



# Pennsylvania's Home and Community-Based Services (HCBS) CMS Final Rule Statewide Transition Plan (STP)

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Final Plan Revised in October of 2022

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# Background

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In January 2014, the Centers for Medicare & Medicaid Services (CMS) issued a new rule, the Home and Community-Based Services (HCBS) Rule. The HCBS Rule became effective on March 17, 2014 and requires states to review and evaluate all settings in which HCBS are provided.

CMS's definition of HCBS has evolved over the years based on experience throughout the country and extensive public feedback about the best way to differentiate between institutional and home and community-based settings. To ensure that they are not an institutional setting, each HCBS (under 1915(c), 1915(i), and 1915(k) Medicaid authorities) must comply with the HCBS Rule. According to the HCBS Rule (42 CFR § 441.530), the following characteristics must be present in each setting where HCBS are provided for the setting to be considered home and community-based:

- It is integrated in and supports full access to the greater community.
- It is selected by the individual from among a variety of setting options.
- It optimizes autonomy and independence in making life choices.
- It facilitates individual choice in selecting both services and service providers.
- It ensures individuals rights of privacy, dignity, respect, and freedom from coercion and restraint.

The Statewide Transition Plan (STP) is considered the vehicle through which states determine their compliance with the HCBS Rule. Pennsylvania is required to complete this final STP to provide:

- A comprehensive summary of completed provider site specific assessments of all settings serving individuals receiving HCBS through waivers under 1915(c), 1915(i), or 1915(k) authority; and
- A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the HCBS Rule in the future.

The waivers covered by this STP are described in Appendix A. The initial STP approved by CMS on August 30, 2016 is available on the Pennsylvania Department of Human Services' (Department) [HCBS Stakeholder Waiver and Planning website](#).

# State Assurances

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Pennsylvania assures full and ongoing compliance with the HCBS Rule requirements at 42 CFR §§ 441.301(c)(4) and (5) and 441.710(a)(1)(2) and public input requirements at 42 CFR §§ 441.301(c)(6)(iii)(B) and 441.710(3)(iii) within the specified timeframes for the identified actions and deliverables. While some requirements have already been met, Pennsylvania will reach full compliance by implementing this STP as described below, which the public will have an opportunity to provide input on. Pennsylvania will consider comments made from stakeholders and revise the plan, as appropriate, before the plan is implemented as final.

## Public Comment on Pennsylvania's STP

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Pennsylvania's STP was released on August 22, 2022, for a 30-day public comment period which ended on September 22, 2022. The Office of Child Development and Early Learning (OCDEL), Office of Developmental Programs (ODP), and Office of Long-Term Living (OLTL) each released information about the public comment period through their ListServes to individuals and families, providers, advocacy organizations, and other interested parties. The information released notified the public that the full STP was available for review at

<https://www.dhs.pa.gov/Services/Assistance/Pages/HCBS-Statewide-Transition-Plan.aspx>.

Public comment was accepted through one of the following methods:

1. Electronic comments submitted via email  
Stakeholders were asked to use the subject header "PA Final STP" and submit comments to the following mailbox: [ra-pwhcbsfinalrulepl@pa.gov](mailto:ra-pwhcbsfinalrulepl@pa.gov)
2. Written comments submitted via mail  
Mailing address: Department of Human Services, Office of the Secretary, P. O. Box 2675, Harrisburg, PA 17105-2675.
3. Verbal and written comments during public comment webinars  
Each office held webinars to go over the office's specific approach for HCBS compliance in the STP and obtain public comment.
  - OCDEL's webinar was held on September 12, 2022 and was attended by 6 people.

- ODP’s webinars were held on September 8, 2022, and September 12, 2022. The webinar on September 8<sup>th</sup> was attended by 157 people and the webinar on September 12<sup>th</sup> was attended by 88 people.

ODP’s proposed approach in the STP and the upcoming release of the STP for public comment was also discussed with the Information Sharing and Advisory Committee (ISAC) on August 16, 2022 to gather thoughts and recommendations. ISAC members include individuals with an intellectual disability and/or autism, families, advocates, county government, providers, supports coordination organizations. ISAC serves as the entity that provides sustained, shared leadership and a platform for collaborative strategic thinking for the ODP system.

- OLTL’s webinar was held on September 15, 2022 and was attended by 105 people.

The Department received written and verbal comments from 23 participants, family members, and organizations regarding the proposed STP. A summary of comments received, and Department responses are contained in Appendix E.

# Part 1: Pennsylvania’s Comprehensive Statewide Approach to Assessing Compliance

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The HCBS Rule requires states to assess all service locations that receive funding or payment through an approved HCBS waiver.

## ODP Approach

ODP utilized the following approaches to assess compliance with the HCBS Rule statewide:

- Self-Assessments for Provider Owned or Operated Settings
- Heightened Scrutiny On-site Reviews
- Licensing Inspections for Provider Owned or Operated Settings
- Quality Assessment and Improvement for all Settings

### *Self-Assessments for Provider Owned or Operated Settings*

Residential Habilitation, Life Sharing, and Community Participation Support/Day Habilitation are the only waiver services rendered in provider owned or operated settings as shown in the table below.

Waiver Service Name	Provider Owned or Operated Setting Where Services Can Be Rendered
Residential Habilitation	<ul style="list-style-type: none"> <li>• Community Homes licensed under 55 Pa. Code Chapter 6400</li> <li>• Unlicensed Community Homes</li> </ul>
Life Sharing	<ul style="list-style-type: none"> <li>• Life Sharing Homes licensed under 55 Pa. Code Chapter 6500</li> <li>• Unlicensed Life Sharing Homes</li> </ul>
Community Participation Support/Day Habilitation	<ul style="list-style-type: none"> <li>• Adult Training Facilities licensed under 55 Pa. Code Chapter 2380</li> <li>• Vocational Facilities licensed under 55 Pa. Code Chapter 2390</li> <li>• Older Adult Daily Living Centers licensed under 6 Pa. Code Chapter 11</li> </ul>

ODP developed the HCBS Provider Settings Self-Assessments tools to start the site-specific assessment process of the above settings.

The HCBS Provider Settings Self-Assessments tools, were developed through extensive research on the HCBS Rule, HCBS waivers, applicable regulations, environmental scan of other state instruments, and through public comment (see Appendix C). ODP utilized Individual Support Plan data to develop a list of service locations where Life Sharing, Residential Habilitation, Community Participation Support, or Day Habilitation services were authorized to be provided. Each provider that owned or operated a service location where at least one of these services was rendered was required to complete an assessment for each service location using SurveyGizmo between April 11, 2018, and June 12, 2018. The purpose of the self-assessment was to identify if there were any areas of non-compliance with the HCBS Rule or whether a Heightened Scrutiny On-site Review would be required. If areas of non-compliance were identified, providers were instructed to develop Corrective Action Plans (CAP) outlining how they planned to achieve full compliance.

Starting in July 2018, ODP determined that self-assessments were not completed for 2 service locations where Residential Habilitation or Life Sharing was rendered and 11 service locations where Community Participation Support/Day Habilitation was rendered. ODP emailed these providers in October 2018, notifying them that an on-site inspection would be scheduled between November 1, 2018, and March 31, 2019. During the on-site inspection, ODP or Administrative Entity staff completed the self-assessment in-person with the provider and the individual(s) who were receiving the waiver service. To complete the self-assessment, ODP and Administrative Entity staff reviewed documentation and interviewed the provider staff and individuals who were willing to talk about the services they receive.

A total of 5,863 Residential Habilitation and Life Sharing and 554 Community Participation Support/Day Habilitation HCBS Provider Settings Self-Assessments were completed. Between August 1, 2018, and December 6, 2018, providers that submitted self-assessments for Residential Habilitation or Life Sharing service locations received a report for each self-assessment completed. Between December 31, 2018 and January 31, 2019, providers that submitted self-assessments for Community Participation Support/Day Habilitation service locations received a report for each self-assessment completed. The report included each self-assessment question<sup>1</sup>, the provider's response, and any further action required to be taken by the provider.

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<sup>1</sup> Each question on the tool was linked to either a specific regulation within the HCBS Rule, a state regulation, or an ODP waiver policy. To view the policies that pertained to each question, please visit: [Residential+HCBS+Self-Assessment+Correction+Guidance+FINAL.pdf](#)

The data from the self-assessments were analyzed and two comprehensive reports were created; one for service locations where Residential Habilitation or Life Sharing services were rendered and one for service locations where Community Participation Support/Day Habilitation services were rendered. Each report contains the history of the HCBS Rule, the methods that were used in assessing each service location, the results of the self-assessments, and the next steps that will be taken to ensure compliance with HCBS Rule. The final self-assessment reports can be accessed at the [ODP Home and Community Based Settings Final Rule webpage](#).

