

HOME & COMMUNITY- BASED SETTINGS

Overview of the
Home and Community Based Services Rule
from the Centers for Medicare and Medicaid Services
and the MI Choice Transition Plan

Final CMS Rule – HCBS portion

- Took effect March 17, 2014
- To make sure that people receiving long-term services and supports through home and community based service Medicaid programs **are a part of the community in which they reside and that they have access to the same conveniences that people who are not in these programs do**
- All states expected to fully meet rule within 5 years or sooner = on or before March 17, 2019



Home and Community Based Settings Requirements

- The final rule sets up:
 - Requirements of the features of home and community-based settings
 - Settings that **are not** home and community-based
 - Settings **presumed not** to be home and community-based
 - State compliance and transition requirements



What settings do we need to assess?

- Rules apply to all settings where home and community based services are delivered. This includes a participant's home (however, participant's homes are assumed to be in compliance and do not need to be assessed).
- All provider owned and operated Residential settings (e.g. Adult Foster Care, Homes for the Aged, Assisted Living) and Non-Residential settings (e.g. Adult Day Care programs) must be assessed.



Home and Community Based Settings Requirements

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



Home and Community Based 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 next to, a public institution
 - Settings that separate people receiving Medicaid home and community based services from people not receiving Medicaid home and community based services

Home and Community Based Settings Requirements

- The State can make a case to the federal government that a setting that appears to be included in the **PRESUMED NOT TO BE** Home and Community Based **does** meet the requirements:
 - A state must submit evidence (**including public input**) showing that the setting **does** have the qualities of a home and community-based setting and not the qualities of an institution; AND
 - The federal government finds, based on a **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



Home and Community Based Settings Features



- The HCB settings should:
 - Be involved in and support access to the rest of the community
 - Make sure the person receives services in the community to the same degree of access as people not receiving Medicaid home and community-based services

Home and Community Based Settings Features

- The HCB settings should:
 - Protect a persons rights of privacy, dignity, respect, and freedom from influence and control
 - Encourage and allow independence in making life choices
 - Help a person choose services and supports, and who provides them



Additional Requirements in Provider-Owned/Controlled Settings

- The person has a lease or other legal agreement providing the same protections as persons not in provider owned and/or controlled settings have
- The person has privacy including lockable doors, choice of roommates, and freedom to furnish or decorate the unit



Additional Requirements in Provider-Owned/Controlled Settings

- People have freedom and ability to control their schedules and activities, including access to food at any time
- People may have visitors at any time
- Setting is physically accessible to the person



Additional Requirements in Provider-Owned/Controlled Settings

- Deviations from the requirements must be:
 - Supported by specific need
 - Explained in the person-centered service plan
 - Example might be limits on access to food or visitors
- The restrictions are required to meet the persons needs, not the setting's requirements.



Additional Requirements in Provider-Owned/Controlled Settings

- Explanation in the person-centered service plan includes:
 - The persons specific need for the restriction
 - Prior actions and supports including less intrusive ways
 - Explanation of condition equal to need
 - Ongoing data measuring success of change
 - Regular check of the changes
 - Persons permission
 - Guarantee that restriction will not cause harm

Settings that May Isolate

- Settings that have the following two features alone might, but will not necessarily, meet the criteria for isolating people:
 - The setting is specifically for people with disabilities, and often even for people with a certain type of disability.
 - The people in the setting are mostly or only people with disabilities and on-site staff provides services to them.

Settings that May Isolate

- Settings that isolate people receiving home and community based services from the rest of the community may have any of the following features:
 - The setting is designed to provide people with disabilities 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 rest of the community.
 - Settings that use and/or allow interventions and/or restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings like seclusion.



MI Choice Surveys

- Each setting needs to be assessed ONCE for MDCH waiver programs.
- In the beginning, waiver agencies may contact MDCH to request whether a setting has already been assessed by another MI Choice agency or by another waiver program.
- In the future, a shared tracking system will be developed that will allow all waiver agencies to review the list of previously assessed settings and those in compliance with the rule.
- If multiple MI Choice waiver agencies use the same setting for participants, they should work together to determine who will conduct the on-site assessment.

