



**ARKANSAS DEPARTMENT OF
HUMAN SERVICES**

HOME AND
COMMUNITY-BASED
SERVICES (HCBS)
STATEWIDE SETTINGS
TRANSITION PLAN

SUMMARY

On March 17, 2014, the Center for Medicare and Medicaid Services (CMS) issued a final rule for home and community-based services that requires states to review and evaluate current Home and Community-Based Services (HCBS) settings, including residential and nonresidential settings. States are required to analyze all HCBS settings where HCBS participants receive services, determine if the current settings comply with the final rule, and demonstrate how compliance will be achieved for those settings that do not meet the HCBS settings requirements. Settings that are HCBS compliant must be integrated in and support full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.

STATE ASSURANCES

The State assures full and on-going compliance with the HCBS setting requirements at 42 CFR Section 441.301(c) (4) (5) and Section 441.710(a) (1) (2) and public input requirements at 42 CFR 441.301(6) (B) (iii) and 42 CFR 441.710(3) (iii) within the specified timeframes for the identified actions and deliverables. While the State is already compliant with some of the requirements, the State will reach full compliance by implementing a statewide transition plan as described below.

The State ensures that, as the standards and the plan for transition are developed, the public has an opportunity for input. The State will consider those comments and make revisions to the plan, as appropriate, before the plan is considered final.

PUBLIC COMMENT

The statewide transition plan, including the timeline and narrative, will be available for public review and comment March 22, 2015 through April 20, 2015. The statewide transition plan will be posted online at <https://www.medicaid.state.ar.us/InternetSolution/general/comment/comment.aspx>. The statewide transition plan will also be published in a statewide newspaper on March 22. In addition, the State will have a public hearing on April 6 to receive comments. The State will review and consider all comments received; summarize all comments, including those which agree or disagree with the state's determination about compliance with the settings requirements; and make changes, as appropriate, into the final statewide transition plan.

WAIVERS

Regulatory requirements for Home and Community-Based Settings for 1915(c) home and community-based waivers, 1915(i) State plan home and community-based services, and 1915 (k) State plan home and community-based settings must have all of the qualities defined at §441.301(c) (4) and §441.710 respectively, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan. In Arkansas, these regulations apply to five waivers. Three of the waivers are operated by Division of Aging and Adult Services (DAAS); one is operated by Division of Developmental Disabilities Services (DDS); and one is operated by University of Arkansas - Partners for Inclusive Communities.

1915(c) Waivers impacted by the HCBS Settings Rule include:

AR.0195	DAAS - ElderChoices Waiver
AR.0312	DAAS - Living Choices Assisted Living (LCAL) Waiver

AR.0400	DAAS - Adults with Physical Disabilities (APD) Waiver
AR.0188	DDS - Alternative Community Services (ACS) Waiver
AR.0396	Partners for Inclusive Communities - Autism Waiver

Types of residential/non-residential settings potentially at risk:

- Assisted Living Facilities – Residential settings
- Group Homes – Residential settings
- Adult Day Care Facilities - nonresidential settings 42 CFR 441.301(c)(4)(i)-(v)
- Adult Day Health Care Facilities - Nonresidential settings 42 CFR 441.301(c)(4)(i)-(v)
- Adult Family Home – Residential setting
- Day Settings (Licensed provider of center-based community services at the clinic site)
- Certified provider of attendant services and support (at clinic site only)

DIVISION OF AGING AND ADULT SERVICES

The Division of Aging and Adult Services (DAAS) is the operating agency for three 1915(c) waivers impacted by the HCBS Settings Rule. These include:

- ElderChoices (EC)
- Alternatives for Adults with Physical Disabilities (AAPD)
- Living Choices Assisted Living (LCAL)

During the transition period, DAAS plans to merge EC and AAPD through a renewal and to change the waiver name to ARChoices in Homecare.

