

HOME & COMMUNITY- BASED SETTINGS

Overview of the
Home and Community Based Services Rule
from the Centers for Medicare and Medicaid Services

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on a slide, it means language has been directly taken from materials available from the Centers for Medicare and Medicaid Services (CMS).

CMS Intent of the Final Rule

- To ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs under the 1915(c), 1915(i), and 1915(k) Medicaid authorities **have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate**
- To **enhance the quality** of HCBS and **provide protections** to participants

Some of the Highlights

- Aligns HCBS setting requirements across three Medicaid authorities
- Defines person-centered planning requirements
- Permits combining multiple target populations into one 1915(c) waiver
- New compliance options for 1915(c) waiver programs, not just approve/deny
- Establishes five-year renewal cycle to align concurrent authorities

This Section Will Address:

- Key requirements of the Home and Community-Based Services (HCBS) settings requirements
- Overview of CMS state transition plan to come into compliance with the HCBS settings requirements

Final Rule

CMS 2249-F and CMS 2296-F

- Published in the Federal Register on January 16, 2014
- Effective March 17, 2014

The HCBS Settings Rule

**Part 1: Overview of Home and Community Based Services
Characteristics for Settings where HCBS is delivered**

HCBS Settings Requirements

- The final rule establishes:
 - Mandatory requirements for the qualities of home and community-based (HCBS) settings including discretion for the Secretary (of Health & Human Services – HHS) to determine other appropriate qualities
 - Settings that **are not** home and community-based
 - Settings **presumed not** to be home and community-based
 - State compliance and transition requirements

HCBS Settings Requirements

- Establishes an outcome oriented definition that focuses on the **nature and quality of individuals' experiences**
- Maximizes opportunities for individuals to have **access to the benefits of community living** and the opportunity to receive services in the **most integrated setting**

HCBS Settings Requirements

- Rules **will apply to all settings where home and community based services are delivered** – not just the place where the person lives. For example,
 - Residential settings such as group homes
 - Day programs
 - Workshops
 - Prevocational Centers

HCBS Settings Characteristics

- The Home and Community-Based setting:
 - **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 home and community-based services**

HCBS Settings Characteristics

- **Selected by the individual from among setting options**, including non-disability specific settings and the state must assure an option for a private unit in a residential setting.
- Person-centered service plans document the options based on the individual's needs, preferences; and for residential settings, the individual's resources

HCBS Settings Characteristics

- Ensures an individual's **rights of privacy, dignity, 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 Requirements in Provider-Owned/Controlled Settings

- The individual has a **lease or other legally enforceable agreement** providing similar protections
- The individual has **privacy in their unit including lockable doors**, choice of **roommates**, and freedom to **furnish or decorate the unit**

Additional Requirements in Provider-Owned/Controlled Settings

- Individuals have **freedom and support to control their schedules and activities, including access to food** at any time
- Individuals may **have visitors at any time**
- Setting is **physically accessible** to the individual

Additional Requirements in Provider-Owned/Controlled Settings

- Modifications of the additional requirements must be:
 - Supported by specific assessed need
 - Justified in the person-centered service plan
 - Example might be limits on access to food or visitors
- The modification is **required to meet the individual's needs, not the setting's requirements.**

Additional Requirements in Provider-Owned/Controlled Settings

- Documentation in the person-centered service plan includes:
 - The **individual's specific assessed need** for the modification
 - **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**

HCBS Settings Requirements

- Settings that are **NOT** Home and Community Based:
 - Nursing facility
 - Institution for mental diseases (IMD)
 - Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
 - Hospital

HCBS Settings Requirements

- Settings that are **PRESUMED NOT TO BE** Home and Community Based:
 - In a publicly or privately-owned **facility providing inpatient treatment**
 - **On grounds of, or adjacent to**, a public institution
 - Settings with the **effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS**
- NOTE: CMS did not specify the size of the setting but focuses on the person's experience and opportunities to interact in the broader community.

Settings that May Isolate

- Settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals:
 - The setting is **designed specifically for people with disabilities**, and often even for people with a **certain type** of disability.
 - The individuals in the setting are **primarily or exclusively people with disabilities** and on-site staff provides many services to them.

Settings that May Isolate

- Settings that isolate people 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 and activities on-site**, including 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**.
 - Settings that **use/authorize interventions/restrictions** that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g., seclusion).

