



*Department of Health
and Human Services*

*Maine People Living
Safe, Healthy and Productive Lives*

Draft Transition Plan for Complying with New HCBS Rules

DECEMBER 15, 2014

Maine Department of Health and Human Services

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Introduction

The Centers for Medicare and Medicaid (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.

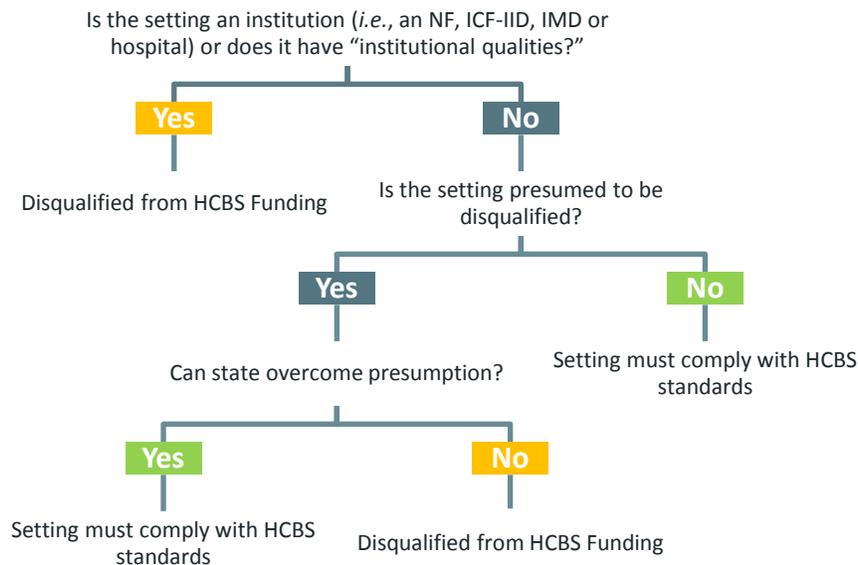
Starting in June 2014, the Department began a self-assessment process to determine how well its policies and practice complied with the new HCBS rules, to assess how well settings complied with the new standards, and to assess how well our quality assurance systems ensured compliance with the new HCBS rule. 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 complies with the new rules, those areas we need to change, and our Transition Plan for coming into compliance and staying in compliance on an ongoing basis. The Transition Plan describes how this preliminary self-assessment process will be supplemented with provider surveys, site visits, assessments of participant experience and other more systematic methods of data collection.

We invite the public to comment on whether this document accurately represents the status of Maine’s HCBS programs and services and provide input on our plan for addressing areas of noncompliance.

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 setting 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. These standards do not apply to services provided in the member’s private home.¹ 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.

¹ However they do apply to Shared Living Arrangements, which are considered to be provider-owned or operated residential settings.

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 setting 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 & 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 supports 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 among 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, 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.

Documentation in the person-centered service plan of modifications of the additional requirements includes:

- 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

HCBS Programs in Affected by New Rules

Maine has seven approved §1915(c) HCBS waivers, no §1915(i) or §1915(k) state plan amendments. See Table 1.

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

Program	Initial Approval	Most Recent Effective Date	Maximum Number of Participants
§18 Home and Community-Based Services for Adults with Brain Injury.*	2014	7/1/14	250
§19 Home and Community Benefits for the Elderly and for Adults with Disabilities	1994	7/1/13	1643
§20 Home and Community Services for Adults with Other Related Conditions	2013	5/1/13	25
§21 Home and Community Benefits for Members with Intellectual Disabilities or Autistic Disorder	1987	7/1/10	2945
§22 Home and Community Benefits for the Physically Disabled**	1989	7/1/09	160
§29 Support Services for Adults with Intellectual Disabilities or Autistic Disorder	2007	1/1/11	1450
§32 Waiver Services for Children with Intellectual Disabilities or Pervasive Developmental Disorders	2011	2/1/11	80*

*Enrollment on the Brain Injury waiver began November 1, 2014.

** Subject to CMS' approval, §22 will be merged with §19. The merger is expected to be effective December 27, 2014. The two waivers are treated separately here.

