming that new waivers meet HCBS standards (2, 9).

Response: While CMS has allowed states to develop a Transition Plan for existing waiver programs, starting with the effective date of the new HCBS rules, all new waivers must be found to be in compliance before CMS will approve them.²⁷ The Brain Injury waiver was approved May 6, 2014, after the effective date of the new rules. The fact that CMS approved the waiver indicates that CMS found this waiver to be in compliance. The Department is required to operate the waiver program in compliance with this CMS-approved waiver. Section 18 is not inconsistent with the approved waiver and, in fact, incorporates language directly from the approved waiver and the new HCBS standards. *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter expressed concern that Sections 18 and 20 do not address how an individual's rights will be ensured or how a setting is required to optimize initiative, autonomy and independence. (9)

Response: Because Department staff are able to play a central role in the person-centered planning process for these waiver programs, we are able to ensure that individualized services optimize individual initiative, autonomy and independence. Because these waiver programs are currently very small, Department staff are also able to provide technical assistance on how to comply as well as monitor compliance on an individualized basis. The Department plans to formalize these verification systems during the implementation phase, to ensure that, as these waiver programs increase in size, compliance is ensured on a more systematic basis. Members also have a right to an administrative hearing under the MaineCare Benefits Manual.²⁸ *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter expressed concern that Section 19 does not address how an individual's rights will be ensured. This commenter suggests that the Department explicitly incorporate rights into the regulations. (9)

Response: Currently, licensing regulations for adult day centers address the individual rights required under the HCBS rules. Adult day programs are required to protect the rights of each consumer including the right to be free from interference, coercion, discrimination or reprisal for exercising rights. Each individual has the right to personal privacy for medical treatment, personal care and telephone conversations, the right to be free from physical and chemical restraint for purposes of punishment or to accommodate needs of staff; and the right to voice grievances. (See 10-144 CMR Ch. 117, §7.2.) *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter expressed concern that, for the Section 18 (Brain Injury) and Section 20 (Other Related Conditions) waivers, the Department's assessment of compliance relies largely on waiver applications, not existing rules. This commenter is concerned that waiver participants and direct staff assisting them are unlikely to be aware of standards and encourages the Department to incorporate HCBS rules into the regulations for those waiver programs. (9)

²⁶ See note 1.

²⁷ Code of Federal Regulations, Title 42, §441.301(c)(6).

²⁸ See MaineCare Benefits Manual, Chapter I, §1.22 accessible at: <http://www.maine.gov/sos/cec/rules/10/ch101.htm>.

Response: The Department agrees that the regulations are more accessible to members and providers and can be used to increase awareness of program standards. The Department believes these regulations do reflect the new HCBS policies. However, we plan to make technical changes to §20 (ORC) that will more clearly indicate the connection between the new HCBS standards and the language in the MaineCare Benefits Manual. *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter expressed concern that the Department appears to have limited its analysis of Section 19 to Adult Day. DHHS should review all Section 19 policies to determine whether they comply with the settings rules. Standards apply to more than the physical location where services are delivered. For example, OADS should examine whether its policies encourages the provision of services in all settings that optimize autonomy and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact. Another commenter questioned the appropriateness of presuming compliance for waivers that disallow provider-owned or controlled housing. Another commenter agreed that the Department had appropriately presumed a member's own home to be compliant and focus on adult day centers was appropriate. (1, 2, 9)

Response: Currently, Section 19 offers services in an individual's home and in adult day centers. As the commenters note, the Department has assessed compliance for adult day centers. As permitted by CMS, the Department presumes that a member's private home meets the settings requirements under the new HCBS rules.²⁹ However, doing so does not foreclose a closer examination of possible enhancements that would optimize access to the community. The Department considers the person-centered planning process an important mechanism for ensuring that individuals receiving services in their home have access to the greater community, as envisioned under the new HCBS rules. As the Department continues to strengthen its person-centered planning process, it will use the person-centered planning process as the vehicle for ensuring that individual's living at home have the supports they need to access the community. *(The Transition Plan was modified to clarify the Department's intent relative to the person-centered planning process and access to the community for persons living at home.)*

Comment: One commenter suggested it was problematic that CMS has not provided the guidance that is necessary to come into full compliance. Guidance has been coming bit by bit and after almost a year since the enactment of the rule. (3)

Response: The Department is aware of the challenges of interpreting and applying the HCBS rules and will continue to look to CMS, its technical assistance providers, and CMS' activity in other states to more fully understand how to achieve full compliance going forward. *(No change was made to the Transition Plan in response to this comment.)*

Comment: A commenter expressed concern about the amount of state government and private resources that will be required to fulfill the requirements of these federal rules. This commenter believes the provider self-assessment will require an enormous amount of resources. The commenter also notes that following the self-assessment process, there may be a need to redesign service offerings, amend waivers and rewrite policies. This commenter notes that CMS is not providing additional resources to assist with compliance and with all of the other change initiatives underway, this task seems daunting. (3)

Response: The Department recognizes that compliance with the new rules may impose new costs on both the Department and providers. However, we do not anticipate the provider self-assessment to be an overly burdensome task for providers. The Department also cautions that it is too soon to know how significant the cost of modifying practice and settings will be. Much more information is needed about settings and provider practice before we can make an estimate. The Transition Plan proposes staggering the implementation process for the new

²⁹ See note 1.

