

Assisted Living Facility Waiver

HCB SETTING TRANSITION PLAN

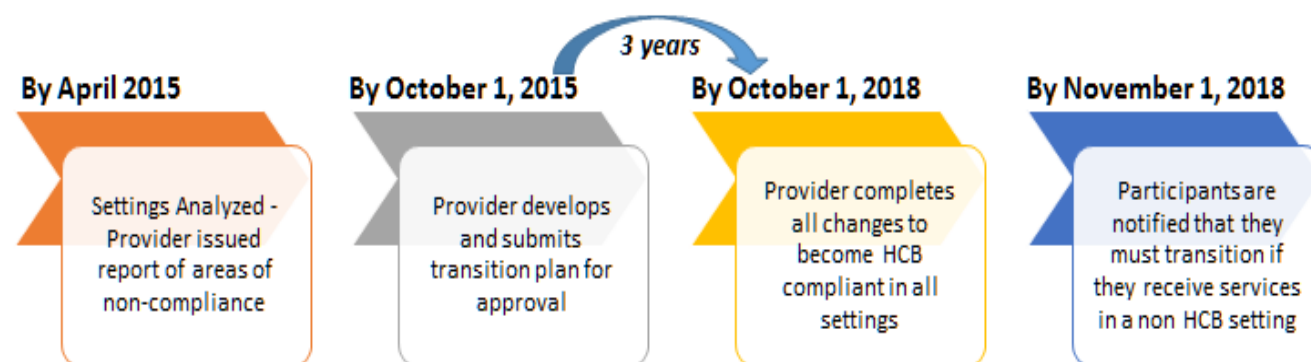
OVERVIEW

On March 17, 2014, the Centers for Medicaid and Medicare Services (CMS) promulgated new federal regulations that set new standards for Home and Community Based Service (HCBS) Settings. The new standards require the state to have all HCB Settings come into compliance within 5 years of March 17, 2014. The federal regulations are 42 CFR 441.301(c)(4)-(5). CMS posted additional guidance to help states assess compliance and remediate areas that are not fully in compliance. More information on the rules can be found on the CMS website at www.medicare.gov/hcbs. The new requirements address standards for informed choice, protecting the rights of participants, requiring settings to be integrated, not isolating to participants, and not institutional in nature or in its characteristics. To adhere to these rules, each state must submit a transition plan to assess the current settings and implement remediation with the areas of non-compliance within a 5-year timeline.

PUBLIC COMMENT

Public comment was taken from October 17, 2014 through November 17, 2014. The public was invited to submit comments through an email address (bhdmail@wyo.gov) and forums were held at six locations across the state (Laramie, Cheyenne, Jackson, Evanston, Sheridan and Casper). A presentation on the state's transition plans was conducted at this year's Mega Conference and a recording was posted using YouTube, and the link was on the Division's website for people who cannot attend in person. Two conference calls were held for people during the 30 day period, so they could call in with their comments. A newsletter with information on the Transition Plan was sent to all waiver providers, and it included the Division's website where the transition plan and waiver application was available, the Division's email address, phone number, and address to contact us, submit public comment or ask for copies. It also included the public forum schedule and the conference call number for those who could not make it in person. The transition taskforce, which has members from various roles within the waiver system, reviewed and discussed input collected to help make final changes to the Transition plan.

