Advancing Optimal Community Inclusion & Maximum Quality in Home and Community-Based Service Provision: *Maine's Statewide Transition Plan for Implementing the Federal Home & Community-Based Services Rule*

Summary of MaineCare's HCBS Statewide Transition Plan

Overview of HCBS Rule:

Published in January of 2014, the federal HCBS rule established new standards for the provision of HCBS services, and reinforces the rights of participants to determine what services they wish to receive, to choose who will deliver these services and support them to live in their own homes and engage in community life. The federal HCBS rule also defines standards for the physical and programmatic characteristics of the settings in which HCBS may be provided, and affirms participant rights related to individual choice, autonomy, privacy, interaction with the broader community, and other protections. There are additional specific federal standards that apply to provider-owned or controlled residential settings. Realizing the importance of many of these criteria set forth in the federal rule, the state of Maine has expanded some of these requirements to apply across all provider owned or controlled settings (including both residential and non-residential).

Summary of Required HCBS Settings Criteria outlined in the Federal HCBS Rule

Minimum Settings Criteria for All Settings Providing MaineCare Home and Community-Based Services

The federal HCBS rule establishes that all HCBS settings must:

- Be integrated in, and support full access of individuals receiving MaineCare 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 MaineCare HCBS.
- Allow the individual to select where s/he will receive HCBS by choosing from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. [The setting options must be identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.]
- Ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- Optimize, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- Facilitate individual choice regarding services and supports, and who provides them.

Additional Requirements for Provider-Owned or Controlled Residential Settings

The federal HCBS rule also requires the following additional criteria be met by all provider-owned or controlled residential settings:

- The unit or dwelling is a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the state, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the state must ensure that a lease, residency agreement or other form of written agreement will be in place for each participant and that this legally enforceable lease or agreement provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.
- Each individual has privacy in his or her sleeping or living unit.
- Units (including entrances, bedrooms and bathrooms) have doors lockable by the individual, with only appropriate staff having keys to doors as needed.
- Individuals sharing units have a choice of roommates in that setting.
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
- Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.
- Individuals can have visitors of their choosing at any time.

Additional Requirements for Provider-Owned or Controlled Residential and Non-Residential Settings

Upon receipt of feedback from various stakeholders in the state with regard to the importance of the state adopting consistent expectations, Maine has decided that the following four federal requirements for provider-owned or controlled residential settings shall apply to all provider owned or controlled settings receiving MaineCare HCBS:

- Individuals have the freedom and support to control their own schedules and activities.
- Individuals have access to food at any time.
- Individuals may have visitors of their choosing at any time.
- The setting is physically accessible to the individual.

Modifications to Provider Owned or Controlled Setting Standards: Person-Centered Planning Requirements

All settings must adhere to the general settings requirements *without exception.* Should a modification of any of the provider owned or controlled requirements need to be made, the modification must be individual-specific and not applied across an entire setting.

HCBS Waiver Programs Impacted by State & Federal HCBS Requirements:

There are five 1915(c) waivers operating in Maine that are affected by the federal HCBS rule:

- §18 Home and Community-Based Services for Adults with Brain Injury* (ME 1082);
- §19 Home and Community Benefits for the Elderly and for Adults with Disabilities (ME 0276); §20 Home and Community Services for Adults with Other Related Conditions (ME 0995);
- §21 Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder (ME 0159); and
- §29 Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder (ME 0467).

Key Findings from Systemic Assessment & Proposed Remediation Strategy

Criteria and Process

In order to receive initial approval from CMS for the state transition plan, Maine must complete the following:

- Accurately identify all HCBS state authorities and settings impacted by the rule;
- List and assess all state standards to determine areas where existing state policies are fully compliant, partially compliant, non-compliant or silent as it relates to one or more components of the federal HCBS rule;
- Propose a strategy for remediating any areas of partial compliance, noncompliance or silence found during the systemic assessment of state standards; and
- Describe all key processes and milestones of the state's implementation strategy; and
- Assure adequate stakeholder involvement in the development of the STP, including but not limited to affording stakeholders the opportunity to provide written formal comments on the STP during a public comment period.

This section focuses on the initial state systemic assessment process, which included a comprehensive review of existing state Medicaid policies, licensing and other regulations, manuals, statutes, and other relevant documentation.

To assess compliance with the federal HCBS rule, each new requirement was compared with existing policy language embedded within the most current waiver applications approved by CMS,[1] the relevant section of the MaineCare Benefits Manual and licensing regulations for assisted housing,[2] certain statutes, and other related policies and procedures.