HCBS rules to follow implementation of the SIS, so as not to overwhelm providers, members, and Department staff. *(No change was made to the Transition Plan in response to this comment.)*

Stakeholder Engagement in Transition Planning Process

Comment: A number of commenters expressed their disappointment about the opportunity for stakeholder involvement in the transition planning process. Commenters expressed concern that the informal comment period in December did not offer an opportunity for meaningful dialogue, especially given the short period of time between the informal release of the draft Transition Plan and the initial public forum, held in December, especially given the complexity and length of the draft Transition Plan. Commenters also expressed their belief that the draft Transition Plan would have been enhanced by stakeholder input. Some stakeholders expressed concern that only a small fraction of those people who use the services are aware of the Transition Plan or able to understand what it says. During the informal comment period, some stakeholders requested a “user friendly” version of the Transition Plan. Some found the plain language version disseminated during the formal comment period to be helpful. One commenter expressed concern that the Transition Plan was difficult to find on the Department’s website. (2, 3, 6, 9, 11)

Response: The Department acknowledges that stakeholder input is a vital ingredient for any successful policy initiative. Those who use and deliver the services can provide valuable insight into how well policy and practice align with program objectives and where improvement is needed. OADS also recognizes the importance of providing information to its members and providers about the new rules but needs to also ensure the accuracy of the information that is being provided. CMS has itself continued to issue new guidance critical to understanding how states can comply with these new requirements. As recently as December 15, 2014, CMS released the further guidance related to its “Settings Requirements Compliance Toolkit”: (1) “HCBS Final Regulations 42 C.F.R. Part 441: Questions and Answers Regarding Home and Community-Based Settings”; and (2) “Exploratory Questions to Assist States in Assessment of Non-Residential Home and Community-Based Service (HCBS) Settings.”

Because of the complexity and breadth of these new requirements, OADS has engaged in a number of different approaches, ranging from webinars to community forums to advisory groups, as described above. (See STAKEHOLDER OUTREACH AND ENGAGEMENT starting on page 6.) While the Department acknowledges that there is always opportunity to improve stakeholder involvement in policy initiatives, we believe these outreach efforts were appropriate for this stage of analysis. As permitted by CMS, the Transition Plan sets forth only a “best estimate” of the settings that are in or out of compliance with the new rules. It also maps out a plan for active stakeholder involvement in designing the process for confirming that initial estimate. As discussed in greater detail below, this process will also involve gathering information and direct feedback from members, families and providers. *(No change was made to the Transition Plan in response to this comment.)*

Categorization of Settings

Comment: One commenter expressed concern that the Department had made an initial categorization of settings without benefit of input from members, and other stakeholders. (9)

Response: In compliance with CMS’ Transition Plan requirements, Maine has made a “best estimate” of how settings should be categorized. Moving forward, we will actively engage members and other stakeholders in designing the process for determining how to categorize a setting. This process will involve gathering information from members and providers about specific settings. Any decisions about how to categorize specific settings will become part of a revised Transition Plan which will be subject to formal comment from stakeholders. *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter expressed agreement with what she believed to be the Department’s position that it would present evidence for any setting subject to heightened scrutiny. (3)

Response: The Department has not taken the position that, for any setting presumed to be disqualified, it will present evidence to CMS to attempt to overcome that presumption. Based on the information collected during the assessment process, the Department will determine whether there is sufficient evidence that could be

submitted to overcome the presumption that the setting is disqualified. For example, we are prepared to submit evidence to CMS seeking to overcome the disqualification presumption for those settings that are co-located with a nursing facility but do not isolate members and otherwise meet HCBS standards. *(The Transition Plan was modified to clarify our intent with respect to submitting evidence to CMS.)*

Residential Settings

Comment: One commenter requested clarification on whether residential services reimbursed as a Medicaid State Plan Private Non-Medical Institutional (PNMI) service, rather than as a waiver service, were excluded from the Transition Plan.³⁰ (4)

Response: Even though PNMI providers are reimbursed under the Medicaid State Plan, and are not a service provided under a waiver, CMS has issued guidance which suggests that waiver members must live in settings that comply with the settings requirements of the new rules, regardless of whether they are receiving waiver services in that setting. In particular, in its response to comments on the new HCBS standards, CMS said:

“...[S]ince this authority provides states the opportunity to provide individuals HCBS and not institutional services, individuals receiving 1915(i) State plan HCBS or 1915(k) CFC services must be living in settings that comport with the HCB setting requirements as set forth in this rule regardless of whether they are receiving HCBS in that residence. This is consistent with CMS' longstanding policy regarding 1915(c) HCBS.”³¹

