

## **Introduction**

New Centers for Medicare and Medicaid Services (CMS) rules outlined at 42 CFR § 441.301(c)(4) require public comment on any new 1915(c) waivers, waiver renewals or substantive waiver amendments. Public comment is also required on a state's transition plan that outlines how the state will bring the subject waivers into compliance with the new federal provisions. Information on these federal provisions can be found at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>.

The Department of Public Welfare's (DPW) Office of Long-Term Living (OLTL) is submitting amendments to the Aging, Attendant Care and Independence waivers to increase the allowable number of unduplicated participants in each of these waivers for the 2013-2014 fiscal year. Click [here](#) to access a public notice detailing the amendments. As a result, OLTL must seek public comment on the proposed amendments and on a transition plan to bring these three waivers into compliance with the new federal rule.

The Aging, Attendant Care and Independence waivers offer a broad continuum of services. These services, depending on the specific waiver, may include, Personal Assistance Services, Respite, Personal Emergency Response System, Accessibility Adaptations, Specialized Medical Equipment and Supplies, TeleCare, Non-Medical Transportation, Home Health, Adult Day Services and Community Transition Services among other services – all designed to support individuals to live more independently in their homes and communities. These three waivers do not include Residential Habilitation Services, but rather Personal Assistance Services which are traditionally provided to participants who reside in their own homes.

OLTL has determined that all services offered in these three waivers comply with the new federal rule. What follows is an assessment of person-centered planning, Adult Daily Living Services and Personal Assistance Services. It is in these three areas that OLTL has determined a need for further evaluation and potential strengthening.

Each area of assessment is followed by a transition plan that OLTL will put in place to attain or maintain compliance with the rule. At the end of the document is a timeline for completion of transition plan steps. For some of these areas, Pennsylvania is waiting for CMS guidance to determine the next steps in the transition process.

### **1. ASSESSMENT**

#### **A. Person-Centered Planning**

Throughout the last several years, OLTL has developed and implemented policies, procedures and trainings to establish a comprehensive Individual Service Planning process that is person-centered. Overall, all of the OLTL waivers are in compliance with Person-Centered Planning regulations published on March 17, 2014, however there are a few areas that will be strengthened.

Areas in which OLTL is compliant:

- **42 CFR 441.301 (b) (1) (i)** Services are furnished under a written person-centered service plan that is based on a person-centered approach and is subject to approval by the Medicaid agency.
- **42 CFR 441.301 (b) (6) (c) (1)** The individual will lead the person-centered planning process where possible, the individual's representative should have a participatory role, as needed and as defined by the individual, unless State law confers decision-making authority to the legal representative, all references to individuals include the role of the individual's representative. Includes people chosen by the individual, provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions, is timely and occurs at times and locations of convenience to the individual. Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS. Offers informed choices to the individual regarding the services and supports they receive and from whom. Includes a method for the individual to request updates to the plan as needed. Records the alternative home and community-based settings that were considered by the individual.
- **42 CFR 441.301 (b) (6) (c) (2)** The person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Reflect that the setting in which the individual resides is chosen by the individual. Reflect the individual's strengths and preferences. Reflect clinical and support needs as identified through an assessment of functional need. Include individually identified goals and desired outcomes. Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports. Reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies when needed. Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her.
- **42 CFR 441.301 (b) (6) (c) (3)** The person-centered service plan must be reviewed, and revised upon reassessment of functional need as required, at least every 12 months, when the individual's circumstances or needs change significantly, or at the request of the individual.

Areas that will be strengthened:

- **42 CFR 441.301 (b) (6) (c) (1)**
  - Reflects cultural considerations of the individual and is conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient.
  - Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants.
  
- **42 CFR 441.301 (b) (6) (c) (2)**
  - The State must ensure that the setting chosen by the individual is integrated in, and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.
  - At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient.
  - Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
  - Document less intrusive methods of meeting the need that have been tried but did not work.
  - Include a regular collection and review of data to measure the ongoing effectiveness of the modification.
  - Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
  - Include an assurance that interventions and supports will cause no harm to the individual.

Transition Plan:

In areas that will be strengthened, a work plan will be developed to include amendment of current policy documents, development and delivery of service coordinator training and/or development and delivery of a service coordinator monitoring tool.

**B. Home and Community-Based Settings - Adult Daily Living Centers:**

Adult Daily Living Services are provided in the Aging and Independence waivers but not in the Attendant Care Waiver. The centers in which Adult Daily Living Services are provided fall under the regulatory jurisdiction of both the Pennsylvania Department of Aging through 6 Pa. Code, Chapter 11 and DPW

through 55 Pa. Code, Chapter 2380. Most of these centers are owned by individuals, partnerships or small Limited Liability Corporations. Pennsylvania is waiting for CMS guidance to determine the next steps in the transition process for this setting. In the meantime, OLTL's transition plan includes initial steps necessary to potentially assess compliance.

