

TRANSITION PLAN

For Complying with the CMS Home- and Community-Based Services Medicaid Rule

FOR THE STATE OF MAINE

The CMS-approved Maine transition plan can be found at:

<https://www.medicare.gov/sites/default/files/2023-05/me-appvd-plan.pdf>

The CMS-approved Maine Corrective Action Plan (CAP) can be found at:

<https://www.medicare.gov/sites/default/files/2023-02/me-prop-cap.pdf>

SITE-SPECIFIC ASSESSMENTS

The Centers for Medicare & Medicaid Services (CMS) required states to conduct validated, site-specific assessments of all provider-owned or controlled settings.

Types of Settings/ Residents and Funding Authorities	<p>The Office on Aging & Disability Services (OADS) serves as the lead agency within DHHS for implementing Maine’s Final STP.</p> <ul style="list-style-type: none">• Section 18 Home and Community-Based Services for Adults with Brain Injury (ME 1082);<ul style="list-style-type: none">○ Settings: Community, Work, Residential (individual’s private home or Group Homs of 2-8 people), Club House○ Maximum number of participants: 250○ Number of residential settings:<ul style="list-style-type: none">▪ Group Home: 51○ Number of non-residential settings:<ul style="list-style-type: none">▪ Club House Support: 1• Section 19 Home and Community Benefits for the Elderly and for Adults with Disabilities (ME 0276);<ul style="list-style-type: none">○ Settings: Member’s home○ Maximum number of participants: 2,665• Section 20 Home and Community Services for Adults with Other Related Conditions (ME 0995);<ul style="list-style-type: none">○ Settings: Community, work, home supports (member’s home or group homes (up to four people)○ Maximum number of participants: 67○ Number of residential settings:<ul style="list-style-type: none">▪ Group Home: 11• Section 21 Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder (ME 0159); and<ul style="list-style-type: none">○ Settings: Community, work, shared living (related provider), shared living (unrelated provider), group homes (up to six people), family-centered homes (up to six people), community support, work support-group○ Maximum number of participants: 3,473
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	<ul style="list-style-type: none"> ○ Number of residential settings: <ul style="list-style-type: none"> ▪ Group Home: 868 ▪ Shared Living*: 897 ▪ Family-Centered Support Homes: 52 ▪ *Some settings for Section 21 may also serve Section 29 participants which results in counting the setting twice. The total unduplicated count for all residential settings is 2,087. ○ Number of non-residential settings: <ul style="list-style-type: none"> ▪ Center-Based Community Support: 165 ● Section 29 Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder (ME 0467). <ul style="list-style-type: none"> ○ Community, work, shared living (related provider), shared living (unrelated provider), community support, work support-group ○ Maximum number of participants: 3,755 ○ Number of residential settings: <ul style="list-style-type: none"> ▪ Shared Living: 490 ○ Number of non-residential settings: <ul style="list-style-type: none"> ▪ Center-Based Community Support: 159 ● There are 13 non-residential settings that are under both Section 21 and Section 29. ● Counts of settings is as of 2/8/2020.
<p>Compliant/Non-Compliant</p>	<p>Settings found to be fully compliant with HCBS settings as of 9/30/22 (data from 6/7/23 Approved CAP):</p> <ul style="list-style-type: none"> ● Residential: 0 <ul style="list-style-type: none"> ○ 1-2 Person Group Home: 286 ○ 3-5 Person Group Home: 190 ○ 6+ Person Group Home: 23 ○ Family Centered Home: 15 ○ Shared Living-Related Family Member Provider: 455 ○ Shared Living-Unrelated Provider: 274 ● Non-Residential: 92 <ul style="list-style-type: none"> ○ Community supports, work supports, clubhouse: 92 ● Total: 1,243 <p>Settings found capable of becoming fully compliant with HCBS setting modifications during the transition period:</p> <ul style="list-style-type: none"> ● Residential: 1,966 <ul style="list-style-type: none"> ○ 1-2 Person Group Home: 470 ○ 3-5 Person Group Home: 261