HIGH LEVEL TRANSITION TIMELINE



CHANGES TO THE TRANSITION PLAN DUE TO PUBLIC COMMENT

Public comments overwhelmingly recommended that the Division focus on assuring services are supporting people to be integrated in the community instead of focusing on the location where services are delivered. From the initial provider survey, settings were flagged for concern due to location issues such as industrial or commercial zoning areas or a rural area. After more analysis, the state decided these flags were an unfair assumption. They are now considered an “indicator” of possible segregation or isolation where the state needs more information to ensure the person’s in those settings have services provided in compliance with the new rules. The flags were removed because providers and family made the case that the zoning characteristic was not an accurate indicator of segregation or isolation and not all industrial zones are created equal in a city. Some locations in these zones are close to other businesses that are safely and regularly visited. Some zones are further from businesses that can be frequented. Providers and family members in these locations mentioned that they still get to access the community and get out more often than other family members living at the family home, so if a provider can provide regular access to the community, the provider setting should not be eliminated from HCB by location alone. Additionally, towns and cities can change the zoning of different areas quickly and easily, but that zones are not always updated to ensure that they reflect the characteristics of an area. This renders the method of enforcing the new rules ineffective, because a provider would only need to their building’s zoning changed. The Department of Health’s leadership team agreed to make these changes and said that we would not disqualify a setting based on this characteristic alone. In our additional analysis in 2015, providers of settings that may appear to isolate or segregate, or are located on or adjacent to an institution, must give evidence on how people access the community, how often, and what they do so we can help them improve in this area or make modifications to their business model to meet the integration standards. Moreover, many people like to live in Wyoming due to its rural nature. Therefore, for residences that are not near other residences or near a community with businesses, the setting cannot be ruled as non-HCB by location alone. The provider must still provide evidence to the state on how they help the person access the community, provide transportation, and integrate the person (as well as the other standards in the new rule.)

Rather than requiring specific milestones each year, providers will be issued a report of areas of non-compliance and will complete a transition plan with milestones and timelines each year. They will have the rest of the five years to come into compliance with the standards but must make progress each year. State monitoring processes will oversee the provider’s compliance to their own transition plans.

PRELIMINARY RESULTS

18 settings were evaluated for the Assisted Living Facility (ALF) population. None are currently in compliance but with modifications they should be in compliance at the end of five year transition timeline. Further analysis of the settings through stakeholder surveys, onsite visits, case management reports, and participant and guardian interviews will be conducted during 2015 and 2016 to ensure that any setting with areas of non-compliance will be addressed by providers. No settings have been determined to be non-HCB at this time and subject to heightened scrutiny by CMS.

TRANSITION TIMELINE AND MILESTONES

The following action plan shows how the state Medicaid agency will ascertain that all ALF waiver settings meet federal requirements now and within the timeline allowed under the new HCB Setting regulations.

Year 1 - Milestones for March 17, 2014 and March 16, 2015

- 1. Milestone: By June 2014 and ongoing until 2016, a Transition Stakeholder team has been established and meets monthly. This stakeholder team that represents a cross section of the waiver providers, participants, and agency staff will meet to discuss and set standards and complete self-assessments for Wyoming and help with ongoing issues.**

Action items:

- Request members & charter team expectations
- Meet regularly, monthly if possible
- Have members from multiple levels within the waiver systems, advocacy groups, participants, guardians, providers and have various parts of the state represented.

- 2. Milestone: Starting in November 2014, the state will inventory provider settings and conduct an assessment of compliance with HCB standards in federal rules. Settings must be evaluated to see if they meet the standards and are required to fix the areas of non-compliance in order to remain HCB providers according to the state's approved transition plan. Settings will be considered one of the following:**

- a) In Compliance (fully align with the Federal requirements)
- b) Does not comply with the Federal requirements and will require modifications
- c) Cannot meet the Federal requirements and require removal from the program and/or the relocation of individuals
- d) Presumptively non-home and community-based but for which the state will provide justification / evidence to show that those settings do not have the characteristics of an institution and do have the qualities of HCBS (to be evaluated by CMS through heightened scrutiny process)

Action Items:

- Develop provider survey to assess settings (first one done in July 2014, second one being done in January 2015 until March 2015)
- Providers complete it by February 28, 2015
- State and team review and analyze survey responses by March 30, 2015
- Determine compliance for each setting and the remediation and improvements that are needed and issue final report to providers by April 30, 2015
- Summarize results for CMS

- 3. Milestone: Starting in October 2014 and through 2018, the state will conduct additional analysis of provider settings with participant, guardian, case manager, and state staff**

respondents for validity testing of the provider settings and compliance with federal requirements.

