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
  - 1915(b)(3) waiver services

• Requirements apply whether delivered under a fee for service or managed care delivery system.

• States have until March 17, 2019 to achieve compliance with requirements for home and community-based settings in transition plans for existing programs.
Key Themes

• The regulation is intended to serve as a catalyst for widespread stakeholder engagement on ways to improve how individuals experience daily life

• There is no HHS initiative to shut down 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

• One state (Tennessee) has received final approval from CMS.
• 14 additional states have Initial Approval
  – OH, KY, PA, DE, IA, ID, CT, WV, ND, OR, WA, SC, AR, IN
• The majority of STPs are scheduled to be updated and resubmitted to CMS through 2016 for review to determine if initial and/or final approval can be made.
• Rolling out of additional technical assistance to support states
  – Individual calls
  – Small Group State TA
  – SOTA Calls
  – Effective Models of Key STP Components
# HCBS Setting Requirements

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is integrated in and supports access to the greater community</td>
<td>Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources</td>
</tr>
<tr>
<td>Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS</td>
<td></td>
</tr>
<tr>
<td>Is selected by the individual from among setting options including non-disability specific settings</td>
<td>Ensures an individual’s rights of privacy, respect, and freedom from coercion and restraint</td>
</tr>
<tr>
<td>Optimizes individual initiative, autonomy, and independence in making life choices</td>
<td>Facilitates individual choice regarding services and supports and who provides them</td>
</tr>
</tbody>
</table>

**Additional Requirements for Provider-Controlled or Controlled Residential Settings**
Home and Community-Based Setting Requirements

Provider Owned and Controlled Settings – Additional Requirements

• 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
Provider Owned and Controlled Settings – Additional Requirements

- 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
Provider Owned and Controlled Settings – Additional Requirements

• Modifications of the additional requirements 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 Requirements (4)

Provider Owned and Controlled Settings – Additional Requirements

• Documentation in the person-centered service plan of modifications of the additional requirements 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
Person-Centered planning

• A key requirement for Medicaid HCBS providers

• Required effective 3-17-2014

• Providers who have focused on implementing strong person-centered planning practices can be valuable to show how it can be done.
Person Centered Planning in the Context of HCBS

- Individual Preferences
- Innovation in Supports & Use of Technology
- Person-Centered Plan
- Flexibility in Scheduling
- Leveraging of Natural & Paid Supports
Looking Forward: HCBS Transition Plan Implementation Timeline

- **Jan 2014**
  - Final Rule

- **Jan 2014 – March 2015**
  - Statewide Transition Development Period

- **March 17, 2015**
  - Statewide Transition Plans Due

- **Fall/Winter 2015**
  - CMS Initial feedback to States Conducting Assessments on the STPs

- **March 2019**
  - CMS review of Systemic Reviews
  - CMS review of Site Specific Assessments
  - Monitoring of Milestones

- **Ongoing 2016-2019**
  - Ongoing CMS initial and ongoing review & feedback

- **March 2019**
  - HCBS Compliance

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**Today!**
Statewide Transition Plans: **Requirements**

- For 1915(c), 1915(i) and 1915(k) programs/services in effect prior to March 17, 2014

- Includes 1115 Demonstrations and 1915(b)(3) services

- Only apply to **settings**

**Note:** New 1915(c), 1915(i) and 1915(k) programs and settings on or after March 17, 2014 must be in full compliance with HCB settings regulations at the time of approval.
Statewide Transition Plan: Elements

- Evidence of the public notice process and results
- Systemic regulation and policy assessment
- HCB Settings assessment including settings presumed institutional in nature
- Remediation (systemic and settings specific)
- Proposed remedial strategies and timelines
- Monitoring to assure ongoing compliance
- Plan to assist individuals who may need to transition to another provider
Public Engagement: Requirements

• A state must provide at least a 30-day public notice and comment period regarding the transition plan(s) that the state intends to submit to CMS for review and consideration, as follows:
  – The public notice must be in electronic (e.g. state website) and non-electronic (e.g. newspaper, mailings, etc.) forms.
  – The state must:
    • provide two (2) statements of public notice and public input procedures.
    • ensure the full transition plan is available for public comment.
    • consider and modify the transition plan, as the state deems appropriate, to account for public comment.
• A state must submit to CMS, with the proposed transition plan:
  – Evidence of the public notice required.
  – A summary of the comments received during the public notice period, any modifications to the transition plan based upon those comments, and reasons why other comments were not adopted.

