Steve Sisolak
Governor

Richard Whitley
Director

State of Nevada

Department of Health and Human Services

Home and Community Based Services (HCBS) Setting Rule 101

Division of Healthcare Financing and Policy

Long Term Services and Supports Unit

Megan Quintana

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Agenda

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HCBS Final Rule

- The final Home and Community-Based Services (HCBS) regulations (known as the “Final Rule”) were published by Centers for Medicare and Medicaid Services (CMS) in January 2014 and effective March 17, 2014.

- Applicable to 1915(c) HCBS Waivers, 1915(i) HCBS State Plan Option, 1915(k) Community First Choice and 1115 Demonstration Waivers.

- Designed to enhance the quality of HCBS, provide additional protections, and ensure full access to the benefits of community living.

- Establishes requirements for the qualities of settings where individuals live or receive Medicaid reimbursable HCBS.

HCBS Final Rule - Continued

- The regulation served as a catalyst for widespread stakeholder engagement on ways to improve how individuals experience daily life.
- The intent is for individuals receiving Medicaid funded HCBS to have the opportunity to promote individual choice and greater community integration
- The deadline to receive final approval from CMS was extended to March 17, 2023, due to the Public Health Emergency caused by the COVID-19 pandemic.

Excluded Settings

- Settings that are not HCBS are specified in the final rule as:
  - Nursing Facilities
  - Institutions for Mental Disease
  - Intermediate Care Facilities for Individuals with Intellectual Disabilities
  - Hospitals
  - Other locations that have qualities of an institutional setting, as determined by the Secretary.

Heightened Scrutiny

- Settings that are not in compliance with the Final Rule fall into 3 categories:

1. Settings located in building that is also operated as a facility that provide inpatient institutional treatment

2. Settings located in a building located on the grounds of, or immediately adjacent to, a public institution

3. Any other settings that have the effect of isolating individual's receiving Medicaid HCBS

HCBS Settings Requirements

Residential and Non-Residential Setting Qualities

Any **residential or non-residential** setting where individuals live and/or receive HCBS must have the following five qualities:

1) Is integrated in and supports full access of individuals to the greater community.
2) Is selected by the individual from among setting options including non-disability specific settings and options for a private unit in a residential setting.
3) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
4) Optimizes individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.
5) Facilitates individual choice regarding services and supports, and who provides them.

HCBS Settings Requirements

Residential Settings:

- A dwelling that may be owned/rented/occupied by a legally enforced agreement that protects from eviction under the state's landlord/tenant laws.
  - NRS Chapter 118 (Discrimination in Housing; Landlord and Tenant).
- Each recipient has privacy in their living unit.
  - This includes lockable doors on sleeping/living units, choice in roommates (if rooms are shared), freedom to furnish/decorate.
- Freedom and support to control schedules/activities and have access to food at any time.
- Able to have visitors at any time.
- The setting is physically accessible.

Note regarding setting requirement conflicts

- Specific criteria must be met when there are “modifications” to settings requirements for an individual
  - i.e. restrictions such as limiting access to food or concerns about furnishings.
  - Any restrictions placed on individuals must be based on an individual specific assessed need and justified in the person-centered service plan.

Person-Centered Planning Process

- The final rule codified the use of Person-Centered Planning for HCBS recipients, effective upon its passage in 2014 (42 CFR § 441.301).
- Process led by the individual where possible.
- Includes people chosen by the individual (family, friends, roommates etc.)
- Provides necessary information and support to ensure the individual directs the process to the maximum extent possible and is enable to make informed choices and decisions.
- Is timely and occurs at times and locations of convenience to the individual.

Person-Centered Planning Process continued

Modifications must be documented in the Person-Centered Plan, and the following must be met:

- Identify specific and individualized assessed needs.
- Document positive interventions and supports used prior to modifications.
- Document unsuccessful methods of meeting the needs.
- Clear description of conditions proportionate to needs.
- Include regular collection and review of data regarding effectiveness of the modification.
- Include time limits for periodic review of modification.
- Include informed consent of the recipient.
- Include assurance that the intervention/support will cause no harm to the recipient.

