

Michigan Department of Health and Human Services
Update on the Home and Community-Based Services Rule

Belinda Hawks and Millie Shepherd
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The HCBS Final Rule

The rule requires that states take steps to ensure that services and supports provided under the HCBS waivers are consistent with the values of the final rule. These values include

- Improve individuals access to the community
- Support individuals in making decisions about their lives
- Increase individuals voice in determining the services they want and who they want to provide those services.
- Build upon individuals rights to privacy
- Ensure that individuals have full access and freedom of movement within their homes and in their communities.

HCBS Assessment Process

1. Survey Providers and Participants
2. Collect and analyze data
3. Send out notification letters to providers (those not diverted for heightened scrutiny)
4. Receive and review Corrective Action Plans (CAPs)
5. Accept or deny CAP's
6. Follow up on CAP execution
7. Accept as HCBS compliant or begin process of transitioning participants to compliant settings

Modifications To The Rule

Providers can work with the individual and their supports to determine if modifications to the setting are required.

Modifications must meet the following requirements and be included in the PCP:

- Specific individualized assessed health and/or safety related need;
- Prior interventions and supports including less restrictive methods tried;
- Description of the health and /or safety concern that makes the modification necessary;
- 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.

Assessment and Remediation Process

Providers and individuals who receive

C waiver services

- Residential
- Non-residential -and/or- B services
- CLS
- Skill Building
- Supported Employment

Will be surveyed. These surveys are the first step in the assessment process.

Assessment and Remediation Process (cont.)

Responses to the surveys will determine who is HCB and who may not be.

- Those who are found to be HCB will receive notification that they are in compliance.
- Those who are not will receive one of two letters.
 - Out of compliance notification
 - Heightened Scrutiny notification

The remediation process will begin for those who are out of compliance:

Providers who are out of compliance have made responses to the survey that are not consistent with HCB services. This may be due to environmental issues such as a lack of privacy or access to all areas of the home, or could be related to freedom of movement around their community. Providers may be able to make changes that will move them from non compliant to compliant. Providers will work with the PIHP to develop a plan to make needed changes. This plan is called a Corrective Action Plan (CAP).

Heightened Scrutiny Process

- The first step in the Heightened Scrutiny (HS) process is to determine if the individual who receives services/supports wishes to continue in the setting. If the individual does not then the HS process will end and transition planning will begin.
- If the individual does want to remain in the setting the provider will be asked does s/he wish to apply for HS in order to be able to continue to provide the support for HCBS participants
- If both the provider and the participant wish to continue the provider will receive information related to evidence they must provide to MDHHS to be considered for review and for possible submission to CMS who makes the final decision.

HS Assessment and Remediation Process

- The Heightened Scrutiny process will begin for those who are assumed not to be HCB. These providers will have to submit evidence to prove that they are HCB if they would like to continue to provide HCB services and supports to individuals.
- MDHHS must decide whether an identified setting does have the characteristics of Home and Community Based (HCB) despite the appearance that it does not.
- This decision will be based upon additional information provided by the setting at the request of the HCBS team.
- Providers can access information that will assist them in identifying what evidence to submit in order to support their claim that they are HCB.
- If providers submit evidence that MDHHS believes proves they are HCB this information will be sent on to the Centers for Medicaid and Medicare Service (CMS) who makes the final decision.

Evidence Table Heightened Scrutiny 1 Institutional

Why is the setting presumed not to be home and community based?