[Citation: Page 85 of the Federal HCBS Settings Rule]
<table>
<thead>
<tr>
<th>Promising Practice</th>
<th>State Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Statewide Transition Plan (STP) must be made available to the stakeholders in electronic and non-electronic forms.</td>
<td>All States</td>
</tr>
<tr>
<td>Provides clear, easily digestible overview of the rule and context of the state’s implementation process in the STP</td>
<td>Pennsylvania</td>
</tr>
<tr>
<td>Virtual and in-person orientation sessions and “town-hall” like meetings across state and stakeholders. Focus groups and feedback forums early on to help inform the design of the state’s HCBS implementation strategy.</td>
<td>Ohio</td>
</tr>
<tr>
<td>Establishment of state working groups or committees that included balanced/equal representation of various stakeholders.</td>
<td>Delaware</td>
</tr>
<tr>
<td>List of all relevant services, settings, descriptions being captured in the HCBS implementation process.</td>
<td>North Dakota Iow</td>
</tr>
<tr>
<td>Use of multi-media to broadcast and disseminate information about public comment process(es).</td>
<td>South Carolina</td>
</tr>
<tr>
<td>Provides clear, informative summary of public comments received, including state’s responses for how it addressed each comment or category of comments.</td>
<td>Michigan</td>
</tr>
</tbody>
</table>
Systemic Assessment & Remediation: Overview

• States are required to conduct a systemic assessment, which is the state’s assessment of the extent to which its regulations, standards, policies, licensing requirements, and other provider requirements ensure settings are in compliance.

• This process involves reviewing and assessing all relevant state standards to determine compliance with the federal home and community-based setting regulations.

• States must review state standards related to all setting types in which HCBS are provided.
Examples of documents in which state standards are likely to be articulated include:

- Statutes
- Licensing/certification regulations
- Guidelines, policy and procedure manuals, and provider manuals
- Provider training materials
Systemic Assessment & Remediation: Requirements

- States must ensure that the language in their state standards is fully consistent with the requirements in the federal setting regulations:
  - 42 CFR 441.301(c)(4) for 1915(c) waivers
  - 42 CFR 441.710 (a)(1) for 1915(i) state plan programs
  - 42 CFR 441.530(a)(1) for 1915(k) state plan programs
- The federal regulations set the floor for requirements, but states may elect to raise the standard for what constitutes an acceptable home and community-based setting.
- States must assure that each element under the HCBS federal regulations is adequately addressed in every relevant state standard for which the specific federal requirement is applicable.
HCBS Systemic Implementation Considerations

• Make sure all relevant state standards are easily identifiable and easy to find online for the public and CMS.

• States should describe the process by which the systemic assessment was completed and validated.

• Systemic assessment must include a review of all relevant state standards.
  – This may require the engagement of state agencies/authorities outside of the state Medicaid agency’s jurisdiction (housing, licensing, etc.)
• State determination of level of compliance for existing state standards must include analysis/explanation in the STP.

• Silence does not equal compliance.

• Inconsistencies/areas of noncompliance in existing state policy cannot be addressed simply by changes to the waiver document alone.

• In terms of remediation, specific language should be used to address remediating inconsistencies between the federal HCBS rule and current state standards.
<table>
<thead>
<tr>
<th>Effective Practice/Strategy</th>
<th>State Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clear list of all relevant state standards reviewed in the systemic assessment, including titles, codes/citations, and links</td>
<td>South Carolina, Vermont, or Iowa</td>
</tr>
<tr>
<td>Detailed analysis/justification of state’s determination of compliance</td>
<td>Arkansas, Indiana, Idaho</td>
</tr>
</tbody>
</table>
| Detailed remediation required, action steps and timeline | Ohio- (Crosswalk with remediation required, action steps and timeline)  
Connecticut- (Developed strong template language covering all aspects of the rule, to then be used uniformly to address key gaps/compliance issues across various state standards in remediation strategy) |
Distinguishing between Settings under the HCBS Rule

**Settings that are not HCB**
- Nursing Facilities
- Institution for Mental Diseases (IMD)
- Intermediate care facility for individuals with I/DD (ICF/IID)
- Hospitals

**Settings presumed not to be HCB**
- 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 meet the HCB rule 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 2019.