Maine policy was found to be compliant with the federal HCBS rule applicable to settings when it captured all key elements of the federal HCBS rule and other state HCBS requirements, or when the specific requirements of the rule were not applicable to that waiver program. For example, when a

[1] Medicaid waiver documents for all states may be accessed through CMS' website: http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers_faceted.html.

[2] All Maine Department of Health and Human Services rules may be accessed at: http://www.maine.gov/sos/cec/rules/10/chaps10.htm.

waiver program does not provide services in a provider-owned or controlled residential setting, standards required specifically of provider owned or controlled residential settings were determined to be non-applicable.

In some cases, Maine policy does not address all the specific requirements of the federal HCBS rule or is in conflict with the regulation. In addition, the Department is also aware of certain situations where Maine policy might be substantially in compliance, but waiver programs do not currently have processes in place to adequately ensure that providers are in compliance with the stated policy. Table 4 describes each level of compliance by which existing state standards were evaluated.

Trends in General Findings

At a general level, all five waiver systemic assessments contained five trends of import:

- While support for community inclusion is referenced generally in the language of several policies across waiver programs, the state's policies lacked definitions for several important terms outlined in the federal HCBS requirements, including but not limited to the following:
  - Community Inclusion
  - Competitive, Integrated Employment
  - Personal Resources
  - Informed Choice
  - Informed Consent
- Additionally, the definition used for Case Management did not necessarily reflect the importance of person-centered planning and the requirement that all participants have a person centered plan (PCP) that describes the individual's needs, desires, and preference with respect to where they live and spend their time, what services they want to receive, and who they want providing such services. Additionally, current policies did not outline the process and appropriate documentation required in the PCP with respect to any modifications at an individual level of settings criteria specific to provider-owned or controlled settings.
- Few if any of the existing policies clearly stated that institutional settings were prohibited from receiving funding to provide MaineCare HCBS.
- While many policies referenced general aspects of both the general and provider owned or controlled settings criteria, often there was language attached to these inferences that limited the right afforded to participants or specific language related to participant rights was omitted.

This is a representative but not exhaustive list of some of the trends in findings the state team observed in its thorough review of the existing standards across all five waiver programs. The full STP includes more specific findings specific to each of the five waiver programs.

Proposed Remediation of State Standards

Assuring compliance across all categories of settings in all waiver programs requires a concerted effort by the state to address all areas of partial compliance, silence, or non-compliance in existing state standards. After receiving initial feedback from stakeholders, consultants, and internal state

programmatic experts, MaineCare has decided the most effective systemic remediation vehicle is a holistic approach that will consolidate the systemic findings in such a way as to assure continuity and consistency in language and expectations with respect to adherence to state and federal HCBS requirements across all of MaineCare's HCBS programs. Such a strategy will include three key components:

- A new, separate section in Chapter 1 of the MaineCare Benefits Manual designed specifically for and about the provision of home and community-based services and the expectations of settings providing HCBS under one or more of the MaineCare HCBS waiver programs;
- Submission of a legislative proposal to the state legislature that provides a global bill outlining the specific state and federal HCBS requirements expected of various categories of providers and settings moving forward; and
- Specific modifications to any state standards where there was a clear issue of non-compliance that would need to be remedied will still be addressed within the body of the state standard in question. However, there were very few areas where any state standard was deemed non-compliant (as opposed to partially compliant).

The global HCBS regulation and legislation will address in one package all areas of silence or partial compliance across the various waiver programs. Language will be inserted the clearly states that the new section in Chapter 1 of the MCBM as well as the new legislation will have the effect of replacing any existing regulations as it relates to requirements of providers of MaineCare HCBS. Further, it will allow for an open, transparent, and consistent vehicle for members of the public and stakeholders to refer to in understanding what the expectations are of specific categories of HCBS settings, as well as the rights of waiver participants.

As a result of this ambitious systemic remediation strategy, the Department has outlined an aggressive timeline for assuring that the language suggested for the proposed remediation steps is translated into a draft regulation and legislative proposal. It is imperative for key partners throughout the Department to be involved and interfacing early and often on the proposed remediation efforts around each of the waivers.

In order to remain focused on these ambitious goals, the Department's various waiver teams under OADS have outlined an aggressive timeline for achieving the major steps required to remediate the various issues that have been identified through the systemic assessment process. These efforts will be aligned with MaineCare's current goals with respect to anticipated waiver amendment and/or renewal processes.