The Transition Plan sets forth a “best estimate” assessment of the number of PNMI that provide residential services to waiver participants but the residential services are reimbursed as a Medicaid State Plan service. The Department anticipates that as more information is gathered, the implications of the new HCBS standards for these PNMI will become clearer. *(No change was made to the Transition Plan in response to this comment.)*

Comment: A commenter noted that the Transition Plan covers state-plan funded residential settings (PNMI) serving waiver recipients but does not address Section 97 policies and practices. The Department should do this analysis and make changes to policy as necessary and work with recipients in these settings. (9)

Response: The Department believes it can adequately regulate the services provided to waiver participants through the waiver document and the regulations governing the waiver program. The regulations governing the practices of PNMI not serving waiver participants are outside the scope of this Transition Plan. *(No change was made to the Transition Plan in response to this comment.)*

Comment: A commenter shared her experience in accessing an appropriate service mix for her son. This commenter reported that the Department’s decision not to cover group home services for children meant that her son had to move out of state in order to receive the appropriate level of services. (6)

Response: The Department thanks this commenter for sharing her experience. The Department notes, however, that the Transition Plan addresses how home and community-based services are delivered but does not address the scope of covered residential services. *.. (No change was made to the Transition Plan in response to this comment.)*

Comment: A commenter expressed her belief that home and community-based residential settings should reflect the personal style and preferences of the people who live there; residents should have a key to their home and be able to lock bedrooms and bathrooms for privacy; residents should not be forced to share a room with an unknown or undesired roommate; residents should have the right to freely access and use kitchens, laundry rooms, and other social and domestic areas of the home. (5)

³⁰ In particular, some members with an intellectual disability or autism receive non-residential waiver services at the same time they are receiving residential services reimbursed as a PNMI service under Appendix C (for Medical and Remedial facilities) of §97 of Maine’s Medicaid State Plan. See §97 in Chapter III of the MaineCare Benefits Manual.

³¹ Federal Register, Volume 79 at page 2960. See also page 2968.

Response: The Department agrees that residential settings should support the member's privacy, choice, and autonomy consistent with the standards articulated in the new HCBS rules. *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter asked how residential providers will be expected to comply with an individual's control over personal resources. This commenter sees these standards applying more significantly in cases where a representative payee is not appointed. This commenter acknowledged that the right to have a savings or checking account appears doable. The commenter wondered whether the practice of locking personal spending funds and EBT cards would be challenged. This commenter indicates that this practice is used to prevent theft when multiple staff and other residents may be coming and going. Although the individual theoretically has access to his or her funds at any time, in reality, that individual can only access those resources through the staff member holding the key. This commenter questioned how compliance with the rules will balance the individual's right to access his or her resources at any time against the provider's responsibility to prevent theft. (7)

Response: The Department welcomes information about the factors that must be taken into account as we move forward with implementing these new rules. The Department believes that implementation will require much more conversation with both providers and the members receiving services to ensure that members have access to their personal resources, while concerns about preventing theft are also addressed. *(No change was made to the Transition Plan in response to this comment.)*

Adult Day Centers

Comment: One commenter noted that it was unlikely that the licensing regulations would be interpreted not to require adult day centers to notify members of their right to complain. This commenter noted that a one line amendment to the consumer rights section requiring the provider to distribute a written notice to each new consumer or the consumer's family or agent describing the rights and the complaint process should be sufficient to satisfy everyone that this part of the adult day rule complies with the HCBS rule. Another commenter suggested that when adult day centers are required to post or notify consumers and their families about their rights, they should also be required to provide information about the Maine Long Term Care Ombudsman Program and other advocacy organizations. The commenter noted that the Ombudsman Program is already in the regulations as a contact if a consumer wishes to file a grievance, so posting information about the Ombudsman Program would enhance access to this service. (1, 8)

Response: The Department agrees that the identified policy change is technical and it is unlikely that the right to notification is not already implied or that adult day centers are not already providing notice. We agree that the needed policy change could be satisfied with language similar to that offered by commenter. The Department agrees that any notice of rights should provide information about how to access appropriate resources for assistance with enforcing those rights. As the Department moves forward with implementation, it will solicit the input of stakeholders on the primary sources of assistance to be identified. *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter offered to be involved in the process of developing the assessment tools for assessing adult day centers and gathering information about adult day centers. This commenter offered the assistance of its staff and volunteers for interviewing members in adult day centers. (8)

Response: The Department welcomes stakeholder engagement in designing the assessment process. The Department has not made any decisions on how it will conduct onsite surveys of specific settings but would like to ensure the information collected is reliable, complete, and unbiased. *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter expressed her belief that adult day centers provide the access to the community that people need and adult day services need to be available to members who need them.

