

HOME AND COMMUNITY-BASED SERVICES SETTINGS & PERSON-CENTERED PLANNING RULES: TRANSITION PLANNING IN NEW JERSEY

Lowell Arye, Deputy Commissioner
NJ Department of Human Services



CMS Regulation on HCBS Settings

- On January 16, 2014, CMS issued a final rule with regards to Home and Community Based Services (HCBS) settings. The final rule was effective March 17, 2014.
- The final rules requires that all HCBS settings meet certain requirements. The requirements apply to all settings where an individual receives HCBS, not just residential settings.
- The setting must:
 - Be integrated in and support full access to the greater community (no explicit definition of term “community” but refers to greater community and not solely community of one’s peer);
 - Provide opportunities for the individual to seek employment and work in competitive and integrated settings, engage in community life and control personal resources;

CMS Regulation on HCBS Settings

continued...

- Be selected by the individual from among setting options such as non-disability specific settings and private units in a residential setting;
- Ensure that the individual receive services in the community with the same degree of access as an individual not receiving Medicaid HCBS.
- Be identified and documented in the person-centered service plan and are based on the individual's needs, preferences; and for residential settings with resources available for room and board;
- Ensure an individual's right of privacy, dignity, respect, and freedom from coercion and restraint;
- Optimize individual initiative, autonomy and independence in making life choices; and
- Facilitate individual choice regarding services and supports and who provides them.

Provider-owned or Controlled Residential Settings

- The residential requirements apply to all residences including assisted living facilities and group homes.
- Additional requirements for residential settings to be HCBS:
 - Unit is a specific physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services;
 - Individual has same responsibilities and protections from eviction as all tenants under landlord/tenant laws of state, county, etc.
 - If landlord/tenant laws do not apply, the state must ensure that a lease/residency agreement is in place to address eviction processes and appeals;
 - Each individual has privacy in their sleeping or living unit;

Provider-owned or Controlled Residential Settings *continued...*

- Units have lockable entrance doors, with individual and 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;
- Individuals have the freedom and support control their own schedules and activities, and have access to food at any time;
- Individuals are able to have visitors of their own choosing at any time, and
- The setting is physically accessible to the individual.

Residential Settings that Isolate

- If a setting has the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS, it will be presumed institutional, subject to the Secretary's determination through a heightened scrutiny process.
- These settings include: farmstead or disability-specific farm communities, gated/secured communities for people with disabilities; residential schools and multiple settings that are co-located and operationally related.

Institutional Setting

- The regulations state that these settings can never be permissible settings for the provision of Medicaid HCBS:
 - Nursing Facilities (NFs)
 - Institutions for Mental Disease (IMD)
 - Intermediate Care Facilities for individuals with Intellectual and Developmental Disabilities (ICF-IDD)
 - Hospitals

Presumptively Institutional Settings

- CMS will presume the following settings to be institutional, subject to the Secretary's determination otherwise through a heightened scrutiny process:
 - Settings in a publicly or privately-owned facility that provides in-patient treatment;
 - Settings on the grounds of, or immediately adjacent to, a public institution, and
 - Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS.

Non-Residential Settings

- The requirements apply to all settings, not just residential settings.
- CMS has not yet provided guidelines to apply the community integration requirement to non-residential settings such as adult day or senior centers.

Person-Centered Planning (PCP)

- PCP must be developed through a process that addresses health and LTSS needs in a manner that reflects individual preferences and goals.
- Underpinning successful HCBS is the importance of a complete and inclusive HCP process that addresses the person's array of HCBS needs in the context of personal goals, preferences, community and family supports, financial resources, other areas important to the person.
- Process should result in provision of appropriate services consistent with the efficient use of available resources.
 - To support PCP process, some states (like New Jersey) are using a standardized functional assessment process to determine eligibility for programs through a “no wrong door” approach.

State Compliance of HCBS Settings Regulation

- ✓ CMS has termed coming into compliance with the settings requirements as “Transition.”
- ✓ States must evaluate whether or not their existing HCBS settings comply with the requirements in the rule.
- ✓ For new HCBS programs, the State must demonstrate full compliance with the setting rules before the program can begin.
- ✓ Submission of the first transition plan for any program will trigger a 120-day clock for submission of a transition plan for all of the State’s HCBS programs.
- ✓ States will have to provide a transition plan detailing any actions necessary to achieve or document compliance with settings requirements. CMS may allow states to transition for up to five years after the effective date of the regulations.
- ✓ NJ’s transition plan is due to CMS by March 17, 2015.

What to Self-Assess?

1. Service definitions – Waiver and State Plan
2. Service standards and requirements
 - Regulations
 - Provider qualifications
 - Training requirements
3. Service contracts, rate methodology, billing and adequacy of rates
4. Person-centered planning requirements and documentation
5. Quality oversight
 - Individual plan monitoring requirements – support coordination
 - UR practices
 - Provider monitoring – licensing, certification
 - Provider reporting requirements
 - Performance outcome measurement – using National Core Indicators
6. Information systems

The Transition Plan

- Assess infrastructure and need for modifications:
 1. Service definitions – Waiver and State Plan
 2. Service standards and requirements
 - Regulations
 - Provider qualifications
 - Training requirements
 3. Service contracts, rate methodology, billing and adequacy of rates
 4. Person-centered planning requirements and documentation
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 - Individual plan monitoring requirements – support coordination
 - UR practices
 - Provider monitoring – licensing, certification
 - Provider reporting requirements
 - Performance outcome measurement – using National Core Indicators
 6. Information systems
- Assess waiver and state plan applications
- Assess current services against states requirements and develop a plan to come into compliance
- Develop guidance and training for providers for implementation
- Public input is required

Public Input

- State must seek public input for its proposed transition plan, which includes an initial compliance review of all HCBS settings.
- State must provide assurance that a minimum of 30-day advance notice of the Transition Plan has been provided to the public for review and comment.
- State must provide a summary of public comments, including comments that agree/disagree with the State's determination about whether settings meet the HCBS requirements; summary of modifications to plan made in response to public comment, and additional evidence the State used to confirm its determination (including site visits to specific settings).

NEXT STEPS
