



# COMMONWEALTH of VIRGINIA

## *Department of Medical Assistance Services*

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Dear Ondrea Richardson:

Virginia intends to submit a formal corrective action plan (CAP) in relation to the Home and Community Based Settings (HCBS) Rule to the Centers for Medicare and Medicaid (CMS) no later than January 1, 2023. The intent of this correspondence is to outline the rationale for the CAP and provide the information that was asked of states on May 24, 2022 during the CMS presentation titled: *HCBS Settings Rule Implementation - Moving Forward Toward March 2023 & Beyond*. Virginia will provide the following required information in accordance with the aforementioned presentation: 1.) Information on the criteria for which the state will need extra time to ensure full provider compliance. 2.) The PHE-related impacts that created barriers to compliance 3.) The state's efforts to bring providers into compliance with those criteria and the state's plan to overcome encountered barriers and the time needed to do so.

### Specific Corrective Action Plan Requests

Virginia's corrective action plan will focus on the following criteria:

1. Access to the broader community
2. Opportunities for employment
3. Options for a private unit and/or choice of a roommate
4. Choice of non-disability specific settings, and
5. Optimization of individual autonomy in life choices such as: physical environment, daily activities and with whom to interact.

All areas outlined above have been directly impacted by the COVID-19 public health emergency (PHE). In order to reach full compliance with the HCBS Settings Rule, Virginia will need additional time to rebuild service infrastructure that was compromised during the PHE.

## Public Health Emergency Impacts

The COVID-19 PHE had devastating impacts on the HCBS waiver system's infrastructure. This included provider closures, settings closures, loss of staff (provider level, case management level, and State level), and reduced capacity for individuals with higher medical or behavioral support needs across settings. In addition, the PHE displaced many individuals who were working in employment settings with support from various vocational services. Unfortunately, many of these employment sites closed permanently and, as such, created a need for individuals to find other employment opportunities. The landscape of Virginia's HCBS services mirrors the rest of the country. In the 2022 survey conducted by ANCOR, *The State of America's Direct Support Workforce Crisis 2022*, the workforce shortages show a direct impact on service delivery. The survey concludes that 63% of providers discontinued programs and services, with an additional 55% of providers considering additional service discontinuations. These closures directly affect the ability of states to reach full compliance with expectations regarding choice and daily autonomy. ANCOR also notes that 71% of case managers are struggling to find available providers and this barrier impacts the ability to ensure that individuals have a choice of non-disability specific settings and options for a private unit/choice of roommate.

Lastly, nationally, providers report significant struggles to reach quality standards. ANCOR reports that 92% of the providers surveyed are struggling to achieve quality standards. The workforce crisis creates a paradigm where providers resort to a primary focus on health and safety. In the environment of a PHE, the health and safety of all individuals becomes even more paramount especially when working with individuals who have underlying medical conditions. The PHE and resulting health and safety guidelines put forth by the Federal government thus stifled community access in itself. As states attempt to move forward from the PHE, the long lasting workforce crisis continues to suppress the ability for true, integrated community access.

## Plan to Overcome Barriers

Virginia is actively working to overcome the aforementioned barriers. The commonwealth utilized funds made available by the American Rescue Plan Act (ARPA) to invest in HCBS services. This included retainer payments, funding for staff bonus/recruitment, temporary provider rate increases, and the inclusion of the availability of telehealth as a part of service delivery, as deemed appropriate. In addition, Virginia conducted a review of the rate setting methodology for HCBS waiver services and provided permanent rate increases for providers of these services. As the workforce crisis is the main barrier to HCBS compliance, the commonwealth is optimistic that increased rates will bolster staff interest and retention across services. This will enable further HCBS compliance.

In addition, Virginia is actively working with our stakeholders to identify barriers and develop plans to remove these barriers. The Department of Behavioral Health and Developmental Services (DBHDS) heads a workgroup focused on provider issues and how to support community based providers in delivering high quality services in alignment with the Settings Rule. This group aims to produce operational recommendations and ease some of the burden on community based providers.

The commonwealth has also made tremendous efforts to bring providers into compliance with the Settings Rule. This has included embedding the HCBS rule into the provider requirement section of Virginia's HCBS waiver regulations, reviewing all providers' HCBS policies and providing direct technical assistance on any deficiencies, speaking with providers on a quarterly basis at a "roundtable" forum to

address any questions and providing feedback on any trends identified by the state, and hosting a four part virtual provider training series on [March 10, 2022](#); [March 25, 2022](#); [April 8, 2022](#); and [April 22, 2022](#). In addition, the commonwealth has continued to utilize the existing HCBS toolkit (included in the State's Final Statewide Transition Plan) and uploaded additional reference documents including: [HCBS Modifications Process Explained](#) and [Group Day Observations](#).

Lastly, the state has presented information on the Settings Rule to Virginia's Board for People with Disabilities, Virginia's public guardians, and Support Coordinators/ Case Managers via a virtual two (2) part training series on [June 24, 2022](#) and [June 30, 2022](#).

In order for the commonwealth to rebuild the waiver infrastructure and workforce that was devastated by the PHE, Virginia intends to request a corrective action plan to be in effect until January 1, 2026. This time will be used to ensure all provider settings meet the minimum standards set forth in the HCBS final rule, allow time for remediation for any identified deficiencies and ensure all providers are afforded the opportunity to rebuild their workforce. Once providers have the ability to hire and retain staff, it is believed that settings will begin to reopen and allow for more choice and independence. As the workforce crisis also extends to the case management entities, this timeframe is additionally intended to permit case managers to have sufficient services and settings options available for selection by individuals.

#### References:

ANCOR. (2021). The state of America's direct support workforce. [https://www.ancor.org/sites/default/files/issue\\_brief\\_the\\_state\\_of\\_americas\\_direct\\_support\\_workforce.pdf](https://www.ancor.org/sites/default/files/issue_brief_the_state_of_americas_direct_support_workforce.pdf)