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December 29, 2022

Ms. Ondrea D. Richardson  
Center for Medicaid and CHIP Services/Disabled and Elderly Health Programs  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244-1850

Re: HCBS Settings Rule Implementation

Dear Ms. Richardson:

In response to the federal Centers for Medicare and Medicaid Services (CMS) request for information to document state and provider compliance with the home and community-based (HCB) settings Rule regulatory criteria, the State is submitting the below information to document compliance with the following regulatory criteria as outlined by CMS.

**CMS request for information: Description of how the state's oversight systems (licensure and certification standards, provider manuals, person-centered plan monitoring by case managers, etc.) have been modified to embed the regulatory criteria into ongoing operations.**

State Response: Many of Florida's home and community-based services (HCBS) settings render services to non-Medicaid recipients. Therefore, it is not the intention of the State to change licensure requirements to become compliant with the HCB settings Rule. All settings receiving Florida Medicaid reimbursement for HCBS will be required to adhere to the requirements established in the State's HCB settings Rule, Rule 59G-13.075, Florida Administrative Code (F.A.C.) in order to continue to receive reimbursement for HCBS provided after March 17, 2023. The rule became effective on December 25, 2018. The State's HCBS rule is available at <https://www.flrules.org/gateway/RuleNo.asp?ID=59G-13.075>. The State's HCBS waivers are up to date and compliant with CMS' Final Rule CMS-2296-F. Any deviation from the requirements established in the rule must be justified and documented in each recipient's person-centered plan. The State's HCB settings Rule meets all standards in CMS' Final Rule CMS-2296-F by incorporating the CMS final rule by reference. Florida has applied the HCB settings Rule to the 1915(c) Long-Term Care (LTC) and the 1915(c) Developmental Disabilities Individual Budgeting (iBudget) Waivers. The State continues to update existing provider manuals and sub-regulatory guidance to align with the HCB settings Rule, as necessary. In instances where existing rules and regulations threaten a setting's compliance to CMS's Final Rule CMS-2296-F, the State's HCB settings Rule 59G-13.075, F.A.C. takes precedence.

Regarding the LTC waiver, the Agency for Health Care Administration (Agency) amended the Statewide Medicaid Managed Care Long-Term Care contract to include compliance language for residential and non-residential settings and the elements of the HCB settings Rule that were not already present. The amendment was effective on June 30, 2017. Residential facilities must have residential agreements that comply with Chapter 429, Florida Statutes (F.S.) Attachment II, Exhibit II-B, Section IX.E.3.a (11) of the SMMC LTC Contract,



pecially requires residential agreements between individuals and facilities. The contract is available on the Agency's website at

[http://ahca.myflorida.com/medicaid/statewide\\_mc/model\\_health\\_FY18-23.shtml](http://ahca.myflorida.com/medicaid/statewide_mc/model_health_FY18-23.shtml).

Regarding the iBudget waiver, the Medicaid Waiver Services Agreement, which is the Agency for Persons with Disabilities' (APD) agreement with all iBudget waiver providers, states:

This Agreement shall be construed, performed, and enforced in all respects in accordance with all the laws and rules of the State of Florida, and any applicable federal laws and regulations.

**CMS request for information: Description of how the state assesses providers for initial compliance and conducts ongoing monitoring for continued compliance.**

State Response: During initial compliance, the State's setting assessment process includes four separate phases: preliminary assessments, on-site assessments, virtual assessments, and the State's validation process.

The State's assessment plan was developed using the requirements in the HCB settings Rule, information gathered during the preliminary assessment, and feedback from stakeholders received during the 30-day public comment period on the draft September 2016 Statewide Transition Plan and public meetings held around the State. New compliance assessment tools were developed based on the HCB settings Rule. The State's tools were designed to allow providers and State assessors to review each setting for compliance with the standards set forth by CMS. The tools were made available for public comment prior to implementation.

During Phase 1-Preliminary Assessment, the State developed, conducted training, and distributed new tools to all enrolled LTC and iBudget settings rendering HCBS with instructions to self-assess for HCB settings Rule compliance. Settings that operated multiple HCB sites were required to complete a self-assessment for each setting. The tools were made available electronically and on the State's web sites. All settings were directed to maintain hard copies of the self-assessments for the State or its designee, for review. Settings that self-identified as presumptively institutional were able to submit the results of setting assessments to the State electronically. The State's designees conducted on-site assessments for 100% of HCB settings enrolled in the LTC and iBudget waiver programs. Settings' self-assessment results were made available to APD and the State's Managed Care Plans (Plans) to review the compliance status of HCB settings within their networks with CMS' HCB settings Rule. Settings that self-identified areas of non-compliance while conducting setting assessments were asked to begin remediation efforts prior to the implementation of Phase 2.

The preliminary assessments allowed the State to field test its tools while gathering information on setting compliance with CMS' HCB settings Rule. The State's analysis showed the majority of HCB settings either already met the HCB settings Rule requirements or would be able to achieve full compliance by implementing programmatic changes.

During Phase 2, On-site Assessment, the State had a solid foundation on which to build its assessment process. All LTC Waiver residential and non-residential settings are credentialed and re-credentialed by Plans as part of contractual mandates. The State delegated the

assessing of each HCB setting in the state enrolled as an LTC Waiver provider, including settings that participated in the State's Phase 1 – Preliminary Assessment process, to the Plans. Plans underwent rigorous training on the tools and the correct usage of them to the goal of assessing HCB settings for compliance with the HCB Settings Rule. Similarly, all iBudget Waiver residential and non-residential settings are credentialed and re-credentialed by APD. As such, the State delegated the assessment of these settings, including settings that participated in the State's Phase 1- Preliminary Assessment process, to APD.