Table 5 outlines the various steps that each of the specific waiver policy teams will take to implement the recommended changes to existing regulations this year separate and distinct from the statewide transition plan and the HCBS systemic remediation process. Any areas of non-compliance that have been identified in the systemic assessment process would be embedded into these ongoing activities. Since statutory changes must occur prior to changes to regulation to assure they are in alignment with each other, the it is hoped that any statutory changes are completed by the Spring of 2021.

Types of Residential Settings

Table 6 provides an overview of the categories used for classifying residential settings utilized in each of the state's waivers, including whether they are considered provider owned or controlled.

Waiver services provided in the member's own home (a home the member owns or leases from a landlord other than a provider of HCBS services, or a home owned by an unpaid natural caregiver where the member resides) are assumed to be in compliance with the federal HCBS rule. One of Maine's waiver programs (§19) currently provides HCBS only in the member's privately owned or leased home. It is anticipated, however, that as part of the state's larger quality improvement effort, additional program enhancements will be considered for this waiver to better ensure community integration and opportunities to work in competitive integrated settings for members served by this waiver program ensuring these opportunities are available to the same extent as individuals not receiving HCBS. Additionally, these settings are subject to ongoing monitoring activities to ensure HCBS participants have an ongoing experience consistent with the rule requirements.

Four of Maine's five waivers (§18, §20, §21, §29) provide services in residential settings that are subject to assessment, validation and remediation (if required) during the transition period. These include Shared Living-Related Caregiver settings (§21, §29) that are not considered to be provider-owned or controlled but must meet the general rule requirements that apply to all settings. These settings also include various provider-owned or controlled residential settings, including group homes, shared living arrangements involving unrelated caregivers, and family-centered homes. Each type of these residential settings is described on the following pages.

Types of Non-Residential Settings

Four of Maine's six waivers (§18, §20, §21, §29) provide non-residential services on an individualized basis in integrated community settings and workplaces. Because these services are provided in typical community settings that are not provider owned or controlled, and the services are provided on an individual basis, these settings are assumed to be following the federal HCBS rule. While they are therefore not subject to assessment, validation and remediation during the transition period, these settings are also subject to ongoing monitoring activities to ensure HCBS participants have an ongoing experience consistent with the rule requirements.

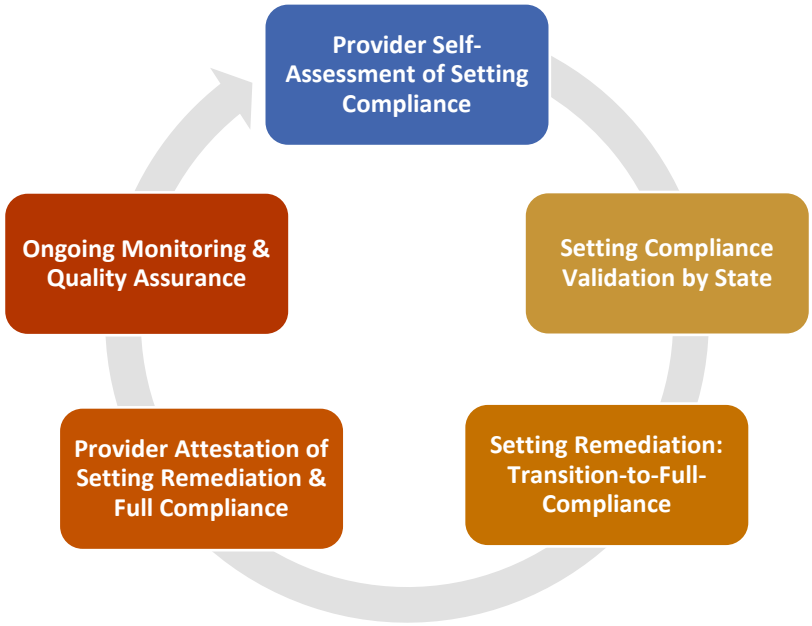
Several waiver programs also provide services in non-residential, provider owned or controlled settings targeting specific disability groups. This includes center-based Community Support services (§21 & 29), Work Support provided in a group model, i.e. mobile work crews or enclaves (§21 & 29), and Club House settings (§18).

Overview of Maine's Setting Compliance Process

As part of implementing the federal HCBS settings requirements, CMS requires states to ensure that all settings providing Medicaid-funded HCBS are fully compliant with the general settings criteria, and that provider owned or controlled residential settings fully comply with the additional requirements set forth in the federal HCBS rule for those particular settings. For existing settings, full compliance must be achieved on timelines included in this Statewide Transition Plan and by no later than March 17, 2022.

