Office of Developmental Programs Updates

ISAC June 30, 2026



Overview

Pennsylvania
Department of Human Services

- Federal Updates
- Program Integrity
- ODP Limitations on Overtime, Paid Relative Caregiving and Travel
- Performance-Based Contracting Update

Federal Updates

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Department of Human Services

- CMS Interim Final Rule - CER
  - Federal Register :: Medicaid Program; Community Engagement Requirement for Certain Individuals
  - Published June 3
  - Expansion population for ODP waiver participants (n=21)
  - Caregiver engagement

- DOJ (Slip Opinion)
  - Application of the Rehabilitation Act and Americans with Disabilities Act to State Institutionalization of Patients with Severe Mental Illness or Disabilities
  - Published June 18
  - The opinion negates long standing legal precedent that the ADA, Section 504 Rehab Act, and the Olmstead decision require services to be provided in the most integrated setting appropriate to the needs of a qualified person with a disability.
  - This is not a court decision.

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Program Integrity

Program Integrity in Medicaid HCBS

Federal oversight of HCBS is escalating

Over the past several months, a coordinated federal response across CMS, Congress, HHS-OIG, and the Department of Justice has emerged around Fraud, Waste and Abuse (FWA). HCBS and personal care programs are named repeatedly as the highest-risk category.

14 states

RECEIVED LETTERS OF INQUIRY

CMS letters to 4 states and House Energy & Commerce letters to 10 states requested program integrity documentation.

HCBS first

HIGHEST-RISK CATEGORY

Spending growth in personal care and waiver services drew the high levels of scrutiny.

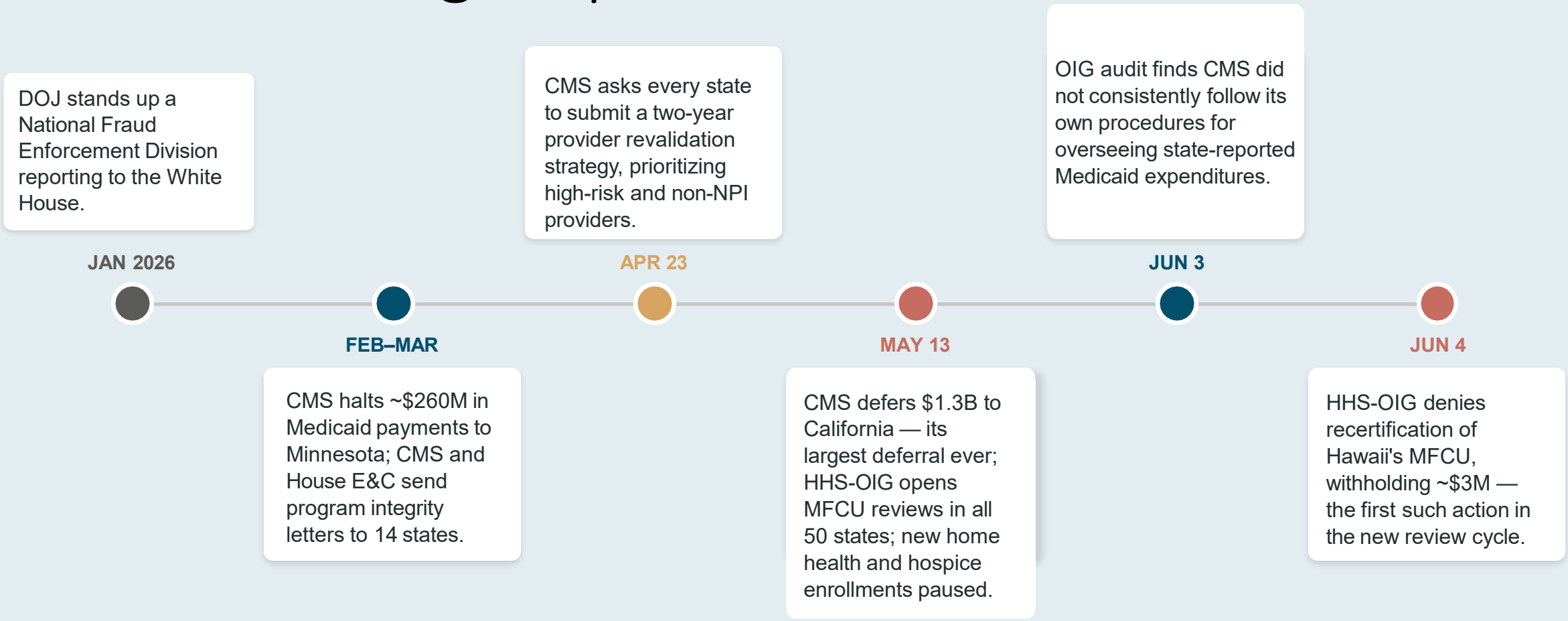
Multi-branch

COORDINATED POSTURE

A DOJ National Fraud Enforcement Division, a White House task force, and HHS-OIG reviews now operate in parallel.

