



HCBS Settings Rule Update – 5/5/22

Members-Only Government Relations Briefing



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Housekeeping

- Today's member briefing is recorded and you will get a copy of the slide deck.
- We will reserve the last 10 – 15 minutes for questions from the audience.
- Please use the Q&A feature on your Zoom control panel to ask questions

History Review

- Final Rule was filed in 2014.
- The final Home and Community-Based Services (HCBS) regulations set forth new requirements for several Medicaid authorities under which states may provide home and community-based long-term services and supports.
- The regulations enhance the quality of HCBS and provide additional protections to individuals that receive services under these Medicaid authorities.
- States began submitting their individual plans for compliance. As of today, there are approximately 20 states still without final approval.
- Pandemic: delayed compliance deadline from March 2022 until March 2023.

Who advocated for the 1-year delay?

- States requested flexibility from CMS with respect to demonstrating compliance with the requirements of the HCBS Settings Rule under section 1135, Appendix K to section 1915(c) waivers, 1115 demos and disaster relief SPAs.
- States highlighted, in particular, delays in their ability to effectively assess settings and determine needed remediation to ensure compliance with the Settings Rule.
- Economic factors including state workforce furloughs and redirection or refocusing of limited existing human and monetary resources due to the PHE have also impacted some of these activities.
- The letter in July 2020 said that “states have also requested that **CMS consider extending the HCBS settings implementation deadline again in the course of ongoing training and technical assistance activities.**

Settings Rule: Would there be another delay?

- Due to the ever worsening state of the workforce crisis, SAE's and GR Committee members expressed grave concern regarding the feasibility of successful implementation during January's winter retreats.
- Despite vaccines, PPE and testing processes more widely available, variants like Delta and Omicron have continued to impact services.
- CMS issued a one year delay in [May 2020](#), due to the pandemic. It was reasonable from the justifications for the delay that there might be another:
 - The impact (of COVID19 PHE) has necessitated changes to states' ongoing efforts to comply with the HCBS settings criteria;
 - The process of social distancing have seriously impacted not only the measurement of community integration for individuals, but the intent of the Settings rule to ensure that individuals with disability & older adults have the opportunity to be active participants in their communities;
 - Older adults & people with disabilities who receive Medicaid HCBS often have underlying conditions that increase risks to health & welfare associated with COVID-19 that can further delay a return to integrated activities as they existed prior to the global pandemic.

First and foremost

- ANCOR has been and continues to be supportive of the Settings Rule
- ANCOR spearheaded a letter to Congress, signed by more than 40 national disability and aging organizations sent July 28, 2015
- ANCOR remains committed to successful implementation of the Settings Rule and our shared goal of meaningful community inclusion for all.
- **OUR POSITION HAS NOT CHANGED.**

But, workforce....



ANCOR's Advocacy

- Discussions with CMS and other partners about the potential need for delay due to the workforce crisis.
- Member of the HCBS Coalition from the beginning.
- Ensuring our Advocacy partners that we've worked so closely with through CCD membership and through the Care Can't Wait coalition understood our concern regarding the workforce.
- Sent letter (3/14) to CMS Director and Deputy Administrator Daniel Tsai and Alissa Deboy, Director for the Disabled & Elderly Health Programs Group: *"The COVID-19 pandemic has drastically accelerated the direct care workforce crisis, forcing delays and closures of crucial home and community-based services (HCBS) due to insufficient staffing. Through no fault of providers, the direct care workforce crisis has created barriers to compliance and the resulting enforcement measures threaten access to already limited and fragile services."*
- Meeting March 30th with assurances to acknowledge workforce, work together, ensure nuanced approach.



Director Tsai Spoke to ANCOR Members



CMS Announcement

Following Director Tsai's address:

- ANCOR met with CMS and HCBS stakeholder advocates and partners in response to ANCOR's advocacy on the direct care workforce crisis and its impact on the HCBS Settings Rule.
- CMS announced it will be creating a slide-deck and training clarifying how states can request additional time through a corrective action plan to address components related to the workforce crisis.

This brings us to two questions:

- What provisions are related to the workforce crisis?
- How can a corrective action plan be used to address it?

“Non-negotiables”- Human rights

- By the March 2023 deadline, CMS expects states to be in full compliance with elements of the HCBS Settings Rule unrelated to the workforce crisis.
- Examples:
 - Statewide Transition Plan
 - Presumptively institutional settings
 - PCP as vehicle for modifications
 - Freedom from restraints
 - Lease protections
 - Ability to decorate own space
 - Access to food and visitors

[HCBS Settings Rule Provisions](#)



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Workforce Dependent

- Provisions directly related to the workforce crisis will have the opportunity for more time.
- Examples:
 - Controlling your own schedule
 - Pursuing competitive integrated employment
 - Choice of roommate
- States will be able to request a corrective action plan as part of their 1915 application which identifies the provisions it needs more time for and a timeframe and method to reach compliance.
- No maximum time identified for length of plans.

Corrective Action Plans

Generally, corrective action plans can be applied for or in response to citations in waiver applications.

Corrective action plans include, but are not limited to, the scope of corrective action, timeline for full compliance, and milestones for how the state will overcome barriers which prevent compliance.

After March 17, 2023, the Statewide Transition Plan becomes the controlling document for how a state will come into full compliance if there is not an approved corrective action plan in place as part of the state's waiver application.

Next Steps

States were also given the same information last week.

The slide deck is in clearance and will be rolled out as soon as possible.

Each state will have its own process for determining whether to request a corrective action plan. CMS requires states to obtain public input during the development of a waiver (or a waiver renewal or a waiver amendment with substantive changes) in accordance with 42 CFR 441.304(f). [30 days notice]

CMS has the ability to require a corrective action plan.





Questions