***§32 has never been an active waiver program.

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.

Not all of Maine's §1915(c) waivers require the same level of attention in this transition plan:

- The §1915(c) waiver authorizing the HCBS program for **adults with brain injury** under **§18** was only recently approved (May 6, 2014). Because approval came after the effective date of the new HCBS rules, program policies have already been determined to be in compliance with the new HCBS rule. Similarly, at the time that the §1915(c) waiver authorizing the **Other Related Conditions** HCBS program under **§20** was approved (May 1, 2013), CMS was applying most of the HCBS standards to new waivers. As a result, §20 also substantially complies with the new rules. 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. However, §19 does cover adult day health services, which are also required to meet HCBS standards. Our analysis of §19 focuses on adult day health services.
- **Section 22**, the waiver covering **consumer directed personal assistance services**, does not cover any services provided in a provider-owned or controlled residential setting, or a disability-specific job site or day program. With minor technical changes to policy (*e.g.*, adding IMDs to the list of disqualified institutional settings), this program is in full compliance with the new HCBS rules.
- The §1915(c) waiver authorizing HCBS for **children with intellectual disabilities or autism** (governed under **§32**) has never been active. That is, there are no children enrolled in that program. That waiver is currently being revised to limit services to only those provided in a child's home, which will eliminate any potential compliance issue. That waiver is not addressed in this plan.

Stakeholder Engagement

Input from stakeholders is critical to the successful development of this transition plan. The Department has a great deal of information about its programs, without input from the people that receive services and those that provide them, our picture is incomplete. Our process for engaging stakeholders has had two stages: an educational and, this phase, our request for public input.

Outreach and Informational Webinars

In October the Department conducted a series of outreach informational webinars targeting for primary audiences:

Audience	Program	Date
Participants & 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 Office of Aging and Disability Services (OADS) and Office of MaineCare Services (OMS) listserves and posted on the OADS website.² Meeting materials providing an overview of the new rules were also posted on the OADS website. Stakeholders had an opportunity to ask questions both during the webinars, by contacting DHHS leads, or by submitting questions.

Community Forum

The Office of Aging and Disability Services (OADS) has taken responsibility for answering questions about the Transition Plan. On December 15, 2014, OADS posted this draft Transition Plan on its website (<http://www.maine.gov/dhhs/oads/>) and disseminated it through the OADS listserve.

The draft was disseminated in advance of a statewide community forum scheduled to take place on December 19, 2014. This community forum will be 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 University of Maine at Fort Kent, and the University of Southern Maine) through video conferencing. Notice of the public forum was published in the legal notice section of five major newspapers, disseminated through the OADS listserve, and posted on the OADS website.³

The purpose of the forum is to provide an opportunity for a two-way dialogue about the transition plan, providing stakeholders the opportunity to ask questions about the plan and an informal forum for voicing their concerns. The forum will also provide Department staff an opportunity to clarify their own understanding of stakeholder concerns. The dialogue will be informal; concerns will be noted but not recorded as public comments. Stakeholders will be notified that if they want a formal response to the concerns they raise, they must submit comments at the public hearing to be scheduled in January or in writing. (See discussion of public comments below.)

Public Comments

OMS has lead responsibility for receiving public comments on the transition plan. A public hearing in compliance with Maine's Administrative Procedures Act (APA) will be held in January 2015. This public hearing will provide

² 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.

³ 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.

interested parties the opportunity to submit testimony and comments. In the final transition plan submitted to CMS we will document the comments submitted and our response to those comments.

Information about the formal public comment process will be published in accordance with the APA. In addition OADS will disseminate information about the public comment process through its website and list serve.

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,⁴ the relevant section of the MaineCare Benefits Manual and licensing regulations for adult day health and assisted housing,⁵ certain statutes, and other related policies and procedures.

Maine policy was found to be compliant with the new HCBS rules 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

⁴ 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.