**Settings presumed to be HCB and meet the rule without any changes required**
- Individually-owned homes
- Individualized supported employment
- Individualized community day activities
Settings Assessment for HCBS Compliance: Scope

- States must identify all types of home and community based program settings in their state where HCBS are provided and where beneficiaries reside.

  o States should first list out all services provided under their various HCBS authorities.

  o Then, states should identify all settings in which each service(s) is/are provided.
Settings Assessment for HCBS Compliance: **Scope (2)**

• A state may presume a setting to be home and community-based because it is considered an individual’s own home:
  - If a state is presuming other categories of settings to automatically comply with the rule, the state must outline how it came to do this determination and what it will do to monitor compliance of this category over time.

• Group Settings:
  - Any setting for which individuals are being grouped or clustered for the purpose of receiving HCBS must be assessed by the state for compliance with the HCBS rule.
Review of HCBS Settings under Final Rule: 
*Key Components*

- Assessment
- Validation
- Remediation
Settings Assessment for HCBS Compliance: **Threshold**

- States are responsible for assuring that 100% of all HCBS settings comply with 100% of the final HCBS rule *in its entirety*.

- Quality thresholds should not be used to reduce the state’s requirement to assure 100% compliance across all settings.
Review of HCBS Settings Compliance: Initial Assessment

• Most states opted to perform an initial provider self-assessment
  o States that did not receive 100% participation of providers in self-assessment process must identify another way the assessment process was conducted on all settings including where a provider self-assessment was not conducted.
  o Providers responsible for more than one setting need to complete an assessment of each setting.
• States must provide a validity check for provider self-assessments including consideration of:
  o a beneficiary/guardian assessment or other method for collecting data on beneficiary experience
  o validation with case managers, licensing staff or others trained with the requirements of the settings rule.
### Highlighting Effective Practices in Assessing Setting Compliance: *State Examples*

<table>
<thead>
<tr>
<th>Effective Practice/Strategy</th>
<th>State Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provides clear, easy to understand listing of all HCBS settings</td>
<td>Iowa, Pennsylvania</td>
</tr>
<tr>
<td>Developed unique comprehensive assessment tools based on type of setting and target respondent</td>
<td>Delaware, Maine, South Carolina</td>
</tr>
<tr>
<td>Clearly laid out the specific details of the state’s approach to the assessment process (including sample sizes, non respondents, etc.)</td>
<td>Kentucky, Oregon</td>
</tr>
<tr>
<td>Summarized assessment results in a digestible manner (based on the seven key requirements of the rule and corresponding sub-elements) so as to inform state’s strategy on remediation.</td>
<td>Iowa, Michigan, South Dakota</td>
</tr>
</tbody>
</table>
Review of HCBS Settings Compliance: Validation

• The state must assure at least one validation strategy is used to confirm provider self-assessment results, and should also identify how the independence of assessments is ensured where an MCOs validates provider settings.

• Validation strategies re: levels of compliance within settings varies across states
  o Onsite visits, consumer feedback, external stakeholder engagement, state review of data from operational entities, like case management or regional boards/entities

• The more robust the validation processes (incorporating multiple strategies to a level of degree that is statistically significant), the more successful the state will be in helping settings assure compliance with the rule.
<table>
<thead>
<tr>
<th>Effective Practice/Strategy</th>
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<tbody>
<tr>
<td>State outlines multiple validation strategies that addressed concerns and assured all settings were appropriately verified. Validation process included multiple perspectives, including consumers/beneficiaries, in the process.</td>
<td>Tennessee</td>
</tr>
<tr>
<td>State relied on existing state infrastructure, but laid out solid, comprehensive plan for training key professionals (case managers, auditing team) to assure implementation of the rule with fidelity.</td>
<td>Delaware Tennessee</td>
</tr>
<tr>
<td>State used effective independent vehicles for validating results.</td>
<td>Michigan</td>
</tr>
<tr>
<td>State clearly differentiated and explained any differences in the validation processes across systems.</td>
<td>Indiana</td>
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Settings Assessment for HCBS Compliance: Remediation

- **Statewide Training & TA is a strong option for states to consider.**
  - State lays out clear plan within the STP of how it will strategically invest in the training and technical assistance needed to help address systems-wide remediation requirements of specific settings, as well as how it intends to build the capacity of providers to comply with the rule.