ODP categorized each service location as one of the following based on the information in each HCBS Provider Settings Self-Assessment:

- Fully Compliant (no areas of noncompliance were identified),
- Partially Compliant (areas of noncompliance were identified that need to be addressed), or
- Pennsylvania Heightened Scrutiny Review Required (see Part 2).

ODP originally found that there were 52 service locations where Residential Habilitation or Life Sharing services were provided (hereafter referred to as residential service locations) and 46 service locations where Community Participation Support/Day Habilitation services were provided that self-identified as being presumptively institutional due to the physical location of the service location or due to having isolating qualities. The number of service locations that met criteria for being presumptively institutional decreased to two residential service locations and 18 Community Participation Support/Day Habilitation service locations based on public comment, closure of service locations, and analysis by ODP as indicated in Part 2 of this document regarding identification of settings presumed to have institutional characteristics.

#### *Remediation Strategies and Timeline for Self-Assessments for Provider Owned or Operated Settings*

ODP sent an email to each service location for which a Provider Settings Self-Assessment was completed. The email contained a Provider Settings Self-Assessment Report that included each self-assessment question, the provider's responses submitted, and any further action required based on the provider's response. These reports along with the "HCBS Self-Assessment Compliance Guidance" were emailed to the providers between November 2018 and January 2019. Providers were given 60 calendar days to remediate all issues that were identified. If the provider was unable to remediate the issue in 60 calendar days, the provider was responsible for filling out a CAP by using the [CAP template](#).



Compliance with waiver and regulatory requirements was validated through Heightened Scrutiny On-site Reviews and/or Licensing Inspections described below.

### *Heightened Scrutiny On-site Reviews*

Heightened Scrutiny on-site reviews were completed for service locations where Residential Habilitation, Life Sharing, Community Participation Support, or Day Habilitation services are rendered that are presumed to have institutional characteristics. The on-site visit focused on the experience of individuals receiving services to verify if each service location is integrated and supports access of individuals receiving HCBS into the broader community, as well as focusing on compliance with regulatory and waiver requirements related to individual rights. During the visit, a significant amount of time was spent talking to individuals who receive services and to the staff who work directly with the individuals at the service location. Responses to the questions on the on-site tools were validated through the collection of evidence, as applicable.

Reviewers utilized the following tools available on the [ODP Home and Community Based Settings Final Rule webpage](#) to complete the Heightened Scrutiny on-site reviews:

- A provider tool used to interview staff and document the reviewer's observations and whether evidence collected demonstrates compliance with regulatory and waiver requirements.
- An individual tool used to interview individuals who receive services and document the reviewer's observations and whether evidence collected demonstrated compliance with regulatory and waiver requirements. All individuals residing in Residential Habilitation or Life Sharing service locations were given the opportunity to speak with reviewers about their services. Since Community Participation Support/Day Habilitation service locations usually serve many more people in a service location, up to three individuals were given the opportunity to speak with reviewers about their Community Participation Support/Day Habilitation services.
- A desk review tool was used for Community Participation Support/ Day Habilitation service locations. This tool was used by reviewers to make a final determination regarding whether each regulatory and waiver requirement was met. This determination was based on a review of the provider tool, individual tool, and all documentation submitted by each service location, including Individual Support Plans (ISP). Providers were required to submit ISPs for a random sample of individuals receiving waiver services at each service location selected by ODP and Temple University's Institute on Disabilities (Temple). The

random sample was selected based on a 20 percent margin of error, 80 percent confidence level, and 5 percent response distribution.

The completion of Heightened Scrutiny on-site reviews was impacted by COVID-19 precautions and temporary closures of service locations. The reviews for the two residential service locations were completed by ODP staff in October of 2020 and October of 2021. The on-site reviews for 17 of the Community Participation Support/Day Habilitation service locations were completed by Temple between January 1, 2022, and March 31, 2022. One Community Participation Support/Day Habilitation service location reopened in April 2022. ODP staff completed the on-site review for this service location in August 2022. ODP reviewed all information from the on-site reviews completed by Temple and made determinations regarding whether each service location meets all HCBS Rule requirements, will require remediation to meet all HCBS Rule requirements, or will not meet all HCBS Rule requirements.

Information on all service locations where a Heightened Scrutiny on-site review was conducted will be published in a public notice. The public notice will include the following:

- ODP's strategies to identify service locations that are presumptively institutional;
- ODP's approaches to reviewing service locations that were identified as presumptively institutional, as well as how ODP will use public comments to inform its review, and how ODP has determined whether a service location overcomes the presumption that it is an institutional setting;
- A list of service locations identified for each category of settings that ODP believes has overcome the presumption that the settings are institutions (e.g., Community Participation Support/Day Habilitation service location inside of a Nursing Facility (NF) or on the campus of a public Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/ID), or a setting that ODP has identified as isolating). The list will also identify the presumptively institutional category that each service location falls into for Heightened Scrutiny, and include a summary of how each service location has or will overcome the presumption that it is an institution as well as ODP's plan for oversight of remediation to ensure compliance with the HCBS Rule requirements by March 1, 2023;
- A list of service locations that ODP does not believe can overcome the presumption that the settings are institutions by March 1, 2023, and thus may not receive waiver funding for services rendered after March 17, 2023; and
- Process for applying CMS feedback on specific service locations to similarly situated service locations.

ODP will then submit evidence to CMS regarding how ODP has determined that each service location overcame the presumption that it has the qualities of an institution. This information will focus on the qualities of the service location including:

- How the service location is integrated in and supports access of individuals receiving waiver services into the broader community via the provider's policies and practices;
- How the service location supports individuals consistent with their person-centered ISPs, waiver requirements, and regulatory requirements; and
- A summary or other description of stakeholder comments received in response to the publication of the public notice outlined above.

ODP will publish a communication notifying stakeholders of the CMS Heightened Scrutiny determination for each service location.

#### *Remediation Strategies and Timeline for Heightened Scrutiny On-site Reviews*

ODP sent an email in July 2022 to each service location for which a Heightened Scrutiny on-site review was completed. The email contained a report that included regulatory or waiver requirements for which information collected did not support compliance. The provider was required to submit information supporting compliance or a completed CAP for each of the requirements identified as not being compliant within 30 calendar days of the email being sent. ODP staff reviewed all CAPs and information submitted within 30 calendar days of receipt and made final decisions as to whether the service location will be compliant with the HCBS Rule by March 1, 2023. It is ODP's goal to publish these determinations in the public notice described above in November 2022.

ODP staff will monitor and validate provider completion of activities outlined in CAPs from September 2022 through March 1, 2023, to ensure compliance with regulatory and waiver requirements.

#### *Licensing Inspections*

Adult Training Facilities under Chapter 2380, Vocational Facilities under Chapter 2390, Community Homes under Chapter 6400, and Life Sharing Homes under Chapter 6500 must have a license to operate in accordance with Pennsylvania statutes and regulations. As these settings serve individuals with an intellectual disability or autism (ID/A), ODP is responsible for completing licensing inspections and other oversight activities.

Licensing inspections usually occur on-site at a home or facility, however, due to the COVID-19 pandemic, inspections were also completed in Fiscal Year (FY) 2020-2021 using technology that allowed regulatory professionals to visually inspect the environment and speak with provider representatives and individuals receiving services, in real time, from an off-site location. This method, which was adopted by other states based on Pennsylvania's success, was found to be effective for compliance measurement while protecting individuals from exposure to COVID-19.

ODP first identified requirements in Chapters 2380, 2390, 6400 and 6500 that align with the HCBS Rule. These are outlined in the [Licensing Regulations that Align with the HCBS Rule](#). Then ODP reviewed licensing inspection data for these requirements, gathered during renewal inspections and partial inspections completed in FY2020-2021.

To determine whether a home or facility was compliant with each regulatory requirement, ODP's regulatory professionals visually confirmed compliance (when applicable) and reviewed policies, procedures, training records, service notes, progress notes and other relevant documentation maintained by the provider. Regulatory professionals also interviewed staff that work in the home or facility, as well as individuals who receive services in the home or facility. Licensees were required to develop and implement a plan to correct any identified violations, after which the regulatory professionals verified that the plan was implemented, and compliance had been achieved. If the plan was not implemented and the home or facility remained noncompliant, they were issued a short-term, provisional "warning" license, or the license to operate was revoked.