To complete this work with fidelity, the state of Maine is applying a five-phase approach to helping settings assure they meet all federal and state HCBS settings requirements: provider self-assessment of setting compliance; setting compliance validation by state; setting remediation & transition-to-full-compliance; provider attestation of completed remediation and full compliance; and ongoing monitoring & quality assurance.

Figure 1. Maine's Five-Phase Approach to HCBS Settings Compliance



- *Phase 1 – Provider Self-Assessment of Setting Compliance:* In Phase 1, Maine requested that all MaineCare HCBS providers conduct a preliminary assessment of setting compliance with the federal HCBS settings criteria across HCBS state authorities and categories of settings. The information obtained from this effort helped the state identify trends in areas of compliance, partial compliance and non-compliance across waivers and categories of settings with respect to specific state and federal settings criteria, and also informed the state about the types of ongoing training and technical assistance providers will need in order to remediate issues and improve the overall quality of their service delivery models.
- *Phase 2 – Setting Compliance Validation by State:* During Phase 2, every setting within MaineCare's system that cannot be automatically presumed by the state to be compliant with the federal HCBS rule per CMS guidance will be independently validated to confirm the setting's level of compliance with each of the state and federal HCBS requirements. By the end of the transition period (according to timelines laid out in this Statewide Transition Plan), every setting must comply fully with the federal settings criteria. Validation must be completed via activities separate from the provider self-assessment, and many states have applied more than one strategy to validate a setting's adherence to the federal HCBS requirements. In Maine, settings will receive either an onsite visit, completion of individual experience assessments for many

participants at the setting, a desk review of all relevant setting policies and procedures, or a combination of these various activities.

- *Phase 3 – Setting Remediation & Transition-to-Full-Compliance:* Phase 3 consists of the Department sharing its findings from the validation activities for each setting with the provider that operates the setting, and working with them to develop a plan of action known as a "Transition-to-Compliance Plan", which outlines the specific remediation activities to address areas of partial or non-compliance. These plans establish a roadmap for the state to work with providers to remediate any areas of non-compliance prior to the end of the transition period (according to timelines laid out in this Statewide Transition Plan).
- *Phase 4 – Provider Attestation of Setting Remediation & Full Compliance:* With respect to all settings required to undertake some level of remediation and develop a Transition-to-Compliance Plan with the state, during Phase 4, the state will engage with providers to support and confirm the completion of these remediation activities within the timeline outlined by the state and in this Statewide Transition Plan.
- *Phase 5 – Ongoing Monitoring & Quality Assurance:* Finally, once settings have implemented all state and federal HCBS settings criteria, the state will continue to engage in ongoing monitoring of the settings, through a variety of methods including use of its regional quality assurance teams, to assure the settings continue to adhere to these requirements.

Parameters of Setting Assessment, Validation & Remediation: Key Issues

There are two key issues related to establishing some parameters around setting assessment, validation and remediation that are deserving of attention: defining what is considered individualized private homes and settings; and assessment and validation of group settings.

Individual Private Homes and Individualized Settings for Supports in the Community: If an individual lives in their own private home (a home the member owns or leases from a landlord other than a provider of HCBS services), or the private home of a family member or other natural support (not being paid to provide HCBS), CMS confirms that these settings may be considered by the state of Maine to be fully compliant with state and federal HCBS settings criteria, and thus do not have to undergo setting assessment, validation or remediation. Any home that a participant resides in that is provider owned or controlled or is owned by a paid caregiver (including a paid relative), is subject to setting assessment, validation and remediation.

Additionally, individuals receiving services to support them to seek and work in individualized supported employment (Work Support-Individual) or engage in activities in the broader community on an individualized basis and not involving use of a provider owned or controlled setting may also be considered fully compliant with the state and federal HCBS requirements. However, these settings must be included in the state's ongoing monitoring processes.

Group Settings: Any setting where two or more people are grouped together for the purposes of receiving MaineCare HCBS must undergo the five-phase approach to setting compliance regardless of whether the setting is provider owned or controlled, facility-based or community-based.

Phase 1: Provider Self-Assessment Process

Providers were asked to complete a comprehensive self-assessment in November 2019 for each setting they operate that provides MaineCare HCBS. The purpose of the self-assessment was to gauge where both individual settings and categories of settings across various waiver systems were at in terms of compliance with specific state and federal settings criteria, from the perspective of the providers operating those settings. Any providers that did not complete the provider self-assessment were automatically included in the sample of settings to receive an onsite visit by the state's contract team as part of the validation of the setting.