- **Setting-Specific Remediation**
  - Corrective Action Plans
  - Tiered Standards
## Highlighting Effective Practices in HCBS Settings

### Remediation: State Examples

<table>
<thead>
<tr>
<th>Effective Practice/Strategy</th>
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</thead>
<tbody>
<tr>
<td>State simultaneously provided a comprehensive template for a corrective action or remediation plan to all providers as part of the self-assessment process.</td>
<td>Tennessee</td>
</tr>
<tr>
<td>State has outlined a process for following up with settings that require remediation to comply with the rule, including but not limited to the negotiation of individual corrective action plans with providers that address each area in which a setting is not currently in compliant with the rule.</td>
<td>Indiana</td>
</tr>
<tr>
<td></td>
<td>North Dakota</td>
</tr>
<tr>
<td></td>
<td>Pennsylvania</td>
</tr>
<tr>
<td>State has identified those settings that cannot or will not comply with the rule and thus will no longer be considered home and community-based after March 2019. State has also established an appropriate communication strategy for affected beneficiaries.</td>
<td>Ohio</td>
</tr>
<tr>
<td></td>
<td>Virginia</td>
</tr>
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</table>
Heightened Scrutiny
Settings Presumed NOT to be HCB

Prong I
Settings in a publicly or privately operated facility that provides inpatient institutional treatment.

Prong II
Settings in a building on the grounds of, or adjacent to, a public institution

Prong III
Settings with the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS
Settings with the Effect of Isolating Individuals

• CMS’ Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community states that the following two characteristics alone might, but will not necessarily, have the effect of isolating individuals:

  – The setting is designed specifically for people with disabilities, or for people with a certain type of disability
  – Individuals in the setting are primarily or exclusively people with disabilities and the on-site staff that provides services to them.
Settings with the Effect of Isolating Individuals (2)

• Settings that isolate individuals receiving HCBS from the broader community may have any of the following characteristics:
  – The setting is designed to provide people with disabilities multiple types of services/activities on-site such as housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities
  – People in the setting have limited, if any, interaction with the broader community
  – The setting uses/authorizes interventions/restrictions used in institutional settings or deemed unacceptable in Medicaid institutional settings (e.g. seclusion)
A farmstead or disability-specific farm community that has the following characteristics:

- Individuals who live at the farm typically interact primarily with people with disabilities and staff who work with those individuals.
- Daily activities and non-home and community-based services, such as religious services, take place on-site so that an individual generally does not leave the farm.
- People from the broader community may sometimes come on site, but people from the farm seldom go out into the community as part of daily life.
Settings with the Effect of Isolating Individuals: Gated/Secured Community (aka “Intentional Communities”)

A gated/secured “community” for individuals with disabilities that has the following characteristics:

- The community typically consists primarily of individuals with disabilities and the staff that work with them
- Locations provide residential, behavioral health, day services, social and recreational activities, and long term services and supports all within the gated community
- Individuals often do not leave the grounds of the gated community in order to access activities or services in the broader community
Multiple settings co-located and operationally related (ie. operated and controlled by the same provider) which congregate a large number of people with disabilities together such that individuals’ ability to interact with the broader community is limited.

- Depending on the program design, examples may include:
  - Group homes on the grounds of a private ICF
  - Numerous residential settings co-located on a single site or in close proximity, such as multiple units on the same street
**Heightened Scrutiny: Requirements**

- If a state identifies settings that are presumed to have the qualities of an institution, such as characteristics that isolate HCBS beneficiaries, the state is obligated to identify them in the Statewide Transition Plan.