Figure 1 below shows the total number of inspections completed overall in FY2020-2021, by setting type, and includes the numbers and percentages where no HCBS Rule violations were identified.

Figure 1

Setting Type	# of <u>inspections</u> completed <sup>2</sup>	# / % of <u>inspections</u> where Zero HCBS violations were found	# of <u>facilities or homes</u> inspected	# / % of <u>facilities or homes</u> where Zero HCBS violations were found
<b>Adult Training Facilities</b> (Chapter 2380)	167	136 / 81%	153	122 / 80%
<b>Vocational Facilities</b> (Chapter 2390)	42	38 / 91%	37	33 / 89%
<b>Community Homes</b> (Chapter 6400)	3,004	2,604 / 87%	2,844	2,458 / 86%
<b>Life Sharing Homes</b> (Chapter 6500)	583	531 / 91%	568	516 / 90%

The full [Home and Community-Based Settings Rule Assessments report](#) with licensing results for Fiscal Year 2020-2021 is available online.

#### *Remediation Strategies and Timeline for Licensing Inspections*

ODP required providers to produce a plan to correct any violation identified during the inspection process, including violations of regulations that related to the HCBS Final Rule requirements. Providers' plans of correction were submitted to ODP for review and approval. In order for ODP to approve the plan of correction, it was required to contain, at a minimum:

- A plan to correct the specific violation identified.
- A multi-step plan to prevent recurrence.
- Specific dates or time periods by which each step of the plan would be completed.
- The person or persons responsible for implementing the plan.

Providers were required to submit a plan of correction within ten calendar days of the date ODP transmitted the inspection findings to the provider.

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<sup>2</sup> Number of inspections completed exceeds the number of facilities/homes inspected, usually because of partial inspections conducted, in addition to a renewal inspection, during the year. Additionally, facilities/homes on a provisional license are subject to at least two renewal inspections during the year, as provisional licenses do not exceed six months.

After the last date in the provider's plan of correction passed, ODP conducted verification activities to ensure that the plan was implemented as written. If ODP found that the plan was fully implemented, the provider was considered in full compliance with the requirement. If the plan was not fully implemented, the provider was subject to enforcement action such as the issuance of a provisional license.

All HCBS Rule violations for Adult Training Facilities and Vocational Facilities were corrected to be 100 percent compliant. ODP found eight distinct Community Home providers that were cited for at least one HCBS Rule violation that were not corrected. Of these providers, seven were issued a provisional license and one had their license revoked. In addition, ODP found that one distinct Life Sharing provider was cited for three violations that were not corrected. As a result, a provisional license was issued for this provider.

Providers that have their license revoked cannot render waiver services. Provisional licenses are short-term "warning" licenses that are issued for up to six months. When a provider is issued a provisional license, they are subject to unannounced monitoring inspections to ensure that basic health and safety needs are being met. Such inspections are usually conducted monthly but can be more frequent depending on the scope and severity of the violations. A full inspection is conducted six weeks prior to the expiration of a provisional license to determine whether the provider has come into complete compliance with regulatory requirements. If the provider has come into complete compliance, a regular (one year) license is issued. If the provider has made significant improvements but is not in complete compliance, a second provisional license will be issued, usually for a period of three to four months. If the provider has not come into compliance or made improvements towards achieving compliance, the provisional license will be revoked. ODP has the authority to issue third and fourth provisional licenses, but generally does not do so except when continued noncompliance is due to circumstances beyond the provider's control.

Of the eight providers that were issued a provisional license:

- 5 providers corrected all violations and have returned to a regular license.
- 2 providers have not corrected all violations and have been issued a second provisional license.
- 1 provider's license was revoked. Control of the home was assumed by a new entity that holds a regular license.

Providers operating on a provisional license or who are operating pending appeal are usually subject to program-operational sanctions pursuant to 55 Pa. Code Chapter 6100, which specifies the payment, program and operational requirements for

applicants and providers of HCBS and services to individuals provided through base-funding. Possible Chapter 6100 sanctions include:

- Recouping, suspending or disallowing payment.
- Terminating a provider agreement for participation in an HCBS waiver program.
- Prohibiting the delivery of services to a new individual.
- Prohibiting the provision of specified services at a specified service location.
- Prohibiting the enrollment of a new service location.
- Ordering the appointment of a master as approved by the Department, at the provider's expense and not eligible for reimbursement from the Department, to manage and direct the provider's operational, program and fiscal functions.
- Removing an individual from a service location.

ODP considers the following factors when determining whether and what sanctions to issue:

- The seriousness of the violations
- The continued nature of the violations
- The repeated nature of the violations
- The history of provisional licenses issued by the Department.
- The provider's history of compliance with Chapter 6100, Departmental regulations such as licensure regulations and applicable regulations of other State and Federal agencies.

### Quality Assessment and Improvement

The ODP Quality Assessment and Improvement (QA&I) process, launched in July 2017, is one tool that ODP uses to evaluate the current system of supports and to identify ways to improve the service system for all individuals. As part of ODP's Quality Management Strategy, the QA&I process is designed to:

- Follow an individual's experience throughout the system,
- Measure progress toward implementing *Everyday Lives: Values in Action*,
- Gather timely and useable data to manage system performance,
- Use data to manage the service delivery system with a continuous quality improvement (CQI) approach, and

- Assess compliance with CMS performance measures and 55 Pa. Code Chapter 6100 regulations.

Through the QA&I process, a comprehensive quality management review is conducted of all county programs, Administrative Entities (AEs), Supports Coordination Organizations (SCOs), and providers who deliver services and supports to individuals with ID/A. While compliance with requirements is part of the QA&I process, the main objective is to emphasize quality and quality improvement.

As a result of the COVID-19 pandemic, ODP received approval from CMS to delay the QA&I activities associated to Cycle 2, Year 1 until July 1, 2022. For FY 2020-2021, ODP conducted an interim review process with modified QA&I activities.

During the interim review process, ODP pulled core samples of individuals receiving services and supports using the proportionate random representative sampling methodology as described in the Consolidated, Community Living, Person/Family-Directed Support (P/FDS) and Adult Autism Waivers (AAW). The SCOs and providers reviewed during the QA&I interim review were based on the individuals selected in the core sample and provider(s) that were authorized in the individual's ISP. If an individual received services and supports from multiple providers, all providers authorized in the individual's ISP were reviewed.

ODP and/or Administrative Entities conducted a desk review for each individual selected to identify evidence of compliance with key performance metrics and quality outcomes, including some HCBS Rule compliance measures. The desk review used all available data sources, which included but was not limited to:

- HCSIS – service notes, monitoring tools, ISP, Prioritization of Urgency of Need of Services (PUNS), Supports Intensity Scale (SIS), Scales of Independent Behavior Revised (SIB-R), Periodic Risk Assessment (PRE), Quality of Life assessment, Independent Monitoring for Quality (IM4Q) considerations.
- Enterprise Incident Management (EIM) – incident reports.
- Documentation – progress notes, policies and procedures, and training records.

The following questions and review guidance regarding HCBS Rule compliance were included in the QA&I provider interim review tool:

- The individual is supported in exploring employment opportunities through Career Assessment and Job Finding or Development (Supported Employment); or through Discovery and Job Acquisition (Advanced Supported Employment). The reviewer determines if progress notes for the review period reflects how the employment provider supports the individual with exploring employment



opportunities through Career Assessment and Job Finding or Development (Supported Employment); or Discovery and Job Acquisition (Advanced Supported Employment), in accordance with the individual's ISP.

- The employment provider supports the individual in maintaining employment through Supported Employment and Advanced Supported Employment. The reviewer determines if the ISP indicates whether or not the individual is employed in a competitive-integrated job and receiving Supported Employment or Advanced Supported Employment from the provider.
- The provider ensures the individual has the right to control the individual's own schedule and activities and has the right to update those activities regularly. This question was applicable to providers of In-Home and Community Support, Companion, Supported Living, Unlicensed Residential Habilitation or Life Sharing in the Consolidated, Community Living and Person/Family Directed Support (P/FDS) Waivers as well as providers of Behavioral Specialist Service, Systematic Skill Building, Community Support, Career Planning, Supported Employment, Small Group Employment, Unlicensed Respite, and Temporary Supplemental Services in the Adult Autism Waiver. The reviewer determines if the provider ensured that all individuals were given opportunities to regularly update their activities by reviewing progress notes and the ISP for an indication of preferred activities and if those activities were attended by the individual, or if there is indication of ongoing progress to participate in a preferred activity.