The State's designees used the State approved tools to conduct on-site assessments of HCB settings to determine their compliance with CMS' HCB settings Rule. At the conclusion of each on-site assessment, the Plans and APD conducted exit interviews with all settings outlining the visit's findings. Based on the assessment, HCB settings were categorized as one of the following: Fully compliant with the HCB settings Rule; Non-compliant with the HCB settings Rule requiring a plan of remediation; or Presumptively Institutional. On March 14, 2020, the Agency issued a policy transmittal to the Plans (PT 2020-14), alerting them that until further notice, the Plans must postpone all HCB setting on-site visits conducted for the purpose of assessing compliance with CMS' HCB settings Rule requirements in the contract due to the COVID-19 public health emergency. Similar messaging was not necessary for APD and the iBudget Waiver settings as their on-site assessments had been completed prior to March 14, 2020.

During Phase 3-Virtual Assessment, the Phase 2 on-site assessments that began in January 2020 were abruptly suspended in March 2020 due to the COVID-19 public health emergency. The Plans resumed HCB setting assessments of settings enrolled as LTC Waiver providers through virtual means in November 2020. Plans and settings were offered the flexibility to determine the most feasible virtual methods that maintained accuracy of results and safety of recipients. Methods could include Zoom, Microsoft Teams, Facetime and other forms of audiovisual technology. All virtual setting assessments were required to be completed by December 31, 2020. APD did not conduct virtual assessments as the assessment of the iBudget Waiver's HCB settings was completed prior to March of 2020.

During Phase 4-Validation, the State delegated primary HCB settings compliance for the LTC Waiver providers to the Plans. As such, the LTC HCB settings' self-assessments were validated by the Plans through the credentialing and recredentialing process. Additionally, the Agency utilized the existing licensing process as the Agency's Division of Health Quality Assurance licenses the following providing types: assisted living facilities, adult family care homes, and adult day care centers. The Plans submit contracted provider networks with license numbers for provider network verification and the Agency confirms the licenses are still active. The Agency also performed a quality assurance review of a sample of the Plans self-assessment validations, as well as the Plans direct assessments, to ensure the Plans used the tools and assessed and/or validated the HCB Setting settings correctly. APD validated 100% of the iBudget Waiver's HCB settings to ensure the accuracy of its on-site assessments.

The State has developed an annual monitoring program that focuses on recipient feedback, provider monitoring, and overall program and regulatory monitoring. The State will use the new

and updated HCB Characteristic Assessment tools that address each aspect of the HCB settings Rule to ensure ongoing compliance. The tools will be reviewed and amended based on lessons learned and monitoring outcomes to ensure their ongoing efficacy, and applicability to the HCB settings Rule. The State implemented a process to evaluate the recipient's person-centered plan, and to seek feedback from the recipient and the recipient's family or representative. The focus of this annual review is to ensure the recipient has the continued opportunity to be active in the community, reside in a home-like environment, and make personal choices.

The State leverages its existing monitoring activities by adding a representative sample of residential and non-residential settings that are reviewed by the State agency responsible for the HCB program's monitoring process. LTC Plans use the credentialing and recredentialing process, quarterly and annual reviews of the client care plans, and monthly case manager contacts to discuss waiver recipient needs and preferences. The State conducts quarterly case file reviews of LTC client files for contract compliance, which includes HCB settings compliance. The case file sample size is a statistically significant sample from the LTC population. The state assigns the Plans a proportionate number of files based on their individual population size. Annually, around 380 case files are reviewed across all Plans. APD staff conduct monitoring activities for HCB setting compliance on an ongoing basis with all of their providers.

**CMS request for information: Description of a beneficiary's recourse to notify the state of provider non-compliance (grievance process, notification of case manager, etc.) and how the state will address beneficiary feedback.**

State Response: Waiver recipients are instructed to contact their case manager for LTC, or waiver support coordinator for iBudget, about any issues, including HCB setting providers. The Agency has implemented a standardized member handbook with information and instructions for filing complaints, grievances, and appeals with the health plan, filing complaints about a health care facility with the Agency, and filing a complaint about Medicaid services with the Agency. Florida's assisted living facilities must post the Resident's Bill of Rights that include the telephone number for lodging complaints against the facility or facility staff must be posted in full view in a common area accessible to all residents. The telephone numbers for lodging complaints that be must be included are: Long-Term Care Ombudsman Program, 1(888) 831-0404; Disability Rights Florida, 1(800)342-0832; the Agency Consumer Hotline 1(888)419-3456, and the statewide toll-free telephone number of the Florida Abuse Hotline, 1(800)96-ABUSE or 1(800)962-2873. The Resident's Bill of Rights must also have a written grievance procedure for receiving and responding to resident complaints and a written procedure to allow residents to recommend changes to facility policies and procedures. APD has a dedicated State Office Ombudsman to assist with client and provider concerns. She can be reached at [Natalie.Jean@apdcare.org](mailto:Natalie.Jean@apdcare.org) or by phone at (850) 414-6666.

When the State receives beneficiary feedback or is notified of compliance concerns about a HCB setting provider, the State works with the appropriate designee to reassess the provider using the appropriate HCBS Residential or Non-Residential Assessment Tool, determine compliance, and conduct remediation as needed.

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Please contact Catherine McGrath if you have any questions regarding the above. She can be reached via email at [Catherine.mcgrath@ahca.myflorida.com](mailto:Catherine.mcgrath@ahca.myflorida.com) or by phone at (850) 412-4256.

Sincerely,



Tom Wallace  
Deputy Secretary for Medicaid

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