- The settings regulations require that, in order to overcome the presumption that a setting has the qualities of an institution, CMS must determine that the setting:
  - *Does have* the qualities of a home and community-based setting and
  - *Does not have* the qualities of an institution.
• Heightened Scrutiny should only be applied if and when a state believes that a setting that falls into one of the three prongs has overcome the presumption that a setting has institutional characteristics AND comports fully with the HCBS settings rule.
  – If a state does not feel that a setting has overcome the institutional presumption, it should not submit the setting to CMS for heightened scrutiny review.
  – If a state does not feel that the setting fully complies with the HCBS settings rule, then the state should first work with the provider to develop and begin implementation of a remediation plan that would bring the setting in full compliance with the rule before initiating HS review.
Heightened Scrutiny: 
Suggested State Process

- **State identifies all settings that fall into any of the 3 prongs for settings presumed NOT HCBS**
- **State reaches out to all providers, beneficiaries and families of settings that fall under the 3 prongs to educate them about the HS review process**
- **State establishes the criteria and process it will use to determine if a setting under any of the 3 prongs should be elevated for HS**

- **State conducts internal review based on the criteria and process it has established**
- **State completes review and determines which settings will be submitted to CMS for HCBS review**
- **State develops evidentiary package for each setting flagged for HS review (either in aggregate or bundled grouping)**

- **State submits list of names of settings, locations, and evidentiary packages for all settings (either all at once or on a rolling basis) out for public comment**
- **State reviews and responds to public comments. Then embeds this information into the existing evidentiary package and inserts into the STP**

- **State submits updated section of STP through Liberty to CMS to initiate HS review**
# Heightened Scrutiny: General Evidentiary Requirements

<table>
<thead>
<tr>
<th>Evidence Should Focus On:</th>
<th>Evidence Should NOT Focus On:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Qualities of the setting and how it is integrated in and supports full access of individuals receiving HCBS into the greater community</td>
<td>• The aspects and/or severity of the disabilities of the individuals served in the setting</td>
</tr>
<tr>
<td>• Strategies the setting has implemented to fully overcome institutional characteristics</td>
<td>• Rationale for why existing institutional qualities or characteristics that isolate beneficiaries are justified</td>
</tr>
<tr>
<td>• Information received about the setting during the public input process</td>
<td></td>
</tr>
</tbody>
</table>
Heightened Scrutiny: Evidentiary Requirements (Prongs I & II)

• As part of the state’s HS evidentiary package for settings under Prongs I or II, the state should include:
  o Information clarifying that there is a meaningful distinction between the facility and the community-based setting such that the latter is integrated in and supports full access of individuals receiving HCBS to the greater community
  o Services to the individual, and activities in which each individual participates, are engaged with the broader community
  o Examples of documentation that can be submitted as evidence for this prong can be found under Question 4 in the June 2015 CMS FAQs
Heightened Scrutiny: Evidentiary Requirements (Prong III: Settings that Isolate)

- As part of the state’s HS evidentiary package for any setting that isolates (Prong III), the state should provide evidence of the following qualities:
  - Setting is integrated in the community to the extent that persons without disabilities in the same community would consider it a part of their community and not associate the setting with the provision of services to persons with disabilities
  - Services to the individual, and activities in which each individual participates, are engaged with the broader community
  - Beneficiaries participate regularly in typical community life activities outside of the setting to the extent the individual desires those activities
Heightened Scrutiny: Public Notice

- Public notice associated with settings for which the state is requesting HS should:
  - Be included in the Statewide Transition Plan or addressed in the waiver or state plan submission to CMS
  - List the affected settings by setting name and location and identify the number of individuals served in each setting
  - Be widely disseminated
  - Include the entire evidentiary package of information for each setting that the state is planning to submit to CMS
• Public notice associated with settings for which the state is requesting HS should (continued):
  o Include all justifications as to why the setting:
    • is home and community-based, and
    • does not have institutional characteristics
  o Provide sufficient detail such that the public has an opportunity to support or rebut the state’s information
  o State that the public has an opportunity to comment on the state’s evidence
• CMS expects that states will provide a summary of responses to those public comments in the Statewide Transition Plan
HS Implementation:
What additional information should states submit in the HS process?