Provider Self-Assessment Completion Rate

Of the 2,087 residential settings providing MaineCare HCBS that were determined to require self-assessment, 2,081 (or 99.7%) completed the self-assessment and submitted their responses to the Department. 180 of the 180 non-residential settings across the state's HCBS waiver authorities, or 100%, also completed the self-assessment.

Initial Findings from Provider Self-Assessment Process

Upon further review of the initial responses from HCBS providers, the following trends were identified as areas where potential remediation and technical assistance may be required across all categories of provider owned and controlled residential settings:

- Practical accessibility to the typical community (lack of sidewalks, walking paths, communal settings in walking distances or near setting's physical location)
- Lack of public transportation or support to access transportation options to get to activities based in typical community settings
- Lack of flexible services to facilitate or support competitive integrated employment;
- Lack of control over personal resources (money, banking, internet, etc.)
- Lease agreement with similar protections afforded under state tenant law
- Private living spaces (i.e. their unit if they live alone and their bedroom and bathroom if they live with others not part of their immediate, self-defined family) lacking lockable entrance doors with only the person and appropriate staff having a key or code to open the door(s)
- Choice of staff providing services

These trends were identified based on questions where over 40% of the total settings reported to be in non-compliance, and where each setting category included at least 20% of settings reporting to be out of compliance.

Because Shared Living with a Related Provider is not considered provider owned and controlled, only the general settings criteria apply to these settings. As such, these settings were evaluated separate from the above-mentioned trends analysis. Based on a distinct review of the findings reported for this category, the following areas of concern were noted:

- Individuals having privacy and autonomy with respect to phone/computer use and having visitors over

- Control over personal resources (like cash, spending money, and information technology devices)
- Ability to seek employment in integrated settings
- Ability to engage in some community activities of interest due to a lack of public transportation or transportation via natural supports during the day
- Ability to engage in community activities as a result from being far from communal entities (sports events, movie theatres, shops, restaurants, local businesses, churches)

Similar areas of concern were identified in reviewing the findings of providers of non-residential settings. Additionally, it was noted that challenges in accessing public transportation, as well as lack of control over individual scheduling and personal resources, access to food and visitors, and diversity in community-based activities and options are common themes cited by providers of MaineCare HCBS waiver non-residential settings.

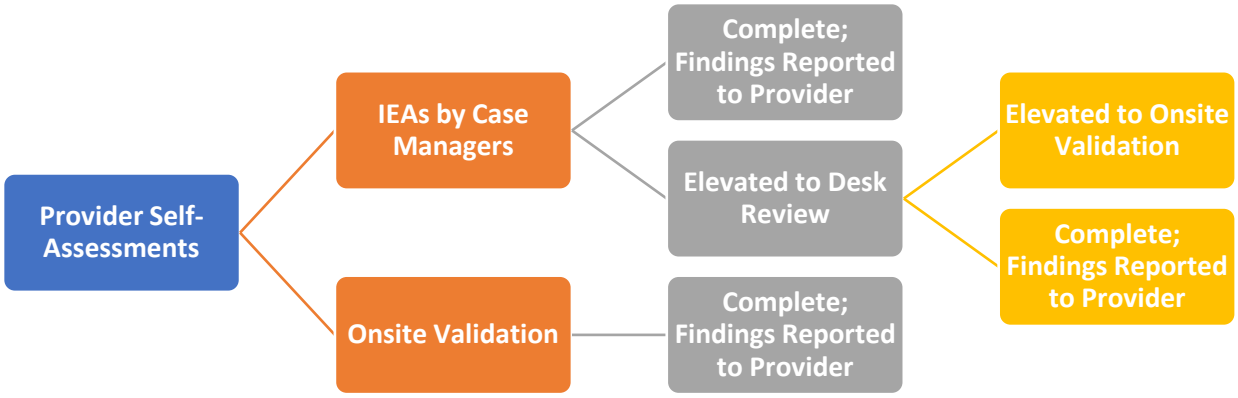
These are areas that will be prioritized for training purposes to assure that providers of various residential settings have the tools and support they need to remediate these and other areas of non-compliance prior to the end of the statewide transition period.

Phase 2: Validation Process

Maine will use a variety of methods, separate from the provider self-assessment, to validate individual settings for compliance with the state and federal HCBS settings criteria across all the state's HCBS authorities. These methods include onsite validations, completion of Individual Experience Assessments (IEAs) with waiver participants receiving services in a setting, and/or desk reviews of policies by state personnel. Each setting will be validated using at least one of these methods.