ODP developed and published a statewide report on November 24, 2021 that includes a summary analysis of statewide data collected during the QA&I process. The [full statewide report](#) is available online. The results for the questions specific to HCBS Rule compliance are listed in Figures 2 through 4 below.

*Figure 2*

Question	Statewide Final Compliance		
	Numerator	Denominator	% Compliant
The individual is supported in exploring employment opportunities through Career Assessment and Job Finding or Development (Supported Employment); or through Discovery and Job Acquisition (Advanced Supported Employment).	14	14	100%
The employment provider supports the individual in maintaining employment through Supported Employment and Advanced Supported Employment.	30	30	100%

The provider ensures the individual has the right to control the individual's own schedule and activities and has the right to update those activities regularly.	280	285	98.2%
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The following questions and review guidance regarding HCBS Rule compliance were included in the QA&I SCO interim review tool:

- The SC develops a person-centered ISP to address all assessed needs. The reviewer determines if the SC developed a person-centered ISP that incorporates all formal and informal assessed needs based on a review of service notes, the ISP, PUNS (ID/A waivers), the SIS assessment (ID/A waivers), the PRE (AAW), SIB-R (AAW), communication assessments and any applicable planning assessments.
- Choice of providers was offered to the individual/family. The reviewer determines if the SC offered individual choice based on the ISP Signature Page.
- Choice of services was offered to the individual/family. The reviewer determines if the SC offered individual choice at the annual ISP meeting based on the ISP Signature Page.

Figure 3

Question	Statewide Final Compliance		
	Numerator	Denominator	% Compliant
The SC develops a person-centered ISP to address all assessed needs.	300 ID/A	313 ID/A	95.8% ID/A
	62 AAW	62 AAW	100% AAW
Choice of providers was offered to the individual/family.	217 ID/A	221 ID/A	98.2% ID/A
	42 AAW	42 AAW	100% AAW
Choice of services was offered to the individual/family.	217 ID/A	221 ID/A	98.2% ID/A
	42 AAW	42 AAW	100% AAW

The following questions and review guidance regarding HCBS Rule compliance were included in the QA&I Administrative Entity interim review tool:

- The ISP has evidence that the individual has opportunities for community activities of their choice. The reviewer determines if the current, approved ISP

includes opportunities for the individual to engage in community activities (i.e., church, shopping, social clubs, restaurants, etc.)

- The ISP has evidence of necessary supports to participate in community activities. The reviewer determines if the current, approved ISP includes supports needed for the individual to participate in community activities that they choose (formal and informal supports).

Figure 4

Question	Statewide Final Compliance		
	Numerator	Denominator	% Compliant
The ISP has evidence that the individual has opportunities for community activities of their choice.	268	268	100%
The ISP has evidence of necessary supports to participate in community activities.	257	257	100%

### Remediation

When there were instances of providers or SCOs not meeting the standard of a question or series of questions, the QA&I spreadsheet indicated the review findings, including areas where remediation was required (i.e., question was marked “No” and highlighted in red). ODP expected that remediation would occur within 30 days of receipt of the QA&I Spreadsheet unless there were concerns for health and safety where remediation had to occur immediately.

The remediation actions by the provider or SCO were captured on the QA&I spreadsheet provided by ODP or the administrative entity and included proof of remediation already completed, including the time frame of completion in its response. The QA&I Lead reviewed and determined approval of all remediation. Once approved, a copy of the completed QA&I spreadsheet along with the CAP, if applicable, was sent electronically to the provider. Receipt of this information indicated that the interim review for the provider was complete.

A Plan to Prevent Recurrence (PPR) was required when the compliance score for the requirement on the QA&I spreadsheet was less than 86%. The QA&I Team used the ODP-approved CAP template to catalog any areas that required a PPR including identification of instances where a Quality Management Plan was required to be developed when appropriate. Once the CAP was received, the provider or SCO reviewed the results and outlined PPR actions that would be taken to ensure instances of noncompliance do not occur in the future. Proof of remediation and a PPR were

required to be submitted to the QA&I Lead within 30 calendar days of receipt of the CAP. Providers and SCOs were responsible for submitting evidence of PPR implementation at the completion of all associated PPR actions.

Within 20 calendar days of receipt of the entity's CAP response, including proof of remediation and PPR, the QA&I Lead either approved the CAP or requested further clarification and/or corrections. If further clarification/corrections were required, the QA&I Lead sent the provider's or SCO's remediation and improvement documentation along with a detailed email providing specific concerns and information to the provider or SCO. The provider or SCO was required to submit revised materials within 15 calendar days of receipt.

If the provider or SCO did not submit the CAP response, including required remediation and improvement documentation within 30 calendar days of receipt, ODP determined which further action and/or sanctions would occur.

## OLTL Approach

OLTL utilized the following approaches to assess compliance with the HCBS Rule statewide:

- Self-Assessments (through provider self-survey)
- On-Site Assessment Process and Heightened Scrutiny On-site Reviews
- OLTL Policies and HCBS Final Rule Processes
- Quality Assurance and Improvement for all Settings

### *Self-Assessment (Provider Survey)*

OLTL surveyed all providers of waiver services administered by OLTL to learn how services are currently being provided. The survey was used as a tool to begin gathering information from HCBS providers to inform the assessment process. Providers were instructed to complete the survey for each enrolled site location in which services are provided. For instance, if a provider has a home office (no services provided) and four locations where services are provided, four surveys would be completed. If a provider is enrolled with both ODP and OLTL to provide services in shared settings, one survey could be used to provide information for both offices. The survey was open for the period of April 2, 2015 to April 30, 2015. Both an electronic and a paper version of the survey were made available. The Electronic Provider Self-Assessment tool may be found at this [provider survey link](#).

A detailed survey analysis from OLTL may be found at: [OLTL Waiver Amendments and Renewals \(pa.gov\)](#).

### *OLTL On-Site Assessment Process Heightened Scrutiny On-site Reviews*

The Quality Management Efficiency Teams (QMET) are OLTL's regional provider monitoring agents. The QMETs monitor providers of direct services as well as agencies having delegated functions. Each regional QMET is comprised of a program specialist (regional team lead), social workers, and fiscal representatives. Four teams are located throughout the state of Pennsylvania.

The QMET utilizes a standardized monitoring process, including a standardized tool and monitors providers against standards derived from Title 55, Chapter 52 of the Pennsylvania Code, provider requirements established in the approved waivers and any OLTL policies. Additionally, OLTL worked to compile an on-site monitoring assessment tool to be used by QMET to document compliance with the rule for each provider's enrolled site. The QMET conducts an onsite assessment using a standard on-site assessment tool based on the requirements standards of the Final Rule at all sites requiring a compliance review. The assessments include a visual inspection of the site where HCBS occur, as well as participant file reviews, interviews of available staff/recipients, and a review of the site's policies and procedures. QMETs will be responsible for continued monitoring of provider sites for compliance after the final compliance deadline to ensure that sites continue to meet the requirements of the rule.

OLTL conducted follow-ups to sites that had incomplete or missing surveys. For sites that were missing surveys, QMET staff assisted the providers to fill out the survey while validating the information and providing technical assistance.

OLTL had completed a majority of on-site assessments between 2016 and 2019, reviewing approximately 400 HCBS congregate sites. OLTL worked with each provider agency of those sites to conduct the review, provide technical assistance, and work through corrective actions when appropriate. It is important to note that OLTL's progress with conducting and completing on-site assessments was disrupted by the COVID-19 public health emergency, as many sites were temporarily closed or unable to be fully integrated in the community.

During this time, OLTL also implemented a managed long-term service and supports program for Medicaid eligible individuals with physical disabilities, older Pennsylvanians, and individuals dually eligible for Medicaid and Medicare. The Community HealthChoices (CHC) program is a combined 1915(b) and 1915(c) waiver authority. The 1915(b) waiver authority permits the mandatory enrollment of individuals into managed care for physical health and LTSS, and the 1915(c) waiver permits individuals who are eligible for an institutional level of care to be served in the community. CHC rolled out in three phases over three years, beginning in January 2018 and completed the final roll out in January 2020. The vision for CHC is an integrated system of physical health and long-term Medicare and Medicaid services that supports older adults and adults with physical disabilities to live safe and healthy lives with as much independence as

possible, in the most integrated settings possible. During the transition, OLTL ensured the necessary updates to the HCBS waiver services definitions included language that providers of services must comply with the HCBS Rule.