MI Choice Surveys

- Must be completed on-site of the residential or non-residential setting.
- Must be completed by the waiver agencies (setting may pre-fill survey, but waiver agency must confirm all answers on-site).
- ALL questions must be answered.
- When asked “If marked, why?” include as much extra/explanatory information as possible.

MI Choice Surveys

- Once assessments have been completed, waiver agencies must submit results to MDCH.
- MDCH will make the final determination on which settings meet, do not meet, and could come into compliance with the requirements after a corrective action plan.
- MDCH will send a letter to the setting/provider and will copy the MI Choice waiver agencies who submitted the survey.

Corrective Action Plans

- Providers will be required to self-disclose remediation plans with timelines to come into compliance. Those corrective action plans will be sent to the MI Choice waiver agency.
- Providers will be required to submit periodic status updates on remediation progress to MI Choice waiver agencies who will forward information to the MDCH.
- Once in compliance, providers must submit documentation that proves compliance. Another site visit by the waiver agency may be necessary to confirm compliance.

Settings not in compliance

- If a setting is found to not meet and unable to meet the requirements in the future, these providers will be notified by MDCH that they will be removed from the provider pool.
- Participants will also need to be notified that their residential setting does not meet requirements and will be given options on how to either remain in the setting or continue on the waiver program.

New Future Settings

- Waiver agencies must ensure that all future provider owned or operated settings are assessed to be home and community based prior to providing services. Those **not** in compliance should not be considered until they are in compliance.
- MDCH will also incorporate the HCB settings requirements into the statewide provider monitoring tool for each waiver agency to use as part of their regular monitoring activities.

Statewide Transition Plan – MI Choice Waiver Items

Action Item	Description	Start Date	End Date	Status
Identify all provider- controlled and owned residential and non- residential settings	MSA will work with waiver agencies to compile a list of all settings currently used within the MI Choice Waiver.	7/1/2014	12/15/2014	Done. Sent to CMS.
Develop statewide assessment tool	MDCH will develop a tool as guided by the CMS Exploratory Questions Tool and vetted by key stakeholders for waiver providers to evaluate conformity to and compliance with HCBS rules. The statewide assessment tool will be used for MI Choice assessment process. The tools for the HSW assessment process will align with the statewide assessment tool.	1/1/2015	3/31/2015	Done. Sent to WAS 3/27

Statewide Transition Plan – MI Choice Waiver Items

Action Item	Description	Start Date	End Date	Status
Review state policies, procedures and standards	MDCH will review current policies, procedures, standards, and contracts and identify any needed changes for full alignment with HCBS settings requirements as well as target dates for the necessary revisions.	09/01/14	09/30/15	In process
Develop a list of settings based upon current compliance status	MDCH will develop a list of those settings that are: <ul style="list-style-type: none">- assumed to be in compliance- out of compliance (but may come into compliance)	12/1/2014	5/31/2016	In process

Statewide Transition Plan – MI Choice Waiver Items

Action Item	Description	Start Date	End Date	Status
Establish requirements for new providers	MDCH will include language in the contracts of waiver entities to ensure that all new providers are assessed for HCB settings prior to providing services. Upon enrollment in the waiver program, providers who offer HCBS will be provided technical assistance on HCBS setting requirement by MDCH and waiver entities. This activity will be ongoing.	1/1/2015	3/17/2019	In process
Have all HCBS settings assessed by waiver agencies	MI Choice waiver agencies contract directly with providers. Waiver agencies will be required to conduct on-site assessments of each provider setting to determine compliance to new rule or need for corrective action. This will include collecting feedback from participants. MSA will oversee the process. Waiver agencies will report this data to MSA. The statewide tool will be used for the assessment.	4/1/2015	12/31/2015	In process

