

Maine's HCBS Compliance Initiative

Maine Coalition for Housing and Quality Services Meeting

05/10/21

What is the HCBS Settings Rule?

- A federal regulation (**42 CFR § 441.530**) that defines **standards** for settings where Medicaid HCBS services are provided using federal funding.
- The Rule is the result of a nearly **5 year federal rule-making process** during which over 2,000 public comments were submitted during multiple public comment periods.
- The final Rule was issued in March 2014. States were given until **March 2022 initially and then extended to March 2023** (9 years) to bring all existing HCBS settings into compliance with **all** of the standards in the Rule.

HCBS Setting Standards Are Designed To:

Access

Maximize opportunities for participants to have full access to the benefits of community living

Integration

Ensure participants can receive services in the most integrated setting

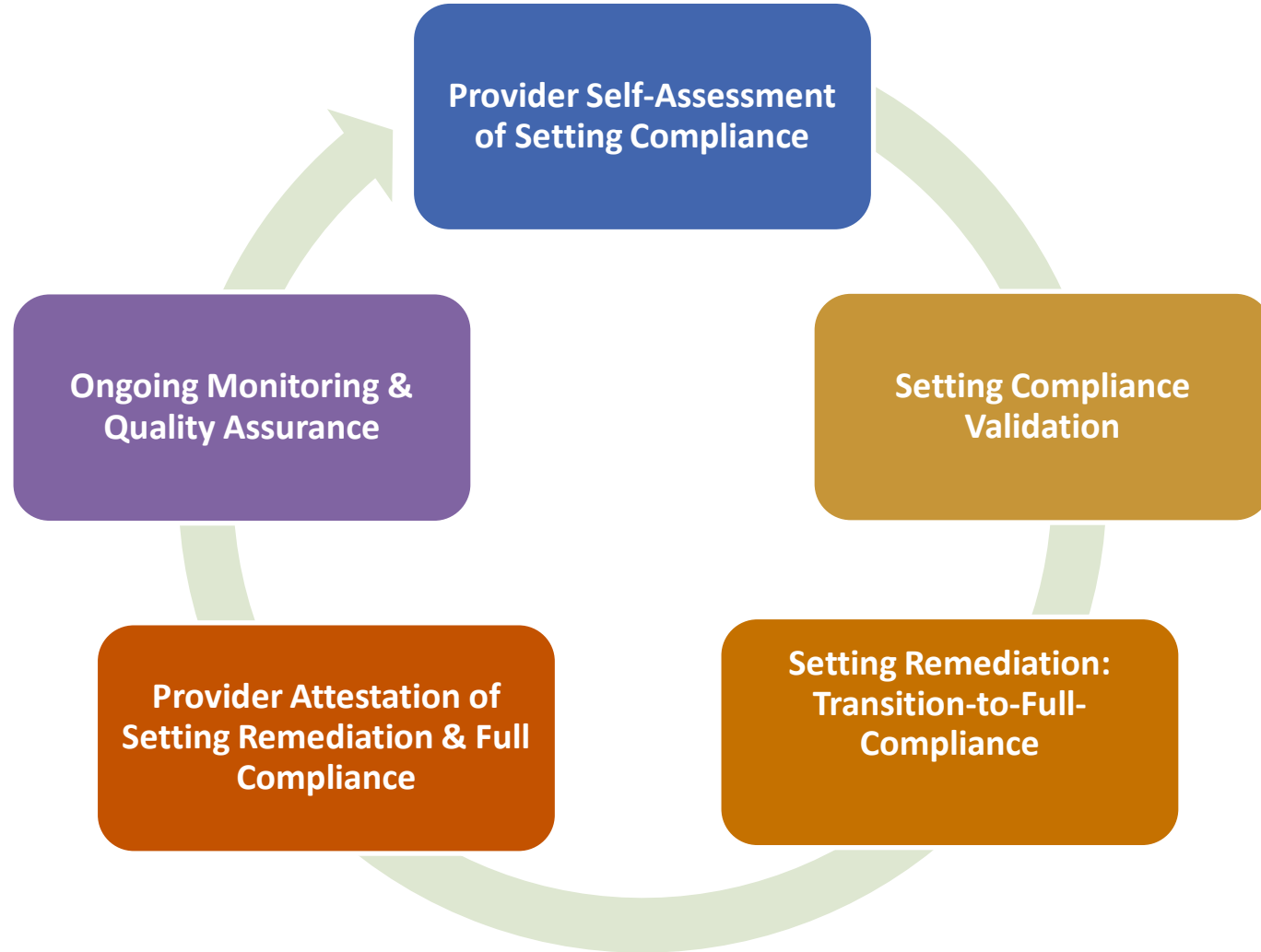
Quality

Ensure the quality of Home and Community-Based Services

Rights

Provide rights protections for participants