Due to limited budgetary resources and time constraints, it is not possible for the Department to complete an onsite visit of every setting across the five HCBS waiver programs prior to the end of the federal transition period (March 2022). As such, the Department has determined that 645 settings (466 residential, 179 non-residential) will receive onsite visits. The remaining settings will be validated through case managers completing IEAs with every willing waiver participant within each setting. For any settings where there are significant discrepancies between the findings from the IEAs and the initial provider self-assessment, responses will be elevated to a desk review by state personnel and if necessary, onsite validation.

Figure 2. Outline of Maine's Methodology for Completing Independent Validation of All HCBS Settings



Validation determines how compliant an existing setting is, and what must be done to bring that setting into full compliance in time for the March 17, 2022 deadline and in accordance with the timelines specified in this Statewide Transition Plan.

On-Site Visits

A total of 645 settings (or 30% of all settings that must be validated) will receive an on-site validation visit, as follows:

- 100% of all three categories of Non-Residential setting types (Community Support, Work Support-Group & Clubhouse) will receive an onsite visit.
- 24% of six categories of Residential setting types
  - 19% Group Homes (1-2 person)
  - 37% Group Homes (3-5 person)
  - 100% Group Homes (6+ person)
  - 21% Family Centered Homes
  - 10% Shared Living-Related Family Member
  - 34% Shared Living-Unrelated Provider

Settings were selected for an onsite visit proportionately based on type of setting and geography to assure strong sampling coverage across all waiver authorities, setting categories and state regions. Random selection was completed in a way that ensured maximum number of distinct providers were included.

The state has contracted with EconSys and Disability Rights Maine (DRM) to conduct on-site validation activities. EconSys and DRM worked with the state to create validation tools and conduct validator training. DRM has recruited a team of seven validators and have provided them with comprehensive training, including a two-day in-person orientation, on-the-job coaching during field visits in real-time, and ongoing mentoring support as needed.

On-site validation visits will occur on a rolling basis, between February 2020 and October 2020. If a provider has multiple settings selected for on-site validation, only the first validation visit will request/review agency policies, etc.

Individual Experience Assessment (IEA) Survey

All residential settings that do not receive an on-site visit will be required to facilitate Care Coordinators and Case Managers to conduct in-person IEAs in the setting with each member (and guardian if one appointed and interested in participating in-person or via phone) receiving services in the setting.

Information from the IEAs will be compared with the Provider Self-Assessment by EconSys to determine current compliance with any areas of partial or noncompliance that need to be addressed. If there are concerns about lack of alignment between the Provider Self-Assessment and the IEAs, EconSys will recommend the setting be evaluated by state personnel via a desk review or onsite validation, depending on the extent of the concerns.

All IEAs must be conducted face-to-face. All individuals residing in residential settings not chosen for an onsite validation will have the opportunity to complete an IEA with their case manager (not the provider). The IEA must be conducted in a private space separate from staff and other participants, so the individual's responses remain confidential. The IEA must be completed as a conflict-free assessment.

All efforts must be exhausted to make it possible for participants to participate in the IEA interview. If the person uses non-traditional modes of communication and lacks the natural supports to help them complete the IEA process, the Care Coordinator or Case Manager will attempt to use strategies to engage the person to the best of their ability. The goal is to successfully complete IEAs with all individuals residing in residential settings not receiving an onsite validation. Data from partially complete IEAs will be used if a person is able to participate in a portion of the IEA interview but not complete it. All IEAs will be completed for all settings by 7/31/2020, with a goal of at least an 80% response rate per setting.

Desk Level Reviews

Settings selected for Desk Level Reviews are based on a trending in discrepancies identified between the Provider Self-Assessment and results of Individual Experience Assessments. Thus, a Desk-Level Review only occurs if a pre-defined threshold representing a substantial level of inconsistency between the findings from the IEAs and the provider self-assessment responses is reached.

Should a setting be elevated to a desk review, the provider will be contacted to submit information and documentation to support answers in the original provider self-assessment and to address areas of concern based upon results from IEAs completed by Care Coordinators or Case Managers. Desk Reviews will occur on a rolling basis, between February 2020 and October 2020. Should the results of the desk review still non-comport with the responses in the provider self-assessment or sufficiently address the concerns based upon the results of the IEAs, the state personnel may elevate the setting to an onsite validation visit.

