

March 13, 2023

Amanda Hill
Health Insurance Specialist
Division of Long Term Services and Supports
Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services

Dear Ms. Hill,

RE: Home and Community Based Settings Rules Corrective Action Plan

Regarding your email dated January 27, 2023, AHCCCS is submitting a Corrective Action Plan (CAP) to allow sufficient time for CMS to complete the Heightened Scrutiny review and adjudication process.

Background

Since 1982, AHCCCS has been delivering high-quality, cost-effective health care services to Arizonans. The State of Arizona has the unique distinction of being the first state to operate under a statewide managed care 1115 Demonstration, and the only state to have done so from the start of its Medicaid program.

In 1988, six years after implementation, the original 1115 Demonstration was substantially amended to allow Arizona to implement the Arizona Long Term Care System (ALTCS), a long term care program for individuals who are elderly and/or have physical disabilities and individuals with an intellectual disability. The ALTCS program provides acute care, behavioral health services, and long term care, including home and community based services (HCBS), to Medicaid members who are at risk of institutionalization. The ALTCS program strives to ensure that members are living in the least restrictive and most integrated settings possible, and are actively engaged and participating in community life. Over the past 33 years, the ALTCS 1115 Demonstration has achieved remarkable success in increasing member placement in HCBS, resulting in significant program savings while also meeting the needs of members.

AHCCCS continues to operate its ALTCS program under 1115(a) authority, specifically Project Number 11-W-00275/9.

AHCCCS submitted Arizona's Systemic Assessment and Transition Plan to CMS in October 2015. The Systemic Assessment conducted by AHCCCS summarized Arizona's current level of compliance for Home and Community Based Settings (HCBS) and was approved by CMS in September 2017.

The Transition Plan outlined strategies the State used to make sure all HCBS settings would come into compliance by March 2023. AHCCCS engaged in multiple meetings and/or correspondence with CMS, pertaining to the Transition Plan, between September 2017 through February 2019. The Transition Plan was revised in response to CMS feedback during that period. In February 2019, CMS confirmed the revisions to the Transition Plan were satisfactory. In order for CMS to officially approve Arizona's Systemic Assessment and Transition Plan, AHCCCS needed to complete the first round of site-specific assessments, hold a public comment period and the State's reports to CMS must be deemed satisfactory.

As part of the Transition Planning process, AHCCCS partnered with multi-stakeholder and multi-disciplinary workgroups to help create the suite of tools to assess provider compliance, including whether or not a setting is a candidate for Heightened Scrutiny. CMS has instituted the Heightened Scrutiny process to allow States to preserve settings that are presumed to have institutional qualities and, therefore, presumed to be non-compliant with the HCBS Rules. When combined, the assessment tool suite includes the following:

Provider Self-Assessment – Purpose is to gather information directly from the provider on the extent to which the provider may or may not be currently applying practices consistent with the HCBS Rules. It is important to note, the provider self-assessment includes both the documented self-assessment from the provider perspective and documentation of the Managed Care Organizations' (MCOs) validations of the provider's self-assessment after a joint review of the self-assessment with the provider and the MCOs' completion of the additional tools in the Assessment Tool Suite.

Observations and Community Interviews – Purpose is to validate the Provider Self-Assessment by observing the location, environment and community engagement of the provider to identify characteristics that may or not be consistent with the HCBS Rules and to gather information directly from community members, who have an association with the provider, about the provider's level of interaction with members receiving services and strategies the provider employs to maximize community engagement.

Person Centered Service Plan Review – Purpose is to review member case files for fidelity to the person-centered plan.

Member Surveys - Purpose is to validate the Provider Self-Assessment by gathering information directly from the members (or their representatives) regarding the member experience with the provider, which may or may not be consistent with the HCBS Rules.