Examples of additional documentation that a state may wish to include in its evidentiary package for a setting under HS could include:

- Observations from on-site review.
- Licensure requirements or other state regulations
- Residential housing or zoning requirements
- Proximity to/scope of interactions with community settings
- Provider qualifications for HCBS staff
- Service definitions that explicitly support setting requirements

- Evidence that setting complies with requirements of provider-owned or controlled settings
- Documentation in PCP that individual’s preferences and interests are being met
- Evidence individual chose the setting among other options, including non-disability specific
- Details of proximity to public transport or other transportation strategies to facilitate integration
HS Implementation: *Site Visits*

- To facilitate CMS review of the evidence presented for heightened scrutiny, a state should also submit a report of any on-site visit conducted by the state.

- The purpose of the site visit is to observe the individual’s life experience and the presence or absence of the qualities of home and community-based settings. The data submitted should support the presence of qualities that define home and community-based settings.
HS Implementation: Beneficiary Experience

• Supplemental information attempting to capture beneficiary experience that could be a part of a HS evidentiary package may include:
  – consumer experience surveys that can be linked to the site for which evidence is being submitted
  – consumer experience participant interviews outside the presence of the provider conducted by an independent entity or state staff with demonstrated expertise and/or training working with the relevant population
Potential Effective Practices in Assessing Setting Compliance under HS

<table>
<thead>
<tr>
<th>Category</th>
<th>Recommended Strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishes clear, easy-to-digest approach to HS setting identification,</td>
<td>Utilize an exhaustive set of strategies for identifying all settings in the state that currently fall into one or more of the prongs under “Settings Presumed NOT to be home and community-based”</td>
</tr>
<tr>
<td>categorization, and information dissemination within the STP and to the</td>
<td>Clearly list within its STP either (a) the state’s initial estimate of settings that fall under the three prongs; and (b) the full list of settings being elevated to CMS for HS</td>
</tr>
<tr>
<td>public</td>
<td>Include this initial list of settings the state has identified under HS in a public comment period and widely disseminate this list to stakeholders across the state for feedback</td>
</tr>
<tr>
<td>Lays out a multi-faceted process for implementing the state’s internal</td>
<td>May include comprehensive documentation, onsite review by state, capturing of beneficiary experience</td>
</tr>
<tr>
<td>review process to determine whether to elevate any setting in the three</td>
<td></td>
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<tr>
<td>prongs to HS review</td>
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</table>
## Potential Effective Practices in Assessing Setting Compliance under HS (2)

<table>
<thead>
<tr>
<th>Category</th>
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</tr>
</thead>
<tbody>
<tr>
<td>State provides an easily digestible, comprehensive evidentiary package for each setting submitted to CMS under HS review</td>
<td>Submit an outline of a suggested organized format to CMS STP review team and receive feedback in advance.</td>
</tr>
<tr>
<td>The state submits settings for HS review on a rolling basis to CMS</td>
<td>Briefly summarizes within the STP an update of the progress made to date under HS by the state and the latest findings the state has made [Example: “The state has identified (number) of (type) settings to meet the requirements necessary to be submitted to CMS for review under HS, and have found the following settings as not meeting the evidentiary standard required to be submitted for additional review by CMS under HS.”]</td>
</tr>
<tr>
<td></td>
<td>Adds the full name, location and evidentiary package of each setting being submitted for CMS review under HS to an easily identifiable location within the STP, waiver application or state plan application (ie. appendix, or easily identifiable section).</td>
</tr>
<tr>
<td></td>
<td>Submits and widely disseminates this entire update out for public comment, includes the summary of comments and the state’s responses within the formal submission to CMS.</td>
</tr>
</tbody>
</table>
### Heightened Scrutiny: CMS’ Response on HS Determinations

