



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Providers Offering the DD Waiver Services of Group Home, Sponsored Residential, Supported Living, Group Day, and Group Supported Employment

FROM: Dawn Traver, DBHDS Waiver Operations Director
Ann Bevan, DMAS Division of High Needs Supports Director

DATE: April 29, 2021

SUBJECT: HCBS Settings Reviews Reminder

DBHDS and DMAS are seeking your help and continued cooperation as Virginia strives to ensure compliance with the federal Home and Community Based Services HCBS settings regulations in order to ensure continued funding for our HCBS waivers. As you are likely aware, the Centers for Medicare and Medicaid Services (CMS) finalized regulations in 2014 that mandated all providers of HCBS comply with what is now known as the HCBS settings regulations. These require person-centered planning and that states operating HCBS waivers confirm that individuals receiving services and supports through these waivers “have full access to the benefits of community living and are able to receive services in the most integrated setting.” CMS expects that all waiver settings are integrated in and support full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to:

- seek employment and work in competitive integrated settings
- engage in community life
- select service settings from among different setting options, including non-disability specific options and an option for a private unit in a residential setting
- have the right to privacy, dignity, respect, and freedom from coercion and restraint
- control personal resources, and
- receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.

Other key principles in the HCBS Settings Regulation are detailed in an attached appendix, along with links to significant resources.

CMS originally gave states until March 17, 2019 to bring all existing providers into compliance (new providers must demonstrate compliance from the outset). This deadline was extended several times and the new **deadline is March 17, 2023**. States that fail to comply risk losing the federal portion of their Medicaid funding (in Virginia this is 50% of the budget for waiver services); individual providers that fail to comply may no longer bill Medicaid for services they provide.

Virginia required all providers to demonstrate “organizational compliance” (i.e., appropriate policies, training materials, etc.) through submitting documentation in REDCap. This was reviewed by DBHDS and DMAS staff beginning in the fall of 2017. To date, nearly all providers have established organizational compliance.

The second phase of demonstrating compliance is “settings compliance.” For this, CMS requires that ALL settings for the services referenced on the first page of this memo be reviewed. This involves around 2700 settings across the Commonwealth. According to the implementation plan Virginia submitted to CMS, about 400 of these reviews will be “on-site reviews” and the rest will be desk reviews. DMAS and DBHDS staff are currently conducting both of these types of analyses to determine providers’ settings observance of the regulations. On-site reviews are currently being accomplished virtually due to COVID precautions, thus requiring uploading of documentation similar to the desk reviews. They also entail virtual tours of the site, interviews with individuals, staff, and in some cases family members.

You will be notified via email of the type of review(s) that will be conducted for your settings. Your reviewer will be contacting you via the email address that is on file in REDCap. If this email address is no longer correct, please update the contact information as quickly as possible. Larger providers may have an on-site review for one setting and desk reviews for others, as it is necessary to assure CMS that *all* sites have been reviewed. DMAS and DBHDS are aware that providers have many challenges while COVID persists and in light of the resumption of some other types of audits. However, the Commonwealth has many settings to review in a limited amount of time for this effort (reviews must be completed by September 2022 in order to permit individuals supported by providers that do not meet criteria to select and transition to another provider). Therefore, **it is essential that all providers respond promptly to requests for information**. Providers that do not respond in a timely manner jeopardize their ability to continue to receive Medicaid payment. Providers who refuse to participate in the audit process will be deemed non-compliant with the HCBS regulations. This seriously jeopardizes a provider’s participation agreement and their ability to bill Medicaid for waiver services.