Maine's 5-Phase Strategy for HCBS Rule Implementation



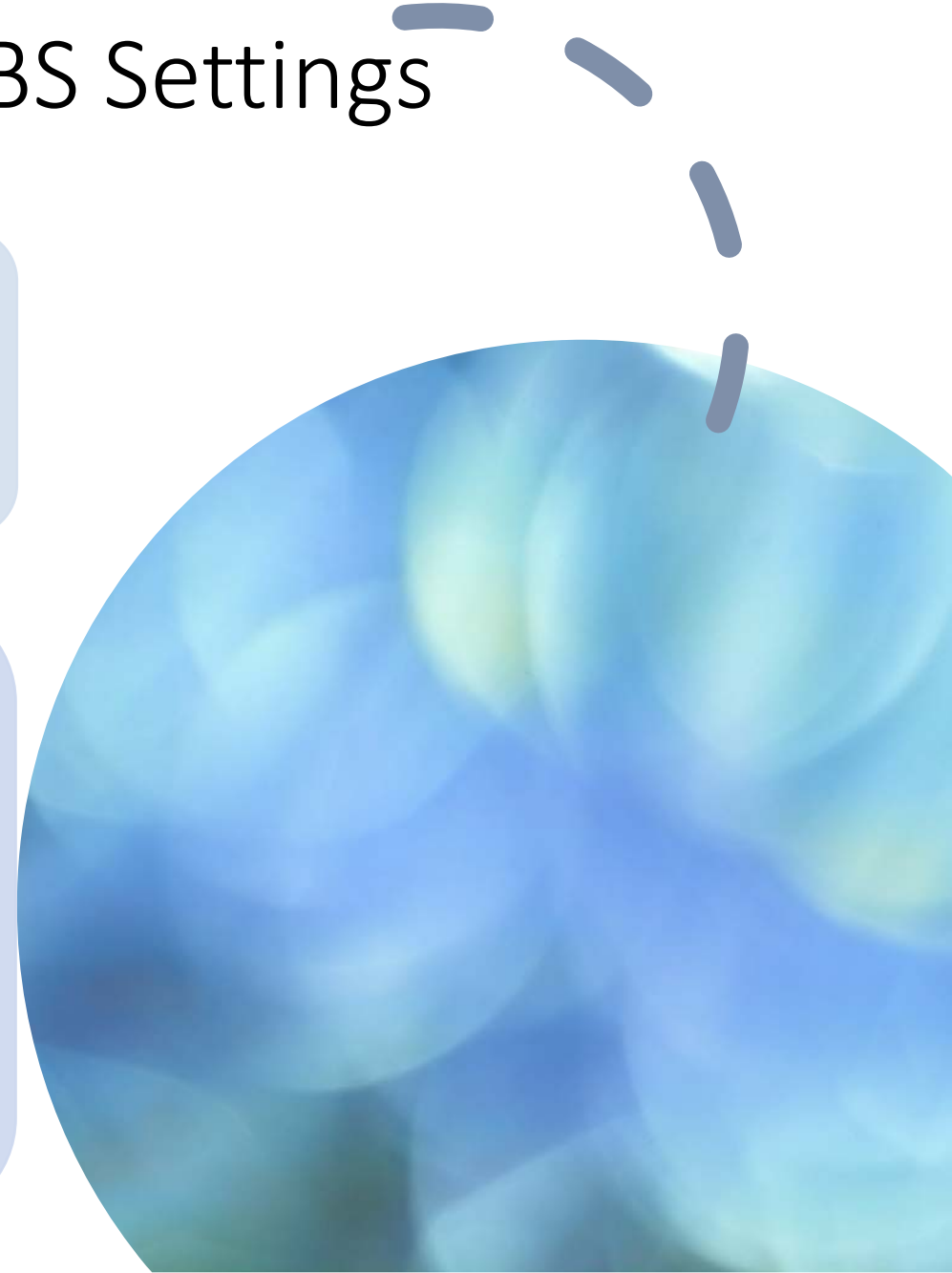
HCBS Setting Standards for All HCBS Settings

Must not be institutional or have the qualities of an institutional setting.

- Must not isolate HCBS participants from the broader community, including community members not receiving HCBS

Must be integrated in and support full access to the greater community, including:

- Opportunities to seek employment and work in competitive integrated settings
- Opportunities to engage in community life
- Opportunities to control personal resources
- Opportunities to receive services in the community with the same degree of access to the community that people not receiving HCBS have



HCBS Setting Standards for All HCBS Settings

CONTINUED

Must ensure certain rights protections, including:

- Must ensure an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.
- Must optimize individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact.
- Must facilitate individual choice regarding services and supports, and who provides them.

