

April 4, 2016

Dear Provider:

In January 2014, the federal Centers for Medicare and Medicaid Services (CMS) released new requirements for Home and Community-Based Services (HCBS) waivers administered by states. The federal guidance states that federal funds cannot be used to pay for waiver services provided in institutional settings, settings adjacent to institutions, or other settings having the effect of isolating people who are receiving HCBS. This rule became effective March 17, 2014.

Each state was required to submit a statewide transition plan to comply with the new federal requirements. Ohio's proposed transition plan is available for review at:

[www.healthtransformation.ohio.gov/CurrentInitiatives/ExpandandStreamlineHCBS.aspx](http://www.healthtransformation.ohio.gov/CurrentInitiatives/ExpandandStreamlineHCBS.aspx).

Appendices 3 and 4 of the transition plan outline the State's proposed remediation strategies to ensure that nursing facility-based (NF-based) level of care (LOC) waivers are in compliance with the new CMS requirements. One strategy included in the transition plan is to create an Ohio Administrative Code (OAC) rule which codifies CMS' new HCBS settings requirements and develop an HCBS settings evaluation. To that end, the Ohio Department of Medicaid (ODM) will propose OAC Rule 5160-44-01 to govern Ohio's Medicaid-funded NF-based LOC HCBS programs. The rule has an estimated effective date of July 1, 2016. This includes the Ohio Home Care Waiver, the MyCare Ohio Waiver and the new 1915(i) Specialized Recovery Services Program administered by ODM, as well as the PASSPORT and Assisted Living waivers that are administered through the Ohio Department of Aging (ODA).

In accordance with Ohio's transition plan, the State conducted a regulatory review of NF-based LOC adult day service and assisted living providers. The review included a systematic review of applicable Ohio Revised Code statutes, OAC rules, approved HCBS waivers, service specifications and provider requirements (i.e., licensing, qualifications and waiver certification) governing these two services. As a result, each adult day service and assisted living provider setting has been assigned to one of four HCBS setting categories:

- Category A - Currently Meets HCBS Characteristics
- Category B - Currently Does Not Meet HCBS Characteristics But Can with Modifications
- Category C - Presumed to Have the Effect of Isolating and May Be Subject to Heightened Scrutiny
- Category D – Settings that Cannot Meet HCBS Characteristics

**Based on the State's regulatory review and the physical location of your service setting, it appears your agency furnishes HCBS waiver services in a Category B setting.**

In order to ensure full compliance with the new CMS requirements and implementation of new OAC Rule 5160-44-01, please complete a self-assessment by July 1, 2016, using the ODM 10172, "Home and Community-Based Services (HCBS) Settings Evaluation Tool." After completing the self-assessment, please identify areas that must be remediated and determine the action steps and projected timeframes necessary to bring the setting into full compliance. The ODM 10172 form is available at: [www.medicaid.ohio.gov/RESOURCES/Publications/MedicaidForms.aspx](http://www.medicaid.ohio.gov/RESOURCES/Publications/MedicaidForms.aspx). Detailed instructions on how to complete the ODM 10172 form are available at: <http://ohiohcbcs.pcgus.com/index.html>.

Using existing processes, the State will conduct an on-site evaluation to confirm the setting has been placed in the appropriate category of compliance, review your agency's remediation plan, and monitor your agency's progress in bringing the setting into full compliance.

The State strongly encourages your compliance with this matter. Failure to comply could render your agency ineligible to furnish HCBS services.

Thank you for your attention to this important new requirement. Please contact ODM at (614) 466-6742 if you have any questions.