Action items:

- State staff analysis of provider surveys by March 31, 2015
- State staff review stakeholder survey information from October 2014 through May 2015
- Develop and disseminate surveys to participants, guardians, case managers, and other stakeholders – Starting in October 2014 and through March 31, 2015 initially, then ongoing through Jan 2019. Review annually in August.
- Collect and analyze responses from stakeholders by March 31, 2015 then ongoing as more surveys are submitted to the Division. Review annually in August.
- Use the Representative Sample Case Review to look at data on participant’s satisfaction with service settings, integration, and informed choice – update process starting in July 2015. Review annually in August.
- Use Case Management Quarterly Report data in EMWS to evaluate integration, progress on objectives, satisfaction with services, and employment data - updated process starting in July 2015. Review annually in August.
- Settings that are found to meet any of the following criteria will be subject to the heightened scrutiny process by CMS if requested by the provider and approved by the Department by October 2015 or anytime thereafter before December 2018:
 - a) The setting is 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.
 - b) People in the setting have limited, if any, interaction with the broader community.
 - c) Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

4. Milestone: In October 2014, the state conducted Public Forums to review transition plan and gather public input, as required by CMS.

Action items:

- Scheduled forums for October 2014
- Put transition information together
- Presented at forums and receive input on plan

5. Milestone: In November 2014, developed the ALF waiver transition plan to submit to CMS and will evaluate every six months.

Action items:

- Transition plan finalized -October 2014
- Summarize public comment and make changes to draft plans as appropriate –Nov 2014
- Discuss comments with Task Force October 2014
- Providers with areas of non-compliance identified in initial survey results-Nov 2014
- Due dates for remediation identified – March 2015

- 6. Milestone: By September 2014 and ongoing quarterly through the next five years, the state will develop and deploy a communication strategy to inform and educate participants, guardians, providers, legislators on the new standards and requirements.**

Action items:

- Summarize decisions from Transition Task force
- Communicate information to public in multi-media approaches
- Reach all audiences with consistent message and needed changes to state rules and policies
- States must ensure the full Transition Plan is available to the public for public comment, including individuals receiving services, individuals who could be served, and the full stakeholder community.

- 7. Milestone: By February 2015 and ongoing through 2019, the state will develop a plan for monitoring and enforcing ongoing compliance with the new standards and provider requirements. States must ensure that providers meet the milestones in the ALF transition plan and continue to meet the standards on an ongoing basis.**

Action items:

- By July 2015, the state will adjust provider monitoring and on-site visits to ensure compliance with transition plan deadlines to reach compliance with HCB setting standards.
- By July 2015, the state will develop a provider self-assessment to help providers diagnose issues that should be improved or fixed in their organization.
- By October 2015, the state will issue additional information to case managers to help monitor service delivery according to the new standards and report individual progress or issues to the Division.
- By July 2015, the state will use monitoring processes to address areas of non-compliance with standards through certification processes and incident/complaint monitoring processes
- By July 2015, the state will modify and use the Representative Sample Case Review to look at data on participant’s satisfaction with service settings, integration, and informed choice
- By July 2015, the state will use the Case Management Quarterly Report data to evaluate integration, progress on objectives, satisfaction with services, and employment data

Year 2 - Milestones for March 17, 2015 to March 16, 2016

- 8. Milestone: By October 2015, the state will update state rules and laws where required to meet new standards. The state needs to ensure the rules and laws do not conflict with the federal regulations.**

Action items:

- The state seeks stakeholder input to adjust rules to meet new standards.
- Rule changes are made according to state procedures.
- State works with legislators to adjust statutes as needed.

9. Milestone: By October 31, 2015 (or anytime thereafter), any provider HCB settings that are fully assessed by the state and found to meet one of the following qualities will be presumed institutional in nature:

- a) The setting is 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.
- b) People in the setting have limited, if any, interaction with the broader community.
- c) Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

If notified of this status, the provider may ask the state to request approval from CMS to be considered HCB because of the other HCB qualities and individual experiences that meet the federal standards. Through the ongoing analysis of settings, if any setting is found to be Non-HCB based on the new rules, but the state determines that evidence proves it should be considered HCB, the state must provide the evidence to CMS and the setting is subject to approval through the heightened scrutiny process. Requests to CMS, if determined appropriate by the state, will be submitted during November 2015 and go through the heightened scrutiny process.

