



**DHS Secretary Mark White**  
**Office of the Secretary**

P.O. Box 1437, Slot S201, Little Rock, AR 72203-1437  
P: 501.682.8650 F: 501.682.6836 TDD: 501.682.8820

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December 1, 2022

Amanda Hill  
Health Insurance Specialist  
Division of Long-Term Services and Supports  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare & Medicaid Services

Dear Ms. Hill:

The State is requesting a corrective action plan (CAP) concerning all criteria for the HCBS settings regulation compliance and is requesting that the CAP be approved until 12-31-2023.

On March 17, 2014, the Centers for Medicare and Medicaid Services (CMS) issued a final rule for Home and Community-Based Services (HCBS) that requires states to review and evaluate current 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 for individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive and 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.

The final rule requires that all home and community-based settings have the following qualities:

- The setting is integrated in and supports full access to the greater community;
- The setting is selected by the individual from among setting options;
- The setting ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- The setting optimizes autonomy and independence in making life choices; and
- The setting facilitates choice regarding services and who provides them.

In addition, the final rule also includes provisions for provider-owned or controlled home and community-based residential settings. The requirements include:

- The individual has a lease or other legally enforceable agreement providing similar protections;
- The individual has privacy in his/her unit including lockable doors, choice of roommate and freedom to furnish or decorate the unit;
- The individual controls his/her own schedule;
- The individual has access to food at any time;
- The individual can have visitors at any time; and
- The setting is physically accessible.

Modifications to these requirements for provider-owned or controlled home and community-based settings must be supported by a specific assessed need and justified in the Person-Centered Service Plan (PCSP).

The final rule also specifies that certain settings are not considered home and community-based. These excluded settings include nursing facilities, institutions for mental disease, intermediate care facilities for people with intellectual or developmental disabilities who have been deemed to meet institutional level of care, clinic-based day habilitation services for children and adults with intellectual or developmental disabilities or delays, and hospitals.

The final rule identifies other settings that are presumed to have qualities of an institution. These settings include those in a publicly or privately owned facility that provide inpatient treatment; on the grounds of, or immediately adjacent to, a public institution; or that have the effect of isolating from the broader community individuals receiving Medicaid-funded HCBS. CMS will presume these settings not to be community-based unless CMS determines through a process of “heightened scrutiny” that the setting is community-based and does not have the qualities of an institution.

The State of Arkansas completed reviews of HCBS settings that were identified, to comply with the 2014 HCBS Settings regulations 42 CFR Section §441.301(c) (4) (5) and §441.710 (a) (1) (2). Once the reviews were completed in 2016, a Statewide Transition plan was developed and submitted to CMS and the final State Transition Plan was approved June 2, 2017.

Progress has been made with the Settings Regulation compliance, two of the 1915 (c) Waivers, AR.0195- ARChoices in Homecare (ARChoices) Waiver, AR.0400 Living Choices Assisted Living (LCAL) have been revised and renewed, both being approved by CMS in the Spring of 2022, and updated with the Settings review assurances, and performance measures for monitoring. Site reviews were completed for Assisted Living Facilities, Adult Day Care, Adult Day Health Facilities and Adult Family Homes. Provider manuals for the ARChoices (ARC) and Living Choices (LCAL) have been updated and promulgated in the Fall of 2022 with the appropriate information and rules for providers to follow concerning the HCBS settings regulations .

AR.0188 – Community and Employment Support (CES) was revised, renewed, and was amended with final approval by CMS in July 2022 and is updated with the Settings review assurances, and performance measures for monitoring. The provider manual for the CES Waiver is updated and will be promulgated in the Fall of 2022.

Site reviews were completed in 2016 for Assisted Living Facilities, Adult Family Homes, DDS Staff Homes, Provider owned or controlled living situations, Adult Day Care and Adult Day Health Facilities. Provider manuals for the ARChoices (ARC), Living Choices (LCAL) and Community Employment Services

(CES) have been updated with the settings requirements and promulgated with the appropriate information and rules for providers to follow concerning the HCBS settings regulations.

Since the Statewide Transition Plan was approved in 2017, the State has implemented two 1915(i) State Plan Amendments that offer HCBS. The AR 18-0017 Provider-led Shared Savings Entity Program (PASSE) and 18-0016 Adult Behavioral Health Services for Community Independence (ABHSCI), both state plan amendment provide HCBS to clients. The PASSE Program was developed and implemented in 2019 and has been on ongoing effort to ensure that this vulnerable population are receiving the services that is required. Provider-led Arkansas Shared Savings Entity (PASSE), which is a full-risk organized care organization responsible for providing all services to its enrolled members, except for non-emergency transportation and dental in a capitated program, school-based services provided by school employees, skilled nursing facility services, assisted living facility services, human development center services, or waiver services provided through the ARChoices in Homecare program or the Arkansas Independent Choices program. The PASSE also provides care coordination services through the § 1915(b) Waiver. The PASSE program development required time and effort of several divisions, resources, and staff to ensure that the program was up and running, the first phase started in 2017 and then was fully implemented in 2019. The HCBS Provider Manual that is housing the provider and settings requirement information for the 1915(i) State Plan amendments is developed and currently in the process of being promulgated. It is set for review at the Arkansas State legislature in 2023.