Monitoring to Ensure Compliance

- Settings compliance can be verified by:
  - Site visits (to observe settings, review records, interview staff and residents)
  - Licensing and certification reviews
  - Case manager visits
  - Consumer satisfaction surveys linked to specific sites

Monitoring to Ensure Compliance continued

- If the state finds that a setting is out of compliance with the setting requirements, the following steps will be taken to support the provider remediation:
  - Report assessment results to the provider and identify provider actions needed to remedy areas of non-compliance.
  - Assist providers to achieve compliance and address issues that appear to be preventing compliance.
  - Require providers to implement corrective action plans to remedy non-compliance.

NOTE: If a provider declines or refuses to implement a corrective action plan, their Medicaid enrollment may be suspended and could lead to termination.

Newly Constructed Settings

- Provider Types (PT):
  - PT 39 – Adult Day Health Care
  - PT 48 – Frail Elderly Waiver (FE Waiver)
  - PT 55 – Day and Residential Habilitation Services
  - PT 57 – FE Waiver in Residential Facilities for Groups
  - PT 58 – Waiver for Persons with Physical Disabilities (PD Waiver)
  - PT 59 – FE Waiver in an Assisted Living Facility

- In August 2019, CMS issued new guidance regarding HCBS settings under development or new construction.
  - Prior to enrollment as a Medicaid provider, the State may conduct site reviews to ensure the facility is in compliance with the Final Settings rule.

Newly Constructed Settings Continued

- Newly constructed facilities enrolling as PT 39, 48, 55, 57, 58 and/or 59 will be graded by State staff during the enrollment process as follows:

  - Low: Site visit not required, approved based on provided documentation submitted by facility.
  - Moderate: Facility has some characteristics that may be considered institutional in nature. The facility must ensure that they meet certain qualifications which may require a site visit to be conducted by state staff.
  - High Risk: The facility resembles an institutional setting and will require a site visit to determine if they can meet final rule requirements.

State Transition Plan

- The state began work on the transition plan in 2014 and received initial approval from CMS August 23, 2019.
  - Changes to Medical Services Manual (MSM) policies to reflect HCBS requirements.
  - Updates to HCBS recipient forms to encompass HCBS requirements.
  - Updates to the person-centered planning process.
  - Site reviews at HCBS facilities conducted by State staff.
    - The State worked with facilities that did not initially meet all HCBS setting requirements.
  - Heightened Scrutiny reviews of facilities that resemble institutional settings.

State Transition Plan Continued

- In order to receive final approval, CMS requested the State to resolve remaining technical issues.
  - The State is in the process of updating the STP for CMS' review and final approval.
- Once the State Transition Plan has been accepted by CMS, all HCBS settings are expected to remain in compliance with the HCBS Final Rule.
  - Ongoing monitoring of all HCBS settings will be done via annual site reviews, case manager visits, and consumer satisfaction surveys linked to specific sites.

Questions

Questions?

Contact Information

- Social Services Chief III – Kirsten Coulombe

1915 (c) Waiver Unit

- SSPS III – Ellen Frias-Wilcox
- SSPS II – Megan Quintana
- SSPS II – Richard McFeely

Email: hcbs@dchfp.nv.gov

1915 (i) Unit

- SSPS III – Mark Du
- SSPS II – Marcia Tinberg

Email: 1915i@dhcfp.nv.gov

https://dhcfp.nv.gov/LTSS/LTSSHome

Acronyms

- HCBS – Home and Community Based Services
- CMS – Centers for Medicare and Medicaid
- STP – State Transition Plan
- PT – Provider Type
- CFR – Code of Federal Regulation
- DHCFP – Division of Healthcare Financing and Policy
- LTSS – Long Term Services and Supports