⁵ 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	Technical Change	No Change	Technical Change
• engage in community life,	No Change	Significant Change	No Change	No Change	No Change	No Change
• control personal resources, and	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 and	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 participant....	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
• 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
• Individuals sharing units have a choice of roommates in that setting.	No Change	No Change	No Change	Significant Change	No Change	Significant Change
• 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-IDD, 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 member 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
- Currently in compliance with the new rules.

To determine whether settings are disqualified or presumed disqualified, the Department generated provider lists from case files (to identify providers and our claims management system (to capture residential providers funded under the Medicaid state plan who are serving waiver participants). 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-ID) 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 participants 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 (see our discussion of the Transition Plan starting at page 16), we plan to conduct a provider self-assessment survey and onsite survey during the transition period. Onsite surveys will include interviews with program participants to ensure that the Department captures information about how participants 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 that 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.”

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

Types of Residential Settings

Services provided under Maine’s HCBS waiver programs are provided in a variety of settings. In addition, some HCBS waiver participants 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.⁶ See **Error! Reference source not found.** for a representation of the types of residential and non-residential settings associated with each waiver program.

⁶ 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 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>.

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 participant’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 participant’s privately owned or leased home.

Four of Maine’s six waivers⁷ 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	-	-	-	√	-	-
• PNMIs*	-	-	-	√	-	√
• Work settings	-	-	-	√	-	√

*If checked, the waiver permits waiver participants 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 participants under §20 currently reside in a PNMI.

⁷ This document does not address Maine’s seventh, inactive waiver, §32. However, although the current rule would allow services to be provided in a provider-owned or controlled residential setting, no services are provided in those settings and the waiver is being amended to eliminate that option.

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.⁸ 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	Participants
§18	0	0
§20	6	6
§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 waiver. We have identified 537 settings in which Shared Living Arrangement services are provided to 541 participants under the §21 waiver.

Waiver Program	Settings	Participants
§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 waiver. Based on our analysis, there are 96 group home settings and 147 participants under §21 receive services in these settings.

Waiver Program	Settings	Participants
§21	96	147

Source: Maine Department of Health and Human Services.

⁸ 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>.

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

Private Non-Medical Institution (PNMI) services are residential services funded as a Medicaid state plan service under §97 of the MaineCare Benefits Manual⁹ (i.e., not an HCBS waiver service). PNMI services are provided in group homes with 24/7 staff.¹⁰ 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	Participants
§21	21	62
§29	62	197

Source: Maine Department of Health and Human Services.

Only PNMI's 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	-	-	√	√	-	√
• Work settings	-	-	-	√	-	√

According to our analysis, 23 participants access adult day health services in 12 settings. There are 125 center-based settings that provide Community Supports and 292 Work Support settings that provide Work Supports as part of work shops or crews.

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 and §29.

⁹ The PNMI's relevant here are those reimbursed under Appendix C (Medical and Remedial Service Facilities) and Appendix F (Non-Case Mixed Medical and Remedial Facilities). PNMI's reimbursed under Appendix C serve persons with a need for assistance with activities of daily living, nursing, monitoring, or certain other supports. PNMI's reimbursed under Appendix F serve persons with intellectual disabilities and brain injury and other population groups.

¹⁰ Like some group homes, PNMI's 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*.

Waiver Program	Type of Setting	Number of Settings	Number of Participants
§19	Adult Day Health Centers	12	23
§21 & §29	Center-Based Community Supports	125	3468*
§21 & §29	Disability-Specific Work Settings	292	708

Source: Maine Department of Health and Human Services.

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

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	0	NA	6	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 either 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	417	NA
• Presumed disqualified	0	3	0	NA
• Disqualified (institutional)	0	0	0	NA

Transition Plan

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.

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

During our transition process the Department will complete a detailed and comprehensive assessment of Presumed Disqualified and Compliance Possible Settings in order. The information gathered will be used to:

- Determine whether the Department should submit evidence to CMS to overcome the presumption that a setting is disqualified
- 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 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.

The Department will also revise policy, conduct training, make improvements to its verification systems, and take all other remedial steps identified in this document.