Most waiver participants in EC and AAPD reside in a private home in the community and receive HCBS services in their home. The home may be the participant's, a family member's or a friend's. It is expected that waiver participants who live in their own home or the home of a family member or friend receive services in a home that meets the setting requirements found at 42 CFR 441.301(c)(4).

DAAS Registered Nurses who complete the assessment and develop the person-centered plan, and Care Coordinators who monitor services in the home will be trained in the settings rule. DAAS Registered Nurses and Care Coordinators have always monitored--and will continue to monitor--the participant's home environment and services provided in the home to ensure the participant's human rights are not violated. If it is discovered that a participant's rights are compromised, the DAAS Registered Nurses and/or Care Coordinator will work with the client and, when appropriate, include the family or friend to resolve the issue, involving Adult Protective Services personnel, when necessary.

DAAS has required Adult Family Homes (AFH), Adult Day Cares (ADC), Adult Day Health Cares (ADHC) and Level II Assisted Living Facilities (ALF) to conduct a self-study and provide the results to the DAAS. The self-study is based on the "Exploratory Questions" document included in the toolkit developed by CMS. DAAS will use the information from the self-studies to determine what qualities of community setting exist in the current setting and to inform the development of standards which will facilitate the transition of settings which may not fully meet HCBS characteristics to those which include all the necessary characteristics and traits of a fully compliant HCBS setting.

Adult Family Homes currently meet the HCBS setting requirements. Since AFHs can have no more than three unrelated residents, these homes do not have to be licensed in the state of Arkansas. There are only three certified AFHs in the state at this time, and there are no waiver clients residing in any of them. All current residents pay as private pay or through the Veteran's Administration. If a new AFH chooses to

open and includes waiver recipients, the AFH would be required to be certified by DAAS. This includes meeting all HCBS requirements.

DAAS has identified three types of services that are at risk for not meeting the full extent of the regulations either because the service is provided outside the participant's private residence or because the participant resides in and receives services in a home owned by the provider. These services are

- Adult Day Care
- Adult Day Health Care
- Assisted Living Services received in a Level II Assisted Living Facility

DAAS is proposing to achieve and maintain full compliance with HCBS requirements, as indicated by this statewide transition plan. A transition plan chart is attached which outlines the process and timeline which DAAS and stakeholders will follow to identify and assess at-risk providers, remediate any areas of non-compliance, and outreach and engage providers and other stakeholders. (See Attachment 1- "Arkansas Home and Community-Based Services – Settings Transition Plan – Elderly, Physical and Developmental Disability Waivers.")

DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

The Division of Developmental Disabilities Services (DDS) is the operating agency for one 1915(c) waiver impacted by the HCBS Settings Rule: AR.0188 DDS - Alternative Community Services (ACS) Waiver. The purpose of this waiver is to support individuals of all ages who have a developmental disability and require waiver services to prevent institutionalization. The person-centered service plan offers an array of services that allow flexibility and choice for the participant. Services are provided in the home and community.

DDS is proposing to achieve and maintain full compliance with HCBS requirements, as indicated by this statewide transition plan. A transition plan chart is attached which outlines the processes and timeline which DDS and stakeholders will follow to identify and assess at-risk providers, remediate any areas of non-compliance and outreach and engage providers and other stakeholders. (See Attachment 1- "Arkansas Home and Community-Based Services – Settings Transition Plan – Elderly, Physical and Developmental Disability Waivers.")

DDS - Assessment Process - DDS is conducting the assessment process outlined in CMS guidance. DDS is analyzing both its residential and day service systems. (See Milestones beginning on page 5 for specific activities.)