Response: The Department agrees that adult day services are an important service component that allows persons with significant impairment to continue to remain in the community. The Department remains committed to

working with adult day centers and CMS to do everything possible to ensure that access to adult day services is preserved provided they can comply with the new HCBS standards. *(No change was made to the Transition Plan in response to this comment.)*

Comment: A commenter recommended that the Department expanded the scope of the assessment to include all adult day centers, not only those currently providing services under §19, the Elder/Adult waiver. (9)

Response: The Department agrees that the scope of the assessment process should be expanded to include all adult day centers, in order to ensure that waiver participants have adult day centers when and if they need them. *(The Transition Plan was modified to expand assessment process to include all adult day centers.)*

Comment: One commenter sought to clarify whether, for adult day centers presumed disqualified because they are co-located with a nursing facility, the Department would submit information to CMS to overcome the presumption under the “heightened scrutiny” standard. (4)

Response: For all settings presumed disqualified, the Department will conduct an onsite survey. Maine anticipates that onsite surveys conducted for adult day centers and other sources of information will produce evidence that may be submitted to CMS, with a request that CMS recognize these settings as qualified HCBS settings. *(No change was made to the Transition Plan in response to this comment.)*

Comment: For all waivers that provide employment supports, OADS should change its policies to ensure that no HCBS employment or work supports will be paid to programs that pay employees subminimum wage. (9)

Response: The Department recognizes that sub-minimum wage does not meet the HCBS definition of “competitive, integrated employment” and will assess all group settings for compliance as part of the verification process. Sections 21 and 29 rule requires that members receiving Work Supports on an individual basis be paid at or above minimum wage. The Department has strengthened the language in rule to require that, for individuals receiving Work Supports in group settings who receive sub-minimum wage, this service must lead to integrated Community-Based employment at or above minimum wage for that individual. In October 2014 career planning was added to Section 21 and Section 29. This service enables members to obtain, maintain, or advance competitive employment or self-employment. As part of an individual's person-centered planning process, the person must be offered employment as the first and preferred service. The Department also actively engaged in Employment First activities recommending changes to the legislature in this area.

Comment: One commenter expressed her belief that home and community-based day and employment settings should ensure (1) Participation in activities taking place in ordinary community venues (not owned, operated or leased by HCBS providers; such as fitness facilities, parks and recreation centers, libraries, etc.; and during times open to the general public) where members include community members without disabilities (who are not paid HCBS staff) and community members who do not receive HCBS (and who are not paid HCBS staff); (2) the type and range of activities—including educational, recreational, familial, social, faith-based—as part of a meaningful day should be comparable to those in which non-disabled persons of similar age routinely engage; (3) Employment services and job placement should be individually planned and delivered; customized employment but not mobile crews and enclaves; and (4) the terms and conditions of employment—such as wages, benefits, supervision, advancement, and tenure—where employment services are provided must be comparable to those offered to non-disabled workers. (5)

Response: The Department agrees that day and employment settings should support the member's privacy, choice, and autonomy consistent with the standards articulated in the new HCBS rules. *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter expressed her opinion that “reverse integration” (bringing people without disabilities into a setting) should not be approved as an acceptable strategy for meeting the new HCB settings regulations. The commenter stated that this approach has not been found to be an effective means for providing opportunities to seek employment and work in competitive integrated settings, nor engage in community life.

Response: The Department welcomes this comment and recognizes that “reverse integration” may not be the best method for integrating an individual into the community in many cases. At the same time, it may be the best option available in certain contexts (for example, where an individual’s health and welfare would otherwise be compromised) that prevents even greater isolation should the person remain at home without the benefit of this service. Whether and to what degree these settings meet the new HCBS standards will need to be evaluated based on the criteria set forth in the rules. As the Department moves forward with implementing the changes required under the new HCBS rules, we will engage stakeholders in a discussion of the best strategies for integrating individuals into the community, within the context of different settings and programs. *(No change was made to the Transition Plan in response to this comment.)*

Modifications

Comment: A commenter expressed her interest in the state’s guidance on how to modify the application of the HCBS standards to an individual when health and safety concerns require it. This commenter used the example of modifying the application of the HCBS rule that requires providers not to restrict access to food when an individual has dietary or fluid restrictions. This commenter suggested that there is not adequate room in the person-centered plan to document these issues and that case managers are not adequately trained to facilitate these conversations. (7)

Response: The Department is committed to ensuring that the protections afforded under the HCBS rules are not undermined by inappropriate modifications to the HCBS standards. At the same time, the Department recognizes the challenges providers face when balancing the protection of individual rights against their responsibility for assuring the health and safety of those they serve. As we move forward with implementing these new rules, we will work closely with key stakeholders to develop training and educational resources designed to educate members and providers about their rights and responsibilities. We will also continue to work with case managers to ensure that they are able to adequately document modifications in the person-centered plan, facilitate conversations on modifications, and ensure ongoing compliance with review and monitoring requirements. *(No change was made to the Transition Plan in response to this comment.)*

Member Experience

Comment: Several commenters emphasized that when assessing a specific setting for compliance, the assessment process needs to capture the experience of waiver participants receiving services in that setting. One commenter also noted persons who have been limited to primarily isolating experiences are not likely to express dissatisfaction with their services because they will not have a point of comparison. When it comes to eliciting true member experience, this commenter emphasized that the person administering the member experience tool will be as important as the tool itself. (5, 9)