The Transition Plan for §19 starts on page 18. Under this transition plan the Department will focus on conducting site visits for the adult day health centers that serve §19 participants. Site visits will entail interviewing waiver participants. For settings Presumed Disqualified, the Department plans to gather evidence to submit to CMS to document that these settings should qualify as HCBS settings.

The Transition Plan for the remaining four waivers starts on page 20. Under this transition plan the Department will begin with a provider self-assessment survey to inform the site visits to follow. Site visits will entail interviewing waiver participants to assess how well services are aligned with individual autonomy, choice and rights. The survey and assessment of §21 and §29 will automatically address the center-based Community Supports settings identified under §20. |

The timeline in both Transition Plans assumes that CMS will have disseminated its guidance on how the rules apply to non-residential settings by March 2015.

For §21 and §29, 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 participant with greater flexibility and choice. However, implementation is also a significant undertaking and will be the primary focus of the Department, providers and waiver participants 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.



TRANSITION PLAN

§19 Home and Community Benefits for the Elderly and for Adults with Disabilities

Note: This timeline assumes that CMS will have released its guidance on non-residential settings by March 2015.

Action Item	Description	Start Date	End Date	Sources	Key Stakeholders	Intervention/Outcome
Identify Disqualified Settings or Presumed Disqualified Settings						
Develop site visit survey tool for adult day health centers	Survey tool designed to measure compliance with new HCBS rules	March 1, 2015	May 31, 2015	Site visit protocols from other states; CMS guidance on how standards apply to adult day health centers	OADS, OMS, DLRS, adult day health center providers and consumers and CMS	Assessment tool vetted by key stakeholders
Conduct site visits	Site visit includes interviews of waiver participants, if necessary and appropriate	June 1, 2015	June 30, 2015	Adult day centers, waiver participants and DHHS staff	OADS, OMS, DLRS	Completed site visit surveys documenting evidence of "isolating effect" where present
Identify evidence relating to presumed disqualified settings	Compile evidence for submission to CMS, for presumed disqualified settings	July 1, 2015	August 31, 2015	Assessment results	OADS, OMS, DLRS	Evidence relating to presumed disqualified settings for submission to CMS
Develop updated transition plan for submission to CMS; conduct public comment	Identifies Disqualified and Presumed Disqualified Settings; compile evidence for overcoming presumption	September 1, 2015	December 30, 2015	Compiled evidence	OADS, OMS, DLRS, adult day health center providers and consumers and other members of the public	Updated Transition Plan vetted by key stakeholders
Submit updated transition plan to CMS	Updated plan identifies presumed disqualified settings and presents evidence for any settings for which the Department is requesting CMS heightened scrutiny.	January 1, 2016	February 28, 2016	Public comments	OADS, OMS, DLRS, adult day health center providers and consumers and other members of the public	Revised Transition Plan submitted to CMS
Remediation						
Modify policy	Modify policy to address notification of right to complain, in compliance with APA	March 1, 2015	July 31, 2015	HCBS Rules, Maine licensing rules for adult day health centers	Division of Licensing and Regulatory Services (DLRS), adult day health center	Revised licensing standards



TRANSITION PLAN

§19 Home and Community Benefits for the Elderly and for Adults with Disabilities

Action Item	Description	Start Date	End Date	Sources	Key Stakeholders	Intervention/Outcome
	procedures				providers and consumers	
Modify practice at adult day health centers	Develop communication plan regarding policy changes.	August 1, 2015	August 31, 2015	Revised licensing regulations	DLRS, OADS, adult day health centers providers and consumers	Communication regarding policy change disseminated.
Modify verification system	Incorporate new licensing standards into licensing onsite survey protocol	August 1, 2015	August 31, 2015	Revised licensing regulations	DLRS, OADS, adult day health centers providers and consumers	Revised onsite survey protocol.
Outreach and Engagement						
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, 2015	December 31, 2015	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, 2016	February 28, 2016	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, 2016		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, 2016	Ongoing	Public comment and State's response documents	OADS, OMS	Public comments stored
Public comment – Ongoing Input	Leverage existing stakeholders groups to solicit input during Transition Plan implementation	March 2015	Ongoing	Public comment and State's response documents	OADS, OMS, DLRS, adult day health center providers and consumers and other members of the public	Public comment into policy and regulations



TRANSITION PLAN

§20 Home and Community Services for Adults with Other Related Conditions

§21 Home and Community Benefits for Members with Intellectual Disabilities or Autistic Disorder

§29 Support Services for Adults with Intellectual Disabilities or Autistic Disorder

Note: With respect to Community Support and Work Support, this timeline assumes that CMS will have released its guidance on non-residential settings by March 2015.

