

MAINE STATE LEGISLATURE

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January 7, 2020

Senator Geoff Gratwick, Chair
Representative Patricia Hymanson, Chair
Joint Standing Committee on Health and Human Services
#100 State House Station
Augusta ME 04333-0100

Dear Senator Gratwick, Representative Hymanson, and Members of the Joint Standing Committee on Health and Human Services:

This report is in response to the Health and Human Services Committee Chairs' June 19, 2019, letter requesting that the Department provide a report "no later than January 15, 2020, on the Department's efforts to engage stakeholders and a plan to comply with the new federal [HCBS Settings] rule including any necessary legislation."

Background:

On March 17, 2014, the Centers for Medicare and Medicaid Services (CMS) issued the Home and Community Based Services Settings Rule. These new federal regulations require states to provide enhanced opportunities for community integration and to ensure certain rights and protections are in place for people who receive Medicaid-funded Home and Community Based Services (HCBS).

The Rule establishes criteria for settings where HCBS may be provided, including residential and nonresidential settings. States are required to analyze most HCBS waiver settings where HCBS participants receive services to determine current compliance with the Rule.¹ All HCBS settings must meet full compliance with the HCBS Settings Rule in time for the State to assure that all waiver participants are receiving HCBS in fully compliant settings as of March 17, 2022 to ensure federal Medicaid funding continues for these settings.² In the event that CMS determines some of Maine's HCBS settings are not in full compliance with the HCBS Settings Rule requirements, the State will lose federal financial participation in funding such settings. This means the State's total available funds for delivery of HCBS would be reduced by almost two-thirds (a 63.8% rate reduction based on current federal participation) for non-compliant settings. Therefore, Maine - like all states - must come into full compliance with the HCBS Settings Rule by March 17, 2022.

¹ Certain settings excluded: a waiver participant's own home or family home where family is not being paid to provide HCBS; integrated community settings that are not provider owned or controlled and where two or more waiver participants are not receiving HCBS as a group.

² With guidance from CMS, the State has determined the necessary target date for full compliance for all HCBS settings to be October 31, 2021.

In Maine, HCBS settings where MaineCare waiver services may be provided are shaped by various policies including: state laws assuring the protections of rights of some waiver populations; CMS-approved waivers that include HCBS; and MaineCare Benefits Manual regulations that implement Maine's Section 1915(c) HCBS waivers. As part of achieving full compliance with the Rule, the State must undertake a "systemic assessment" of all relevant state statutes, rules, regulations and policies to ensure all are consistent with the requirements of the HCBS Settings Rule. Any necessary changes must be identified, and the State must develop a written summary of these changes, including intended steps that will be taken to accomplish these changes and timeframes for doing so.

Statewide Transition Plan:

Under the Rule, every state is required to have a Statewide Transition Plan (STP), approved by CMS, that describes the comprehensive process a state will undertake to ensure full compliance with the Rule by March 17, 2022. Maine's STP must include a description of how the Department engaged with stakeholders, including how we are eliciting input from stakeholders about MaineCare HCBS settings and how we are educating people receiving services, family members, advocates, service providers and partner systems about the new Rule and our progress in implementing it. Before the State may submit the proposed STP to CMS, the Department must widely disseminate the draft Plan and elicit public comment on the plan for at least 30 days. The Department is then required to summarize and respond to comments from the public and include this summary in the STP before it is submitted to CMS for approval. Any time the State subsequently makes substantive changes to the STP, the State is required to repeat the 30-day public comment process prior to resubmitting the STP to CMS for re-approval.

There is a minimum of two approvals by CMS of a state's STP. "Initial" approval is granted once CMS has confirmed, through review of the STP, that the state has completed its systemic assessment and clearly outlined remediation strategies, including timelines, to rectify issues that the systemic assessment uncovered, such as legislative/regulatory changes, licensing changes, changes to vendor agreements and provider application/enrollment processes, and changes to provider quality oversight processes. "Final" approval is granted once the state resubmits its STP and includes the outcomes of its assessment of current compliance for existing HCBS settings and the plan for ensuring any necessary remediation of existing HCBS settings. The Department has contracted with a national technical assistance firm named Economic Systems, Inc. ("EconSys") which includes subject matter experts across the country who are assisting Maine to meet the federal requirements and ensure full compliance with the new Rule by March 17, 2022. EconSys and its subject matter experts are supporting the Department in developing and implementing a comprehensive transition-to-compliance effort, including the drafting of the required Statewide Transition Plan (STP) that describes the clear path the state will take to ensure its HCBS programs are in full compliance by March of 2022.

To date, the Department has completed the requisite systemic assessment of MaineCare's policies governing waiver settings (the "HCBS Systemic Assessment"). The HCBS Systemic Assessment included a review and comparison of all applicable state statutes and regulations against the requirements of the HCBS Settings Rule. For this purpose, the Department engaged closely with stakeholders as outlined in greater detail below. The resulting report of the Department's HCBS Systemic Assessment outlines whether an applicable statute or regulation is

compliant, partially compliant, silent or in conflict with the Rule. As mentioned above, the Department must state in the STP how any statute or regulation, found not to be fully compliant with the Rule, will be modified in order to ensure full compliance with the Rule.

The Department recognizes the Legislature has exclusive responsibility for statutory compliance, and also plays a key role in reviewing and approving many of the Department's regulations that will require some change in order to come into full compliance. In consultation with EconSys and the Office of Attorney General, the Department has identified statutes the Department will ask the Legislature to amend to help assure Maine's compliance with the HCBS Settings Rule. These include: MRS Title 5: MRS Title 22: and MRS Title 34-B. The Department intends to submit proposed statutory changes to the First Regular Session of the 130th Legislature. Stakeholders will be apprised of proposed statutory changes when they are described in the draft STP that will be posted for public comment in February 2020.