Response: The Department agrees that capturing member experience is a critical element in assuring compliance with the new rules. The Department also agrees that it will be very important to administer the member experience interview so as to capture an accurate and complete picture of patient experience. However, it is important to note that the HCBS rules do not set standards for member satisfaction with services. They have a more objective focus on the facts relating to member experience of services. For example, did the member have access to food? The ability to lock his or her door? Control over his or her personal resources? We recognize that we will still need to design and administer the member experience tool with care. However, we believe some of the concerns raised by this commenter are mitigated by the nature of the information to be gathered. *(No change was made to the Transition Plan in response to this comment.)*

Member Choice

Comment: One commenter noted that Maine does not provide members a choice to live alone and receive 24/7 support under Section 21. This commenter expressed her view that this is a substantial limitation on choice of residence and leaves the individual at the mercy of their roommate’s status. This commenter noted that Maine regulations instruct service providers to give notice to persons that they must leave a residence when funding stops. For some, this creates a nomadic culture of moving from place to place in an attempt to find a stable

roommate. For others who are medically or behaviorally incapable of living with someone else, this requirement can prevent them from having the ability to live safely in the community. (9)

Response: The Department agrees that Section 21 does not allow new placements providing members the option to live alone and receive paid 24/7 supports. The Department recognizes that, in some cases, members will experience disruption in their lives when another member sharing the same home leaves. When these events occur the Department works with each individual to minimize any disruption the remaining member might experience, as the process of identifying another housemate or placement progresses. The Department does not believe that a person who cannot live with someone else is automatically unable to live safely in the community without 24/7 care. The Department agrees that there may be medical or behavioral factors that make living in the community unsafe without 24/7 care. Because the Transition Plan addresses settings not the scope of covered services, this issue is beyond the scope of the Transition Plan. *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter raised the question of the relationship between changes in staffing ratios and the goals of individual flexibility and choice under the HCBS rules and the Transition Plan. This commenter noted that persons requiring more staff need access to the community as much as a person with a lower level of need. (6)

Response: The Department believes the changes in staffing ratios support individual flexibility and choice. A waiver participant has the option of selecting a 1:1 staffing ratio for community supports, depending on the provider's business decision about the type of services to offer. *(No change was made to the Transition Plan in response to this comment.)*

Person-Centered Planning

Comment: Several commenters noted that the HCBS rules include new standards for person-centered planning (PCP). They requested the Department address the PCP standards in the Transition Plan. (8, 9)

Response: The Department agrees that person-centered planning is a key component of the new regulations and looks forward to evaluating these processes as a component of its transition planning work across the waivers. However, CMS has notified states that the process of ensuring compliance with the new PCP standards may not be included in the Transition Plan. The Department will continue to strengthen the PCP process under a coordinated but separate initiative. Our goal is to provide robust person-centered planning across all waivers while still recognizing and identifying program differences that should be preserved to meet each population's distinct need. *(The Transition Plan was modified to clarify the relationship between the HCBS settings standards and the Department's plans for strengthening PCP across programs).*

Comment: One commenter noted that while Maine has already done much to ensure compliance with the PCP requirements under the HCBS rules, this commenter believes that many of the new plans are poor quality and that case managers need more training, particularly as the Department implements the settings standards. This commenter also believes the PCP process has become less about a meaningful, vision planning process than a documentation process. (7)

Response: The Department appreciates the feedback from this commenter and will continue to provide training and technical assistance to case managers to ensure that the PCP process is truly person-centered, in compliance with the Department's policy and the new HCBS standards. *(No change was made to the Transition Plan in response to this comment.)*

Stakeholder Engagement

Comment: A number of commenters emphasized the need for active stakeholder engagement during the implementation process. Commenters mentioned the importance of obtaining input from consumers, advocates, and others. Commenters suggested a number of different roles for stakeholders in the implementation process including participating on advisory groups, coordinating the assessments of settings, and developing and conducting field assessments. One commenter also encouraged the Department to engage in an active outreach and education strategy to educate consumers about the new rule, its potentially positive impact on services, and

roles that they can play in shaping the transition process. Another commenter asked whether there will be a formal process for commenting on policy and practice changes made during the implementation process. (2, 6, 8, 9, 11)

Response: The Department welcomes comments about the need for active stakeholder engagement. The voices of consumers, family members, and advocates play an important role in making sure policy and program changes are responsive to the needs of those served. As one commenter said, “The deeper the understanding of the issues of those being served, the more likely a system can be created to meet those needs effectively for all involved.” We also recognize the importance of listening to providers who can help us to understand the implications of policy and practice changes and avoid unintended consequences that weaken our delivery system.