Action Item	Description	Start Date	End Date	Sources	Key Stakeholders	Intervention/Outcome
Identify Disqualified Settings or Presumed Disqualified Settings						
Develop provider self-assessment survey	Tool will be used by providers to evaluate compliance with HCBS rules	March 1, 2015	May 31, 2015	HCBS guidance; CMS guidance on how standards apply to non-residential settings; self-assessment tools from other states	OADS, OMS	Draft web-based provider self-assessment survey
Test and refine tool		June 1, 2015	July 31, 2015	Draft tool, providers	OADS, OMS, providers, consumers and advocates	Assessment tool vetted by key stakeholders
Providers conduct self-assessment survey	All providers submit provider self-assessment to OADS	August 1, 2015	October 31, 2015	Assessment tool, providers serving §21 or §29 waiver participants	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	November 1, 2015	December 30, 2015	Self-assessment data	OADS, OMS	Report documenting compliance status for all providers
Validate survey response	Validate 5 percent random sample of self-assessments	November 1, 2015	December 30, 2015	Self-assessment data, OADS staff, provider and consumer interviews	OADS, OMS, providers, consumers	Validated survey response for 5 percent sample
Compile validated self-assessment survey	Compare initial assessment data to validated data. Compile results.	January 1, 2016	February 26, 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 participants; conduct follow-up site visits as necessary	Collect data on settings identified through survey and other sources	January 1, 2016	February 26, 2016	Validated survey data	OADS, OMS, providers, consumers	Report summarizing findings from site visits identifying presumed disqualified settings.
Disseminate report	Formally present	March 1, 2016	Ongoing	Reports site visits and survey	OADS, OMS,	Public awareness of



TRANSITION PLAN

§20 Home and Community Services for Adults with Other Related Conditions

§21 Home and Community Benefits for Members with Intellectual Disabilities or Autistic Disorder

§29 Support Services for Adults with Intellectual Disabilities or Autistic Disorder

Action Item	Description	Start Date	End Date	Sources	Key Stakeholders	Intervention/Outcome
	survey and site visit results to stakeholders and make available on website			results	Commissioner's office	findings for survey and site visits
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	March 1, 2016	June 30, 2016	Assessment results, stakeholder input	OADS, OMS, DLRS, providers, consumers and advocates	Transition Plan vetted by key stakeholders
Submit waiver amendments to CMS	Modify waiver to be consistent with HCBS rules	July 1, 2016	September 30, 2016	Current waivers, new HCBS rules	OADS, OMS, providers, consumers and advocates	§21 and §29 waivers amended to be consistent with HCBS rules
Revise Medicaid policy	Revised Medicaid policy to be consistent with HCBS rules	October 1, 2016	December 31, 2016	MaineCare benefits manual, new HCBS rules	OADS, OMS, providers, consumers and advocates	MaineCare Benefit Manual revised to be consistent with HCBS rules
Revise rights regulations	Revise regulations governing rights restrictions to address expanded requirements under HCBS rules	October 1, 2016	December 31, 2016	Rights regulations, new HCBS rules	OADS, OMS, providers, consumers and advocates	Regulations governing rights restrictions revised to address expanded requirements under HCBS rules
Revise licensing and other regulations	Conduct rulemaking	October 1, 2016	December 31, 2016	Key stakeholder input, existing provider standards	OADS, OMS, DLRS, providers, consumers and advocates	Provider standards for enrollment and continued participation
Modify tools, manuals, and tools	Incorporate policy changes into operational documents and systems	March 1, 2016	November 30, 2016	Key stakeholder input, existing provider standards	OADS, OMS, DLRS, providers, consumers and advocates	Tools, manuals and other operational details modified to facilitate and enforce compliance
Conduct training and education	Design and implement plan for	December 1, 2016	June 30, 2017	Key stakeholder input, existing provider standards	OADS, OMS, DLRS, providers, consumers	Providers, consumers, OADS and OMS staff



