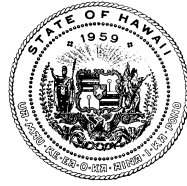


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In reply, please refer to:
File:

Medicaid I/DD Waiver
Memo No.: FY2022-05
Date: September 13, 2021

TO: Medicaid I/DD Waiver Providers

FROM: Mary Brogan, Administrator
Developmental Disabilities Division

SUBJECT: Providers Requesting to Add or Change a Residential or Non-Residential
(Adult Day Health) Setting

The purpose of this memo is to remind providers that all new residential and non-residential (Adult Day Health) settings must meet full compliance with the Home and Community-Based Services (HCBS) rule on setting requirements prior to Waiver service delivery and providers must submit required documentation if your agency is requesting a change in setting due to the COVID-19 public health emergency.

The Department of Health, Developmental Disabilities Division (DOH-DDD), continues to implement measures to achieve full compliance with the Centers for Medicare and Medicaid Services (CMS) final rule, which established HCBS setting requirements. The HCBS rule requires that people receiving services in Medicaid-funded HCBS settings have full access to the benefits of community living, including the opportunity to live, work and play in integrated community settings with the services and supports they need.

Notifying DOH-DDD of Additions and Changes for All Settings

As a reminder, notifying DOH-DDD of any change in location is required. In Section 3.1 of the 1915(c) Home and Community Based Services (HCBS) Medicaid Waiver for Individuals with Intellectual and Developmental Disabilities Waiver Provider Standards Manual, effective July 1, 2021 (Waiver Standards), DOH-DDD's Community Resources Branch (CRB) must be contacted when requesting to add or change any residential and non-residential (Adult Day Health) setting.

All New Settings Must Meet Final Rule Compliance

All new residential and non-residential (Adult Day Health) settings not in operation prior to the March 17, 2014, date must meet full compliance with the HCBS rule on setting requirements prior to Waiver service delivery.

See question #3 below from the CMS Q&A which addresses new setting requirements.

Q3. Can a new setting that was not providing Medicaid-funded HCBS on March 17, 2014, under an approved state plan, waiver or demonstration, avail itself of the time remaining in the transition period to come into compliance with the settings requirements?

A3. No. As indicated in the HCBS final regulations, any setting in which services were not being provided under an approved state plan, waiver or demonstration as of March 17, 2014, must be in compliance with the regulations for HCBS settings by the effective date of the program (the time the state submits a claim for Federal HCBS reimbursement).

The full document can be found here: <https://www.medicaid.gov/sites/default/files/2019-12/faq-planned-construction.pdf>

Changes Due to the Public Health Emergency (PHE)

If your agency is requesting a change in setting due to the COVID-19 PHE, your agency must submit documentation to demonstrate how the COVID-19 PHE has impacted your program and resulted in a need to change the setting. Additionally, your agency will need to submit a new HCBS Compliance Evidence Template for the change/new location and DOH-DDD will reassess the change/new setting. Although the change/new location will be subject to the HCBS rule, DOH-DDD will allow the location to continue to work toward full compliance with the HCBS rule, however, the physical location must demonstrate the likelihood that full compliance will be met and the setting must **not** be:

- located in a building or attached to a building that is also a publicly or privately operated facility that provides inpatient institutional treatment (NF, ICF/IID, hospital, inpatient rehabilitation facility);
- located in a building on the grounds of, or immediately adjacent to, a public institution;
- located where there are multiple facilities or settings serving people with disabilities co-located and operated or controlled by the same provider agency;
- surrounded by high walls or fences and/or has closed or locked gates; and
- designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral, and therapeutic services and/or social and recreational activities.

The setting **must** be among private settings, homes, retail businesses, food establishments, and other community resources.

See question #5 below from the CMS Q&A which addresses changes to settings due to the COVID-19 PHE.

Question: If settings have made significant and long-term changes to the services provided or the location in which services will be provided in response to the COVID-19 PHE, will states be required to reassess those settings?

Answer: If a setting has made significant and permanent changes to the services provided or the location in which those services are provided, the state may be required to reassess the setting, after the PHE, for compliance with the Settings Rule requirements.

The full document can be found here <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd20003.pdf>

The Hawai'i Statewide Transition Plan available here <https://medquest.hawaii.gov/en/members-applicants/already-covered/my-choice-my-way.html>, describes the State's efforts in detail, as we continue to progress towards full compliance, with a state goal of December 31, 2021, for our service system.

Please send any questions or comments to the Community Resources Branch by email to doh.dddcrb@doh.hawaii.gov

c: Jon Fujii, DHS-MQD
DDD Management Team