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Home and Community Based Services (HCBS) Setting Rule 101

Division of Healthcare Financing and Policy

Long Term Services and Supports Unit

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Agenda

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6. HCBS Monitoring
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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 able 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?





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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