Pursuant to the letter of intent that was submitted to the Centers for Medicare and Medicaid Services (CMS) on November 22, 2022, Virginia's corrective action plan (CAP) is detailed below. This plan includes the following required criteria:

1. description of how the state's oversight systems have been modified to embed the regulatory criteria into ongoing operations;
2. how the state assesses providers for initial compliance and conducts ongoing monitoring for continued compliance; and
3. a beneficiary's recourse to notify the state of setting non-compliance and how the state will address beneficiary feedback.

Oversight Systems

The Commonwealth has embedded the HCB Settings criteria into existing state regulations for ongoing oversight and compliance. This includes the Department of Behavioral Health and Developmental Services' (DBHDS) Office of Licensing regulations and the Department of Medical Assistance Services' (DMAS) Developmental Disabilities waivers regulations.

The DBHDS Licensing regulations became effective on August 1, 2020. These regulations include the following language:

> *12VAC35-105-150.* ***Compliance with applicable laws, regulations and policies.***
> *The provider including its employees, contractors, students, and volunteers shall comply with:*
> *1. This chapter;*
> *2. The terms and stipulations of the license;*
> *3. All applicable federal, state, or local laws and regulations including:*
> *a. Laws regarding employment practices including the Equal Employment Opportunity Act;*
> *b. The Americans with Disabilities Act and the Virginians with Disabilities Act;*
> ***c. For home and community-based services waiver settings subject to this chapter, 42 CFR 441.301(c)(1) through (4);***
> *d. Occupational Safety and Health Administration regulations;*
> *e. Virginia Department of Health regulations;*
> *f. Virginia Department of Health Professions regulations;*
> *g. Virginia Department of Medical Assistance Services regulations;*
> *h. Uniform Statewide Building Code; and*
> *i. Uniform Statewide Fire Prevention Code.*
> *4. Section 37.2-400 of the Code of Virginia and related human rights regulations adopted by the state board; and*
> ***5. The provider's own policies. All required policies shall be in writing.***

Per licensing regulations, providers are responsible for compliance with HCBS settings requirements. In addition, providers are responsible for compliance with their own policies. This is significant because, to be compliant as an organization a provider must have an HCBS rights policy that includes: requirements for annual disclosures of HCBS rights to individuals/families and mandatory annual staff training on HCBS rights. Provider's HCBS policies have been reviewed by a member of the state team. For providers

who were delivering services prior to 2018, a review of policy and practice was competed in the Research Electronic Data Capture (REDCap) secure website. Providers received direct feedback from a state reviewer on their HCBS policy and practices. As new providers enter the system, their policy is reviewed by a member of the state team before any provider is entered into the Medicaid network. A new provider is unable to enter the network without a letter of compliance that states the HCBS policy was reviewed and approved. This process is outlined in the assessment section of this plan (below).

The DMAS Developmental Disabilities waivers regulations became effective on March 31, 2021 and include the following language:

> ***12VAC30-122-120. Provider requirements.***
>
> *A. Providers approved for participation shall at a minimum perform the following activities:*
>
> *7. **Provide medically necessary services and supports for individuals in accordance with the ISP and in full compliance with 42 CFR 441.301**, which provides for person-centered planning and other requirements for home and community-based settings including the additional requirements for provider-owned and controlled residential settings; Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d et seq.), which prohibits discrimination on the grounds of race, color, or national origin; the Virginians with Disabilities Act (Title 51.5 (§ 51.5-1 et seq.) of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act, as amended (42 USC § 12101 et seq.) .*

The implementation of the requirements outlined in this regulation are included in the DMAS Quality Management Reviews (QMR). The purpose of QMRs is to monitor the provider's compliance with the Quality Assurances determined by the CMS and to assure the health, safety and welfare of the members. Any violations of the criteria are included in a mandatory corrective action plan that is completed by the provider to ameliorate deficits that were identified in the review.

Virginia identified the support coordinator/case management entities as the first line of quality oversight in the waiver system. Support coordinators see individuals receiving services at least every 90 days and more frequently if their needs require more intensive oversight. The current Onsite Visit Tool used by support coordinators is completed each time they see an individual using services. This mandatory tool was modified in November 2022 to include specific questions related to a provider's ongoing HCBS compliance.

Lastly, both DBHDS and DMAS have the ability to refer providers with a history of non-compliance for mandatory provider remediation. This process, outlined below, requires a provider to complete mandatory retraining under supervision of state staff in order to maintain their provider participation agreement.

> *Providers with a history of noncompliance, which may include multiple records with citations of failure to comply with regulations or multiple citations related to health and welfare for one service plan, resulting in a corrective action plan or citation by either DMAS or DBHDS in key identified areas will be required to undergo mandatory training and technical assistance in the specific area(s) of noncompliance. These areas of noncompliance may include health, safety, or failure to address the identified needs of*

the individual. Failure to complete the mandatory training or identified technical assistance may result in referral to DMAS Program Integrity or termination of the provider's Medicaid participation agreement. 12VAC30-122-120.