In our draft Transition Plan, we have identified the role of stakeholders in the implementation process. Based on comments, we have revised the Transition Plan to clarify our vision for how the stakeholder process will work and the roles and responsibilities of stakeholders and the Department in that process. The Department will convene four working groups who will have responsibility for advising the Department as it moves forward with implementing the Transition Team. The Department will provide support to these advisory groups to ensure that the meetings provide a meaningful opportunity for constructive engagement. The Department will consult with the advisory groups as it develops and conducts the assessment process. The Department will consult with the advisory groups as it develops or modifies existing policies and procedures and verification systems. The Department also agrees that there needs to be active outreach and education to make sure waiver participants understand the implications of these rule changes, including their rights. We expect the process of more systematically engaging stakeholders to begin this spring, in anticipation of beginning the Settings Assessment process over the summer.

Finally, substantive changes to the Transition Plan, waiver application and Department regulations will be subject to a formal comment period, consistent with the Department’s existing administrative procedures. (*The Transition Plan was modified to clarify the Department’s plan for stakeholder engagement during the implementation phase.*)

The Provider Self-Assessment

Comment: Several commenters made suggestions regarding the procedures for assessing settings. One commenter suggested the Department work with researchers to develop interview questions that will ensure the accuracy and reliability of the survey tool and the data collected. A commenter suggested the Department should include a small but representative stakeholder group in the actual development of the tool and to ensure the tool is reliable, valid and understandable to providers of all service types. A commenter was concerned that the tool needed to be developed with words and concepts that will not rely on the rhetorical language that can distinguish between true community integration and special programs, Special Olympics, and facility-based day programs; real community employment versus segregated work; and real homes versus living in “home-like” environments. The self-assessment must be very clear about what constitutes acceptable settings and experiences under the rule and examples must be provided to illustrate such. Some commenters suggested the Department should not rely solely on provider self-assessments. One commenter suggested that providers are likely to offer too “rosy” a picture of actual integration. (2, 5, 9, 11)

Response: We agree that the survey tool will need to be carefully designed to capture objective rather than subjective measures of compliance. Stakeholders will be actively engaged in guiding the development of the assessment tools and procedures. The Department will work closely with stakeholders to design the assessment process to capture observable, factual data to avoid this problem. (*No change was made to the Transition Plan in response to this comment.*)

Comment: Some commenters thought that a five percent sample for validating the provider self-assessment survey was too small a sample to be meaningful. Others thought a 10 percent sample would be more meaningful. (2, 5, 9, 11)

Response: We will conduct onsite surveys for 100% of all settings identified as presumed disqualified. For all other settings, we anticipate that the total number sampled will be five percent. The exact sampling methodology for all

other settings will be guided by CMS, stakeholders, and researchers, balanced against available resources. Our proposed sample size was modeled after that used in other states. *(The Transition Plan was revised to clarify the Department's approach to the sampling methodology.)*

Comment: A commenter encouraged the Department to have mechanisms in place to ensure that onsite review teams are knowledgeable, experienced, independent and capable of providing unbiased reviews. They recommended that the Department not presume any setting meets HCBS rules unless people with disabilities and their families and service providers adequately assess the setting. (9)

Response: The Department agrees that the quality and independence of the onsite review teams is important to this process. We do not anticipate that members or their family members will be conducting the onsite survey, although we expect that members and their families will have an active role. Capturing member experience of the services provided in a setting will be critical to confirming that the setting complies with those standards focused on member choice, autonomy and other aspects of member experience. *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter suggested the Department focus its efforts on transitioning individuals from “presumed disqualified” settings rather than “rather than developing protocols by which institutional settings may identify themselves as Community-Based.” (2)

Response: The Department will be conducting site visits for all sites identified as “presumed disqualified” including both those identified as “presumed disqualified” during our preliminary assessment and those identified through the provider self-assessment survey. The Department will not transition persons from a “presumed disqualified” setting until it or CMS concludes that the setting has institutional qualities that cannot be remedied. *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter wanted to confirm that the Department will be making site visits to waiver programs this year to initially determine their level of compliance with the new definitions of home and Community-Based services. This commenter wanted to confirm that site visits would include adult day centers. (4)

Response: The Department can confirm that it will be conducting site visits to validate the provider self-assessment survey and to more closely examine potentially disqualified sites. The timing of the site visits will be driven by CMS approval of our Transition Plan and the process of designing and implementing the site visit protocols. The timing is also likely to vary across types of settings, driven by differences in the volume of settings, the length of time involved in tool and protocol development, and stakeholder guidance and input. *(No change was made to the Transition Plan in response to this comment.)*

Education and Training

Comment: One commenter recommended that the Transition Plan be more fully developed to include education, mentoring, and resources to achieve provider transformation, expanded to include education for new providers and employees, people with disabilities, families, Boards of Directors, and community partners. The training should provide information on “how” and “why” change is necessary. Training should focus how to customize employment, how to build relationships with typical community members, how to make home ownership a reality for people with significant intellectual disabilities. A simple redefinition or relabeling of the status quo with no actual meaningful positive change will not benefit people with disabilities and is not the intent of this landmark CMS settings rule. (5)