Compliance with the HCBS Rule has been established as a requirement for providers to participate in CHC. As stated in updated 1915(c) service definitions, and the CHC Agreement between OLTL and CHC-managed care organizations (MCO), the CHC-MCO must provide services in the least restrictive, most integrated setting and LTSS must be provided in accordance with 42 CFR §441.301(c) (4) and (5), which outlines allowable settings for HCBS. This includes that CHC-MCOs shall only provide LTSS in settings that comply with federal regulations; and that settings cannot be located on the grounds of a NF, ICF/ID, Institute for Mental Disease, or Hospital, unless they meet the standards for the Heightened Scrutiny process established through the HCBS Final Rule and is included in the Person-Centered Service Plan (PCSP).

For all participants who receive HCBS through OLTL, SCs are required at least yearly through the annual re-determination process to review all available service delivery options and document the participant's choice. Service Coordinators are responsible for ensuring participants are fully informed of all services available in the waiver, their right to choose from and among all willing and qualified providers that are part of the CHC-MCOs provider network, and electronically document evidence of participant choice. Service Coordinators are also responsible for providing participants with information and training on the process for selecting qualified providers of services during the PCSP development process. This includes the option to receive services in non-disability specific settings. Choices made are reflected in the PCSP.

OLTL resumed the on-site assessment process in 2022. Overall, OLTL has identified 289 distinct service sites that will require follow-up for compliance with the HCBS Final Rule. There was a decrease in the number of sites from the previously published STP due to many service providers closing and remaining closed during the COVID-19 pandemic. OLTL estimates that, of these 289 sites, 11 providers representing 19 service locations may be submitted for heightened scrutiny.

Below is a breakout of sites by service location type:

- 62 service locations are providing Employment Skills Development and are licensed under 55 Pa. Code Chapter 2390-Vocational Facilities, pertaining to Prevocational Services.
- 168 service locations are providing Residential Habilitation and are licensed under 55 Pa. Code Chapter 2600-Personal Care Homes, pertaining to Residential Habilitation Services. 3 providers with 10 service locations have been identified for heightened scrutiny.

- 97 service locations are providing Adult Day services and are licensed under 6 Pa. Code 11, pertaining to older Adult Daily Living Services. 7 of these service locations have been identified for heightened scrutiny.
- 11 service locations are identified to be providing Personal Assistance Services in a provider-owned or controlled residential setting, but do not follow 55 Pa. Code Chapter 2600-Personal Care Homes, pertaining to Residential Habilitation Services, because there are less than four un-related individuals living at the site.
- 44 service locations are providing Structured Day services, who qualify for Commission on Accreditation of Rehabilitation Facilities (CARF) Community Integration accreditation, or CARF Brain Injury Home and Community Services (Adult) accreditation, or are licensed under 55 Pa Code, Chapter 2380 as an Adult Training Facility. 1 provider with 2 service locations have been identified for heightened scrutiny.

On December 29, 2021, OLTL issued a Medical Assistance Bulletin Number 59-21-03 “**Home and Community Based Settings Heightened Scrutiny Process**,” after soliciting stakeholder feedback, providing guidance on a process for heightened scrutiny, and detailing establishment of the OLTL Final Rule Panel. OLTL developed a final rule panel comprised of representatives from each of the CHC-MCOs, licensing entities, and OLTL staff to review the findings of the QMET assessment to ensure ongoing compliance with the HCBS Rule. The panel is also responsible for validating a site’s claim that they do not have qualities of an institutional setting or isolating conditions. Additionally, the panel will review all complaints received regarding potential noncompliant sites. The OLTL Panel will work collaboratively with providers, stakeholders, state staff, and MCO representatives to assess compliance with the rule.

#### *OLTL Remediation*

Provider remediation activities are documented in the Corrective Action Plan (CAP) which will be requested from providers by OLTL to correct areas of non-compliance.

Areas of non-compliance with the HCBS Settings requirements are identified from the HCBS Settings Final Rule Assessment Tool and are communicated to the provider through a Statement of Findings (SoF) upon approval by OLTL’s Final Rule Panel. The provider responds to the written statement of findings by completing a CAP. The CAP will provide detail about the steps to be taken to remediate issues and the expected timelines for compliance. OLTL will review and approve a provider’s CAP. The CAP includes some of the following: action steps to address a specific finding; explanation on how the steps will remediate the finding; date when a finding will be remediated; and the agency responsible person for correcting the identified problem. The provider needs to demonstrate through the CAP that it can meet the regulations and develop a process

on how to continue compliance with the regulations. QMET provides technical assistance to the provider to ensure their corrective measures are acceptable. QMET then presents the CAP to the Final Rule Panel with a recommendation of approval. The provider must implement the approved CAP. The timeframe for conducting the CAP follow-up is dependent upon the dates for completion identified by the provider.

The QMET determines the CAP follow-up reassessment schedule and the method (on-site vs in office) based on the action steps that were to be completed or the area which was deemed out of compliance. CAPs are to be followed-up on between 30 and 90 days of the last date listed under timeline for completion. The provider is notified of the type of follow-up to be performed 15 business days in advance of the follow-up monitoring. All areas of non-compliance are reviewed during the CAP follow-up assessment to determine if the action steps have been completed in accordance with the approved CAP. If the follow-up is performed and all the action items are verified as complete, the CAP is closed.

If some items remain incomplete, the QMET will provide technical assistance in order to assist the provider in remediating any outstanding items and work towards closing the CAP. No CAP is closed until all action steps have been completed.

Sites identified to need heightened scrutiny through OLTL's Final Rule Panel will receive a letter from OLTL that would be appropriate for heightened scrutiny giving them the opportunity to do one of the following:

- Schedule an onsite review- the onsite review will entail examination of provider policies and procedures, an onsite assessment of the setting by QMET, review of provider documentation, and review of the PCSP. OLTL will conduct confidential personal interviews with a representative sample of site participants, family members and staff as part of this process.
- Implement a CAP that demonstrates compliance prior to being submitted for heightened scrutiny.
- Discontinue providing HCBS at the site.

Those sites will also work with OLTL to compile a heightened scrutiny package for submission to CMS for a heightened scrutiny review and approval/denial. OLTL will issue final notice to the affected provider upon receipt of CMS's decision.

Providers that are unable or unwilling to comply with their CAP or the heightened scrutiny process will be dis-enrolled from providing HCBS at that setting and are required to adhere to Pa. Code § 52.61- Provider Cessation of Services:



“(a) If a provider is no longer able or willing to provide services, the provider shall perform the following:

(1) Send written notification to each participant, the Department and other providers with which the provider works that the provider is ceasing services, at least 30 days prior to the provider ceasing services.

(2) Notify licensing or certifying entities as required.

(3) Send the Department a copy of the notification sent to a participant and service providers as required under paragraph (1). If the provider uses a general notification for all participants or service providers, a single copy of the notification is acceptable.

(4) Cooperate with the Department, new providers of services and participants with transition planning to ensure the participant’s continuity of care.

(b) If the provider fails to notify the Department as specified in subsection (a), the provider shall forfeit payment for each day that the notice is overdue until the notice is issued.”

Providers determined to be ineligible after the CAP process will be provided appeal rights. OLTL will keep a “tracker” of HCBS providers who have been determined to be out of compliance with the final rule. The tracker will include how many participants are served at the site location that is out of compliance. OLTL will work with the provider to transition affected participants to another provider.

# Part 2: Identification of Settings Presumed to Have Institutional Characteristics

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## ODP Approach

After extensive stakeholder engagement, ODP published regulations at 55 Pa. Code Chapter 6100 in October 2019 which incorporated HCBS Rule requirements by strengthening community services and supports to promote person-centered approaches, community integration, personal choice, quality in service delivery, health and safety protections, and competitive integrated employment. The regulations include requirements that newly funded residential or day service locations may not be located adjacent to another human service residential service location or another human service day service location serving primarily persons with a disability. Requirements that residential service locations be integrated in community locations have been included in ODP's waivers for over a decade.

Compliance with the requirements regarding the location of new residential or day service locations is validated by ODP prior to approving the service location to be enrolled to render waiver services. As a result of the waiver and regulatory requirements and ODP's validation process, no homes where residential waiver services are rendered have been identified as presumed to have institutional characteristics due to the location of the home. Prior to the effective date of 55 Pa. Code Chapter 6100 regulations, there were no requirements regarding the location of Community Participation Support/Day Habilitation service locations. ODP identified 18 Community Participation Support/Day Habilitation service locations that are presumed to have institutional characteristics due to the physical location of the facility where services are rendered.

