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Medicaid Waivers State Risk

As a reminder, the Risk Factors section in the Underwriting Lender Narratives directs Lenders to address project risks associated with reliance on the use of Medicaid Waivers. The [Centers for Medicare and Medicaid Services (CMS) Home and Community Based Services (HCBS) Rule](https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-services-final-regulation/index.html) requires States to ensure that settings (e.g. places or locations) receiving Medicaid Waivers achieve compliance with this rule by March 17, 2023. As a part of this rule, certain settings, as identified by States as potentially noncompliant, undergo an additional Heightened Scrutiny review by CMS (see [here](https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-settings-requirements-compliance-toolkit/index.html)).

As the HCBS rule deadline approaches, most States have begun posting publicly available lists of sites needing Heightened Scrutiny. ORCF expects that, as part of the lender’s review required in the Lender Narrative, the lender will fully vet projects identified as being under Heightened Scrutiny review and that rely on Medicaid Waiver Income.  If a project is identified as being under Heightened Scrutiny review, the Lender should clearly demonstrate that the project can either withstand the loss of Medicaid Waiver income, has already received CMS post-review approval, or will conclusively receive full Medicaid Waiver approval before submitting an application.

Please see the [State Risk Summary Grid](https://www.hud.gov/sites/dfiles/Housing/documents/UpdtStRiskGrd.pdf) for additional information.

***Keywords:*** *State Risk, Lender Narrative, Income Sources*

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A Quick User Guide For LEAN Thinking

ORCF strives to address program-related questions or concerns as promptly, clearly and consistently as possible. A key means of doing this is the Lean Thinking email box ([LeanThinking@hud.gov](mailto:LeanThinking@hud.gov)), through which ORCF receives and reviews messages daily. These messages are most often questions about policies or operations, but can also be comments and suggestions from program participants, all of which are welcome.

Many questions are well suited for submission to ORCF via the Lean Thinking email box. These include:

* Program questions resulting from your review of existing guidance.
* Pre-submission Production environmental matters (per Handbook 4232.1, Production, Chapter 1 & 7, 10/27/21 Email Blast).
* Other pre-submission mortgage insurance application questions.

Some questions, though, are less suitable for Lean Thinking. These include:

* Questions relating to a mortgage insurance application already under review
* Asset Management/Servicing questions related to a facility with a currently insured loan. (The lender can often answer owner/operator questions and can contact the ORCF Account Executive if needed.)

When submitting questions to the Lean Thinking email box, ORCF suggests:

* Being as specific as possible.
* Pointing to any difficulty interpreting/applying program guidance that you have reviewed.
* Promptly following up via the Lean Thinking email box, rather than ORCF individual staff, if the initial response received from the Lean Thinking email box:
  + reflects a misunderstanding of your question, or
  + indicates that additional information is needed for a more specific response.

Please remember that:

* If a Lean Thinking response relates to a forthcoming insurance application, Lenders should submit a complete record of the inquiry/response within the Communication folder of their applications. This helps avoid duplicative efforts.
* Although ORCF strives to provide Lean Thinking responses as specifically as possible, definitive resolution often cannot occur until ORCF considers the lender’s factual presentation and analysis during application review. Thus, a Lean Thinking response contains a limitation clause.

***Keywords:*** *LEAN Thinking*

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Emergency Preparedness Requirements for Skilled Nursing Facilities

Lenders and Third-Party Need Assessors are reminded that installing and maintaining generators is a requirement for all Skilled Nursing Facilities.  On September 16, 2016, The Centers for Medicare & Medicaid Services (CMS) established a national preparedness Final Rule codified at [24 CFR 483.73](https://www.govinfo.gov/content/pkg/CFR-2020-title42-vol5/pdf/CFR-2020-title42-vol5-sec483-73.pdf) - Emergency Preparedness.Additionally, effective March 26, 2021, CMS updated guidance and combined excerpts from the regulation (24 CFR 483.73) with Interpretive Guidelines ([here)](https://files.asprtracie.hhs.gov/documents/aspr-tracie-cms-ep-rule-long-term-care.pdf) for Long Term Care (LTC) facilities.

The interpretive guidance and regulation require:

24 CFR 483.73

(e) Emergency and standby power systems. The LTC facility must implement emergency and standby power systems based on the emergency plan set forth in paragraph (a) of this section.

1) Emergency generator location. The generator must be located in accordance with the location requirements found in the Health Care Facilities Code (NFPA 99 and Tentative Interim Amendments TIA 12-2, TIA 12-3, TIA 12-4, TIA 12-5, and TIA 12-6), Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12-1, TIA 12-2, TIA 12-3, and TIA 12-4), and NFPA 110, when a new structure is built or when an existing structure or building is renovated.

2) Emergency generator inspection and testing. The LTC facility must implement the emergency power system inspection, testing, and maintenance requirements found in the Health Care Facilities Code, NFPA 110, and Life Safety Code.