There are approximately 2,580 Aging Waiver participants receive Adult Daily Living Services in 121 settings. There are approximately 60 Independence Waiver participants receive Adult Daily Living Services in 15 settings.

Areas in which OLTL is compliant:

- **441.301(c) (4) Is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.**
- **441.301(c) (4) Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint.**
- **441.301(c) (4) Facilitates choice regarding services and who provides them.**

Areas that will be strengthened and/or will receive additional evaluation:

- **441.301(c) (5) (CMS Prohibited Settings) Home and Community-Based Settings do not include a nursing facility, institution for mental diseases, ICF/ID and hospitals.**
  - OLTL has identified one provider that may not be in compliance with this provision. Twenty-nine Aging Waiver participants receive services at:
- **441.301(c) (5) (v) (CMS Presumed Institutional) Settings in a publicly or privately owned-facility that provides inpatient treatment.**
  - Only seven Adult Daily Living providers have been identified that may not comply with this provision. Fifty-five Aging Waiver participants receive services at these centers.
- **441.301(c)(5)(v) (CMS Presumed Institutional) Settings on the grounds of, or immediately adjacent to, a public institution.**
  - All Adult Daily Living Centers are assumed to be in compliance with this regulation with the possible exception of those noted above.
- **441.301(c) (5) (v) (CMS Presumed Institutional) Settings that have the effect of isolating individuals receiving HCBS from the broader community of individuals not receiving HCBS.**
  - All Adult Daily Living Centers are assumed to be in compliance with this regulation with the possible exception of those noted above.

- **441.301(c)(4) The setting is integrated in and supports full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.**
  - All Adult Daily Living Centers with the possible exception of those noted above are assumed to be in compliance.
  - Adult Daily Living Centers do not provide employment and work.

Transition Plan:

- OLTL is currently developing a Service Coordinator monitoring tool which will be utilized by Service Coordination Entities (SCE) to ensure consistent monitoring of the health and welfare of waiver participants, and to ensure that services are being provided in accordance with the individual service plan.

OLTL plans to incorporate questions relating to home and community-based settings as part of this monitoring tool.

- OLTL also intends to require providers to conduct a self-assessment of compliance with these provisions of the regulation. In addition, OLTL will be utilizing the Quality Management and Efficiency (QMET) monitoring teams to conduct on-site assessments to identify settings that do not comply with the regulation.
- A survey will be conducted of all Adult Daily Living participants to seek their feedback on the home and community-based environment of the center they attend.
- OLTL intends to work with the SCE, provider and QMET to identify where the setting is not in compliance with the regulation, and steps for meeting compliance.
- Where non-compliance exists or is found and confirmed, OLTL will develop a work plan that includes, but is not limited to, working with any non-compliant providers as they secure other settings in which to provide their services; developing policies that if followed would ensure that the setting meets the qualities for being home and community-based and does not have the qualities of an institution even if physically located in a setting presumed institutional, working with departmental, other state agencies and licensing entities to potentially make policy and regulatory changes to clearly articulate where waiver Adult Daily Living Services can be provided; or transitioning participants to other providers of this service.
- To ensure OLTL has robust stakeholder input, OLTL's established stakeholder review process will be used to inform the development of any new policies.

- OLTL is waiting for CMS guidance to determine the next steps in the transition process.

### **C. Home and Community-Based Settings – Residential Settings**

As stated above, the Aging, Attendant Care and Independence waivers do not offer traditional residential services; the majority of participants receive Personal Assistance Services, which are traditionally provided to participants who reside in their own homes. Personal Assistance Services provide hands-on assistance to participants and are aimed at assisting the participant to complete tasks of daily living that would be performed independently if the individual had no disability. Personal Assistance Services enable the participant to integrate more fully into the community and ensure the health, welfare and safety of the participant.