ODP's regulations and waivers require all providers to offer individuals opportunities and needed assistance to participate in integrated community activities, including employment, consistent with the individual's preferences, choices, and interests. ODP utilized licensing inspections, heightened scrutiny on-site reviews, and the QA&I process to ensure these requirements were met. If any provider was found to be noncompliant with any requirement, the provider was required to remediate the issue. As a result, no providers have been identified to date as having the effect of isolating individuals from the broader community. ODP staff are still in the process of reviewing all information submitted through the Heightened Scrutiny on-site review. It is possible

that providers could be identified as having the effect of isolating individuals from the broader community as a result of this process.

ODP used the following methods to analyze and identify whether service locations where Residential Habilitation, Life Sharing, or Community Participation Support/Day Habilitation services are provided were presumed to have institutional characteristics which required a heightened scrutiny on-site review as outlined in Part 1:

- ODP staff reviewed all completed self-assessments outlined in Part 1 to identify service locations that providers indicated had characteristics of an institutional setting.
- ODP staff also utilized the following:
  - Software that maps all provider owned or operated service locations receiving ODP waiver funding as well as public and private ICFs/ID;
  - Information and maps available on the internet;
  - Addresses of skilled nursing facilities; and
  - ODP staff knowledge of the service locations.

All service locations identified through this process were shared with stakeholders for public comment. Public comment did not indicate that any additional service locations should be added due to institutional characteristics. Public comment recommended that some service locations be removed because they were not in locations that were presumed to have institutional characteristics. ODP reviewed all public comments, mapping software, and internet information mentioned in the bullets above and determined that 14 Community Participation Support/Day Habilitation service locations could be removed from the list that required a heightened scrutiny onsite review because they were not in locations that were presumed to have institutional characteristics. An additional 14 Community Participation Support/Day Habilitation service locations were removed from the list because they have closed or no longer render services through ODP's waivers.

## Office of Childhood Development and Early Learning (OCDEL) Approach

It is the Department's position that all services provided through the Infants, Toddlers, and Families waiver meet the requirements of home and community-based settings and are compliant with the HCBS Rule. Per state regulation § 4226.74 all Early Intervention services, to include Special Instruction provided under the Infants, Toddlers and Families waiver are to be delivered in natural environments. Natural environments are defined in regulation § 4226.5 as settings that are natural or normal for a child's age peers who have no disabilities, including the home and community settings in which children without disabilities participate.

No remediation strategies are necessary and no settings will be submitted for heightened scrutiny. OCDEL will continue to monitor waiver providers to ensure individuals continue to receive services in compliant settings. Ongoing monitoring for compliance is achieved through OCDEL's annual verification process that is completed through a verification visit utilizing standardized tools and procedures.

## OLTL Approach

OLTL's Bureau of Fee-For-Service Programs, Division of Provider Operations accepts applications from providers electing to enroll to render HCBS. Prior to any enrollment the provider is required to complete the OLTL standard application form and materials. Effective July 1, 2015, the application form includes questions and information related to the HCBS Rule. The types of questions a provider must respond to are specific to the service location where HCBS is rendered, pose qualities to isolate participants from the greater community, third-party relationships, and the financial interest of owners of residential settings. A copy of this form may be found at [Provider Enrollment Information Form HCBS 9.1.2021.pdf \(pa.gov\)](#). Applicants that are identified as not in compliance with the final rule will be required to complete the provider self-survey and may be subject to an on-site visit by OLTL as well as submission to CMS for heightened scrutiny prior to enrollment or may have additional steps to take to become compliant with the rule before their enrollment is considered complete.

OLTL released an electronic provider enrollment application on January 29, 2016 to improve the ease of submission for providers and automate processes that were previously manual and cumbersome. The electronic provider enrollment user interface allows new and existing OLTL providers to complete their Pennsylvania Medical Assistance enrollment application online, effective January 29, 2016.

On December 28, 2016, OLTL issued Medical Assistance Bulletin Number 59-16-14, “Home and Community Based Settings Requirements,” after soliciting stakeholder feedback, requiring all Home and Community-Based Services providers to be compliant with the requirements of the CMS Final Rule. During implementation of the CHC program, as well as post-implementation, OLTL continued to use their established on-site assessment tool to review provider sites for compliance with the Final Rule and worked with providers on corrective actions when appropriate.

In addition, Participants also have the ability to directly report complaints through the Customer Service line OLTL operates, which is known as the OLTL Participant HelpLine. The OLTL Participant HelpLine (1-800-757-5042) is located in the Bureau of Coordinated and Integrated Services and is staffed by OLTL personnel during normal business hours. Participants, family members and other interested parties use the Participant HelpLine to report complaints/grievances regarding the provision/timeliness of services and provider performance. Individuals calling the OLTL Participant HelpLine with a complaint/grievance are logged into EIM, a web-based database, and the information is then referred to the appropriate Bureau for resolution and follow-up.

OLTL has also established an email resource account for providers, participants, stakeholders, advocates, and others to communicate with OLTL on sites that may not be compliant or ask questions about site compliance with the HCBS Rule.

# Part 3: Communicating with People in Settings That Cannot or Will Not Come into Compliance

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When services are rendered in settings or service locations that Pennsylvania has determined cannot or will not come into compliance with the HCBS Rule by March 17, 2023, individuals receiving these services will be notified that the services are no longer eligible for waiver funding and given an informed choice of alternate services, settings, service locations, or providers that are compliant with the HCBS Rule.

## ODP Approach

At this time, ODP has identified two service locations through licensing inspections where Residential Habilitation services were provided that did not come into compliance with the HCBS Rule and had their license revoked. A new legal entity with a regular license assumed control of the service location identified in the Home and Community-Based Settings Rule Assessments report with licensing results for Fiscal Year 2020-2021. As a result, the individuals living in this home chose to remain in the home and continue receiving waiver services. ODP revoked the license for the second service location after the provider was issued a provisional license due to continued noncompliance with regulatory requirements. The provider that owns this home has appealed the license revocation and continues to render services pending the outcome of the appeal.

When ODP determines that any settings or service locations cannot or will not come into compliance in the future and the setting or service location can no longer receive waiver funding for services rendered, the following process will be utilized unless other serious health and safety concerns are also identified:

- The ODP central office notifies the provider that the setting or service location will be ineligible for waiver funding.
- The ODP regional office notifies the impacted Administrative Entities and SCOs.
- The Administrative Entities and SCs work with impacted individuals and any designated individuals to identify alternative waiver services or settings and holds a service plan team meeting to add the chosen services or settings to the service plan.
- The Administrative Entity reviews the revised service plan and authorizes the new waiver services or settings when all requirements are met.

- It is the responsibility of the current provider to continue services during the transition period with oversight provided by the Administrative Entities and SCs. ODP will work with the Administrative Entities and SCs to ensure that there will be no disruption of services during the transition period.

## OLTL Approach

OLTL oversees the Managed Long-Term Services and Supports (MLTSS) and Long-Term Services and Supports (LTSS) subcommittees of the Department's Medical Assistance Advisory Committee (MAAC). The purpose of the MLTSS and LTSS Subcommittees are to review materials and advise the MAAC and the Department on policy development, program administration, and new and innovative approaches to long-term services and supports. Membership of the committees includes consumers of long-term living services, providers of services, family caregivers, and advocates. The MLTSS Subcommittee meets monthly and the LTSS meets bi-monthly to discuss proposed policies and programmatic changes which include review and feedback on OLTL policies related to the HCBS Rule. OLTL has also provided information and updates on compliance with the final rule to the LTSS subcommittee on April 12, 2022 and the MLTSS on May 10, 2022. OLTL will continue to use these forums to communicate any updates or changes to the STP as well as the OLTL waiver specific transition plan updates.

OLTL will be working with providers during the transition period to come into compliance with the HCBS final rule by implementing OLTL specific policies and procedures for better measurement of compliance with the final rule. A public notice is anticipated to be published in November 2022, which will list all settings/providers that have been found eligible for continued waiver reimbursement and meet criteria for CMS heightened scrutiny process, including the number of participants currently receiving services in those settings.