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	<ul style="list-style-type: none">○ 6-or More Person Group Home: 36○ Family-Centered Home: 56○ Shared Living - Related Family Member is Provider: 648○ Shared Living - Unrelated Provider: 495● Non-Residential: 179<ul style="list-style-type: none">○ Club House: 1○ Community Supports: 165○ Work Support-Group: 13● Total: 2,145 <p>Settings found unable to comply with HCBS settings criteria</p> <ul style="list-style-type: none">● Residential: 0● Non-Residential: 0● Total: 0 <ul style="list-style-type: none">● Non-compliant settings as of 9/30/22 (data from 6/7/23 Approved CAP)**Residential: 104<ul style="list-style-type: none">○ 1-2 Person Group Home: 38○ 3-5 Person Group Home: 33○ 6+ Person Group Home: 9○ Family Centered Home: 8○ Shared Living-Related Family Member Provider: 7○ Shared Living-Unrelated Family Member Provider: 9● Non-Residential: 36<ul style="list-style-type: none">○ Community supports, work supports, clubhouse: 36 <p>**These settings were assigned to a subject matter expert (SME) from the operating agency, the Office of Aging and Disability Services (OADS). These 140 settings received a notice informing them of the opportunity to submit evidence up until the deadline of December 2, 2022, to meet non-flexible HCBS standards.</p> <p>Settings found to be presumptively institutional in nature but for which the state will, subject to public comment, submit evidence for the application of heightened scrutiny:</p> <ul style="list-style-type: none">● Residential: 104<ul style="list-style-type: none">○ 1-2 Person Group Home: 32○ 3-5 Person Group Home: 28○ 6-or More Person Group Home: 13○ Family-Centered Home: 3○ Shared Living - Related Family Member is Provider: 7
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	<ul style="list-style-type: none"> ○ Shared Living - Unrelated Provider: 21 ● Non-Residential: 78 <ul style="list-style-type: none"> ○ Club House: 0 ○ Community Supports: 78 ○ Work Support-Group: 0 ● Total: 182 <p>Heightened Scrutiny Non-Compliant Settings (data from 6/7/23 Approved CAP):</p> <ul style="list-style-type: none"> ● Residential: 13 <ul style="list-style-type: none"> ○ 1-2 Person Group Home: 7 ○ 3-5 Person Group Home: 3 ○ 6+ Person Group Home: 3 ○ Family Centered Home: 0 ○ Shared Living-Related Family Member Provider: 0 ○ Shared Living-Unrelated Family Member Provider: 0 ● Non-Residential: 30 <ul style="list-style-type: none"> ○ Community supports, work supports, clubhouse: 30 <p>NOTE: Maine received approval of its corrective action plan (CAP) on June 7, 2023. The CAP provides updated timeframes for completion of site-specific assessments and the heightened scrutiny review process. Therefore, setting classifications in the STP may be out of date. The updated CAP sets August 11, 2023, as the completion date for settings to remediate non-compliance on settings criteria subject to the CMS approved CAP. According to the CAP, March 16, 2023, was the completion date to submit the list of settings identified by settings type and category of institutional presumption to CMS. Final compliance statewide with HCBS settings rule will take place the later of November 9, 2023, or 6 months post the date CMS issues heightened scrutiny findings to the state.</p>
<p>Reasons for Non-Compliance</p>	<p>Upon deeper review of the setting self-assessment responses from HCBS providers, the following trends were identified, suggesting areas where potential remediation and technical assistance might be needed across all categories of provider owned or controlled residential settings:</p> <ul style="list-style-type: none"> ● Practical accessibility to the typical community (lack of sidewalks, walking paths, communal settings in walking distances or near setting’s physical location) ● Lack of public transportation or support to access transportation options to get to activities based in typical community settings ● Lack of flexible services to facilitate or support competitive integrated employment