3) Emergency generator fuel. LTC facilities that maintain an onsite fuel source to power emergency generators must have a plan for how it will keep emergency power systems operational during the emergency, unless it evacuates.

As required by the regulation at 24 CFR 483.73 and the interpretive guidance, all emergency standby power systems are to be sized to power the necessary emergency systems as described in 24 CFR 483.73 and interpretive guidance.  Accordingly, the Needs Assessor must confirm that the project complies with all Federal, State, and local regulations/codes, including the applicable 2012 Life Safety Codes, the 2012 Health Care Facilities Codes, and all essential Tentative Interim Amendments (TIA) regarding emergency and standby power systems.  Please also reference ORCFs Project Capital Needs Assessment (PCNA) Statement of Work IV.B.4 ([here).](https://www.hud.gov/sites/dfiles/Housing/documents/PCNA_SOW.docx?web=1)

***Keywords:*** *Generator, Disaster Recovery*

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September 2022 ORCF Webinar Presentation on Recent 232 Asset Management Issues and How Operators Can Address Them

On September 28, 2022, ORCF participated in a webinar hosted by the American Health Care Association/National Center for Assisted Living (AHCA/NCAL) on Asset Management matters. The webinar provided a brief overview of the Section 232 program and addressed key asset management issues. The webinar is now available online ([here](https://educate.ahcancal.org/products/recent-232-asset-management-issues-and-how-operators-can-address-them#tab-product_tab_handouts)). Membership to AHCA/NCAL is not required to access this webinar. Please use your AHCA login used when registering for the webinar (*If you have forgotten your password click*[*here*](https://members.ahcancal.org/Dashboard/Sign-In-Help)*).*

If you did not register for the live webinar, you will need to create an account to access the recorded webinar.

**How to Create Account:**

* To avoid technical problems, use Google Chrome.
* If you are new to the AHCA site, you can create an account [here](https://members.ahcancal.org/Dashboard/Create-New-User-Account). After creating an account, you will be able to access the webinar.

For further assistance, please email [educate@ahca.org](mailto:educate@ahca.org).

***Keywords:*** *Asset Management, Webinar*

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Legal Instructions For Claims Completed PRA Renewal Process

The Legal Instructions Concerning Applications for Full Insurance Benefits-Assignment of Multifamily and Healthcare Mortgages to the Secretary (form HUD 2510) (the “Legal Instructions”) has completed the renewal process in accordance with the Paperwork Reduction Act of 1995.  The Legal Instructions have been revised with clarifying changes and updates to reflect current HUD requirements and policies, including electronic submission for legal review, as well as current practices in real estate, title insurance, hazard insurance and mortgage financing transactions.

The Legal Instructions and associated exhibits are now available [here](https://www.hud.gov/program_offices/general_counsel/legal_instructions_full_insurance_benefits) and on [HUDCLIPS](https://www.hud.gov/program_offices/administration/hudclips/forms/hud2#group2). Please share this information with your counsel.

***Keywords:*** *Legal Instructions, Claims*

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| Past Lean 232 Updates are [available online](https://lnks.gd/l/eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMDEsInVyaSI6ImJwMjpjbGljayIsImJ1bGxldGluX2lkIjoiMjAyMTAxMDQuMzI3OTIyMzEiLCJ1cmwiOiJodHRwczovL3d3dy5odWQuZ292L2ZlZGVyYWxfaG91c2luZ19hZG1pbmlzdHJhdGlvbi9oZWFsdGhjYXJlX2ZhY2lsaXRpZXMvcmVzaWRlbnRpYWxfY2FyZS9tYWlsX2JsYXN0X2luZGV4P3V0bV9tZWRpdW09ZW1haWwmdXRtX3NvdXJjZT1nb3ZkZWxpdmVyeSJ9.wD_kyOelsVj0O18oGZ6vB1qZQYtIH2lojk5kd633DYc/s/1356292409/br/92636915983-l).  Have questions about the Lean 232 Program? Please contact [LeanThinking@hud.gov](mailto:LeanThinking@hud.gov).  For more information on the Lean 232 Program, check out: [http://www.hud.gov/healthcare](https://lnks.gd/l/eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMDIsInVyaSI6ImJwMjpjbGljayIsImJ1bGxldGluX2lkIjoiMjAyMTAxMDQuMzI3OTIyMzEiLCJ1cmwiOiJodHRwOi8vd3d3Lmh1ZC5nb3YvaGVhbHRoY2FyZT91dG1fbWVkaXVtPWVtYWlsJnV0bV9zb3VyY2U9Z292ZGVsaXZlcnkifQ.1u0SLtDtXsU62834yVCK0A042fLMrX4ZfmVsijRPzQI/s/1356292409/br/92636915983-l).    Stay Connected with the Office of Housing and the Federal Housing Administration: |
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