Phase 3: Remediation of Settings: Transition-to-Compliance

Providers will receive the results of a setting validation within 30 days of the validation process being completed for that setting. A summary of aggregate compliance results across setting categories will be included in the final STP and posted on the MaineCare HCBS website for public review.

Based on the setting validation results, each setting with areas of partial or non-compliance with be required to have a setting-specific Transition-to-Compliance Plan (T-2-C Plan). The Department will provide a plan and template for providers to use in creating the T-2-C plans, along with instructions on how to complete the template.

After a provider receives the setting's validation results, the provider will have 30 days to submit an approvable T-2-C Plan for the setting. EconSys and the Department will be available to answer questions and provide technical assistance to providers as they develop these plans. Suggested remediation strategies will also be provided by EconSys to assist providers in identifying appropriate remediation steps for their settings and to enable them to make the necessary improvements to their existing service delivery models and processes as expeditiously as possible.

Phase 4: Attestation of Remediation & Full Compliance

All T-2-C plans must be fully implemented (all action steps completed) by October 31, 2021. EconSys and the Department will monitor provider progress on implementation of their plans to ensure the October 31, 2021 deadline is met. On a quarterly basis, providers will be expected to report progress and update their T-2-C plan with remediation milestones met by using the EconSys provider portal which will receive and house all the T-2-C plans. EconSys will provide regular updates on provider progress to the Executive Leadership Committee and the Stakeholder Advisory Committee. If any setting does not meet the October 31, 2021 deadline, the state is required to ensure safe and orderly transitions of individuals, wishing to continue to receive HCBS, to compliant settings so that these relocations are completed in the person-centered manner by no later than March 17, 2022.

Phase 5: Ongoing Monitoring & Quality Assurance

Similar to its approach to setting validation, the Department is taking a multi-pronged approach to ongoing monitoring of settings, which will include:

- Case managers completing IEAs on an ongoing basis to assure that an IEA is completed with all waiver program participants at a minimum of every three (3) years.
    - Any discrepancies between participant responses and compliance with one or more of the settings rule criteria will result in the provider being contacted by the regional quality assurance team to determine whether the provider has evidence that supports continued compliance with the criteria in question, and if not, to discuss a strategy for addressing the situation.
- As part of the state's ongoing licensing and recertification processes, state personnel will review providers' policies to assure that certain state and federal HCBS requirements are being met.
- Quality Assurance liaisons will meet virtually with providers, and at least once a year onsite, to administer an abbreviated onsite validation tool and confirm that all settings criteria are being adhered to and participants' rights are preserved.

The combined leveraging of each of these processes within the MaineCare system will assure that all MaineCare HCBS settings are being thoroughly monitored on an ongoing basis for full compliance with all the federal and state HCBS settings criteria. Ongoing monitoring activities will also include monitoring individual private homes for compliance with the general requirements expected of all MaineCare HCBS settings.

Additional Areas where Further Work and Discussion is Needed:

- Heightened Scrutiny
- Ongoing Compliance Monitoring of Settings and Quality Assurance
- Gaps in Technical Assistance and Training for Providers and DSPs

KEY CHARTS FROM STATEWIDE TRANSITION

Figure 3. State of Maine Requirements for Settings Providing MaineCare HCBS

All settings receiving Medicaid funding for the provision of MaineCare HCBS must:

- Be integrated in, and support access to, the greater community.
- Provide opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources.
- Ensure the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services.
- Be selected by the individual from different setting options offered, including non-disability specific settings and an option for a private unit if the individual lives in a provider-owned or controlled residential. The person-centered service plan must document the setting options offered based on the individual's needs, and preferences; and for residential settings, the individual's resources.
- Ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.
- Optimize individual initiative, autonomy, and independence in making life choices.
- Facilitate individual choice regarding services and supports, and who provides them.

Standards that Apply to All Provider-Owned or Controlled HCBS Settings (Residential and Non-Residential)

- Individuals should have freedom and support to control their schedules and activities.
- Individuals should have access to food any time.
- Individuals may have visitors of their choosing at any time.
- Be physically accessible to all individual participants.

Standards that Apply Only to Provider-Owned or Controlled HCBS Residential Settings

- In addition, **provider-owned or controlled residential settings** must meet an additional set of standards.
- The member must have a legally enforceable agreement with the same responsibilities and protections from eviction as all tenants have.
- Each individual has privacy in their sleeping or living unit.
- Units (entrances, bedrooms and bathrooms) with appropriate staff having keys to doors as needed.
- Individuals sharing units have a choice of roommates.
- Individuals have the freedom to furnish and decorate their sleeping or living units.