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	<ul style="list-style-type: none"> • Lack of control over personal resources (cash, spending money, banking, and information technology/internet devices) • Lease agreement with protections afforded under the state’s landlord-tenant law • Private living spaces (i.e., their unit if they live alone or, if they live with others not part of their immediate self-defined family, their bedroom) lacking lockable entrance doors with only the person and appropriate staff having a key or code to open the door(s) • Choice of staff providing services <p>These trends were identified based on self-assessment questions where over 40% of the total settings reported being non-compliant, and where each setting category included at least 20% of settings that reported being non-compliant.</p> <p>Based on a distinct review of the self-assessment responses for these Shared Living-related family member settings, there were concerns noted with noncompliance in the following areas:</p> <ul style="list-style-type: none"> • Individuals having privacy and autonomy with respect to phone/computer use and having visitors over • Control over personal resources (cash, spending money, banking, and information technology/internet devices) • Ability to seek employment in integrated settings • Ability to engage in some community activities of interest with readily available public transportation or transportation via natural supports. • Ability to engage in community activities even if home is far from communal entities (sports events, movie theatres, shops, restaurants, local businesses, churches)
<p>Transition plans</p>	<p>A comprehensive assessment of the extent to which Maine’s standards, rules, regulations and other requirements comply, do not comply or are silent with the Federal HCBS settings requirements was conducted by waiver type. An Executive Steering Committee (ESC) was established to provide consumer and stakeholder feedback on the development of the Statewide Transition Plan. The group includes 24 representatives from a broad array of stakeholders from offices such as the Office of Aging and Disability Services, DHHS Commissioner’s Office and the Division of Licensing and Regulatory Services. Phase 1 of the transition was a provider-self assessment to identify trends in areas of compliance, partial compliance, and non-compliance and improve the overall quality of their service delivery models. During Phase 2, every setting within MaineCare’s system that could not automatically be presumed to be compliant with applicable settings standards was independently validated to confirm the setting’s level of compliance with applicable settings standards. In Maine, settings were validated either by an onsite validation visit, or review of Individual Experience Assessments (IEAs) completed by a minimum percentage of HCBS participants receiving services in the setting coupled with a desk review for all relevant setting requirements not otherwise susceptible to validation via IEAs. Phase 3 is on-going and consists</p>

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	<p>of DHHS sharing its findings from the validation activities for each setting with the provider that operates the setting and working with the provider to develop a plan of action to remediate the setting, known as a “Transition-to-Compliance Plan” (TTCP), which outlines the specific remediation activities needed to bring the setting into full compliance with the Global HCBS Waiver Rule. For Phase 4, the state will engage with providers to support and confirm the completion of these remediation activities. Finally, once providers are compliant with all applicable requirements in the HCBS Waiver Rule, the state will continue to engage in ongoing monitoring of the settings.</p>
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SETTINGS PRESUMED INSTITUTIONAL

CMS presumes some settings have qualities that are institutional or isolating in nature. These settings must go through a heightened scrutiny review by CMS.

CMS presumes the following types of settings have institutional or isolating qualities:

- *Category 1: Located in a hospital, nursing facility, or other institutional setting.*
- *Category 2: Located adjacent to a public hospital, nursing facility, or other institutional setting.*
- *Category 3: Have the effect of isolating people from the broader community.*

% Presumed Institutional (No. of Residents Affected)	188 settings (12% of total active settings) were determined to have isolating characteristics and considered presumptively institutional under category 3.
Type of Setting/Residents	Types of settings presumptively institutional due to being isolating: <ul style="list-style-type: none"> • 6+ Group Home: 13 • 3-5 Group Home: 24 • 1-2 Group Home: 30 • Family-Centered Home: 5 • Shared Living-Unrelated: 15 • Shared Living-Related Family Member: 7 • Community Supports: 82 • Settings closing: 12
Reason for Presumption	Settings had the effect of isolating people from the broader community.
Heightened Scrutiny Process	<p>As of September 16, 2022:</p> <p>For settings that are found to be isolating through the state’s setting assessment and validation process and who submitted a transition-to-compliance-plan (TTCP) that was approved by the state, a time-limited opportunity to bring the setting into full compliance and avoid the full heightened scrutiny process, became available because of CMS extending the final deadline for states to March 17, 2023.</p> <p>Ninety-eight (98) settings determined to be isolating received their findings report with sufficient time to submit and receive approval for a proposed TTCP that outlined their remediation to be completed by July 1, 2021. Five (5) of these settings were able to fully remediate their isolating qualities and</p>

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come into full compliance by July 1, 2021. The remaining ninety-three (93) settings, and an additional ninety (90) settings that were determined to be isolating, are required to go through the full heightened scrutiny process.