TRANSITION PLAN

§20 Home and Community Services for Adults with Other Related Conditions

§21 Home and Community Benefits for Members with Intellectual Disabilities or Autistic Disorder

§29 Support Services for Adults with Intellectual Disabilities or Autistic Disorder

Action Item	Description	Start Date	End Date	Sources	Key Stakeholders	Intervention/Outcome
	incorporating necessary training and education into provider enrollment orientation and provider employee training; provide training				and advocates	educated on new policies
Modify Verification System						
Develop participant experience assessment tool	Tool will be used by case managers to ensure that participants' experience of care is consistent with rules	July 1, 2016	June 30, 2017	HCBS rules, models from other states	OADS, OMS, DLRS, providers, consumers and advocates	Tool for measuring participant experience to ensure compliance with HCBS rules
Develop a standardized protocol for reviewing the person centered plan	Tool will be used to ensure person centered planning process offers choice	July 1, 2016	June 30, 2017	HCBS rules, models from other states	OADS, OMS, DLRS, providers, consumers and advocates	Protocol for reviewing 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 participants	July 1, 2016	June 30, 2017	HCBS rules, models from other states	OADS, OMS, DLRS, providers, consumers 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	July 1, 2016	June 30, 2017	HCBS rules, models from other states	OADS, OMS, DLRS, providers, consumers and advocates	Revised licensing survey to ensure compliance with HCBS rules
Outreach and Engagement						
Public comment – on Revised Transition Plan	Make public notice on revised transition plan. Collect public comments on revised Transition	March 1, 2016	April 30, 2016	Transition plan	OADS, OMS	Public notice posted with transition plan, comments collected



TRANSITION PLAN

§20 Home and Community Services for Adults with Other Related Conditions

§21 Home and Community Benefits for Members with Intellectual Disabilities or Autistic Disorder

§29 Support Services for Adults with Intellectual Disabilities or Autistic Disorder

Action Item	Description	Start Date	End Date	Sources	Key Stakeholders	Intervention/Outcome
	Plan through multiple methods (including in person, fax, email and website submission).					
Public comment - Collection and plan revisions	Incorporate changes to the revised Transition Plan based on public comments	May 1, 2016	May 31, 2016	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	June 1, 2016	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	June 1, 2016	Ongoing	Public comment and State's response documents	OADS, OMS	Public comments stored
Public comment – Ongoing Input	Leverage existing stakeholders groups to solicit input during Transition Plan implementation	March 2015	Ongoing	Public comment and State's response documents	OADS, OMS, DLRS, providers and consumers and other members of the public	Public comment into policy and regulations

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 (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 22.¹¹

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 participants 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 participants are given the option for a non-disability specific setting and an option for a private unit in a residential setting; that the options are documented in plan and are based on the individual’s needs and preferences and resources available for room & board.

Table 12. §18 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:			
• 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
• engage in community life,	No Change. §18.05-4 and §18.05-9	No Change	Formalize verification system
• control personal resources, and	Modify §18 to ensure that individuals living in unlicensed settings, not under guardianship, have control over personal resources.	No Change	Formalize verification system
• receive services in the community,	Modify §18 to require the person	No Change	Formalize verification

¹¹ MaineCare Benefits Manual, Chapter II, §20.03-2.

HCBS policy standard	Policy Change	Practice Change	Verification System
	centered planning process to reinforce an individual's option to receive services from providers not tied to the setting in which the individual lives.		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 §18 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 and 			
<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 participant, 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 For licensed settings, incorporate standards into licensing survey
<ul style="list-style-type: none"> Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. 			
<ul style="list-style-type: none"> Individuals sharing units have a choice of 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.			

