

PENNSYLVANIA DOCUMENTATION OF COMPLIANCE WITH THE HOME AND COMMUNITY-BASED SERVICES RULE

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

OCDEL

While no additional regulatory changes were needed to support HCBS Rule requirements; OCDEL enhanced the data collection to standardize the methods to collect and report on provider qualifications and training. The development of the Provider Registry allows providers and OCDEL to oversee the compliance with meeting training standards to ensure compliance with HCBS Rule implementation. Providers who do not meet the rigor of qualifications and training are identified through the Provider Registry and are cited and corrective action plans are required to be developed to ensure the standards are met.

ODP

After extensive stakeholder engagement, ODP published regulations at 55 Pa. Code Chapter 6100 in October 2019 which incorporated HCBS Rule requirements by strengthening community services and supports to promote person-centered approaches, community integration, personal choice, quality in service delivery, health and safety protections, and competitive integrated employment. The Chapter 6100 regulations apply to all services that receive funding through ODP's waivers.

The following regulatory licensing chapters were updated to align with the HCBS Rule requirements in Chapter 6100:

- Chapter 2380 regarding Adult Training Facilities where the Community Participation Support/Day Habilitation waiver service is rendered.
- Chapter 2390 regarding Vocational Facilities where the Community Participation Support waiver service is rendered.
- Chapter 6400 regarding Community Homes where the Residential Habilitation waiver service is rendered.
- Chapter 6500 regarding Life Sharing homes where the Life Sharing waiver service is rendered.

The Individual Support Plan Monitoring Tool used by Supports Coordinators contains questions to ensure the following individual rights are met:

- The individual is able to decorate their bedroom to their preference,

- The individual participates in community activities that are connected to interests and preferences indicated in the Individual Support Plan, outside of a facility during the day,
- The individual has opportunities to engage in activities that promote purpose or build potential for employment,
- The individual can spend their personal funds as they choose, and
- The individual has support to engage in meaningful relationships with friends and family.

OLTL

OLTL waiver providers are monitored for compliance with OLTL waiver and program requirements biennially in accordance with CHC and OBRA waiver requirements. OLTL has modified the OBRA and CHC waivers to capture requirements related to the HCBS final rule including standards around the person-centered planning process. OLTL updated the ongoing monitoring process to include the use of the standardized assessment tool into the regular on-site provider monitoring processes. The standardized assessment tool has been published with the Statewide Transition Plan and is available to CMS and stakeholders.

For all participants who receive HCBS through OLTL, SCs are required at least yearly through the annual re-determination process to review all available service delivery options and document the participant's choice. Service Coordinators are responsible for ensuring participants are fully informed of all services available in the waiver, their right to choose from and among all willing and qualified providers that are part of the CHC-MCOs provider network, and electronically document evidence of participant choice.

Service Coordinators are also responsible for providing participants with information and training on the process for selecting qualified providers of services during the PCSP development process. This includes the option to receive services in non-disability specific settings. Choices made are required to be reflected in the PCSP.

Description of how the state assesses providers for initial compliance and conducts ongoing monitoring for continued compliance

OCDEL

Prior to delivering services, OCDEL providers must meet standard qualifications metrics as outlined in state regulation. This includes pre-service training about the requirements of the regulations; methods for working with families and utilizing family-centered approach. Pre-service training must be documented and stored in the statewide Provider Registry to demonstrate compliance. Providers who do not meet these standard qualifications are not permitted to deliver services.

OCDEL monitors waiver providers to ensure individuals receive services in settings that comply with the HCBS final rule. Ongoing monitoring will be through OCDEL's annual verification process that includes a verification visit that utilizes standardized tools and procedures.

The verification process focuses on a standard set of required indicators in each of the following areas: child find and public awareness; procedural safeguards; evaluation for eligibility; program planning; service delivery; transition; and fiscal accountability. The verification process has three major focus areas:

- Compliance items: state and federal regulations;
- Assurances outlined in the transition plan and waiver application; and
- Program management to ensure continuous quality improvement.

The verification process includes the following standardized activities: data reviews, review of policies, individual child record reviews, and observations of service delivery. Standard child record samples as well as targeted child record samples are utilized for the verification process. Both samples are randomly selected by OCDEL. A comprehensive review is completed on the standard child record sample. The targeted sample is pertinent to specific areas and is designed to ensure that an adequate child record sample is obtained when reviewing specific requirements.

OCDEL issues a report of findings for the verification process. Local infant/toddler early intervention programs develop a Quality Enhancement Plan (QEP) to address non-compliances, improvement needed in the area of program management, and activities to enhance program quality to improve outcomes for children and families. The required elements of the QEP utilized in response to identified non-compliances are:

1. Goals/outcomes for non-compliance(s) as well as results goals;
2. Activities to achieve goals/outcomes, target date for completion and responsible person; and
3. How the goal/outcome will be measured: evidence, data source, data review schedule, and responsible persons.