OLTL will notify providers and participants of all findings and corrective actions that are being taken. Individuals who will have to transfer from non-compliant or presumed non-compliant settings will get advance, accessible notice through a phone call and/or visit from their SC in addition to a letter, which will ensure that this important information is received and understood. OLTL will work with each participant, their families, and their HCBS providers in assisting the participant to transfer out of the non-compliant site. The participant and their families will have the option of choosing between compliant HCBS providers and non-disability specific settings. Transitioning participants is a last resort and will occur in the event a provider's agreement is terminated due to continued non-compliance. Prior to transition activities, OLTL will assess and resolve any access to care concerns. Depending on the number of participants served at a non-compliant setting, there will be a 30-60 transition period. In accordance with 55 PA Code Chapter

52.61(a)(1) providers are required to give participants notice of cessation of services 30-days prior to cessation. The participants' service coordinators will discuss service options available at that time.

In December 2022, OLTL will submit a list of settings/providers identified for heightened scrutiny to CMS for their heightened scrutiny process, including the number of participants currently receiving services in those settings. Notice for the stakeholders will be published regarding the settings/providers CMS accepted as being home and community-based, and those that CMS denied as being home and community-based.



# Part 4: Ongoing Monitoring and Quality Assurance Process

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The Department continues to monitor and ensure that quality services are provided at all HCBS settings. Through the different processes described below, Pennsylvania will continue to ensure compliance with the federal settings criteria now and in the future.

## ODP Approach

### Incorporation of HCBS Rule Requirements in Regulation and Waivers

ODP published regulations at 55 Pa. Code Chapter 6100 in October 2019 which incorporated HCBS Rule requirements by strengthening community services and supports to promote person-centered approaches, community integration, personal choice, quality in service delivery, health and safety protections, and competitive integrated employment. These regulations govern the program, as well as operational and fiscal aspects of HCBS provided through ODP's 1915(c) waiver programs. ODP also amended licensing regulations in 55 Pa. Code Chapters 2380, 2390, 6400, and 6500 in October 2019 to make them compatible with Chapter 6100 in the areas of training, rights, individual planning, incident management, restrictive procedures and medication administration.

ODP also analyzed and revised all four 1915(c) waivers to ensure alignment with the federal standards. The following standards (including tiered standards) and clarification not contained in regulations are included in the waivers:

- All Residential Habilitation and Life Sharing settings must be integrated and dispersed in the community in noncontiguous locations and may not be located on campus settings. To meet this requirement, the location of each setting must be separate from any other ODP-funded residential setting and must be dispersed in the community and not surrounded by other ODP-funded residential settings. Settings that share only one common party wall are not considered contiguous. Settings should be located in the community and surrounded by the general public.
- Waiver funding cannot be used to provide any service in any private home purchased for, developed for or promoted as serving people with an ID/A in a manner that isolates or segregates the participant from the community of individuals not receiving waiver services. Further, waiver funding cannot be used to provide any service in a private home that has the effect of isolating the

participant from the broader community of individuals not receiving waiver services as evidenced by any of the following:

- Due to the design or model of service provision, participants have limited, if any, opportunities for interaction in and with the broader community, including with individuals not receiving waiver services;
- The participant's choice to receive services or engage in activities outside of the home is restricted; or
- The home is physically located separate and apart from the broader community and does not facilitate opportunities for the participant to access the broader community and participate in community services, consistent with the participant's person-centered service plan.

### Ongoing Monitoring

ODP providers are continuously monitored through the QA&I process as well as through licensing inspections.

The QA&I process is designed to conduct a comprehensive quality management review of each provider (as well as county programs, AEs, and SCOs) delivering services and supports to individuals. The QA&I process, which is completed for each provider every three years, is one of the tools ODP uses to evaluate its current system and identify ways to improve services for all individuals. Each provider is required to complete a self-assessment every year which ODP reviews and monitors through a desk review.

An onsite review occurs at least once per cycle (once every three years) for 33% of providers. The QA&I process now is aligned with the HCBS Rule, and providers are monitored for compliance with the updated policies, regulations, and waiver standards.

Individual interviews are considered a critical component of the QA&I process to fully evaluate an individual's experience with services and supports. ODP pulls a core sample of individuals receiving services and supports using the proportionate, random, and representative sampling methodology described in the AAW and ID/A Waivers. All individuals in this core sample are offered an interview to be conducted by the Independent Monitoring for Quality (IM4Q) local programs on behalf of ODP.

ODP also incorporated requirements in the licensing regulations (55 Pa Code Chapters 6400, 6500, 2380, and 2390) to align with the HCBS Rule. ODP's Regulatory Administration Unit will continue conducting onsite visits through the licensing process/inspection and will monitor providers in accordance with the HCBS Rule. As part of the onsite review process, ODP develops operational policy and regulatory interpretations, takes enforcement actions, and ensures that licensing functions are performed consistently across the state. Licensing inspections usually occur on-site at a home or facility. To determine whether a home or facility was compliant with each

regulatory requirement, ODP's regulatory professionals visually confirm compliance (when applicable) and review policies, procedures, training records, service notes, progress notes and other relevant documentation maintained by the provider. Regulatory professionals also interview staff that work in the home or facility, as well as individuals who receive services in the home or facility. Licensees must develop and implement a plan to correct any identified violations, after which the regulatory professionals will verify that the plan was implemented, and compliance has been achieved. If the plan was not implemented and the home or facility remains noncompliant, the home or facility will be issued a short-term, provisional "warning" license, or the license to operate may be revoked.

With the HCBS Rule requirements embedded in ODP's policies and regulations, ODP started to collect data on these new policies and regulations (such as on exercise of rights, rights of the individual, negotiation of choices, physical location, etc.) and will continue to report the findings to stakeholders.

### New Providers/Service Locations

Prior to rendering direct waiver services, new providers must complete ODP's Provider Applicant Orientation which requires the provider's Chief Executive Officer (CEO) or Executive Director to complete the following steps:

- Review the materials for each of the pre-registration modules and successfully pass the test after each module. One of the modules focuses on regulatory requirements, including HCBS Final Rule requirements.
- Register for, and participate in, a full-day face-to-face session.
- Successfully pass a post-test following the face-to-face session and be issued a Certificate of Achievement.

Once the CEO or Executive Director successfully completes the Provider Applicant Orientation, the new provider must provide documentation to ODP or its designee demonstrating that all waiver provider qualification criteria are met for each service the provider will render. This includes completion of the following steps that focus on HCBS Rule compliance:

- If the service(s) chosen requires licensure, the licensing process must be completed including an onsite licensing inspection that ensures compliance with regulatory requirements, which include HCBS Rule requirements.
- When the service(s) chosen include Residential Habilitation, Life Sharing, or Community Participation Support/Day Habilitation, ODP staff review the location(s) where services are proposed to be rendered to ensure that they are not adjacent to another human service residential location or another human

service day service location serving primarily persons with a disability. More information about these locations is included in Attachment B.

- All new providers, regardless of licensing requirements, must submit a signed ODP Waiver Provider Agreement which requires the provider to comply with federal and state statutes, regulations, waivers, policies, and the Individual Support Plan of each individual served by the provider.
- All new providers, regardless of licensing requirements, must complete the New Provider Self-Assessment and Guidelines which includes questions regarding the provider agency's structure, policies, and procedures that must be in place before waiver services are offered, including policies and procedures that ensure compliance with regulations.

When a provider that is currently enrolled to render waiver services wants to open a new provider owned or operated service location, the following steps must be completed:

- New Vocational Facilities and Adult Training Facilities that are subject to licensure must have an onsite licensing inspection completed by ODP staff that ensures each new facility is compliant with regulatory requirements, which include HCBS Rule requirements. ODP staff also ensure the location is integrated and dispersed in the community.
- Residential Habilitation service locations and Life Sharing service locations that are subject to licensing must either complete a self-assessment or have an onsite licensing inspection completed. The onsite licensing inspection will be completed by ODP staff and ensure that each new facility or service location is compliant with regulatory requirements, which include HCBS Rule requirements.
- To be eligible to add a new service location to an existing license through the self-inspection process, the following criteria apply:
  - The provider must have had at least one full renewal inspection by the Department. The initial inspection that resulted in licensure is not considered a full renewal inspection and does not meet the requirement for at least one full renewal inspection.
  - The provider's license must be on regular status. Providers whose licenses are on provisional status or providers operating pending appeal of a revoked or non-renewed license may not expand through self-inspection.