HCBS policy standard	Policy Change	Practice Change	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.	No Change. Approved Waiver Application App. C-2 (c)(ii);	No Change.	Formalize verification system
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 HCB SETTING			
Disqualified settings: NF, hospital, ICF-IDD, 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 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. §20.04-2, §20.05-6, §20.05-17, §20.06-6	No Change	Formalize verification system

HCBS policy standard	Policy Change	Practice Change	Verification 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, and 	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
<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 and Are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. 	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
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 participant, 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. 	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
<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.			
<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>The following requirements must be documented in the person-centered service plan:</p> <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-IDD, 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.¹² 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.¹³ 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, that 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 participants 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 participant experience and provider services.

Settings

Table 14 provides an overview of the settings in which §18 and §20 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 participants 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 participants 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 has begun, currently there are no waiver participants residing in group homes. Before enrollment can begin, the setting must be in compliance with this waiver standards, which have already been determined in compliance with CMS requirements.

¹² MaineCare Benefits Manual, Chapter II, §20.04-1(E).

¹³ MaineCare Benefits Manual, Chapter II, §20-02-6.

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

Type of Setting	§18 Brain Injury		§20 Other Related Conditions	
	Settings	Participants	Settings	Participants
Group homes	0	0	6	6

The residential setting is selected by the individual. The Department’s Care Monitor assists the participant 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 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	0	11
Compliance Possible	0	0
Presumed Disqualified	0	0
Disqualified	0	0

Non-Residential Settings. Three individuals receiving services under the Other Related Conditions waiver (§20) 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 Participants for §18 and §20 Waiver Programs

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

Again, the Department’s Care Monitor assists the participant 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 & §20)

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 and §20 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 two waivers that serve older adults and adults with physical disabilities. Section 22 covers consumer directed personal assistance services and a few other supportive services. These services are 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 of this year, 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 are subject to CMS approval and the merger is expected to be 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 and §22 are fully 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 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.¹⁴ 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:

- Although licensing regulations protect consumer rights consistent with the new HCBS rules, they do not explicitly require adult day health centers to notify consumers about their rights. This change is identified as Technical because modification to policy and practice is expected to be minor.

¹⁴ MaineCare Benefits Manual, Chapter II, §19.01-3.

- Currently licensing regulations do not currently require adult day health centers to support participant 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 currently 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 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 three settings Presumed Disqualified. However, the Department plans to submit evidence to overcome the presumed disqualification.

Table 19. §19 and §22 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, and • receive services in the community, 	NA	NA	NA
	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 and • Are based on the individual's needs, preferences, and, for residential settings, resources available for room and board. 	<p>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.</p> <p>§19.07(C)(2)</p> <p>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.</p> <p>10-144 CMR Ch. 117, §8.5</p> <p>Adult day health services are based on an individual's needs, strengths and resources.</p>		
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	<p>Modify 10-144 CMR Ch. 117 to require adult day centers to post/notify consumers about rights identified under licensing.</p> <p>Rights addressed under 10-144 CMR Ch. 117, §6.9 and §§ 7.2.5 -7.2.9.</p> <p>Program required to protect rights of each consumer 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</p>	Develop training program/ communication plan to ensure that providers understand how to comply with requirements.	Modify licensing survey to ensure that rights are posted/consumers are notified of rights.

HCBS policy standard	Policy Change	Practice Change	Verification System
	to voice grievances. The right to be free from physical and chemical restraint for purposes of punishment or to accommodate needs of staff.		
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>No Change</p> <p>10-144 CMR Ch. 117, 7.2 Consumer 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 nonfolding chairs, nonfolding tables, rocking and reclining chairs.</p> <p>10-144 CMR 6.10: Every part of the building intended for consumer 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 consumers. Consumers shall be able to move freely from room to room, with no barriers or hazards impeding free movement.</p>	No Change	No Change
Facilitates individual choice regarding services and supports , and who provides them.	<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>	NA	NA
PROVIDER-OWNED OR CONTROLLED			
For a provider-owned or controlled residential setting....	NA	NA	NA
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 participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	NA	NA	NA
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