Next steps in the path toward finalizing and implementing the STP include:

1. The Department, in addition to finalizing the systemic assessment, is in the process of assessing existing HCBS settings for current compliance with the Rule. The Department is using the same two-step approach used by other states, which starts with providers who operate the settings completing a self-assessment for each setting, followed by the Department validating the results of those self-assessments to arrive at a final determination of each HCBS setting's current compliance with the Rule. The Department is now in the process of reviewing the provider self-assessments which were completed and submitted by providers in November 2019. As part of this self-assessment process, HCBS waiver providers were asked to answer a series of questions on each of their settings within several domains that provide details regarding to what extent a provider currently meets the HCBS Settings Rule requirements and whether remediation may be required. EconSys has established an on-line portal for providers, through which they are able to access information and training on the Rule and securely submit their self-assessment data.
2. To do the required validation of provider self-assessment data for existing HCBS settings, the Department plans to use a variety of approaches consistent with those used and approved by CMS in other states:
 - a. The State, through its contract with EconSys and their sub-contract with Disability Rights Maine, will implement its validation process between Feb 1 and Oct 31, 2020. With training and technical assistance from EconSys, Disability Rights Maine will train and supervise a team of validators who will complete on-site "validation" of the information providers shared about their settings' current level of compliance with the HCBS Settings Rule. On-site visits will be utilized for a percentage of each setting type (residential and non-residential).
 - b. For settings that do not receive an on-site validation visit, either a desk level review process for the setting will be completed or Individual Experience Assessment interviews will be conducted with HCBS members (and/or legal

guardians if applicable) receiving services in the setting. The desk review will be conducted by reviewers trained and supported by the Department and EconSys and will involve a review of the setting's policies and procedures. The Individual Experience Assessment interviews will be conducted by the member's Support Coordinator/Care Coordinator/Case Manager. For some settings, the Department may determine both a desk level review and Individual Experience Assessment interviews are necessary to accurately and completely validate the provider's self-assessment information.

The results of the validation process will be used to make a final determination each setting's current compliance with the Rule and any areas of partial or noncompliance that require remediation.

Stakeholder Engagement:

The Department has an Executive Steering Committee (ESC) and Stakeholder Advisory Committee (SAC) to ensure the State develops and implements a comprehensive plan to transition its HCBS programs and settings to full compliance with the federal regulations by the March 2022 deadline. The Department also has established a web-page specific to the HCBS Settings Rule and its transition-to-compliance initiative, along with a dedicated email address at hcbs.dhhs@maine.gov. In addition, the State sends regular communications through list serves and other electronic media.

The ESC includes representation from the Commissioner's Office, Officer Directors or their designees, and program subject matter experts within the Offices of Aging and Disability Services, MaineCare Services, Division of Licensing and Regulatory Services, and the Attorney General's Office. The ESC reviews the recommendations of the Stakeholder Advisory Committee, and the work products and recommendations of staff and consultants to make decisions on the implementation of the HCBS Settings Rule. The ESC meets on a monthly basis.

The Stakeholder Advisory Committee (SAC) was established as a multi-stakeholder committee made up of consumers, self-advocates, providers, advocates, family, and other experts in their fields. Members are appointed by the Commissioner to engage in a three-year process. The SAC provides recommendations to the ESC, staff and consultants on operational, procedural and outreach/educational activities related to compliance efforts with the Rule. Examples include reviewing material via electronic mail as well as at in-person quarterly meetings. The SAC has been meeting quarterly since June 2019. Members of the SAC are listed on Attachment A.

Compliance with the Setting Rule is a complex and time-consuming process with wide ranging implications for how HCBS is delivered. These changes are consistent with the Department's goal of including persons with disabilities in their communities. Time was lost when the previous administration ceased its planning process, but the effort is now on track. The timeline for full compliance by March 2022 is very tight but achievable. The Department appreciates the assistance it has received from stakeholders to date and looks forward to working with the Legislature as statutory and regulatory changes are proposed.

If you have questions regarding the information provided in this letter, please let us know. We would be happy to provide a briefing to the Committee should that be desired. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Saucier". The signature is fluid and cursive, with the first name "Paul" and last name "Saucier" clearly distinguishable.

Paul Saucier

Director

Office of Aging and Disability Services

Attachment A

**Maine Home and Community Based “Settings Rule”
Stakeholder Advisory Committee (SAC) Membership**

Nomination Organization	Name	Representation
Maine Developmental Disabilities Council	Rachel Dyer	Advocate
Maine Association for Community Service Providers (MACSP)	Ann-Marie Mayberry	Provider
Office of Aging and Disability Services (OADS)	Maria Wark	Member
OADS	Linda Lee	Parent/Caregiver
OADS	Maggie Hoffman	Parent/Caregiver
OADS	Dixie Redman	Parent/Caregiver
Brain Injury Association of America	Sarah Gaffney	Advocate
Acquired Brain Injury Advisory Council	Mike Mozzoni	Provider
ABIAC	Matt Hickey	Provider
Maine Developmental Services Oversight and Advisory Board (MDSOAB)	Rory Robb	Advocate
MDSOAB	Jennifer Putman	Advocate
Speaking Up for Us (SUFU)	Abbott Philson	Self-Advocate
SUFU	Marco Orlando	Self-Advocate
Disability Rights Maine	Staci Converse	Advocate
OADS	John Jackson	Member
Seniors Plus	Betsy Sawyer-Manter	Provider
Home Care of Maine	Dawn Palmer	Provider
Long Term Care Ombudsman	Brenda Gallant	Advocate