Action items:

- By March 31, 2015 the preliminary HCB Setting analysis will be completed to determine which settings are out of compliance and are “flagged” for corrective action
- By April 30, 2015 the state will issue providers a report of findings and require the provider to develop a detailed corrective action plan with a transition plan by October 2015.
- By October 31, 2015 (or any time after this deadline if compliance issues are found), if a setting meets one of the listed criteria in this milestone, the setting may be subjected to the heightened scrutiny process by CMS.
- For settings found to be institutional in nature, the provider may request the state submit an exception to CMS and will provide evidence of how each setting:
 - a) Supports full access to the greater community to the same degree as individuals not receiving Medicaid HCBS.
 - b) Is selected by the individual from options including non-disability specific settings.
 - c) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
 - d) Optimizes individual independence in making life choices including daily activities, physical environment, and with whom to interact.
 - e) Facilitates individual choice regarding services and supports, and who provides them.
- The state will submit a detailed request with evidence by October 31, 2015 for settings that are deemed not HCB, which the state elects to be subject to the heightened scrutiny process by CMS. If any apply, the request will be submitted by November 30, 2015 or at any time a different decision is made by the state for a setting.

10. Milestone: By April 30, 2015, each provider with an HCB setting that has areas of noncompliance with the new standards found by state staff will be issued a Corrective Action Plan for any of the following standards where their residential setting is not in compliance.

- **A lease or written residency agreement with each participant**
- **Each individual has privacy in their sleeping or living unit**
- **Units have lockable entrance doors, with the individual and appropriate staff having keys to doors as needed**
- **Individuals sharing units have a choice of roommates**
- **Individuals have freedom to furnish and decorate within the lease/agreement**
- **Individuals have freedom and support to control their schedules and activities and have access to food any time**
- **Individuals may have visitors at any time**
- **The setting is physically accessible to the individual**

Action items:

- By March 31, 2015, a full setting analysis completed to determine which settings are out of compliance and are “flagged” for corrective action
- By April 30, 2015, Providers will be issued a report of findings and areas that need corrections
- By October 31, 2015, each provider’s transition plan must be submitted to the Division for approval and must include milestones and timeframes that outline how and when they will correct each requirement by December 1, 2018.
- Providers will be able to uniquely adjust or restructure their business to meet the standards. Providers have until October 1, 2018 to come into compliance in all areas.
- Ongoing from October 2015 to October 2018, the state will meet with each provider that has a setting found to be in jeopardy of noncompliance and requiring disenrollment in 2019 to discuss all options, areas to improve, and meet with participants, guardians and stakeholders as necessary.

11. Milestone: By October 2015, any provider found out of compliance with an HCB standard in any setting must develop and implement a transition plan to make changes in order to meet the standards. The provider must ensure the policies and practices of their organization are changed where appropriate and that board members, staff, participants and guardians are aware of the systemic changes. Providers will be able to uniquely adjust or restructure their business to meet the standards within the four years left in the transition plan, but must report annual progress on milestones.

Action Items:

- By April 30, 2015, providers will be issued a report of where they are not in compliance with specific settings.
- By October 31, 2015, providers must develop and submit a detailed action plan with milestones and timelines each year that outline the changes or actions that will be taken in order to come into full compliance with all HCB standards December 1, 2018. The transition plan will require providers develop or update operating policies and procedures to address how they will demonstrate that each setting:
 - a) 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 as individuals not receiving Medicaid HCBS.

- b) Is selected by the individual from options including non-disability specific settings.
- c) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- d) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including daily activities, physical environment, and with whom to interact.
- e) Facilitates individual choice regarding services and who provides them.
- By October 1, 2015, the state will develop provider self-assessment to assist the provider in adjusting business practices to meet the standards.
- From July 2015 and ongoing, the state will work with providers to make adjustments to the action plan, if needed.
- By December 1, 2015 the state must approve each provider transition plan.

12. Milestone: By March 1, 2016, participants who need a modification to a right specified in the new standards must have the modification or restriction identified and documented in a signed plan of care approved by the state according the requirements listed in § 441.301(c)(4)(vi)(A) through (D). Participants must have their rights protected. Any modification to their rights must be fully documented and explored by the team according to the new HCB standards.