THE LANDSCAPE

A fast-moving sequence of federal actions



Sources: White House anti-fraud task force release (May 2026); CMS provider revalidation SMD letter (Apr 2026); AP News on the California deferral (May 2026); HHS-OIG report A-06-23-09006; HHS-OIG Hawaii MFCU letter.

THE LETTERS

What the state inquiries focus on

Common themes cited across CMS and Congressional letters to 14 states.

HCBS & personal care

Self-attestation, fictitious caregivers, and billing for people deceased, hospitalized, or out of state.

NEMT

"Ghost rides," mileage and toll inflation, and rapid spending growth.

ABA services

Fast-growing autism services flagged as high-risk for undetected fraud, waste, and abuse.

Behavioral health & SUD

Upcoding, services not rendered, unlicensed clinicians, fabricated records.

Eligibility & enrollment

Broad eligibility, weak fiscal intermediary oversight, infrequent provider site visits.

EVV Gaps & spending growth

Electronic visit verification gaps; spending outpacing enrollment.

WHAT IT MEANS

Implications for I/DD, Aging, and Physical Disability systems

NASDDDS
National Association of State Directors of Developmental Disabilities Services

1 Waivers are squarely in scope

Personal care, supported living, and home health waivers match the highest-risk profiles named in every letter.

2 Self-direction draws focus

Fiscal intermediary oversight in self-directed programs is a specific Congressional area of inquiry.

3 ABA is named explicitly

States not actively monitoring ABA are warned they are likely missing fraud, waste, and abuse.

4 Screening rigor matters

Site-visit frequency by risk tier, revalidation timelines, and exemptions will be examined.

5 Growth must be explainable

Per-capita cost growth outpacing enrollment is a flag; be ready to explain the drivers.

6 EVV is implicit throughout

Demonstrating EVV implementation and data use is central wherever ghost-billing is raised.

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ODP Limitations on Overtime, Paid Relative Caregiving and Travel

ODP Limitations on Overtime, Paid Relative Caregiving and Travel

ODP has long standing policy allowing certain services to be rendered by relative caregivers within **reasonable limitations**.

- Limitations included restricting overtime to emergency circumstances
- Paid relative caregiving can be provided by any combination of legally responsible persons (LRPs), relatives, and legal guardians for In-Home and Community Services (IHCS) and Companion services up to 60 hours per week.
- For individuals seeking more than 60 hours of paid care rendered by a relative, the Life Sharing service model (24/7) is an available service.
- ODP policy also allowed service provision during out-of-state travel for a maximum of 90 days.

ODP's policy balances flexibilities for travel and allows family caregivers to be paid through the state's Medicaid program with reasonable limitations.

Necessity of Reasonable Limitations

DHS identified these limitations as necessary due to:

- health and safety issues
- potential for conflicts of interest
- individual choice
- caregiver burnout
- potential for isolation
- assurances that individuals have opportunities for relationships with non-relatives
- fiscal and program integrity considerations

PA Commonwealth Court Decision

- On February 17, 2026, in *Dunkelberger v Department of Human Services* (PA DHS), the Court determined that limitations on provider model services were not promulgated as regulations by PA DHS in accordance with the procedures required in the Commonwealth Documents Law, the Regulatory Review Act, and the Commonwealth Attorneys Act

- Limitations were included in the CMS approved ODP Waivers and Individual Support Plan Manual

- Court decision considered limitations (40-60 and 90 day maximum travel) as null and void.

PA Commonwealth Court Decision (cont.2)

- The Dunkelberger decision was about *process*, not the validity of the *policy*.

- The Court did not say that ODP's policy establishing reasonable limitations was improper policy; rather the decision was that the procedures that ODP relied on for that policy were improper.

- ODP's policies balance important flexibilities for travel, relative caregivers and health, safety, and program integrity concerns.