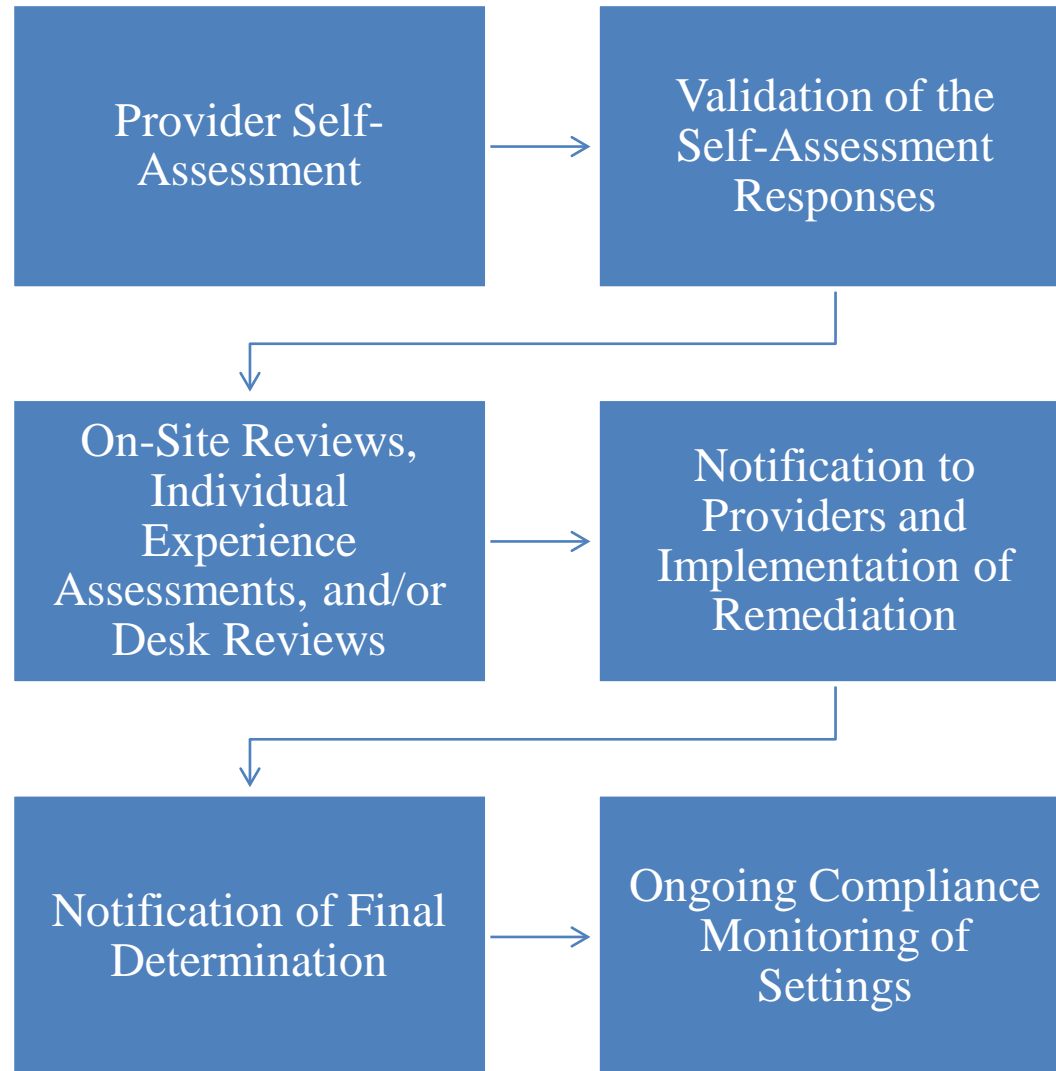
Maine's Home and Community- Based Services Initial Statewide Transition Plan (STP)

- Approved by CMS on May 28, 2020 and can be viewed at:
<https://www.maine.gov/dhhs/oms/about-us/policies-rules/proposed-and-recently-adopted/statewide-hcbs-transition-plan>
- To date 21 states have received Final Approval of their Statewide Transition Plans
- Maine and 27 other states have yet to receive and/or submit Final STPs

HCBS Global Rule

- Maine’s “draft” HCBS Global rule mirrors the federal HCBS Settings rule (42 CFR § 441.530) with additional standards for provider-owned and controlled non-residential settings as outlined in OADS HCBS FAQ posted to the OADS HCBS webpage at:
<https://www.maine.gov/dhhs/oads/about-us/initiatives/hcbs>
- Maine’s “draft” HCBS Global rule continues in review with the Office of Attorney General