Table 1. Timeline for Proposed Global HCBS Systemic Remediation Strategy

Legislative Strategy	Regulatory Strategy
Develop draft language for global HCBS legislative proposal (March-April 2020)	Develop draft language for new section in Chapter 1 of the MCBM re: requirements and expectations of settings providing MaineCare HCBS.
Office on Aging & Disability Services (OADS) and Office of the Attorney General (OAG) will work collaboratively on development and negotiation of both regulatory and bill language (March-June 2020)	OADS will send draft regulation to OAG for review NLT 8/31/2020.
Mockup legislative bill to be submitted to Commissioner's office in preparation for the legislative session (November 2020)	Will file with SOS by 09/30/2020
Commissioner's Office shares with Governor's Office (November-December 2020)	Comment period will begin on or before 10/15/2020 and last for thirty (30) days.
Legislation finalized by the legislature's Revisor of Statutes	Comment period to last for thirty (30) days, thus ending on or around 11/14/2020.
Legislature takes up bills in the spring of 2021	Adoption date (DHHS Commissioner signature by 12/31/2020).

Table 2. Type of Residential Settings by MaineCare HCBS Waiver Program

Type of Setting	§18 Brain Injury	§19 Elder/Adult	§20 Other Related Conditions	§21 Adults ID/Autism HCBS	§29 Adults ID/Autism Support
Not Provider-Owned or Controlled					
• Own Home or apartment	√	√	√	√	√
• Shared Living-Related Caregiver	-	-	-	√	√
Provider-Owned or Controlled					
• Group homes	√	-	√	√	-
• Family-Centered Support Homes	-	-	-	√	-
• Shared Living-Unrelated Caregiver	-	-	-	√	√

Table 3. Number of Residential Settings across Maine's HCBS Waiver Authorities, by Setting Category

Setting Type	Section 18	Section 19	Section 20	Section 21	Section 29	Total
Group Home	51		11	868		930
Shared Living*				897	490	1387
Family-Centered Support Homes				52		52
Total	51	-	11	1,817	490	2,369

*Some settings for Section 21 may also serve Section 29 participants.

Table 4. Type of Non-Residential Settings Where Services May Be Provided by Waiver Program

Type of Non-Residential Setting	Waiver Programs				
	§18 Brain Injury	§19 Elder/Adult	§20 Other Related Conditions	§21 Adults ID/Autism HCBS	§29 Adults ID/Autism Support
Individualized, Typical Community (Non-Disability Specific and Non-Provider Owned or Controlled)					
Integrated community settings	√	-	√	√	√
Integrated individualized work settings	√	-	√	√	√
Provider-Owned or Controlled					
Center-based Community Supports	-	-	-	√	√
Group work settings	-	-	-	√	√
Clubhouse Supports	√	-	-	-	-

Table 5. Number of Non-Residential Settings across Maine's HCBS Waivers by Number, Category, and Waiver Authority

Type of Setting	§18	§21	§29	Total
Center-Based Community Support		188	181	165
Work-Support Group				13
Club House Supports	1			

Table 6. Breakdown of Number of Participants in Residential and Non-Residential Settings

Provider Self-Assessments	Residential	Non-Residential
Settings with >=1 individual served (as of 11/2019)	1,961	179
Settings with 0 individual served (as of 11/2019)	120	1
Total Self-Assessments Submitted	2,081	180

Table 7. Breakdown of HCBS Residential Settings receiving Onsite Validation Visits, by Setting Type

Setting Type	Onsite Visits	Other	Total	% Onsite Visits	Total Number of Settings
1-2 Person Group Home	0.0%	0.0%	0.0%	3.0%	468
3-5 Person Group Home	0.0%	0.0%	0.4%	1.5%	261
6-or More Person Group Home	0.0%	0.0%	0.0%	2.8%	36
Family-Centered Home	0.0%	0.0%	3.8%	0.0%	53
Shared Living - Related Family Member is Provider	0.0%	0.0%	0.5%	0.9%	648
Shared Living - Unrelated Provider	0.0%	0.0%	0.6%	0.8%	495
All Settings	**0.0%**	**0.0%**	**0.5%**	**1.5%**	**1,961**

Table 8. Breakdown of HCBS Non-Residential Settings receiving Onsite Validation Visits, by Setting Type

Setting Type	Onsite Visits-DRM	Onsite Visits-OADS	Total	% Onsite Visits
Community Support	165		165	100%
Work Support-Group		13	13	100%
Clubhouse		1	1	100%
Grand Total	165	1,496	179	100%