The QEP is required to be submitted within 30 days of receipt of the verification findings report. The QEP must address all areas of non-compliance and include activities designed to correct non-compliance within 365 days of the issuance of the verification findings report.

OCDEL approves the QEP and also conducts validation activities according to standard timelines to ensure non-compliance is corrected by implementation of listed improvement activities within 365 days of issuance of findings report. This validation is achieved either onsite or through electronic sharing of evidence/documentation and conference calls. The standardized format of the QEP documents the validation process and includes sections to document the following: the QEP team's review of its data, dates, and progress toward the outcomes. The results of the review as well as a section for OCDEL to document the date the outcomes were achieved and closed.

ODP

NEW PROVIDERS/SERVICE LOCATIONS

Prior to rendering direct waiver services, new providers must complete ODP's Provider Applicant Orientation which requires the provider's Chief Executive Officer (CEO) or Executive Director to complete the following steps:

- Review the materials for each of the pre-registration modules and successfully pass the test after each module. One of the modules focuses on regulatory requirements, including HCBS Final Rule requirements.
- Register for, and participate in, a full-day face-to-face session.
- Successfully pass a post-test following the face-to-face session and be issued a Certificate of Achievement.

Once the CEO or Executive Director successfully completes the Provider Applicant Orientation, the new provider must provide documentation to ODP or its designee demonstrating that all waiver provider qualification criteria are met for each service the provider will render. This includes completion of the following steps that focus on HCBS Rule compliance:

- If the service(s) chosen requires licensure, the licensing process must be completed including an onsite licensing inspection that ensures compliance with regulatory requirements, which include HCBS Rule requirements.
- When the service(s) chosen include Residential Habilitation, Life Sharing, or Community Participation Support/Day Habilitation, ODP staff review the location(s) where services are proposed to be rendered to ensure that they are not adjacent to another human service residential location or another human service day service location serving primarily persons with a disability.
- All new providers, regardless of licensing requirements, must submit a signed ODP Waiver Provider Agreement which requires the provider to comply with federal and

state statutes, regulations, waivers, policies, and the Individual Support Plan of each individual served by the provider.

- All new providers, regardless of licensing requirements, must complete the New Provider Self-Assessment and Guidelines which includes questions regarding the provider agency's structure, policies, and procedures that must be in place before waiver services are offered, including policies and procedures that ensure compliance with regulations.

When a provider that is currently enrolled to render waiver services wants to open a new provider owned or operated service location, the following steps must be completed:

- New Vocational Facilities and Adult Training Facilities that are subject to licensure must have an onsite licensing inspection completed by ODP staff that ensures each new facility is compliant with regulatory requirements, which include HCBS Rule requirements. ODP staff also ensure the location is integrated and dispersed in the community.
- Residential Habilitation service locations and Life Sharing service locations that are subject to licensing must either complete a self-assessment or have an onsite licensing inspection completed. The onsite licensing inspection will be completed by ODP staff and ensure that each new facility or service location is compliant with regulatory requirements, which include HCBS Rule requirements.
- To be eligible to add a new service location to an existing license through the self-inspection process, the following criteria apply:
 - The provider must have had at least one full renewal inspection by the Department. The initial inspection that resulted in licensure is not considered a full renewal inspection and does not meet the requirement for at least one full renewal inspection.
 - The provider's license must be on regular status. Providers whose licenses are on provisional status or providers operating pending appeal of a revoked or non-renewed license may not expand through self-inspection.

As part of the self-inspection process, the licensed provider completes a Self-Inspection and Declaration instrument for review and approval. Through the instrument, the licensed provider reviews the home's physical site for noncompliance with statutes and regulations, and corrects any non-compliances that are identified, including requirements that relate to the HCBS Rule. The declaration on the instrument reads, "I swear that the [information on the instrument] is true and correct, that the agency is responsible for compliance with all applicable statutes and regulations, including but not limited to Article X of the Public Welfare Code, 62 P.S. § 1001 et seq. and 55 Pa. Code § 20.1 et seq., and that knowingly providing inaccurate information may lead to enforcement action up to and including revocation of the agency's license to operate." The provider must also submit ODP's Noncontiguous Clearance Form which provides verification from regional ODP staff that the service location is integrated and dispersed in the community.

Any home that is added through the self-inspection process is also inspected by ODP during the next on-site inspection. If it is determined that the provider provided inaccurate information on the self-inspection instrument, the provider is subject to sanctions.