When the COVID-19 Public Health Emergency (PHE) threatened the initiation of the site-specific assessment process, AHCCCS reconvened workgroups and engaged with stakeholders representing members and families to create modified assessment tools that accommodated providers' efforts to mitigate COVID-19 risks with the introduction of a COVID-19 Transition Plan. AHCCCS believed it was crucial to maintain compliance with the HCBS settings regulation in the forefront and prioritize community integration and engagement of members by challenging

providers to continue to support self-determined member choice and mitigate risks pertaining to community engagement to the extent possible during the PHE. The COVID-19 Transition Plan consisted of:

- Revising the assessment tools and process to accommodate for practices that had to be curtailed to mitigate risk,
- Adding assessment elements to ensure providers made plans to resume compliant practices when Centers for Disease Control and Prevention guidelines said it was safe to do so, and
- Encouraging providers to plan for new programs or practices that strengthen compliance with the HCBS Rules and/or improve members' experiences with their services and supports.

CMS recognized AHCCCS' efforts to continue to pursue HCBS Rules compliance during the PHE by asking the State to co-present on multiple occasions regarding the COVID-19 Transition Plan implementation.

In March 2021, MCOs began assessing all settings subject to the HCBS Rules for compliance. As a result, in December 2021, AHCCCS began reporting quarterly progress to CMS, including compiling a list of settings that met the criteria for Heightened Scrutiny. After completing the first round of site-specific assessments, AHCCCS posted an addendum to update progress on the Transition Plan, informed by stakeholder meetings held in October 2022 and a public comment period that concluded in November 2022. In November 2022, AHCCCS submitted a final version of the Transition Plan addendum to CMS, which was informed by stakeholder feedback. In the document, AHCCCS noted all settings (including settings meeting criteria for Heightened Scrutiny) can or will comply with the HCBS Rules by March 2023; the majority of which will have had at least two assessments prior to the deadline. On January 20, 2023, CMS granted final approval of Arizona's Transition Plan.

Issue: CMS approval of the Transition Plan solely addresses the State's compliance with applicable Medicaid authorities and the State's process for assessing setting compliance, including settings that meet the criteria for Heightened Scrutiny. CMS review of settings submitted for Heightened Scrutiny and subsequent determinations are separate and distinct from final approval of the Transition Plan. If States want to preserve settings that are presumed institutional in nature and the State asserts the setting complies with the HCBS rules, the States must submit evidence to CMS to make a final determination. CMS determines whether the evidence supports that the setting is or can become compliant with the HCBS Rules. Given the March 17, 2023, deadline is fast approaching and CMS has not yet requested evidentiary documentation packages for a sampling of settings meeting Heightened Scrutiny, a Corrective Action Plan is warranted to afford CMS more time to review the state's assessment documentation and either affirm the State's findings or require remediation for identified settings.

Corrective Action Plan (CAP) Milestones

AHCCCS will perform the following to respond to and support CMS' Heightened Scrutiny review process as it applies to the ALTCs/HCBS provisions of 1115(a) demonstration Project Number 11-W-00275/9.

- AHCCCS will respond to CMS requests for evidentiary packages for the identified sample of settings meeting the Heightened Scrutiny criteria within 45 business days of request receipt.
- If CMS deems that a setting requires remediation to comply with the HCBS Rules, AHCCCS will work in partnership with the MCOs and provider to implement a corrective action plan within 60 days of determination and satisfy the corrective action plan within 12 calendar months from the date CMS issued the notice of findings.
- If CMS deems a site visit is necessary to assess HCBS Rules compliance for a setting that meets the Heightened Scrutiny criteria, AHCCCS will respond to CMS requests for information or coordination to conduct site visits within 21 business days of request receipt.
- AHCCCS will continue to submit ongoing quarterly progress reports to CMS with updates regarding assessment dates and findings of all settings subject to HCBS Rules compliance.

The CAP may be amended when mutually agreed upon by both parties at any time. The CAP will be null and void when AHCCCS receives written notice from CMS that the Heightened Scrutiny review and adjudication process has been completed and the sampled settings' compliance has been either affirmed by CMS or remediation plans for identified settings have been satisfied.

For notices and communications regarding the CAP, please contact Danielle Ashlock at Danielle.Ashlock@azahcccs.gov copying Dara Johnson at Dara.Johnson@azahcccs.gov.

Sincerely,



Carmen Heredia
Director