Submitting an evidentiary package (EP) is required for the settings that require the full heightened scrutiny review process.

The ESC (appropriate members with relevant expertise), on behalf of the state, does a formal review of the entire EP and makes one of two possible determinations regarding the setting: the state believes that the setting is capable of overcoming the isolating qualities that make it presumed institutional and can come into full compliance with the HCBS Setting Rule or the state believes the setting is not capable of overcoming the isolating qualities that make it presumed institutional and cannot come into full compliance.

After the state has made its initial determination regarding each isolating setting’s ability to overcome its isolating qualities and come into full compliance with the Rule, the state is required to post a summary of the setting’s EP, with the state’s initial determination, for thirty (30) days.

After receiving public comments, the ESC will take account of public comments and make a final determination for each setting with regard to whether the state concludes the setting can overcome its isolating qualities and come into full compliance with the Rule by the deadline for all existing settings as noted in this STP, and ultimately be in full compliance and no longer isolating by March 17, 2023.

If, after considering public comment, the ESC determines the setting can overcome its isolating qualities and come into full compliance with the Rule, the state will include the setting on the list of settings submitted to CMS for heightened scrutiny review. Per the regulation, CMS’s determination will be final. As of the finalization of this STP, the state anticipates submitting up to 146 evidentiary packages to CMS after the second public comment period is completed.

NOTE: Maine received approval of its corrective action plan (CAP) on June 7, 2023. The CAP provides updated timeframes for completion of site-specific assessments and the heightened scrutiny review process. According to the CAP, March 16, 2023, was the completion date to submit the list of settings identified by settings type and category of institutional presumption to CMS. Final compliance statewide with HCBS settings rule will take place the later of November 9, 2023, or 6 months post the date CMS issues heightened scrutiny findings to the state.

NON-COMPLIANCE COMMUNICATION

% Cannot/Will Not Comply (No. of Residents Affected)	N/A
Type of Setting/Residents	N/A

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Reason for Determination	N/A
Communication Strategy	
Assistance to Residents?	<p>The state will use the following process to assure participants are properly supported in making any transitions to a new setting:</p> <ul style="list-style-type: none"> • Initial Notice (by 12/17/22): Contact the participant, participant’s guardian and/or family members to provide initial information of the timeline required for transition and the options of other settings available near the participant’s existing setting. • Person-Centered Process for Choosing New Setting: Case Manager and/or Care Coordinator will schedule a meeting with the participant and the participant’s person-centered planning team to discuss alternative setting options available, and to develop a plan for making the sure the participant has an opportunity to explore the other available options in order to make an informed choice. • Transition Timeframe (by 3/17/23): The member will receive a minimum of 120 days to transition from their current setting to a fully compliant setting where they can continue to receive needed services. • Post-Transition Monitoring (through 3/17/25): OADS will review Care Coordinator/Case Manager documentation on any participants that transition as a result of setting noncompliance with Federal HCBS requirements on a quarterly basis for the two years following the transition to monitor the participant’s experience and to ensure the new setting is adequately and effectively meeting the participant’s needs.

ONGOING MONITORING

Monitoring Procedures	<p>Three types of ongoing monitoring will be utilized with waiver providers delivering HCBS in provider owned or controlled residential settings, Shared Living-Related Caregiver settings, disability-specific non-residential settings, and presumed compliant HCBS settings in Sections 18, 20, 21, and 29 waivers. Ongoing monitoring includes individual experience assessments completed with participants, on-site compliance visits and desk level reviews. On-site visits will be conducted at least once every three to five years. These visits include a site survey and individual experience assessment interviews with a select number of waiver participants. Providers found to be out of compliance with the state’s Global HCBS Waiver Rule will be issued a letter requesting the provider submit a plan of corrective action. In addition, OADS will conduct a review of a 10% randomly selected sample of person-centered service plans (PCPs/PCSPs) from each case management/care coordination agency every three years.</p>
Quality Assurance Measures	<p>Quality Assurance monitoring methodologies will incorporate the addition of monitoring performance measures that ensure compliance with HCBS Settings Rule. Specific quality assurance information can be found in Maine’s January 1 submission here.</p>