The Statewide Transition Plan is in the process of being amended to incorporate the HCBS Settings that are in the 1915(i)s and updates to services in the 1915 (c) Waivers that are no longer provided by the State.

Home and community-based services (HCBS) that are no longer provided:

- Adult Family Homes through the Division of Aging, Adult and Behavioral Health Services (DAABHS)
- DDS Staff Homes through the Division of Developmental Disabilities (DDS)

HCBS Providers for the 1915(i) services along with new HCBS Providers are currently being identified and will be contacted for questionnaires to be completed and for Site Reviews to be conducted to ensure that the providers are in compliance with the HCBS Settings regulations.

Home and community-based services under the 1915(i):

- Therapeutic Community
- Adult Day Rehab
- Therapeutic Host Home
- Community Reintegration

The HCBS Provider Manual that is housing the provider information for the 1915(i) State Plan amendments, AR 18-0017 Provider-led Shared Savings Entity Program (PASSE) and 18-0016 Adult Behavioral Health Services for Community Independence (ABHSCI), has been developed and is in the process of being promulgated. It is set for review at the Arkansas State legislature in 2023.

In March of 2020, the COVID-19 virus outbreak was declared to be a pandemic and the federal government declared a public health emergency. In 2020, the State worked tirelessly in researching,

developing ways to provide services and benefits to the citizens of Arkansas in this unexpected turn of events with the pandemic. Divisions within the Department of Human Services worked to make adjustments to provide services and benefits provided following CMS guidance, even as the Agency itself was short staffed and had adjusted work procedures due to the pandemic.

In the last three (3) years of the public health emergency, the Divisions within the Arkansas Department of Human Services (ADHS) have been working to ensure that the individuals in this vulnerable population that require HCBS receive those services without disruption that are so vital for their well-being.

Due to the implementation of the PASSE Program, Covid-19 Public Health Emergency, and Agency staff turnover; the HCBS Settings compliance is still in process and will not be completed until late 2023. Focus shifted within the Department from the statewide transition plan to the implementation of the PASSE program and then the COVID-19 Public Health Emergency which took priority at the time. Additionally, Arkansas DHS organizational structure, particularly its compliance and reporting components, has changed significantly with resultant staff turnover, including retirements, and reassignment of duties. Providers themselves have either changed ownership or facilities in some instances and contacts and communications have been delayed.

The State is requesting a corrective action plan concerning all criteria for the HCBS Settings regulation compliance and is requesting that the CAP be approved until 12-31-2023. Arkansas' current STP was approved on June 2, 2017, preceding the ongoing Public Health Emergency and Arkansas DHS is currently updating that STP to reflect the programmatic and organizational updates that have occurred since 2017. The criteria to be addressed by this CAP proposal include assessment and compliance of the following:

- All settings within the state will be compliant with the following regulatory settings criteria by the end of the proposed transition period ending December 31, 2023.
  - Privacy, dignity, respect, and freedom from coercion and restraint;
  - Control of personal resources.
  
- All provider-owned or controlled residential settings will be compliant with the following regulatory settings criteria by the end of the proposed transition period ending December 31, 2023.
  - A lease or other legally enforceable agreement providing similar protections
  - Privacy in their unit, including lockable doors, and freedom to furnish or decorate the unit;
  - Access to food at any time;
  - Access to visitors at any time;
  - Physical accessibility; and
  - Person-centered service plan documentation of modifications to relevant regulatory criteria.

Your favorable consideration of this request would be greatly appreciated.

If you have any questions or need additional information, please contact Kristie Hayes, DMS Waiver Compliance Manager, [Kristie.hayes@dhs.arkansas.gov](mailto:Kristie.hayes@dhs.arkansas.gov) or 501-682-8256.

Sincerely,

Dawn Stehle, DrPH  
State Medicaid Director/DHS Deputy Director of Health  
Arkansas Department of Human Services

cc: Lynn Ward, CMS Dallas Regional Office, Kristie Hayes, DMS Waiver Compliance Manager, Division of Medical Services, Elizabeth Pitman, Director, Division of Medical Services, Martina Smith, Director, Division of Provider Services and Quality Assurance