The setting is located: In the same building as a publicly or privately owned facility that provides treatment –OR- On the grounds of or immediately adjacent to a public institution

What the evidence must demonstrate:

- There is a meaningful distinction between the facility or institution and the HCBS setting such that the setting is integrated in the community and supports full access for individuals receiving HCBS

How the evidence can demonstrate this:

Interconnectedness between the facility and the HCBS setting, including staff and finances does not exist or is minimal. Residential license status- zoning requirements.
Documentation that supports the existence of separation between the institution and home; financial and administrative

Any facility /institution staff that are occasionally assigned to support HCBS staff have the same training and qualifications. ***Staff qualifications that indicate training in HCB services and support. Evidence of different staff for each location or cross trained.***

Participants in the setting do not have to rely primarily on transportation or other services provided by the facility or institution, to the exclusion of other options.
Evidence that residents do not rely primarily upon institution staff for transportation

The HCBS setting and facility have separate entrances and signs (if setting is located within a facility) ***Photographs of residence- evidence of separate entrances and signage***

How the evidence can demonstrate this (cont):

The setting is integrated in the community to the extent that a person or persons without disabilities in the community would not associate the setting with the provision of services to people with disabilities. *Photographs of residence. Evidence that the setting is in the community among other private residences.*

The individual participates regularly in typical community activities outside the setting to the extent that the individual desires. Such activities do not include only those organized by the provider agency specifically for a group of individuals with disabilities and /or involving only paid staff. *Evidence that residents are encouraged and supported to engage in activities in the larger community; individual schedules, progress notes etc.*

Services to the individual, and activities in which the individual participates, are engaged with the broader community. *Evidence that residents are encouraged and supported to engage in activities in the larger community; individual schedules, progress notes etc. from most recent 30 day period*

Evidence Tables Heightened Scrutiny –Isolation

Table 2

Why is the setting presumed not to be home and community based?(Isolation)

The setting appears to have:

The effect of isolating individuals receiving home and community based services (HCBS) from the broader community of individuals not receiving HCBS

What the evidence must demonstrate:

The setting does not isolate participants from the broader community of individuals not receiving HCBS.

How the evidence can demonstrate the setting does not isolate:

- The setting is integrated in the community to the extent that a person or persons without disabilities in the same community would consider it a part of their community and would not associate the setting with the provision of services to persons with disabilities.
Photographs of residence. Individuals receiving HCBS live/receive services in the same area of the setting as individuals not receiving Medicaid HCBS. The setting is in the community among other private residences not providing services to HCBS participants exclusively.

How the evidence can demonstrate the setting does not isolate (cont):

- The individual participates regularly in typical community life activities outside of the setting to the extent the individual desires. Such activities do not include only those organized by the provider agency specifically for a group of individuals with disabilities and/or involving only paid staff; community activities should foster relationships with community members unaffiliated with the setting. ***Evidence that: individuals come and go at will, that visitors have been present at regular frequencies, the setting is in the community among other private residences not providing services to HCBS participants exclusively. Individual participants have varied activities based upon their interests and abilities. Individuals have access to materials to become aware of activities occurring outside of the setting***

Overview of the Remediation Process

Compliance: Five possible Results

1. Presumed Compliance with Rule no survey required: Next Step: Ongoing Review
2. Full Compliance on Survey: Next Step: Ongoing Monitoring
3. May need remediation but could come into compliance: Next Step: Develop Corrective Action Plan
4. Presumed not to be home and community based: Heightened Scrutiny review
5. Cannot come into compliance: Next Step: transition of individuals from the setting

Transition Process

- If a participant does not wish to remain in a setting or continue to receive services from a provider their CMHSP case manager or supports coordinator will work with them to identify alternatives. This includes both residential and non residential service providers.
- Participants can choose where they live and receive services. The decisions to live in certain locations or to choose private residences must include consideration of their income or other resources.
- Participants may want to consider whether any required changes to meet HCB standards will result in them being more satisfied with their current provider.

Contact Information:

Belinda Hawks

Federal Compliance & OBRA/PASARR Section Manager
Behavioral Health and Developmental Disabilities Administration
Division of Quality Management and Planning
Michigan Department of Health and Human Services

Millie Shepherd

Departmental Specialist
Home and Community Based Services
Federal Compliance Section
Behavioral Health and Developmental Disabilities Administration
Division of Quality Management and Planning
Michigan Department of Health and Human Services

**For all HCBS related communications, please contact:
HCBStransition@michigan.gov**