Settings that May Isolate

- CMS provides a non-exhaustive list and describes these examples of types of settings that are **PRESUMED NOT** to meet HCBS because they isolate:
 - Farmstead or disability-specific farm community
 - Gated/secured “community” for people with disabilities
 - Residential schools
 - Multiple settings co-located and operationally related

HCBS Settings Requirements

- The State can make a case to CMS that a setting that appears to be included in the **PRESUMED NOT TO BE** Home and Community Based does meet the requirements:
 - A state submits evidence (**including public input**) demonstrating that the setting does have the qualities of a home and community-based setting and NOT the qualities of an institution; AND
 - The Secretary finds, based on a **heightened scrutiny review** of the evidence, that the setting meets the requirements for home and community-based settings and does NOT have the qualities of an institution

HCBS Settings Toolkit

- CMS has provided several documents to use
 - A **summary of the regulatory requirements** of fully compliant HCB settings and those settings that are excluded.
 - Schematic drawings of the **heightened scrutiny process** as a part of the regular waiver life cycle and the HCBS 1915(c) **compliance flowchart**.
 - Additional technical guidance on regulatory language regarding **settings that isolate**.
 - **Exploratory questions** that may assist states in the assessment of **residential** settings.

HCBS Settings Rule Recap

- The “test” for any HCBS setting will be **qualities and characteristics** of the setting that make it home and community based and how the **individual experiences** the community **to the same extent as others in the community** who do not receive HCBS.

State Transition Plan

Part 2: Overview of CMS Requirements for States to come into compliance with the HCBS Settings Rule

The State Transition Plan

- CMS has termed coming into compliance with the HCBS settings requirements, “Transition”.
- States will have to complete a self-assessment and provide a transition plan, *“detailing any actions necessary to achieve or document compliance with setting requirements”* .
- The level and detail of the state plan will be determined by the types and characteristics of settings used in the individual state.

Final Rule

CMS 2249-F and CMS 2296-F

- IMPORTANT DATES TO REMEMBER:
 - Effective March 17, 2014
 - All states' transition plans **due on or before** March 17, 2015
 - All states expected to complete final implementation of rule **within 5 years or sooner = on or before** March 17, 2019

CMS Timelines

- If an existing waiver submits a **renewal or amendment** application within the first year of the rule (March 17, 2014 – March 17, 2015)
 - Must include a plan detailing any actions necessary to achieve or document compliance with setting requirements for the **specific waiver or amendment**
 - Renewal or amendment approval will be contingent upon inclusion of an approved transition plan
- Within **120 days** of first renewal or amendment request detailing how the state will comply with the settings requirements in **ALL** 1915(c) HCBS waivers and 1915(i) HCBS State Plan benefits

Requirements for Public Input

- The state must provide a **30-day public notice and comment period** on the plan the state intends to submit to CMS -
 - Provide **minimum of two** statements of public notice and public input procedures
 - Ensure the **full transition plan is available** for public comment
 - Consider **public comments**
 - **Modify** the plan based on public comment, as appropriate
 - **Submit evidence of public notice and summary of disposition** of the comments to CMS

State Transition Plan

- Implementation of the plan **begins upon approval** by CMS
 - **Failure to submit an approvable plan** may result in compliance actions.
 - **Failure to comply with the terms** of an approved plan may result in compliance actions.
 - If there are settings that do not fully meet the final regulation's home and community-based settings requirements, the state must work with CMS to develop an approach to ensuring **either the settings come into compliance or that the individuals are offered settings that are compliant** with the rule.

State Transition Plan

- The Plan must contain the following elements:
 1. Assessment
Systems and Settings both must be assessed
 2. Remedial Actions
Based on findings, what are you going to do?
 3. Milestones and Timeframes
How are you going to get there?
 4. Public Comment
Summary of comments with changes based on those or justification if not addressed

State Transition Plan Recap

- CMS has **specific timelines** and requirements for **public input**
- If a state submits a “plan to plan”, CMS requires a **second public comment period** when the full transition plan is completed and made available.
- This is **not a “one-time” activity**.
 - Compliance with HCBS settings requirements will be **on-going** and will require **sustained effort and oversight** to assure continued compliance.

CMS Resources

CMS Website

CMS has a website with all of their materials, guidance, and the toolkit. They update this webpage as new materials are developed so watch the site regularly.

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>

or search for “CMS HCBS toolkit”

CMS Website – another path

1. Go to www.medicaid.gov
2. Click on “**Medicaid**” in the aqua colored bar at the top
3. Select “**By Topic**” from the drop down menu
4. Click on the link for “more information...” in the section titled “**Long-Term Supports & Services**”
5. On this page, the link to “**Home & Community Based Services**” is on the right column. Click that link to get to the page with all the materials CMS posts.

Impact for Michigan's System

- Based on CMS guidance to-date, Michigan's State Transition Plan must include the following:
 1. MI Choice Waiver
 2. Habilitation Supports Waiver (HSW)
 3. Children's Waiver Program (CWP)
 4. Waiver for Children with Serious Emotional Disturbances (SEDW)
 5. State Plan Amendment for Autism (iSPA)
 6. 1915(b) – Managed Specialty Supports and Services Program (MSS&SP) operating concurrently with the 1915(c) HSW
- NOTE: The new 1915(b)/(c) concurrent waiver for MI Health Link must ensure that HCBS are only delivered in settings that meet the new requirements in order to be approved by CMS. There is no transition plan for new waivers, only for those already in existence.