The DDS assessment includes:

Systemic review (Milestones 2R, 5R, 8R, 1RO, 3RO, 8RO, 1D, 3D and 8D)

Site-specific assessments (Milestones 1R, 2R, 3R, 4R, 7R, 2RO, 3RO, 4RO, 5RO, 7RO, 2D, 3D, 4D, 5D and 7D)

Provider assessments (Milestones 1R, 6R, 2RO, 6RO, 2D and 6D)

DDS Standards – DDS has developed and will promulgate standards that support and promote the belief that individuals must have full access to the benefits of community living and have the opportunity to receive services in the most integrated setting appropriate. (See Milestones 5R, 1RO, and 1D.) The standards specify how services must be offered in settings that are designed specifically for people with disabilities when the individuals in the setting are primarily people with disabilities and on-site staff provide services to them and the setting may have the effect of

isolating the individuals who live there from the broader community of individuals not receiving Medicaid-funded HCBS.

The standards require that organizations that own or operate a residential service setting or a day service setting which may be presumed to have institutional qualities to offer services in such a way as to ensure that the characteristics required of an HCBS setting are present. The standards: 1) require assurance of specific individual rights; 2) prescribe certain characteristics of the physical plant; and 3) specify steps which must be taken if any of the required conditions must be modified based on a specific assessed need of an individual.

DDS Oversight - DDS determined that its oversight process is adequate to ensure ongoing compliance. DDS conducts annual and incident-specific on-site reviews of all providers that serve people with developmental disabilities. These reviews use observation, interviews and record review to determine provider compliance with DDS Standards. (See Milestones 2R, 3R, 4R, 3RO, 4RO, 5RO, 3D, 4D and 5D.)

Estimate of compliance - Estimate of compliance – Based on Milestones 2R, 3R and 4R, DDS estimates that 100% of residential settings evaluated to date are in substantial compliance with HCBS settings requirements. DDS has not begun to evaluate staff home residential settings or day settings. In order to focus on one type of setting at a time, DDS has separated the reviews of provider owned, operated, or controlled homes, apartments and group homes; staff homes and day settings.

Settings presumed not to be home and community based - DDS has recognized that certain settings are presumed not to be home and community based and to instead have institutional qualities – those settings that are publicly or privately owned facilities that provide inpatient treatment, those settings that are located on the grounds of, or immediately adjacent to, a public institution, or those settings that have the effect of isolating individuals from the broader community. In cases where DDS asks for heightened scrutiny by CMS for certain settings, DDS will conduct a second site visit. (Milestone 7R and 7D) These settings include those that are located on or near the grounds of an institution and settings which may isolate individual from the community. These settings include group homes located on the grounds of or adjacent to a public institution, numerous group homes co-located on a single site, a disability-specific farm-like service setting and apartments located in apartment complexes also occupied by persons who do not receive HCBS services. DDS will request heightened scrutiny for those settings presumed not to be home and community based.

DDS Remedial Strategy: DDS is developing remedial actions outlined in CMS guidance for both its residential and day service systems. See milestones for specific activities. The DDS Remedial Strategy includes:

State level remedial actions (Milestones 5R, 8R, 1RO, 8RO, 1D and 8D)

Provider level remedial actions (Milestones 2R, 3R, 4R, 5R, 6R, 7R, 1RO, 3RO, 4RO, 5RO, 6RO, 7RO, 1D, 3D, 4D, 5D, 6D and 7D)

Settings presumed not to be home and community based (Milestones 7R, 7RO and 7D)

Relocation of individuals Providers that must transition individuals from a setting that does not meet the home and community based setting qualities must follow guidelines and time frames

DDS outlined in the standards for transitioning individuals to a new service provider. Individuals are afforded due process by DHS Policy 1076, Appeals.

DDS Milestones

DDS Residential Settings – Group Homes:

Milestone 1R – Self-Study - DDS distributed a self-study tool based on the “Exploratory Questions...” document included in the CMS toolkit to each organization that owns, operates or otherwise controls a group home. Each organization completed and returned the self-study to DDS. This process allowed organizations to review their own practices in light of the CMS rule and to determine what qualities of community setting exist in providers’ current living arrangements.