#### Areas in which OLTL is compliant:

- **42 CFR §441.301 (c) (5) (CMS Prohibited Settings)** Home and community-based settings do not include a nursing facility, institution for mental diseases, ICF/ID and hospitals.
- **42 CFR §441.301 (c) (5) (v)** In summary, settings that are presumed to have the qualities of an institution include: settings in a publicly or privately owned facility that provides inpatient treatment; settings on the grounds of, or immediately adjacent to, a public institution; and settings that have the effect of isolating individuals receiving HCBS from the broader community of individuals not receiving HCBS.
- **42 CFR §441.301 (c) (4) (i)** The setting is integrated in and supports full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
- **42 CFR §441.301 (c) (4) (ii)** Is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
- **42 CFR §441.301 (c) (4) (iii)** Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint.
- **42 CFR §441.301 (c) (4) (iv)** Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- **42 CFR §441.301 (c) (4) (v)** – Facilitates choice regarding services and who provides them.
- **42 CFR §441.301 (c) (4) (vi)** The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from

eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

- **42 CFR §441.301 (c) (4) (vi) (B) (1) through (3)** The individual has privacy in their unit, which includes: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors; individuals sharing units have a choice of roommates in that setting; and individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
- **42 CFR §441.301 (c) (4) (vi) (C)** Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
- **42 CFR §441.301 (c) (4) (vi) (D)** Individuals are able to have visitors of their choosing at any time.
- **42 CFR §441.301 (c) (4) (vi) (E)** The setting is physically accessible to the individual.

Areas that will be strengthened and/or will receive additional evaluation:

- **42 CFR §441.301 (c) (4) (i)** The setting is integrated in and supports full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
  - Six Aging waiver participants reside in Domiciliary (Dom) Care homes. These individual provider homes are private household or family dwellings and serve no more than three Dom Care residents. These settings are under the regulatory jurisdiction of the PA Department of Aging, and are inspected annually by the local Area Agency on Aging (AAA) to ensure they meet health and safety standards. If the home and provider passes this inspection, they are certified by the AAA.

A requirement to live in a Dom Care home is that the participant has no relative, or other person whose relationship with the participant is important to the participant's continued well-being, that is willing or able to provide the participant with the necessary supports for independent living. The participant must be incapable of living alone regardless of available services, or require services to live alone and the services are not available.
  - Eight Independence waiver participants with acquired brain injuries reside in provider leased apartments. These waiver participants were transitioned from Personal Care

Homes, an unallowable service setting in the Independence waiver, two years ago as part of OLTL's Global Corrective Action Plan with CMS.

## **2. TRANSITION PLAN:**

**OLTL is waiting for CMS guidance to determine the next steps in the transition process. In the meantime, the following actions are being planned:**

- OLTL is currently developing a Service Coordinator monitoring tool which will be utilized by SCEs to ensure consistent monitoring of the health and welfare of waiver participants, and to ensure that services are being provided in accordance with the individual service plan.

OLTL plans to incorporate questions relating to home and community-based settings as part of this monitoring tool.

- OLTL intends to require providers to conduct a self-assessment of compliance with these provisions of the regulation. In addition, OLTL will be utilizing the QMET monitoring teams to conduct on-site assessments to identify settings that do not comply with the regulation.
- OLTL intends to conduct face-to-face monitoring visits with a sampling of participants in each waiver to assess compliance from the participants' perspective and to ensure participant participation in the process.
- OLTL intends to work with the SCE, provider and QMET to identify where the setting is not in compliance with the regulation, and steps for meeting compliance.
- To ensure OLTL has robust stakeholder input, we will follow our established stakeholder review process to inform the development of any new policies.

## **3. TIMELINE:**

A workplan will be developed to address all transition plan items after CMS guidance is issued and within 120 days after submission of OLTL's amendments to CMS. At least two drafts of the workplan will be shared with stakeholders prior to submission. To summarize these items:

- Development of policy documents, training and/or a service coordination monitoring tool to address person-centered planning weaknesses.
- Development of a Service Coordinator monitoring tool – incorporation of questions relating to home and community-based settings as part of the tool.

## OLTL Transition Plan – CMS HCBS Regulations

- Institution of a broad department-wide assessment of all home and community-based settings to identify any non-compliant outliers.
- Implementation of a provider self-assessment tool, which will both educate them about the new rule and ensure their compliance.
- Utilization of OLTL's QMET monitoring teams to conduct on-site assessments to identify outlier settings that do not comply with the regulation.
- Survey of all Adult Daily Living participants to seek their feedback on the home and community-based environment of the centers they attend.
- When provider non-compliance exists or is found and confirmed:
  - Develop policies that if followed would ensure that the setting meets the qualities for being home and community-based and does not have the qualities of an institution even if physically located in a setting presumed institutional;
  - Work with non-compliant providers as they secure other settings in which to provide their services;
  - Work with departmental, other state agencies and licensing entities to potentially make policy and regulatory changes to clearly articulate where waiver Adult Daily Living services can be provided; or
  - Transition participants to other providers of this service.
- Utilize, OLTL's established stakeholder review process to seek input on compliance activities and inform the development of any new policies to ensure OLTL has robust stakeholder input.