Another matter of great importance is the correct and complete uploading of documentation. Departmental staff have been delayed in their efforts due to providers failing to upload all documentation requested or documentation being uploaded to the wrong locations. While the staff conducting the reviews make every effort to obtain needed information from existing sources (e.g., WaMS & REDCap), providers will need to upload to a system called “eDocs” the

following for review, so it may be helpful to be considering now how these will be assembled:

For ALL individuals:

- The last four (4) consecutive Person Centered Quarterly Reviews
- The Behavioral Support Plan (if applicable)
- A signed (by individual or representative) acknowledgement of HCBS Rights
- Individual schedule of activities and community access covering a full month of service, generally spanning the dates of: 01/01/20 - 01/31/20
- Individual progress notes covering a full month of service, generally spanning the dates of: 01/01/20 - 01/31/20
- Direct support staff position descriptions
- Staff HCBS training records for all setting staff
- Informed consent for modification of HCBS rights
- Pictures of the setting to include: outside of the setting, common areas, bathrooms, any accessibility modifications.
- Any supplemental documentation the provider feels will show HCBS compliance (checklists, surveys, policy, etc.)

For SUPPORTED LIVING, SPONSORED RESIDENTIAL AND GROUP HOME RESIDENTIAL settings ALL of the above documentation will be required as well as:

- A signed lease or residency agreement
- Documentation of choice of roommate (as applicable)
- All documentation related to modifications of rights (as applicable)
- Individualized menu (any month)
- Any documentation related to issuance of keys (entrance doors and bedroom doors)
- Pictures of bedrooms, bathrooms, door knobs of bedrooms, kitchen (pantry & refrigerator) and common areas
- Any policy on visitation
- House Rules

In eDocs, the documents must be placed in region-specific folders. These folders are specific to the location of where each setting is located -- not a main office. If the agency has a main office in region 1 but the specific setting being reviewed is in region 2, the documentation for that specific setting **must** go into the region 2 folder. Following the regional folder, a provider will select a specific "setting." The provider must go in order of reviews, starting at setting 01. Please upload in order (setting 01, 02, etc.). If documents are entered out of order, the review team may not be able to find the documents and this may lead to a finding of non-compliant. Your attention to detail in the content and location of document uploading will enable Virginia to meet the federal deadline and is most appreciated.

Lastly, please be aware of what the review team is looking for when completing a review. Chiefly, the review team is looking for evidence that a provider has implemented their own HCBS Policies that were approved in REDCap. Some specifics include:

- Do individuals have any specific residential HCBS modifications? If so, is there a documented modification in the individual's part V in WaMS? This can be included in the safety modification section.
- Is person-centered and person-first language used in the setting as evidenced by the documentation?
- Is the setting accessible to each individual?
- Do individuals have the right to privacy?
- Does each individual have the opportunity to communicate with people of their choice in privacy?
- Did individuals select their service settings?
- Is the setting integrated into the larger community? Can people come and go? Do the individuals have opportunities to socialize, work, etc. with people who do not use HCBS services?
- Do the individuals make choices in each setting?

Resource Appendix

The actual HCBS Settings Regulation can be found at: <https://www.govinfo.gov/content/pkg/FR-2014-01-16/pdf/2014-00487.pdf> (begins on page 83).

The DMAS HCBS Toolkit can be found at: <https://www.dmas.virginia.gov/for-providers/long-term-care/waivers/home-and-community-based-services-toolkit/>

The DMAS toolkit also has a tutorial video specific to EDoc uploads. Please watch this video for a walk-through on how to upload the requested documents.

Key principles in the HCBS Settings Regulation are:

- The setting 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.
- 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.
- An individual's rights of privacy, dignity and respect, and freedom from coercion and restraint are ensured.
- Individual initiative, autonomy, and independence in making life choices are optimized, including but not limited to, daily activities, physical environment, and with whom to interact.
- Individual choice regarding services and supports, and who provides them is facilitated.

In addition, for provider owned/operated residential settings, additional requirements apply:

- 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.
- Each individual has privacy in their sleeping or living unit to include:
 - 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.
- Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
- Individuals are able to have visitors of their choosing at any time.
- The setting is physically accessible to the individual.
- Any modification to these conditions, must be supported by a specific assessed need and justified in the person-centered service plan.