Milestone 2R – On-site Reviews - DDS determined that its oversight process is adequate to ensure ongoing compliance. DDS conducted on-site reviews of all group homes that serve people with developmental disabilities. These reviews included observations and interviews with persons who reside in those group homes.

Milestone 3R – Compliance Reports - DDS issued a report to each organization that owns, operates or otherwise controls a group home with any characteristics at each location that did not appear to be in compliance with the current HCBS settings rule.

Milestone 4R – Report Response - Each organization that received a report of deficient practice from DDS responded with a corrective action plan and submitted its policies to verify future compliance.

Milestone 5R – Develop, Promulgate and Implement Standards - DDS reviewed its current (2007) standards and determined that they may not meet the HCBS residential settings requirements. DDS developed, in conjunction with stakeholders, HCBS standards which stipulate requirements that will, when implemented, bring residential settings into compliance with the HCBS required characteristics and allow DDS to cite practices that are not in compliance with these Standards.

Milestone 6R – Issuance of Approval – DDS will issue to a certificate of approval for each group home that is in compliance with promulgated standards. If a group home is not approved as complying with HCBS settings requirements, DDS will offer choice of providers that are in compliance and will assist with relocation of individuals receiving HCBS to settings that are compliant with the regulations.

Milestone 7R - Heightened Scrutiny – DDS, in collaboration with affected providers will submit a request for enhanced scrutiny of any settings that have characteristics of an institution for review and approval by CMS.

Milestone 8R – Ongoing Compliance – HCBS standards, which include those for residential settings, will become effective. DDS will continue annual on-site review of group homes’ compliance with standards. DDS, in coordination with providers, will conduct provider training on the new state standards.

DDS Residential Settings – Other:

Milestone 1RO – Develop, Promulgate, and Implement Standards - DDS reviewed its current (2007) standards and determined that they may not meet the HCBS residential settings requirements. DDS developed, in conjunction with stakeholders, HCBS Standards which stipulate requirements that will, when implemented, bring residential settings into compliance

with the HCBS required characteristics and allow DDS to cite practices that are not in compliance with these Standards.

Milestone 2RO – Self-Study - DDS distributes a self-study tool based on the “Exploratory Questions...” document included in the CMS toolkit to each Organization that owns, operates, or otherwise controls a residential setting. Each Organization completes and returns the self-study to DDS. This process allows Organizations to review their own practices, in light of the CMS rule, and to determine what qualities of community setting exist in providers’ current living arrangements.

Milestone 3RO – On-site Reviews - DDS determined that its oversight process is adequate to ensure ongoing compliance. DDS conducts on-site reviews of all residential settings that serve people with developmental disabilities. These reviews include observations and interviews with persons who reside in those settings.

Milestone 4RO – Compliance Reports - DDS issues a report to each Organization that owns, operates, or otherwise controls a residential setting of any characteristics at each location that does not appear to be in compliance with the current HCBS settings rule.

Milestone 5RO – Report Response - Each Organization that receives a report of deficient practice from DDS responds with a corrective action plan and submitted its policies to verify future compliance.

Milestone 6RO – Issuance of Approval - DDS will issue to a certificate of approval for each residential setting that is in compliance with promulgated Standards. If a residential setting is not approved as complying with HCBS Settings requirements, DDS will offer choice of providers that are in compliance and will assist with relocation of individuals receiving HCBS to settings that are compliant with the regulations.

Milestone 7RO – Heightened Scrutiny - DDS, in collaboration with affected providers, submits request for enhanced scrutiny of any settings that have characteristics of an institution for review and approval by CMS.

Milestone 8RO – Ongoing Compliance - DDS continues annual on-site review of residential settings’ compliance with Standards. DDS, in coordination with providers, conducts provider training on the new state standards.

DDS Day Settings:

Milestone 1D – Develop, Promulgate and Implement Standards - DDS reviewed its current (2007) day settings standards and determined that they did not fully comply with the HCBS settings requirements. DDS developed, in conjunction with stakeholders, HCBS standards which stipulate requirements that will, when implemented, bring day settings into compliance with the HCBS required characteristics and allow DDS to cite practices that are not in compliance with these standards.