Next Steps

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To ensure this balanced approach continues:

1. ODP will amend regulations to provide the authority to establish appropriate limits related to services and service delivery that support the health, safety, and welfare of individuals and program integrity.

2. ODP modified the agreements signed by individuals using self-directed models to clarify the limitations on the use of overtime; the limits on combined relative service provision; and restrict service provision during travel to Pennsylvania and contiguous states.

3. For individuals seeking more than 60 hours of paid care rendered by a relative, the Life Sharing service model remains available.

Next Steps (cont.)

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4. ODP will seek Consolidated, Person/Family Directed Support (P/FDS), Community Living, and Adult Autism Waiver (AAW) waiver changes to include additional qualifications for providers to strengthen program integrity measures.
    - Agencies providing IHCS and Companion services will have new requirements related to having a process for disclosing a direct support professional's relationship to participants and ensuring proper programmatic oversight.
    - Given the inability to effectively and timely monitor out-of-state services for extended periods of time, service provision will be limited to Pennsylvania and contiguous states.

Public comment period for these proposed changes in ODP home and community-based waivers is anticipated in January 2027.

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Resources

- ODPANN 26-051 Requirements for Updated Common Law Employer and Managing Employer Agreements in ODP Participant-Directed Services

- ODPANN 26-067 – 2025 Operational Guidance as a Result of the Dunkelberger v. Department of Human Services (DHS) Court Decision
  - FAQ for Individuals and Families

- Webinar Session for Individuals and Families: ODP Limitations on Overtime, Paid Relative Caregiving, and Travel – July 2nd Registration Link

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Performance-Based Contracting Update

Positive Impacts of Performance-Based Contracting (PBC) Residential (CY2025)

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More agencies are providing **Life Sharing (LS)** and **Supported Living (SL),** and more individuals are receiving those services (CoS.01)



- **5** more agencies are providing SL year to year, with **27** additional individuals receiving the service
- **5** more agencies are providing LS year to year, with **83** additional individuals receiving the service
- In total, **121** agencies provided SL or LS in 2025 to **1,649** individuals

Positive Impacts of PBC (CY2025) (cont.2)

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Providers demonstrated clear improvement in incident tracking and risk management

- **RM-IM.01.1:** 0.24% fewer incidents not reported across tiers on average
- **RM-IM.01.2:** 4.10% fewer incidents not reported timely across tiers on average
- **RM-IM.01.3:** 12.8% more incidents finalized timely across tiers on average







Positive Impacts of PBC (CY2025) (cont.3)

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Providers Submitting for Advanced Tiers greatly increased their percentages of credentialed staff (DSPs and FLSs)

- **WF.01.4:** On average, providers demonstrated a validated 8.62 percentage point increase in DSPs credentialed through NADSP or NADD from their 2024 baseline (6.93% percentage point median)
- **WF.02.4:** On average, providers demonstrated a validated 55.65 percentage point increase in FLSs credentialed through NADSP from their 2024 baseline (33.33% percentage point median)

Statewide NADSP Certification Data
(data as of June 5, 2026)

Total DSP-I Certifications awarded	4,974
Total DSP-II Certifications awarded	1,610
Total DSP-III Certifications awarded	1,187
Total FLS Certifications awarded	1,853
Total Certifications awarded	**9,624**

Final Tier Determinations by Provider for Contract FY26-27

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Tier Determination	Count
Primary	349
Unassigned	39
Select	31
Clinically Enhanced - Dual Diagnosis	11
Clinically Enhanced - Medical and Dual Diagnosis	3
Grand Total	**433**

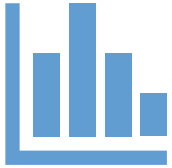
Final Tier Determinations for Contract FY26-27

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Tier Determination	Sum of Individuals Served
Primary	9,053
Select	3,969
Clinically Enhanced - Dual Diagnosis	951
Unassigned	668
Clinically Enhanced - Medical and Dual Diagnosis	137
Grand Total	**14,778**
Total Individuals in Clinically Enhanced	**1,088**
Total Individuals in Advanced Tiers	**5,057**
% Individuals Served by Advanced Tiers	**34.2%**
% Individuals Served by Unassigned	**4.5%**

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PBC: Next Up



Data analysis: trending, benchmarking from SCO and Residential provider submissions



SCO New Rate Structure Implementation



Publish FY27-28 Performance Measures