Response: The Department welcomes input and suggestions on how to design the education and training needed to implement the new rules. Stakeholders will be actively involved in designing educational and training activities as we move forward with implementation. *(No change was made to the Transition Plan in response to this comment.)*

Comment: A commenter suggested that the Department expand its proposed case manager training to include all of the HCBS standards. This commenter suggested that the Department offer this or a similar training to waiver

participants so that they know their rights under the HCBS rules and what to do if their provider is not complying. (5)

Response: The Department agrees that training should extend to all HCBS rules and that waiver participants should have access to similar training in order to more fully understand their rights. *(The Transition Plan was revised to clarify the Department's plan for training.)*

Comment: A commenter noted that unlicensed provider-owned or controlled settings will now be required to use residential agreements. This commenter encouraged the Department to develop a training and education campaign for providers and service recipients about these changes and tenant rights. (9)

Response: The Department agrees that the use of residential agreements will be a significant change both for the unlicensed provider and for the waiver participant. The Department will conduct a training and education campaign to ensure that providers and members understand their rights and responsibilities. *(The plan was modified to address member education and training.)*

Verification Systems

Comment: Several commenters had suggestions and comments on the Department's plans for formalizing or developing systems for verifying compliance with the new rules. One commenter believes that the plan to develop and implement the verification system is extended too far into the future. This commenter also questioned whether an informal verification system could ensure that reliable and valid results over time and across monitors. This commenter questioned whether it was feasible to add the verification of participant experience to the case manager's responsibilities, given that case managers are already overextended. This commenter requested that the details for the verification system be developed before the plan is released for formal comment. (11)

Response: We welcome the many comments on the proposed plans for developing verification systems. We appreciate the commenter's concern that the verification systems will take some time to develop. However, implementation of the Transition Plan will require the development of tools and new procedures. It would be premature to develop systems to monitor practices and procedures that have not been developed yet. We also appreciate the commenter's concern about adding to the case manager's responsibilities. We recognize that the scope of responsibility for case managers is already significant but also believe that we need to leverage the professional skills and contact that case managers have with their clients as part of the verification process. We expect the role of case managers in the verification process to be an ongoing topic of discussion both internally and with our external stakeholders.

The details of the verification system could not be developed prior to putting the Transition Plan out for formal comment. The proposed approach for building a verification system is subject to revision during the implementation phase. During the implementation phase, a wide range of stakeholders will be involved in designing the verification systems, including case managers. We anticipate that the optimal approach to verification will emerge through this process. *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter recommended that the Department expand developmental services grievance process to include all HCBS waiver programs. This commenter indicated that because individuals receiving services are in the best position to inform the Department if the services they receive are not in compliance with the HCBS rules, the best way to capture that kind of information would be through a robust grievance process. (9)

Response: We welcome suggestions on verification systems and agree that members provide valuable insight and need to have a role in identifying areas of noncompliance. However, while a grievance process can be a useful mechanism for identifying and addressing problems, the Department does not agree that expanding the developmental services grievance process is the most effective or efficient way to formalize a verification system across waivers. We believe a more systematic approach to assessing participant experience is necessary. *(No change was made to the Transition Plan in response to this comment.)*

Comment: One commenter noted that the verification system lacks an enforcement mechanism and requested that the Department make policy changes to include methods for penalizing providers who do not comply with HCBS rules. (9)

Response: We agree that the Department will need effective mechanisms for ensuring that providers comply with these standards and take corrective action when they do not. We will address this issue, in consultation with our advisory groups, as we modify or formalize verification systems to ensure compliance with the new HCBS settings standards. (No change was made to the Transition Plan in response to this comment.)

Other Comments

Comment: One commenter noted that the Department is planning to eliminate group residential services as a covered service under §32, the Children’s Services waiver. This commenter believes eliminating this option hurts families that may desperately need such a service, potentially creating a huge strain on family members. This commenter believes that eliminating group homes for children is inconsistent with the “flexibility” intended the new HCBS standards. This commenter suggests that the Department consider allowing occasional “group home” exceptions. (6)

Response: The Department values the role of family caregivers and recognizes the importance of supports and services that strengthen the family caregiver role. We note, however, that the Transition Plan focuses on ensuring that settings comply with the HCBS standards, not the scope of covered services under the waiver program. (No change was made to the Transition Plan in response to this comment.)

Comment: The commenter disagrees with the Department’s note that “implementation of the SIS is well aligned with the new HCBS rules, providing the waiver participant with greater flexibility and choice.” This commenter identifies the expansion of community-based services and the inclusion of new services such as career planning and assistive technology as positive attributes of the Department’s plan for implementing the SIS. However this commenter believes that the Department’s plan for reimbursing community and work supports does not honor the choices of many individuals not to participate in day activities for reasons related to personal preference, retirement, etc. This commenter believes that the resulting cuts to Home Supports will be so great that the proposed changes will have the effect of isolating individuals, counter to what the new HCBS standards are trying to accomplish. This commenter believes that reductions in staff resulting from the changes will mean there is only one staff on shift in a home of 3 or 4 residents, This commenter is concerned that these changes may limit each member’s independence, freedom of movement, privacy, community activities, etc. (7)

Response: The Department disagrees with this commenter’s assessment of the impact of the SIS on member independence, choice, and access to the community. (No change was made to the Transition Plan in response to this comment.)