ONGOING MONITORING

ODP providers are continuously monitored for compliance through the Quality Assessment and Improvement (QA&I) process as well as through licensing inspections. The QA&I process is aligned with the HCBS Rule, and providers are monitored for compliance with the updated policies, regulations, and waiver standards.

An onsite review occurs at least once per cycle (once every three years) for 33% of providers. Individual interviews are considered a critical component of the QA&I process to fully evaluate an individual's experience with services and supports. ODP pulls a core sample of individuals receiving services and supports using the proportionate, random, and representative sampling methodology described in the AAW and ID/A Waivers. All individuals in this core sample are offered an interview to be conducted by the Independent Monitoring for Quality (IM4Q) local programs on behalf of ODP.

ODP also incorporated requirements in the licensing regulations (55 Pa Code Chapters 6400, 6500, 2380, and 2390) to align with the HCBS Rule. ODP's Regulatory Administration Unit will continue conducting onsite visits through the licensing process/inspection and will monitor providers in accordance with the HCBS Rule. As part of the onsite review process, ODP develops operational policy and regulatory interpretations, takes enforcement actions, and ensures that licensing functions are performed consistently across the state. Licensing inspections usually occur on-site at a home or facility. To determine whether a home or facility was compliant with each regulatory requirement, ODP's regulatory professionals visually confirm compliance (when applicable) and review policies, procedures, training records, service notes, progress notes and other relevant documentation maintained by the provider. Regulatory professionals also interview staff that work in the home or facility, as well as individuals who receive services in the home or facility. Licensees must develop and implement a plan to correct any identified violations, after which the regulatory professionals will verify that the plan was implemented, and compliance has been achieved. If the plan was not implemented and the home or facility remains noncompliant, the home or facility will be issued a short-term, provisional "warning" license, or the license to operate may be revoked.

OLTL

New Provider/Service Locations

OLTL's Bureau of Fee for Service Enrollment Division accepts applications from providers electing to enroll to render HCBS. Prior to any enrollment, the provider is required to complete the OLTL standard application form and materials. Effective July 1, 2015, the application form includes questions and information related to the HCBS final rule. The types of questions a

provider must respond to are specific to the service location where HCBS is rendered, pose qualities to isolate participants from the greater community, third-party relationships, and the financial interest of owners of residential settings. A copy of this form may be found at [Provider Enrollment Information Form HCBS 9.1.2021.pdf \(pa.gov\)](#). Applicants that are identified as not in compliance with the final rule will be required to complete the provider self-survey and may be subject to an on-site visit by OLTL prior to enrollment or may have additional steps to take to become compliant with the rule before their enrollment is considered complete.

No applicants as of December 2015 have been identified as needing heightened scrutiny. OLTL released an electronic provider enrollment application on January 29, 2016 to improve the ease of submission for providers and automate processes that were previously manual and cumbersome. The electronic provider enrollment user interface allows new and existing OLTL providers to complete their Pennsylvania Medical Assistance enrollment application online, effective January 29, 2016.

OLTL's overall monitoring strategy continues to rely on its existing HCBS quality assurance processes to ensure ongoing provider compliance with the HCBS rule. OLTL waiver providers are monitored for compliance with OLTL waiver and program requirements biennially in accordance with CHC and OBRA waiver requirements. The QMET utilizes a standardized monitoring process, including the standardized on-site assessment tool and monitors providers against standards derived from Title 55, Chapter 52 of the Pennsylvania Code, provider requirements established in the approved waivers and any OLTL policies.

The QMET conducts an onsite assessment using a standard on-site assessment tool based on the requirements standards of the Final Rule at all sites requiring a compliance review. The on-site assessment tool will assist with determining the level of compliance at each location. This will include provider identification of remediation strategies for each identified issue, and ongoing review of status and compliance. OLTL will also provide guidance and technical assistance to providers to assist them with ongoing compliance. The assessments include a visual inspection of the site where HCBS occur, as well as participant file reviews, interviews of available staff/recipients, and a review of the site's policies and procedures. QMETs will be responsible for continued monitoring of provider sites for compliance after the final compliance deadline to ensure that sites continue to meet the requirements of the rule. Providers that do not remain compliant with the HCBS final rule may be subject to sanctions including but not limited to termination from participation with the OLTL waivers and programs.

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.

ODP

ODP encourages individuals receiving services and other concerned stakeholders to submit concerns regarding provider noncompliance with the HCBS Rule to the provider or the individual's SC. Per 55 Pa. Code Chapters 2380, 2390, 6100, 6400, and 6500, providers are required to develop procedures to receive, document and manage complaints about a service that are submitted by or on behalf of an individual. Providers are required to document and manage complaints, including documentation of the provider's investigation process, findings and actions to resolve the complaint, if applicable. The provider shall ensure that there is no retaliation or threat of intimidation relating to the filing or investigation of a complaint.

