

HCBS Final Rule

HCBS Conference

HCBS Final Rule: Current Issues and Future Direction

November 2017

2014 HCBS Final Rule

- Published January 2014 – Effective March 17, 2014
- Addressed HCBS requirements across:
 - ❖ 1915(c) waivers
 - ❖ 1915(i) state plan
 - ❖ 1915(k) Community First Choice
 - ❖ 1115 Demonstrations
- Requirements apply whether delivered under a fee for service or managed care delivery system
- Guidance issued in May 2017 extended the transition period for settings in existence as of the effective date of the final regulation from March 2019 to March 17, **2022**. Extension of the transition period recognizes the significant reform efforts underway and is intended to help states ensure compliance activities are collaborative, transparent and timely.

Key Themes

- The regulation is intended to serve as a catalyst for widespread stakeholder engagement on ways to improve how individuals experience daily life
- The rule is not intended to target particular industries or provider types
- FFP is available for the duration of the transition period
- The rule provides support for states and stakeholders making transitions to more inclusive operations
- The rule is designed to enhance choice

HCBS State Transition Plans: Status of STP Reviews

- Seven states have received final approval from CMS (TN, KY, AR, OK, DC, DE, WA).
- 39 states have received Initial Approval.
- The majority of states who have not received Initial Approval are scheduled to update their STPs and resubmit to CMS within the next 6 months.
- Technical assistance continuing to support states
 - ❖ Individual calls
 - ❖ SOTA Calls
 - ❖ Effective Models of Key STP Components

HCBS Setting Criteria

Is integrated in and supports access to the greater community

Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources

Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS

Is selected by the individual from among setting options including non-disability specific settings

Ensures an individual's rights of privacy, respect, and freedom from coercion and restraint

Optimizes individual initiative, autonomy, and independence in making life choices

Facilitates individual choice regarding services and supports and who provides them

*****Additional Criteria for Provider-Controlled or Controlled Residential Settings*****

Home and Community-Based Setting Criteria

Provider Owned and Controlled Settings – Additional Criteria

- Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement
- Same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity
- If tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law

Home and Community-Based Setting Criteria

Provider Owned and Controlled Settings – Additional Criteria

- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with appropriate staff having keys to doors as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
- Individuals have freedom and support to control their schedules and activities and have access to food any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual

Home and Community-Based Setting Criteria

Provider Owned and Controlled Settings – Additional Criteria

- Modifications of the additional criteria must be:
 - ❖ Supported by specific assessed need
 - ❖ Justified in the person-centered service plan
 - ❖ Documented in the person-centered service plan

Home and Community-Based Setting Criteria

Provider Owned and Controlled Settings – Additional Criteria

- Documentation in the person-centered service plan of modifications of the additional criteria includes:
 - ❖ Specific individualized assessed need
 - ❖ Prior interventions and supports including less intrusive methods
 - ❖ Description of condition proportionate to assessed need
 - ❖ Ongoing data measuring effectiveness of modification
 - ❖ Established time limits for periodic review of modifications
 - ❖ Individual's informed consent
 - ❖ Assurance that interventions and supports will not cause harm

Distinguishing between Settings under the HCBS Rule

Settings that are not home and community-based

- Nursing Facilities
- Institution for Mental Diseases (IMD)
- Intermediate care facility for individuals with I/DD (ICF/IID)
- Hospitals

Settings presumed not to be home and community-based

- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on grounds of, or adjacent to, a public institution
- Settings with the effect of isolating individuals receiving Medicaid HCBS.*

Settings that could be home and community-based with modifications

- Settings that require modifications at an organizational level, and/or modifications to the PCP of specific individuals receiving services within the setting.
- Settings that engage in remediation plans with the state, and complete all necessary actions no later than March 2022.

Settings presumed to be home and community-based and meet the rule without any changes required

- Individually-owned homes
- Individualized supported employment
- Individualized community day activities

Review of HCBS Settings under Final Rule: *Key Components*

Assessment

Validation

Remediation

Implementation: Tiered Standards

- States have flexibility to set different standards for existing and new settings.
- Existing settings must meet the minimum standards set forth in the HCBS rules but the state “may suspend admission to the setting or suspend new provider approval/authorizations for those settings”
 - ❖ State may set standards for “models of service that more fully meet the state’s standards” for HCBS and require all new service development to meet the higher standards
 - ❖ The tiered standards can extend beyond the transition plan timeframe to allows states to “close the front door” to settings/services that only meet the minimum standard.

[Reference: [CMS FAQs dated 6/26/2015](#); page 11, Answer to Question #16]

HCBS Final Rule for Person-Centered Planning

- Final rule relating to person-centered planning became effective on March 17, 2014
- Final rule includes changes to the provisions regarding person-centered service plans for HCBS waivers under 1915(c) and HCBS state plan benefits under 1915(i)
- Requires a person-centered service plan for each individual receiving Medicaid HCBS
- Person-centered planning principles also apply in 1915(k) Community First Choice state plan programs, and for HCBS provided in 1115 demonstrations

Person-Centered Thinking, Planning, and Practice

- **Person-centered thinking** helps to establish the means for a person to live a life that they and the people who care about them have good reasons to value
- **Person-centered planning** is a way to assist people needing HCBS to construct and describe what they want and need to bring purpose and meaning to their life
- **Person-centered practice** is the alignment of service resources that give people access to the full benefits of community living and ensure they receive services in a way that may help them achieve individual goals and preferences

Resources

Main CMS HCBS Website: <http://www.medicaid.gov/HCBS>

- Final Rule & Sub-regulatory Guidance
- A mailbox to ask additional questions
- Exploratory Questions (for Residential & Nonresidential Settings)

CMS Training on HCBS – SOTA (State Operational Technical Assistance) Calls:
<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/hcbs-training.html>

Statewide Transition Plan Toolkit:

<https://www.medicaid.gov/.../statewide-transition-plan-toolkit.pdf>