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Home and Community Based Services (HCBS) Setting Rule 101 and  
Updates to the State Transition Plan (STP)  
Division of Healthcare Financing and Policy

Long Term Services and Supports Unit

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*Helping people. It's who we are and what we do.*

# Agenda

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# HCBS Final Regulation

- The final Home and Community-Based Services (HCBS) regulations (known as the “Final Rule”) were published by the 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 Regulation continued

- The regulation serves 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 regulation as:
  - Nursing Facilities (NF)
  - Institutions for Mental Disease (IMD)
  - Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)
  - 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 HCBS Final Regulation fall into 3 categories:

1. Settings located in a building that is also operated as a facility that provides 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** settings 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 as appropriate.
- Able to have visitors at any time (within reasonable or agreed upon time).
- The setting is physically accessible.







# Modifications to Settings Requirements

- Any modifications/exceptions due to safety concerns for a specific individual (such as limiting access to food, locking doors etc.) must be supported by a specific assessed need, and justified and documented in the person-centered service plan (Plan of Care (POC)).

# 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 applicant/recipient where possible.
- Includes people chosen by the applicant/recipient (family, friends, roommates etc.)
- Provides necessary information and support to ensure the applicant/recipient 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 applicant/recipient.



# 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 applicant/recipient.
- Include assurance that the intervention/support will cause no harm to the applicant/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/Newly Enrolled HCBS Providers

- 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 – Frail Elderly Waiver (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 HCBS Settings requirements.

# Proposal for Newly Constructed Settings/Newly Enrolled HCBS Providers

- The DHCFP and/or Fiscal Agent will screen all initial applications for newly constructed facilities/new HCBS Providers enrolling as PT 39, 48, 55, 57, 58 and/or 59 based on a categorical risk level of “Moderate”.
  - A site visit will be conducted by State staff prior to enrollment approval as a Medicaid HCBS provider.
  - This is to ensure compliance with the HCBS Final Regulation.
- The Provider Enrollment Checklist will be updated to include a declaration and attestation that as a provider you will read and understand the HCBS Final Regulation.

# 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 settings requirements.
  - Updates to HCBS recipient forms to encompass HCBS settings 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 Regulation.
  - Ongoing monitoring of all HCBS settings will be done via annual site reviews, case manager visits, and consumer satisfaction surveys linked to specific sites.

# Update to the STP for Site Specific Assessment Validation 1 of 4

- The data below are the results of the site visit assessments and ongoing monitoring of individual settings:
- 1915c FE/PD Waivers

## Residential Settings

### Residential Group Homes

Total Settings Reviewed	151
Fully Compliant with HCBS settings compliance	101
Could come into full compliance with modifications	11
Cannot comply with the HCBS setting criteria	1
Are presumptively institutional and will be submitted for Heightened Scrutiny	1
Inactive or Closed	37

# Update to the STP for Site Specific Assessment Validation 2 of 4

- 1915c FE and PD Waivers continued

## Residential Settings

### Assisted Living Facility:

Total Settings Reviewed	2
Fully Compliant with HCBS settings compliance	2

## Non-Residential Setting

### Adult Day Care Center

Total Settings Reviewed	11
Fully Compliant with HCBS settings compliance	11

# Update to the STP for Site Specific Assessment Validation 3 of 4

- 1915c ID Waiver

## Residential Settings

### 24 Hour SLAs and Shared Living SLAs

Total Settings Reviewed	378
Fully Compliant with HCBS settings compliance	337
Could come into full compliance with modifications	41

## Non-Residential Setting

### Jobs and Day Training Centers

Total Settings Reviewed	54
Fully Compliant with HCBS settings compliance	53
Are presumptively institutional and will be submitted for Heightened Scrutiny	1

# Update to the STP for Site Specific Assessment Validation 4 of 4

- 1915(c) ID Waiver

## Non-Residential Settings

### Supported Employment Center

Total Settings Reviewed	23
Fully Compliant with HCBS settings compliance	23

- 1915(i) Adult Day Health Care and Residential Habilitation

## Residential Settings

### Residential Habilitation:

Total Settings Reviewed	2
Fully Compliant with HCBS settings	2

## Non-Residential Settings

### Adult Day Health Care Center

Total Settings Reviewed	17
Fully Compliant with HCBS settings compliance	17

# Systemic Remediation

- The State is in the process of updating certain MSM policies to reflect HCBS Final Regulations:
  - MSM Chapter 1800 – 1915(i) HCBS State Plan Option Adult Day Health Care and Habilitation Services
  - MSM Chapter 2100 – HCBS Waiver for Individuals with Intellectual Disabilities
  - MSM Chapter 2200 – HCBS Waiver for the Frail Elderly
  - MSM Chapter 2300 – HCBS Waiver for Persons with Physical Disabilities

# Systemic Remediation continued

Updates to the Recipient Rights Form (NMO 7070) to reflect the following:

## **RECIPIENTS IN A RESIDENTIAL GROUP HOME AND ASSISTED LIVING FACILITY: (NRS Chapter 118A – Landlord and Tenant: Dwellings)**

### **You have the right to:**

- Not be denied admittance based solely on your race, religion, color, national origin, disability, sexual orientation, gender identity or expression, ancestry, familial status, or sex.
- Furnish and decorate your sleeping or living unit with reasonable accommodations if necessary to ensure you may use and enjoy the dwelling.
- A lease or other agreement that does not differ from those individuals who do not receive Medicaid services.
- Receive written notification of eviction at least 30 days prior to the eviction date.
- Have privacy in your sleeping or living unit including the ability to lock your door (if appropriate) with appropriate staff having access to a key.
- Have visitors of your choosing within reasonable or agreed upon time.
- Have food available at any time as appropriate.

### **According to NRS Chapter 118 – Discrimination in Housing:**

If you feel that you have experienced discriminatory housing practices, you may file a complaint to:

Nevada Equal Rights Commission (NERC) at <https://detr.nv.gov/NERC>. *If you are unable to submit your online complaint form, please call the NERC office at (702) 486-7161 or (775) 486-7161.*



# Public Comment

- There is still time to submit public comments to the State.
  - Additional comments can be sent until **September 29, 2022**
- The State Transition Plan and additional HCBS Final Regulation information can be viewed at:  
<https://dhcfp.nv.gov/Home/HCBS/FinalRegulation/>
- Comments can be sent:
  - **By Mail:**  
Division of Health Care Financing and Policy  
Attn: Long Term Services and Supports Unit  
1050 E. William St., Ste. 435  
Carson City, NV 89701
  - **By Email:** [hcbs@dhcfp.nv.gov](mailto:hcbs@dhcfp.nv.gov)
  - **By Fax:** (775) 687-8724 Attn: LTSS Unit





# 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](mailto:hcbs@dchfp.nv.gov)

## 1915 (i) Unit

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

[Email: 1915i@dchfp.nv.gov](mailto:1915i@dchfp.nv.gov)

<https://dchfp.nv.gov/LTSS/LTSSHome>





# Questions and Public Comment





# 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