As part of the self-inspection process, the licensed provider completes a Self-Inspection and Declaration instrument for review and approval. Through the instrument, the licensed provider reviews the home's physical site for noncompliance with statutes and regulations, and corrects any non-compliances that are identified, including

requirements that relate to the HCBS Rule. The declaration on the instrument reads, “I swear that the [information on the instrument] is true and correct, that the agency is responsible for compliance with all applicable statutes and regulations, including but not limited to Article X of the Public Welfare Code, 62 P.S. § 1001 et seq. and 55 Pa. Code § 20.1 et seq., and that knowingly providing inaccurate information may lead to enforcement action up to and including revocation of the agency’s license to operate.” The provider must also submit ODP’s Noncontiguous Clearance Form which provides verification from regional ODP staff that the service location is integrated and dispersed in the community.

Any home that is added through the self-inspection process is also inspected by ODP during the next on-site inspection. If it is determined that the provider provided inaccurate information on the self-inspection instrument, the provider is subject to sanctions.

## OCDEL Approach

OCDEL will continue to monitor waiver providers to ensure individuals continue to receive services in settings that comply with the HCBS final rule. Ongoing monitoring will be through OCDEL’s annual verification process that includes a verification visit that utilizes standardized tools and procedures.

The verification process focuses on a standard set of required indicators in each of the following areas: child find and public awareness; procedural safeguards; evaluation for eligibility; program planning; service delivery; transition; and fiscal accountability. The verification process has three major focus areas:

- Compliance items: state and federal regulations;
- Assurances outlined in the transition plan and waiver application; and
- Program management to ensure continuous quality improvement.

The verification process includes the following standardized activities: data reviews, review of policies, individual child record reviews, and observations of service delivery. Standard child record samples as well as targeted child record samples are utilized for the verification process. Both samples are randomly selected by OCDEL. A comprehensive review is completed on the standard child record sample. The targeted sample is pertinent to specific areas and is designed to ensure that an adequate child record sample is obtained when reviewing specific requirements.

OCDEL issues a findings report for the verification process. Local infant/toddler early intervention programs develop a Quality Enhancement Plan (QEP) to address non-compliances, improvement needed in the area of program management, and activities

to enhance program quality to improve outcomes for children and families. The required elements of the QEP utilized in response to identified non-compliances are:

1. Goals/outcomes for non-compliance(s) as well as results goals;
2. Activities to achieve goals/outcomes, target date for completion and responsible person; and
3. How the goal/outcome will be measured: evidence, data source, data review schedule, and responsible persons.

The QEP is required to be submitted within 30 days of receipt of the verification findings report. The QEP must address all areas of non-compliance and include activities designed to correct non-compliance within 365 days of the issuance of the verification findings report.

OCDEL approves the QEP and also conducts validation activities according to standard timelines to ensure non-compliance is corrected by implementation of listed improvement activities within 365 days of issuance of findings report. This validation is achieved either onsite or through electronic sharing of evidence/documentation and conference calls. The standardized format of the QEP documents the validation process and includes sections to document the following: the QEP team's review of its data, dates, and progress toward the outcomes. The results of the review as well as a section for OCDEL to document the date the outcomes were achieved and closed.

## OLTL Approach

OLTL's overall strategy continues to rely on its existing HCBS quality assurance processes to ensure ongoing provider compliance with the HCBS rule. OLTL waiver providers are monitored for compliance with OLTL waiver and program requirements biennially in accordance with CHC and OBRA waiver requirements. OLTL will continue to use the monitoring strategy described above in Part 1 of the STP to monitor provider compliance throughout the provider's participation with OLTL's programs. The on-site assessment tool will assist with determining the level of compliance at each location. This will include provider identification of remediation strategies for each identified issue, and ongoing review of status and compliance. OLTL will also provide guidance and technical assistance to providers to assist them with ongoing compliance. Providers that do not remain compliant with the HCBS final rule may be subject to sanctions including but not limited to termination from participation with the OLTL waivers and programs.

OLTL will work with providers to ensure documentation needed for heightened scrutiny submission is gathered and work with sites to make decisions on working towards complete compliance, work to safely close a site and transition participants to an

equivalent compliant site of their choice, or work with a provider to achieve compliance to submit for heightened scrutiny.

### *New Provider/Service Locations*

OLTL's Bureau of Fee for Service Enrollment Division accepts applications from providers electing to enroll to render HCBS. Prior to any enrollment, the provider is required to complete the OLTL standard application form and materials. Effective July 1, 2015, the application form includes questions and information related to the HCBS final rule. The types of questions a provider must respond to are specific to the service location where HCBS is rendered, pose qualities to isolate participants from the greater community, third-party relationships, and the financial interest of owners of residential settings. A copy of this form may be found at [Provider Enrollment Information Form HCBS 9.1.2021.pdf \(pa.gov\)](#). Applicants that are identified as not in compliance with the final rule will be required to complete the provider self-survey and may be subject to an on-site visit by OLTL prior to enrollment or may have additional steps to take to become compliant with the rule before their enrollment is considered complete. No applicants as of December 2015 have been identified as needing heightened scrutiny.

OLTL released an electronic provider enrollment application on January 29, 2016 to improve the ease of submission for providers and automate processes that were previously manual and cumbersome. The electronic provider enrollment user interface allows new and existing OLTL providers to complete their Pennsylvania Medical Assistance enrollment application online, effective January 29, 2016.

# Part 5: Beneficiary Recourse

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Pennsylvania must have a process for accepting reports of provider noncompliance with the HCBS Rule from individuals receiving services as well as any other concerned individuals and addressing these reports.

## ODP Approach

ODP encourages individuals receiving services and other concerned stakeholders to submit concerns regarding provider noncompliance with the HCBS Rule to the provider or the individual's SC. Per 55 Pa. Code Chapters 2380, 2390, 6100, 6400, and 6500, providers are required to develop procedures to receive, document and manage complaints about a service that are submitted by or on behalf of an individual.

Providers are required to document and manage complaints, including documentation of the provider's investigation process, findings and actions to resolve the complaint, if applicable. The provider shall ensure that there is no retaliation or threat of intimidation relating to the filing or investigation of a complaint.

If anyone is uncomfortable using this process or does not believe that the provider followed the requirements to receive, document, and manage complaints outlined in the previous paragraph, they may call the ODP Customer Service Line at 1-888-565-9435 or 1-866-388-1114 for individuals with a hearing impairment. This information may also be emailed to ODP at [RA-odpcontactdpw@pa.gov](mailto:RA-odpcontactdpw@pa.gov). When a complaint or grievance is received through the Customer Service Line or by email, information relating to the complaint or grievance is obtained from the person contacting the Customer Service Line and entered into a database. Information collected includes, but is not limited to, the complainant's contact information and the nature of the complaint. The information is then referred to the appropriate ODP staff person for follow-up.

Follow-up activities are determined and triaged based on the level of risk to an individual's health, welfare, or rights as described in the complaint allegation. Allegations that pose a high risk (such as abuse, mistreatment, unsafe living conditions, etc.) are responded to immediately through mechanisms such as licensing inspections or investigations by ODP. Lower-risk allegations are generally acted upon within three business days of receipt.

ODP will resolve a complaint within 30 calendar days of the date the complaint was submitted unless there are circumstances beyond ODP's control, in which case the complaint will be resolved as soon as possible.



## OLTL Approach

OLTL will keep a “tracker” of HCBS providers who have been determined to be out of compliance with the final rule. The tracker will include how many participants are served at the site location that is out of compliance. OLTL will be tracking any necessary transition activities through the CAP process. OLTL will notify participants of all findings and compliance actions that are being taken. Individuals who will have to transfer from non-compliant or presumed non-compliant settings will get advance, accessible notice through a phone call and/or visit from their SC in addition to a letter, which will ensure that this important information is received and understood. OLTL will work with each participant, their families, and their HCBS service providers in assisting the participant to transfer out of the non-compliant site. The participant and their families will have the option of choosing between compliant HCBS providers and non-disability specific settings.

Participants have the ability to directly report complaints through the Customer Service line OLTL operates, which is known as the OLTL Participant HelpLine. The OLTL Participant HelpLine (1-800-757-5042) is located in the Bureau of Coordinated and Integrated Services and is staffed by OLTL personnel during normal business hours. Participants, family members and other interested parties use the Participant HelpLine to report complaints/grievances regarding the provision/timeliness of services and provider performance. Individuals calling the OLTL Participant HelpLine with a complaint/grievance are logged into EIM, and the information is then referred to the appropriate Bureau for resolution and follow-up. OLTL has also established an email resource account for providers, participants, stakeholders, advocates, and others to communicate with OLTL on sites that may not be compliant or ask questions about site compliance with the Final Rule. Information can be emailed to OLTL at [RAPWHCBSFinalRule@pa.gov](mailto:RAPWHCBSFinalRule@pa.gov).