Action items:

- By July 1, 2015, the state will revise the electronic plan of care to include the new standards for restricting a person's right.
- By January 31, 2016, the Case manager will work the participant's plan of care team to inform the participant and guardian of their rights in the new regulations.
- By February 1, 2016, the team must address the following items for any modification or restriction to a person's right in the plan of care:
 - a) Identify a specific and individualized assessed need.
 - b) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
 - c) Document less intrusive methods of meeting the need that have been tried but did not work.
 - d) Include a clear description of the condition that is directly proportionate to the specific assessed need.
 - e) Include regular collection and review of data to measure the ongoing effectiveness of the modification.
 - f) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
 - g) Include the informed consent of the individual.
 - h) Include an assurance that interventions and supports will cause no harm to the individual.
- By February 1, 2016, the modifications to the plans of care will be submitted to the Division for review and approval by March 1, 2016.

13. Milestones: By March 1, 2016, the participant's team documents in the plan of care, which is signed by the participant or guardian, how the HCB setting(s) chosen in the plan:

- a) **Is integrated in and supports full access to the greater community to the same degree as individuals not receiving Medicaid HCBS.**
- b) **Is selected by the individual from options including non-disability specific settings.**
- c) **Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.**
- d) **Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including daily activities, physical environment, and with whom to interact.**
- e) **Facilitates individual choice regarding services and supports, and who provides them.**

The plan of care is developed using person-centered practices to ensure the providers know how to support the person in an individualized fashion. The plan approval process ensures the participant and guardian signs and approves the how services will be delivered.

Action items:

- By January 31, 2016, each Participant has choice and information provided according to the new standards.
- By July 1, 2015, the state will revise the electronic plan of care to include the new standards and offer guidance on how to complete the sections using person-centered practices.
- By February 1, 2016, the case manager shall submit the revised plan of care to the Division for review and approval by March 1, 2016.

14. Milestone: By December 31, 2015, the approved ALF waiver five year transition plan will be implemented and evaluated.

Action items:

- The five year transition plan for this waiver will be further implemented and evaluated for its progress. Feedback will be acquired through surveys and stakeholder meetings.
- Any substantial changes to a Transition Plan will incorporate the public notice and input process into that submission.

15. Milestone: By March 1, 2016, the state will develop and monitor a plan to address provider capacity and setting capacity if issues with capacity arise. The state must ensure that the participants served on the waivers and the number of providers and settings available are equitable.

Action items:

- By March, 1, 2016, the state will provide training and support to providers to assist with provider stability and capacity.
- By March 1, 2016, areas of the state with provider shortages will be reviewed and addressed.
- By March 1, 2018, the state will address shortage issues that may result due to the changes required in the provider setting standards.

16. Milestone: By March 1, 2016, the state will implement changes to provider monitoring practices to oversee the provider compliance to their own transition plans and

milestones. CMS requires the state to ensure the provider is meeting state standards and must address areas of noncompliance through technical assistance, corrective action plans or other sanctioning actions.

Action items:

- By March 1, 2016, Provider surveying and monitoring practices by the state will be adjusted to check for compliance with the standards and the provider's action plan for transitioning.
- By March 1, 2016, the state's process for issuing corrective action will be used in areas of non-compliance found with the provider's own transition plan.

17.Milestone: Throughout 2015-16, the state will deploy a communication strategy to inform participants, guardians, providers, legislators.

Action items:

- The state will continue use multiple communication channels to get the information out about the transition plans, new standards, and any areas of concern that need attention.
- Legislators will be contacted with information on the status of the transition plan and setting progress.

Year 3 - Milestones for March 17, 2016 to March 16, 2017

18.Milestone: By March 1, 2017, Providers will continue to implement transition plan and report progress to the state during recertification processes. Any business changes and policy changes should be evaluate regularly and adjusted as appropriate.