Statewide Transition Plan – MI Choice Waiver Items

Action Item	Description	Start Date	End Date	Status
Compile, analyze, and review assessment data. Report findings to stakeholders.	MDCH will compile the data from providers and beneficiaries to determine those HCBS services providers who meet, do not meet, and could come into compliance with HCBS guidance. MDCH will present the results of the assessment data to stakeholders and post results for 30 days.	10/1/2015	3/31/2016	To do
Update MDCH policies, procedures, standards, contracts as necessary	MDCH will develop and adopt revised policies, procedures, standards, and contracts to address ongoing compliance and monitoring, including adding requirement of using assessment tool as part of provider monitoring, self-assessment, survey tools as well as the site review protocols. These updates may include legislation, administrative rules, and contracting procedures.	10/1/2015	3/1/2017	To do
Develop statewide protocols and procedures for site specific reviews	MDCH will develop protocols and procedures to address ongoing monitoring and compliance.	10/1/2015	9/30/2016	To do

Statewide Transition Plan – MI Choice Waiver Items

Action Item	Description	Start Date	End Date	Status
Conduct ongoing monitoring of compliance	MDCH will incorporate HCBS settings requirements into quality reviews, provider monitoring, and consumer satisfaction surveys to identify areas of non-compliance. This activity will be ongoing.	10/1/2015	3/17/2019	To do
Design statewide remediation strategy	MDCH will design a remedial strategy for settings found to be noncompliant. The strategy includes education and outreach in the form of site surveys, technical assistance and consultation, and corrective action plans.	12/1/2015	6/30/2016	To do
Revise statewide transition plan if necessary	MDCH will develop a modified statewide Transition Plan if necessary. Revisions to the transition plan will be informed by the assessment and site survey data which establish a plan for addressing all components of compliance with the HCBS rule.	1/1/2016	5/30/2016	To do

Statewide Transition Plan – MI Choice Waiver Items

Action Item	Description	Start Date	End Date	Status
Transition of participants in non-compliant settings	MDCH will provide choice to participants in provider controlled and owned residential settings to transition to a new residential or non-residential setting that meets requirement or disenroll from the waiver program.	1/1/2016	3/17/2019	To do
Notify providers who do not and cannot meet the HCB setting requirements. Notify any affected participants of these providers.	MDCH will notify providers who are found to not meet and are unable to meet the Federal requirements. These provider types include nursing facilities, hospitals, institutes for mental diseases, and intermediate care facilities for individuals with intellectual disabilities. These providers are ineligible to participate in the program. Participants will also be notified that their provider cannot meet requirements.	6/1/2016	12/31/2016	To do

Statewide Transition Plan – MI Choice Waiver Items

Action Item	Description	Start Date	End Date	Status
Notify CMS of any presumptively non-home and community-based settings that do have qualities of home and community-based settings for heightened scrutiny	For settings that are presumed not to be home and community-based, MDCH will compile a list of settings that do have the qualities of home and community-based settings and do not have the characteristics of an institution. MDCH will submit this list and any corresponding evidence to CMS for the heightened scrutiny process.	6/1/2016	12/31/2016	To do
Develop and implement corrective action plans for individual non-compliant settings	MDCH and its contractors will ensure individual provider settings become compliant with the new rule. MDCH and its contractors will work with individual non-compliant settings to develop and implement corrective action plans Providers will be required to submit periodic status updates on remediation progress to MDCH. MDCH will allow reasonable timeframes for large infrastructure changes with the condition that the providers receive department approval and provide timely progress reports on a regular basis. Updates will be provided to CMS as needed.	10/1/2016	9/30/2018	To do

Questions?



- HCBS Settings Webinars
 - Wednesday, May 13, 10:00 am – 12:00 noon
 - Will probably be adding a 2nd
- Contact Cheryl Decker at deckerc@michigan.gov to submit questions to be answered during the webinars.