Commenters

| Reference Number | Name | Organization, If Identified | Written Informal Comments | Public Testimony (January 16, 2015) | Submitted Written Formal Comments |
|------------------|---------------|---|---------------------------|-------------------------------------|-----------------------------------|
| 1 | Leo Delicata | Legal Services for the Elderly | | | √ |
| 2 | Rachel Dyer | Maine Developmental Disabilities Council | | | √ |
| 3 | Mary Lou Dyer | Maine Association for Community Support Providers | | √ | √ |
| 4 | Rick Erb | Maine Health Care Association | √ | | √ |
| 5 | Gail Fanjoy | KFI | | | √ |
| 6 | Kim Humphrey | | | | √ |

MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES

| | | | | | |
|----|---------------------|---|---|---|---|
| 7 | Jen Jello | Support Solutions | | | √ |
| 8 | Pam Marshall | Long Term Care Ombudsman Program | | √ | √ |
| 9 | Katrina Ringrose | Disability Rights Center | √ | √ | √ |
| 10 | Cullen Ryan | | | √ | |
| 11 | Valerie Smith | Maine Developmental Services Oversight & Advisory Board | √ | √ | √ |

Appendix: Public Notice

Legal Notice published Wednesday 31, 2014 in the Portland Press Herald/Maine Sunday Telegram, the Sun Journal, the Kennebec Journal, the Morning Sentinel, and the Bangor Daily News.

Notice of Agency Hearing

AGENCY: Department of Health and Human Services, MaineCare Services

RULE TITLE OR SUBJECT: Home and Community-Based Services Transition Plan
<http://www.maine.gov/dhhs/oms/rules/index.shtml>

CONCISE SUMMARY: The Centers for Medicare and Medicaid Services (CMS) has implemented new rules governing Medicaid-funded Home and Community-Based Services (HCBS) authorized under §1915(c), §1915(i) and §1915(k) of the Social Security Act. The new rules set standards for person-centered planning, conflict-free case management, and the settings in which HCBS is provided. The rules became effective March 17, 2014. For the standards that apply to HCBS settings, DHHS must submit a “Transition Plan” to CMS. The Transition Plan must document compliance with the rules and develop a plan for addressing noncompliance. DHHS is required to seek public input on the draft Transition Plan which is posted at the website listed below. DHHS invites the public to comment on whether this document accurately represents the status of Maine’s HCBS programs and services and to provide input on our plan for addressing areas of noncompliance.

WEBSITE: <http://www.maine.gov/dhhs/oms/rules/transition-plan.shtml> for the Transition Plan and the link to submit a comment.

PUBLIC HEARING:

January 16, 2015, 9:00 am-12:00 pm

Location: Conference Room # 110

Department of Health and Human Services

19 Union Street

Augusta, ME

The Department requests that any interested party requiring special arrangements to attend the hearing contact the agency person listed below before January 10, 2015.

DEADLINE FOR COMMENTS: Comments must be received by midnight, Saturday, January 31, 2015

AGENCY CONTACT PERSON: Ginger Roberts-Scott

Children’s and Waiver Services Program Manager

AGENCY NAME: MaineCare Services

ADDRESS: **242 State Street**

11 State House Station

Augusta, Maine 04333-0011

Email: Ginger.roberts-scott@maine.gov

TELEPHONE: 207-624-4048 **FAX:** (207) 287-1864 **TTY:** 711

Posting on Office of MaineCare Services Policy/Rules Page³² on December 31, 2014, with a link for accessing a PDF version of the Draft Transition Plan for Complying with New HCBS Rules and the graphic representation of the transition plan.

The Centers for Medicare and Medicaid Services (CMS) has implemented new rules governing Medicaid-funded Home and Community-Based Services (HCBS) authorized under §1915(c), §1915(i) and §1915(k) of the Social Security Act. The new rules set standards for person-centered planning, conflict-free case management, and the settings in which HCBS is provided. The rules became effective March 17, 2014. For the standards that apply to HCBS settings, DHHS must submit a "Transition Plan" to CMS. The Transition Plan must document compliance with the rules and develop a plan for addressing noncompliance. A copy of the Transition Plan may be viewed at any regional Office for Family Independence (a list of the offices and locations can be found at this link <http://www.maine.gov/dhhs/DHSaddresses.htm>) or a printed copy may be obtained by calling Ginger Roberts-Scott at 207-624-4048 or emailing at ginger.roberts-scott@maine.gov.

³² The Office of MaineCare Services Policy/Rules webpage for the draft Transition Plan may be accessed at: <http://www.maine.gov/dhhs/oms/rules/transition-plan.shtml>.