Compliance Assessment

New Providers

As outlined in the approved Statewide Transition Plan (STP), as of August 2018, all new providers are required to enter the system in full compliance with the HCB Settings Rule. In order for a potential provider to enroll with the Medicaid system, they must first complete an assessment and submit to DMAS all applicable policies and procedures for review. This assessment was included as an attachment with the Commonwealth's final STP. Providers receive direct feedback and one on one technical support for any noted deficiencies. In addition, this assessment is designed to ensure that a provider's HCBS policy becomes a part of their agency philosophy with specific questions regarding access to the community, choice, autonomy, independence, and an additional supplement for all provider owned and operated settings. Once a new provider's policies are deemed compliant, they are able to enter the Medicaid network. However, the setting then receives an unannounced visit from the DBHDS Office of Human Rights. This visit is a validation that HCBS has been fully implemented by the setting. Should any deficiency be noted, the provider is required to address the issue and once again receive a follow-up by the Office of Human Rights.

Existing Providers

For any existing provider as of 2018 a comprehensive assessment has been in place since 2018 (outlined in the STP). In addition, each setting across the Commonwealth is receiving a validation assessment by way of an onsite review, desk-audit or quality service review. Following any validation method, a provider is given a comprehensive summary of strengths and areas for improvement. If any specific HCBS violation was noted, the provider is required to complete a corrective action plan and submit evidence of remediation. This is an intensive effort on behalf of all stakeholders (state staff, case management and the provider community) where each setting receives a comprehensive validation review. These reviews include: interviews with individuals receiving services, interviews with staff, tours of settings, reviews of person-centered plans, and reviews of provider documentation.

These reviews have generated valuable insights for the state in terms of barriers to compliance, including the direct care workforce crisis. The state is working with the provider community and larger stakeholder community to look for solutions to this significant barrier. Additional information on the waiver infrastructure landscape was provided in the November 22, 2022 letter to CMS. The workforce crisis and public health emergency have significantly impeded the pace of each setting validation. The state has reviewed 40% of all the required settings. The commonwealth has surpassed the 400 onsite reviews that were identified in the STP, to date 458 onsite reviews have been completed. As each existing provider receives a comprehensive summary report of the findings and the ability to correct deficits, the average review spans 1-3 months. The Commonwealth anticipates reviewing all targeted settings and having all setting-specific remediation completed no later than January 1, 2026 (as outlined in the previous correspondence).

As outlined above, HCBS specific criteria are re-evaluated on an ongoing basis by way of the standing oversight systems, the Office of Licensing, QMR Reviews, and Support Coordination/ Case Management Oversight.

Beneficiary Feedback

As outlined in the STP, the state has identified the DBHDS Office of Human Rights as the point of contact should there be a concern regarding HCBS compliance within individual settings. Each setting is required to post the name and phone number of the designated Human Rights Advocate in a location that is visible to anyone receiving services. The Commonwealth did involve the HCBS Advisory Committee, comprised of self-advocated, advocacy organizations, private providers, and other state agencies in discussing the point of contact for concerns. The committee agreed that utilizing the Office of Human Rights would be the preferred contact as individuals using services and their families are already familiar with this office.. In addition, stakeholders may contact the hcbscomments@dmas.virginia.gov email address to outline any concerns regarding services and supports.

Any concern is evaluated by way of contacts with the individual receiving services, the provider of services, a review of documentation, and onsite assessments by DBHDS or DMAS staff. The Commonwealth is available for technical assistance to address any deficiencies that may arise. In addition, the HCBS Toolkit remains an active hub for resources and trainings. All stakeholders are encouraged to utilize these resources.

Update May 12, 2023:

The Commonwealth has engaged with various committees to develop a beneficiary feedback process that aligns with the current systems in place. Each year, individuals receiving services and their families receive a form that contains a name, phone number and email for their regional human rights advocate. In addition, this information is required, per regulation, to be posted somewhere visible in all HCBS settings. Individual and families are able to utilize this existing resource to express feedback or concerns regarding their HCBS rights. This information is processed using the same investigation and resolution process that is outlined in the Office of Human Rights regulations.

In addition, Virginia engaged the case management/ support coordinators to develop a process that includes the required onsite visit form that is completed each time a support coordinator visits a person they support. Process: support coordinator sees a person and takes notice of a potential violation- this is documented on the onsite visit tool and the support coordinator follows up with the provider to correct the issue. If the issue is resolved on next visit, the correction is noted, and the issue is deemed to be resolved. If the issue is not corrected, the support coordinator will email the hcbscomments@dmas.virginia.gov mailbox and give a synopsis of the issue. The state team will then schedule a visit of the setting and utilize the tools and processes of the onsite review process. If warranted, the provider will be issued a compliance action plan to remediate the deficit. This process is the direct result of the above statement *"The Commonwealth will develop a comprehensive process and informational materials with input from stakeholders".*