Milestone 2D – Self-Study - DDS distributed a self-study tool based on the “Exploratory Questions...” document included in the CMS toolkit to each organization that owns, operates or otherwise controls center-based day services. Each organization completed and returned the self-study to DDS. This process allowed organizations to review their own practices in light of the CMS rule and to determine what qualities of community settings exist in providers’ current living arrangements.

Milestone 3D – On-site Reviews - DDS determined that its oversight process is adequate to ensure ongoing compliance. DDS conducted on-site reviews of all center-based day service

programs that serve people with developmental disabilities. These reviews included observations and interviews with persons who receive day services in those centers.

Milestone 4D – Compliance Reports - DDS issued a report to each organization that owns, operates, or otherwise controls center-based day services of any characteristics at each location that is not in compliance with promulgated Standards for day settings.

Milestone 5D – Report Response - Each organization that received a report of deficient practice from DDS responded with a corrective action plan and submitted its policies to verify future compliance.

Milestone 6D – Issuance of Approval – DDS will issue to certificate of approval for each center-based day service program that is in compliance with promulgated standards for HCBS settings. If a center-based day service program is not approved as complying with HCBS settings requirements, DDS will offer individuals receiving HCBS day services a choice of providers that are in compliance and will assist as needed with relocation of individuals receiving HCBS to settings that are compliant with the regulations.

Milestone 7D - Heightened Scrutiny – DDS, in collaboration with affected providers, will submit a request for enhanced scrutiny of any settings that have characteristics of an institution for review and approval by CMS.

Milestone 8D – Ongoing Compliance –DDS will continue annual on-site review of center-based day service programs’ compliance with Standards. DDS, in coordination with providers, will conduct provider training on the new state standards.

DDS Public Input - DDS ensures that, as the standards and the plan for transition are developed, the public has an opportunity for input, both formally and informally through collaboration and discussion. (See Milestones 1R, 2R, 3R, 5R and 7R for Group Home Residential settings, Milestones 1RO, 2RO, 3RO, 4RO, and 7RO for Other Residential Settings, and Milestones 1D, 2D, 3D, 4D and 7D for Day settings.) The State will consider those comments and make revisions to the standards and plan, as appropriate, before the standards and plan are considered final.

PARTNERS FOR INCLUSIVE COMMUNITIES - AR.0396 AUTISM WAIVER

Due to the nature of the Autism Waiver, it has been determined that the Autism Waiver complies with HCBS requirements. The Autism Waiver provides intensive one-on-one treatment for children ages 18 months through 6 years of age with a diagnosis of autism. Autism Waiver services are designed to maintain Medicaid-eligible participants at home in order to preclude or postpone institutionalization.

TRANSITION PLAN CHART

The State is proposing to achieve and maintain full compliance with HCBS requirements, as indicated by this statewide transition plan. The attached transition plan chart outlines the processes and timeline which DAAS, DDS and stakeholders will follow to identify and assess at-risk providers, remediate any areas of non-compliance and outreach and engage providers and other stakeholders. Items which pertain to DAAS are indicated by the use of the acronym for the Division name, DAAS, as well as by the use of the letter “A” followed by a number (e.g. A-1). Items which pertain to DDS are indicated by the use of the acronym for the Division name, DDS, as well as by the use of the letter “D” followed by a number (e.g. D-1). The chart is divided into four sections: Identification, Assessment, Remediation, and Outreach and Engagement.

Components include: Action Numbers, Division, Action Items, Proposed Start Dates, Proposed End Dates, Completed (indication), Sources, Key Stakeholders, and Interventions/Outcomes. (See Attachment 1- “Arkansas Home and Community-Based Services – Settings Transition Plan – Elderly, Physical and Developmental Disability Waivers.”)