HCBS policy standard	Policy Change	Practice Change	Verification System
<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 HCB SETTING			
<p>Disqualified settings: NF, hospital, ICF-IDD, IMD and any other locations that have qualities of an institutional setting</p> <p>Disqualified settings: NF, hospital, ICF-IDD, IMD and any other locations that have qualities of an institutional setting</p>	Modify §19 and §22 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 or §22. The statewide independent assessing agency and the service coordination agency both verify that the member does not live in a provider owned or controlled residence.
<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</p>	Modify §19 to exclude adult day health services that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of	Three adult day health settings categorized as Presumed Disqualified. The Department will	Incorporate standards into adult day licensing survey to capture information for

HCBS policy standard	Policy Change	Practice Change	Verification System
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 ...	individuals not receiving Medicaid HCBS consistent with HCBS rules.	submit evidence to overcome this presumption.	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 or §22. 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 these two programs.

Table 20. Type of Settings for §19 and §22 Waiver Programs

Type of Setting	§19 Elder/Adult	§22 Consumer Directed PAS
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	-	-

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 private non-medical institution (PNMI), or any residential care facility or supported living arrangement, regardless

of payment source (private or MaineCare).¹⁵ 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 22 does not provide any non-residential services in a disability-specific setting. 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 participants have current service authorizations for adult day health services in twelve different centers. See Table 21.

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

Type of Setting	§19 Older Adults and Adults with Disabilities	
	Settings	Participants
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 participants 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 participants. 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 participants 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 to support the waiver participant at home rather than in a residential care or nursing facility. Most importantly, unlike persons residing in an institutional setting, waiver participants 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 participants 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 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.

¹⁵ MaineCare Benefits Manual, Chapter II, §19.03(I) and (J).

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 consumers 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 participants 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 18.

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 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 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 and §29 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 and §29 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 participant experience for compliance with these standards
<ul style="list-style-type: none"> control personal resources, and 	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 participant 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 participant 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 and 	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 participant 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 participant 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 participant 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 participant, 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>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 participant experience for compliance with these standards</p> <p>For licensed settings, incorporate standards into licensing survey</p>
<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>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 participant 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> <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. 	<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
		requirements.	
<ul style="list-style-type: none"> 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. 	Expand scope as described above	Develop training program/ communication plan to ensure that case managers and providers understand how to comply with requirements.	<p>Ensure case manager monitors participant experience for compliance with these standards</p> <p>Ensure document review protocol for person centered plan ensures compliance with this standard</p>
Standards that define settings presumed to not be HCB settings			
Disqualified settings: NF, hospital, ICF-IDD, 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 PNMIs, 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, currently the Department does not use standardized review criteria or processes. The case manager is responsible for monitoring the participant’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 PNMIs 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 and §29.

Table 24. Type of Settings for §21 and §29 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 participants 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 participants by the type of setting and waiver program.

Currently waiver participants 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 participants are served in residential settings funded as Private Non-Medical Institution (PNMI) services under §97 of the MaineCare Benefits Manual.

Table 25. Number of Residential Settings and Participants for §21 and §29 Waiver Programs

Type of Setting	§21 Adults with ID/Autism HCBS		§29 Adults with ID/Autism Support	
	Settings	Participants	Settings	Participants
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 PNMI's 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. Some waiver participants choose to receive Community Support as a center-based service. In some cases, Work Supports are delivered as a group service to participants who are part of a work crew or work as a segregated unit in a larger organization. Currently there are 125 center-based Community Support providers and 292 Work Support settings that serve participants as a group. For each waiver program provides detail on the number of disability-specific non-residential settings and the number of waiver participants accessing services from those settings.

Type of Setting	§21 & 29 Adults with ID/Autism HCBS	
	Settings	Participants*
Center-Based Community Support	125	3468
Disability-Specific Work Settings	292	708

*Participants may be counted more than once if they attend more than one program.

Based on the Department’s analysis of provider lists, we have identified no Disqualified or Presumed Disqualified setting. 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	292
Presumed Disqualified	0	0
Disqualified	0	0

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 18.