<table>
<thead>
<tr>
<th>When ALL Regulatory Requirements are Met</th>
<th>When All Regulatory Requirements are NOT Met</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Approval of a HS request pertains only to the individual setting or settings subject to the request</td>
<td>• If the setting is included in the STP, the state has several options [See Q10 in July 2015 FAQs]</td>
</tr>
<tr>
<td>• Any material changes to the parameters approved through HS will require the state to update CMS and may result in a reevaluation of the setting</td>
<td>• If the setting is included in a new 1915(c) waiver, or new 1915(i) or (k) state plan benefit, or as part of new services added to an existing program, federal reimbursement for services in that setting may not be available unless or until the setting has achieved compliance with all requirements</td>
</tr>
<tr>
<td>• The state must describe a monitoring process for ensuring that these settings and all settings continue to comply with setting requirements even after the transition period ends.</td>
<td></td>
</tr>
</tbody>
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Heightened Scrutiny: Options for Settings that Don’t Comply

• Provider can implement necessary remediation to comply by the end of the transition period

• Provider can furnish Medicaid services that do not require their provision in a home and community-based setting

• Engage in communications with impacted beneficiaries to determine alternative compliant settings
Statewide Transition Plans – *What Are We Seeing*

- Several Initial STPs did not provide enough information to facilitate meaningful public input.
- Some states are very early in the process of conducting assessments of their current systems
  - Some states have not completed systemic assessments
  - Many states have not identified all of the specific policies, rules, licensure or certification process to be reviewed, the settings they apply to and/or the qualities of home and community-based settings that they address
  - Many states have not completely identified all of the standards that apply to specific settings to be included in the assessment, the number of such settings, or the number of individuals served
  - Some states have equated silence with compliance
• Large congregate, facility-based settings should be carefully reviewed to determine whether they are presumptively institutional and/or identify remediation required to comply with the rule.

• Where you live AND where you spend your day MATTERS under the HCBS rule.

• Implications of waiver/state plan service definitions and reimbursement structures
Individuals receiving HCBS must reside in settings that comply fully with the rule (regardless of whether those settings are being paid for using HCBS funds or not).

Living in settings that do not comply with the rule could jeopardize an individual’s ability to receive non-residential HCBS.
Residential Settings

- States are asking, “How much integration is enough?”
- Availability of single-units and roommate choices
- Unrestricted access to visitors, food and individual schedules
- Locked Units/Delayed Egress
- Restraints/Coercion
- Control over personal resources

- Intentional communities, farmsteads, and other large congregate residential settings that have the effects of isolation are presumed not to be home and community-based and must go through heightened scrutiny if a state feels the setting is home and community-based and does not have institutional characteristics.
Non-Residential Settings

• Large congregate, facility-based settings should be carefully reviewed to determine if they are in compliance and/or to identify remediation needed to comply with the rule.

• *Reverse Integration* by itself will not result in an appropriate level of compliance with the rule.

• States should review parameters around service definitions/policies/reimbursement rates as well, in order to promote options like greater use of innovative transportation and natural support strategies that facilitate individual community integration.
HCBS in Non-Residential Settings: Promoting Community Integration

Access
- Availability of supports to allow a person to engage in the broader community for the maximum number of hours desired daily.
- Activities designed to maximize independence, autonomy and self-direction.

Variety
- Broad range of activities/offernings that are comparable to those in which individuals not receiving HCBS routinely engage.
- Access to both individualized and small-group activities, on and off site.

Quality
- Cultural competency
- Measurement focused on Increasing Community Access, Decreasing Social Isolation
HCBS 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]
Implementation with Integrity: *Priority Areas of Emphasis*

- Person-Centered Planning
- Strategies for Community Integration in both Residential & Non Residential
- Capacity Building/Training & TA
- Heightened Scrutiny – Settings that Isolate
- Planned Construction
Resources

- **Main CMS HCBS Website:** [http://www.medicaid.gov/HCBS](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:**

- **Statewide Transition Plan Toolkit:**
Resources (2)

- **Exploratory Questions**
  - Residential Settings
  - Non-Residential Settings

- **FAQs**
  - HCBS FAQs on Planned Construction and Person Centered Planning (June 2016)
  - HCBS FAQs on Heightened Scrutiny dated 6/26/2015
  - FAQs on Settings that Isolate
  - Incorporation of HS in the Standard Waiver Process

- **ACL Plain-Spoken Briefs on HCBS Rule & Person Centered Planning:**
  [http://www.acl.gov/Programs/CPE/OPAD/HCBS.aspx](http://www.acl.gov/Programs/CPE/OPAD/HCBS.aspx)
Thank you!

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