HCBS Provider Validation Process



Settings

2214 settings submitted self-assessments in November 2019

2032 Residential:

- Group Homes (1-2 person, 3-5 person, 6+ person)
- Family Centered Support Homes
- Shared Living: Related and Non-related Providers

182 Non-Residential Settings:

- Community Supports (168)
- Work Support-Group (13)
- Work Ordered Day Clubhouse (1)



Validations to Date

1,847 Residential Settings:

- 465 validated by Disability Rights Maine
- 1382 validated by OADS through mini desk level review

63 Non-Residential Settings: 58 to be completed by June 30, 2021

13 Work Support-Group

1 Work Ordered Clubhouse to be completed by June 30, 2021

367 settings determined inactive, moved to a new location, or closed

What Happens After a Setting Has Been “Validated?”

12

- Providers receive a settings findings report
- The report outlines areas which do not comply with the HCBS Settings rule
- The report outlines *minimum* remediation expectations to help providers know which policies and procedures require updating
- The provider addresses the recommendations by uploading examples of their new policies and procedures, and/or evidence of how they have complied with the expectation

Settings PRESUMED to Have the Qualities of an Institutional Setting

- **Any setting that has the effect of isolating individuals receiving HCBS from the broader community of individuals not receiving HCBS.**

These settings are presumed institutional (not approved for HCBS) unless:

1. The isolating qualities are remediated (corrected) AND
2. CMS determines, through review of a “**heightened scrutiny**” package of evidence submitted by the state, that the setting **does not** have the qualities of an institutional setting and the setting **does** meet all of the standards for HCBS settings.

Heightened Scrutiny #s To Date

- **94** settings have been identified as Heightened Scrutiny with setting findings reports issued to providers
- **68** providers have acknowledged receipt of setting findings reports, **24 providers have yet to acknowledge receipt**
- **60** providers have submitted Transition to Compliance plans which have been approved by the state
- **90%** of HS settings that have submitted TTCPs identify remediation dates **as 7/1/21 or earlier**
- **10%** of HS settings that have submitted TTCPs identify remediation dates **after 7/1/21**

How the CMS Extension Impacted Maine's Heightened Scrutiny Settings

- Due to COVID, CMS extended the deadline for states to be in full compliance by 1 year to **3/17/2023**
- CMS also extended the deadline for HS settings to fully comply (avoiding state/federal level HS review) by 1 year from 7/1/20 to **7/1/21**
 - *This is a CMS deadline for HS settings in all states that can't be changed*
- *Prior to the CMS extension for COVID, the timeframes did not allow any HS Settings the opportunity to avoid the state/federal level HS review.*
 - *The state previously expected all HS settings would need to go through the state/federal level HS review.*

How the CMS Extension Impacted Maine's Final Date For all Settings to be in Full Compliance

- With the CMS extension, the state **did** change the final deadline for **all settings** (including HS settings not fully compliant by 7/1/21) to be fully compliant from 10/31/21 to **7/31/22**.
- **This change allows all providers more time to remediate their settings.**
- This change was also made to reflect **completion of Validations is delayed to 6/30/21**, due to COVID, which means **finishing issuance of all Findings Reports is delayed to 7/31/21** due to COVID.

HCBS Compliance Portal Training and Resources Tab

https://maine.hcbscompliance.com/training_materials

Transition to Compliance Plan Process & Examples (video)

Monthly HCBS Provider Meeting (power points)

Evidentiary Package Template (Word)

Minimum Remediation Actions for Shared-Living or Related
Caregiver Residential Settings (PDF)

Minimum Remediation Actions for All Other Residential Settings
(PDF)

Sample Policies-Residential

Sample Policies-Non-Residential

OADS HCBS Training and Resources

<https://www.maine.gov/dhhs/oads/about-us/initiatives/hcbs/training-and-resources>

Recorded HCBS Trainings, Power Points, and FAQs

Monthly HCBS Provider Meetings: Recordings and Power Points

Memos

Individuals, Families and Guardian Resources

HCBS.DHHS@maine.gov



Please feel free to submit any HCBS related Questions, Comments, Feedback to:

HCBS.DHHS@maine.gov

Heidi.Bechard@maine.gov

207-287-6214



For more information related to the HCBS Compliance Initiative, please visit our website at: <https://www.maine.gov/dhhs/oads/about-us/initiatives/hcbs>



For HCBS Trainings and Resources: <https://www.maine.gov/dhhs/oads/about-us/initiatives/hcbs/training-and-resources>