Action Items:

- By March 1, 2017, Providers will meet milestones in their transition plans and inform staff, participants and guardians regarding the changes in their programs.
- By March 1, 2017, Policies and practices will be evaluated and adjusted depending on feedback and issues that arise.
- By March 1, 2017, adjustments to provider action plans for the transition must be review by the state to ensure the changes still meet the standards.

19.Milestone: By October 31, 2016 and after the state has completed another year of site visits, monitoring and provider recertifications, if the state determines any provider settings are non-HCB, the provider will be notified that it must come into full compliance with the HCB standards by October 1, 2018. If requested by the provider, the state will determine by October 31, 2016 if the setting should be submitted to CMS for heightened scrutiny. If the state determines any provider settings are non-HCB, the provider will be notified that it must change or repurpose the setting that does not comply with the HCB standards.

Action Items:

- After the state has completed site visits, monitoring and provider recertifications during 2015 and 2016, if the state determines any provider settings are non-HCB, the provider will be notified that it must come into full compliance with the HCB standards by October 1, 2018.
- If requested by the provider, the state will determine by October 31, 2016 if the setting should be submitted to CMS for heightened scrutiny in November 2016.

Year 4 - Milestones for March 17, 2017 to March 16, 2018

20.Milestone: By December 1, 2017, the state will require a Corrective Action Plan (CAP) to be submitted within 30 days from providers if they have a setting found not in compliance. In the CAP, the provider must make final action plans regarding the changes to settings they will make to meet HCB standards or list how they will notify participants, guardians and case managers to help participants transition to new service settings by March 1, 2019.

Action Item:

- By January 1, 2018, if a providers has a service setting that does not meet the new standards, the provider will be required by the state to submit a corrective action plan within 30 days that details how they will move or repurpose a setting, or transition participants out of the setting, so that participants are not served in the setting by March 1, 2019.

21.Milestone: By March 2018, providers continue to implement transition plan and report progress to the state during recertification processes.

Action items:

- Providers meet milestones in their transition plans and inform staff, participants and guardians regarding the changes in their programs.
- Policies and practices are evaluated and adjusted depending on feedback and issues that arise.
- Adjustments to provider action plans for the transition must be review by the state to ensure the changes still meet the standards.
- Business changes and policy changes must be evaluate regularly and adjusted as appropriate.

Year 5 - Milestones for March 17, 2018 to March 16, 2019

22.Milestone: By October 1, 2018, Providers make final adjustments to meet and maintain compliance with all HCB setting standards.

Action Items:

- All provider settings must be in compliance by October 1 of year 5.
- State staff will evaluate all progress made by providers on their transition plans and address areas of non-compliance or unmet milestones and issue corrective action plans and or sanctions at the end of year five.

23.Milestone: By November 1, 2018, the waiver transition plan will receive a final evaluation by Division administrators.

Action items:

- The ALF waiver transition plan is further implemented and evaluated for its progress.
- Feedback will be acquired through surveys and stakeholder meetings.
- Any substantial changes to a Transition Plan must incorporate the public notice and input process into that submission

- 24. Milestone: By November 1, 2018, the state will notify providers of any setting that will be disenrolled from waiver funding due to noncompliance.**
- 25. Milestone: By November 1, 2018, the state will issue notification to the participants and their case managers who receive services in noncompliant settings that the funding for services in those settings is discontinuing effective March 17, 2019 so the participants can be offered a choice in other providers and begin the transition process.**
- 26. Milestone: By March 1, 2019, waiver participants must have completed the transition to new settings, if needed. By November 1, 2018, any participants (and their case managers) served in a setting that does not meet HCB standards will receive notice to choose another setting and possibly a new provider. If participant chooses to remain in a non-compliant setting waiver funding cannot be used.**

Action items:

- Ongoing from October 2015 to October 2018, the state will meet with each provider that has a setting found to be in jeopardy of noncompliance and requiring disenrollment in 2019 to discuss all options, areas to improve, and meet with participants, guardians and stakeholders as necessary.
- Participants must begin choosing providers or new settings, having transition plans or transitioning off of the waiver if wanting to stay in a non-compliant setting. All services to participants must be in compliant settings by March 1, 2019 to ensure the state is in full compliance with CMS rules by March 16, 2019.