If anyone is uncomfortable using this process or does not believe that the provider followed the requirements to receive, document, and manage complaints outlined in the previous paragraph, they may call the ODP Customer Service Line at 1-888-565-9435 or 1-866-388-1114 for individuals with a hearing impairment. This information may also be emailed to ODP at RA-odpcontactdpw@pa.gov. When a complaint or grievance is received through the Customer Service Line or by email, information relating to the complaint or grievance is obtained from the person contacting the Customer Service Line and entered into a database. Information collected includes, but is not limited to, the complainant's contact information and the nature of the complaint. The information is then referred to the appropriate ODP staff person for follow-up.

Beneficiaries are made aware of this process through the following:

- ODP's regulations at 55 Pa. Code §6100.51 require providers to inform all individuals, and persons designated by the individual, of the right to file a complaint and the procedure for filing a complaint upon initial entry into the provider's program and annually thereafter. This would include complaints regarding noncompliance with the HCBS Rule as those requirements are built into the 6100 regulations.
- This information was also included and published in Pennsylvania's Statewide Transition Plan. When ODP published notification of CMS approval of Pennsylvania's Statewide Transition Plan the attached infographic was included which includes information about notifying providers or ODP's Customer Service Line.
- ODP is also working on developing a 1-page document for individuals and families that outlines how they can file complaints, including complaints about provider noncompliance with the HCBS Rule. Once this document is finalized, it will be distributed through Supports Coordinators and contracted training partners such as PA Family Network and Self Advocacy Power Network for All (SAPNA).

When someone calls the ODP Customer Service Line, follow-up activities are determined and triaged based on the level of risk to an individual's health, welfare, or rights as described in the complaint allegation. Allegations that pose a high risk (such as abuse, mistreatment, unsafe living conditions, etc.) are responded to immediately through mechanisms such as licensing inspections or investigations by ODP. Lower-risk allegations are generally acted upon within three business days of receipt.

ODP will resolve a complaint within 30 calendar days of the date the complaint was submitted unless there are circumstances beyond ODP's control, in which case the complaint will be resolved as soon as possible.

OLTL

OLTL will keep a "tracker" of HCBS providers who have been determined to be out of compliance with the final rule. The tracker will include how many participants are served at the site location that is out of compliance. OLTL will be tracking any necessary transition activities through the CAP process. OLTL will notify participants of all findings and compliance actions that are being taken. Individuals who will have to transfer from non-compliant or presumed non-compliant settings will get advance, accessible notice through a phone call and/or visit from their SC in addition to a letter, which will ensure that this important information is received and understood. OLTL will work with each participant, their families, and their HCBS service providers in assisting the participant to transfer out of the non-compliant site. The participant and their families will have the option of choosing between compliant HCBS providers and non-disability specific settings.

Participants have the ability to directly report complaints through the Customer Service line OLTL operates, which is known as the OLTL Participant HelpLine. The OLTL Participant HelpLine (1-800-757-5042) is located in the Bureau of Coordinated and Integrated Services and is staffed by OLTL personnel during normal business hours. Participants, family members and other interested parties use the Participant HelpLine to report complaints/grievances regarding the provision/timeliness of services and provider performance. Individuals calling the OLTL Participant HelpLine with a complaint/grievance are logged into EIM, and the information is then referred to the appropriate Bureau for resolution and follow-up. OLTL has also established an email resource account for providers, participants, stakeholders, advocates, and others to communicate with OLTL on sites that may not be compliant or ask questions about site compliance with the Final Rule. Information can be emailed to OLTL at RAPWHCBSFinalRule@pa.gov.

OLTL Participant's Service Coordinators are required to provide information on how to report any concerns or issues with their provider or services using the Customer Service line OLTL operates, the designated OLTL email account, and the CHC-participant help line. Information on how report complaints is also included in the CHC participant handbooks. Additionally, OLTL utilizes the Managed Long-Term Services and Supports (MLTSS) and LTSS subcommittees of the

Department's Medical Assistance Advisory Committee (MAAC) to communicate where and how participants, advocates, and stakeholders can report complaints or concerns to OLTL.

OCDEL

OCDEL participant's Service Coordinators are required to provide information on how to report any concerns or issues with their provider or services. OCDEL published a guide called "Problem Solving in Early Intervention" which can be found in the Resources for Families section of the Departments website located at [Resources for Families \(pa.gov\)](https://www.pa.gov/resources-for-families). This publication is intended to help parents of children receiving early intervention understand their procedural safeguards, parent rights and how to problem solve when they have concerns about their child's early intervention program.