

HCBS FEDERAL RULES
Questions and Answers
July 15, 2014

Questions from the Webinar

Home Health Questions

1. Can you address HCBS in a home health administered plan? Specifically how the final rule applies, please.

The final federal rule includes qualifications that apply to all home and community based (HCB) settings:

- The setting is integrated in and supports full access to the greater community;
- Is selected by the individual from among setting options;
- Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.

These provisions apply to all HCB settings, and so would apply to home health administered services.

CMS has indicated that additional guidance will be released on non-residential HCBS settings. We'll notify providers once this guidance is available so home health agencies, as well as other non-residential waiver providers, can review it for relevance to their services.

2. Is there anything that we as providers (home health) need to be doing differently right now?

Each provider may wish to review their own practice in view of the federal rule. As indicated above, we'll share additional federal guidance about non-residential settings as soon as we receive it.

Residential Questions

3. What about the requirement that the consumers have a lease of their own. Should that be done with the actual landlord, or the agency?

It would depend on who owns the residence. Refer to guidance from CMS: in circumstances where landlord tenant laws do not apply, a lease, residency agreement or other form of written agreement must be in place that provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. Under circumstances where tenant landlord rules do apply, the state will ensure compliance with those rules....at a minimum- the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, country, city or other designated entity. This regulation is not intended to override existing rules governing adherence to proper eviction procedures. This rule requires that individuals receiving Medicaid HCBS who are in provider owned or controlled settings have the same or comparable protections related to evictions as individuals not receiving Medicaid HCBS.

If lease agreements are not current practice among Kentucky residential waiver providers, this is one of the changes that will be addressed in Kentucky's transition plan for coming into compliance with the new federal requirements on HCB settings.

4. Could you elaborate on the statement that the Onus of finding placement for persons in need of residential placement falls on the State? To elaborate on my question....It appears that the commentary reference that the onus is on the state, rather than on the individual provider, to ensure that assistance securing new housing and services is available to the individual who has been involuntarily discharged or evicted. CMS says, "The state is responsible for addressing this assistance through the person-centered planning process."

As is currently required in waiver regulations, it is the responsibility of the person centered team facilitated by the case manager, to coordinate and monitor all waiver and non-waiver services and ensure that the participant's health, safety, and welfare is not at risk. The CMS statement appears to reflect the responsibility of the state to ensure adequate person centered planning is in place.

5. How close is too close for two residences to be considered community based? Two blocks? Three? 200 feet?

The federal rule does not include this level of detail. For settings that may have the effect of isolating individuals receiving Medicaid HCBS from the broader community, the focus of the rule and the additional federal guidance we have received is on demonstrating that individuals in these settings, in fact, exercise choice and access the community to the same extent as individuals who do not receive Medicaid HCBS. CMS's HCBS Settings Requirements Compliance Toolkit includes two sections which are directly relevant to this question: Guidance on Settings that have the Effect of Isolating Individuals Receiving HCBS from the Broader Community and Exploratory Questions to Assist States in Assessment of Residential Settings. The toolkit is available at <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>.

6. Just want to know what the expectation will be in going forward when someone is involuntarily discharged or evicted. Will the Final Rule change what has been historically done in SCL?

No, it will remain the responsibility of the provider as a part of the person centered team to ensure the participant's health, safety and welfare is not at risk.

7. Will you discuss page 15 a little bit more when it states that settings that are primarily people with disabilities and on site staff provides many services may not meet the definition?

Many of the waiver day program settings possess these characteristics; they are set up for people with disabilities and sometimes for people with a certain type of disability-ID, ABI, medical...This would also be true of apartment complexes, group homes, and even staffed residences, for people with disabilities who get residential and often other services from the same staff. Please note, the information on Slide 15 is from the CMS toolkit mentioned above. As the slide indicates, these characteristics might, but will not necessarily, meet the criteria of isolating individuals from the broader community. The focus is on

demonstrating that individuals in settings which have these characteristics, in fact, exercise choice and access the community to the same extent as individuals who do not receive Medicaid HCBS.

8. Will there be clarification for page 17 of the slide where it discusses "farmsteads" or disability specific farm communities? Geography? Distance?

We have not received any further guidance from CMS.

9. How do you anticipate these changes impacting existing group homes & staffed residences?

We do not have specific guidance yet but it will be important that HCBS settings demonstrate the following characteristics and qualities:

- They are integrated in and support access to the greater community
- They provide opportunities for people to seek employment and work in competitive, integrated settings, engage in community life, and control their personal resources
- They ensure the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services

10. We are a residential provider serving Kentucky waiver members, and several of our homes cluster in the same neighborhood. Our participants like this arrangement because it enables them to choose to live in a neighborhood with people of similar interests. This arrangement also enhances our ability to provide effective services because additional support staff is available to each of our residences in close proximity, if needed, and the clinical staff is housed in this area and are available as needed.

The configuration of homes which you describe is one of the settings that CMS has identified in their toolkit as having the effect of isolating individuals receiving Medicaid HCBS from the broader community. For these settings, the focus of the rule and the additional federal guidance we have received is on demonstrating that individuals in these settings, in fact, exercise choice and access the community to the same extent as individuals who do not receive Medicaid HCBS. CMS's HCBS Settings Requirements Compliance Toolkit includes two sections which are directly relevant to this question: Guidance on Settings that have the Effect of Isolating Individuals Receiving HCBS from the Broader Community and Exploratory Questions to Assist States in Assessment of Residential Settings. The toolkit is available at <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>.

Non-Residential Questions

11. When do you anticipate CMS will provide clarification regarding non-residential requirements/guidelines?

CMS has not provided an estimate of when additional guidance will be issued.

12. What is considered a geographical exception?

We have not received any further guidance from CMS.

13. Is it relevant how close consumers live to an ADT or office?

We have not received any further guidance from CMS.

14. Please explain the following: "HCBS service providers must not provide case management for a person they serve, except when the state is granted a geographic exception". If the case manager works for the agency that is also providing the services does this mean the employee can no longer do the case management?

The federal rule (42 CFR 441.301) requires conflict free case management. The only exception included in the rule is when the State demonstrates that the only willing and qualified case management entity in a geographic area also provides HCBS. In these cases, the state must devise conflict of interest protections. In cases where this requirement is not already in place for Kentucky's waivers, we will need to amend our waiver policy to require it.

15. Will the determination of compliance w/meeting the definition for community setting be completed during the certification review?

We have not made any decisions yet on how this will be assessed.

16. How will the changes affect Adult Day Health Care?

The final federal rule includes qualifications that apply to all home and community based (HCB) settings:

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- Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.

These provisions apply to all HCB settings, and so would apply to Adult Day Health Care.

CMS has indicated that additional guidance will be released on non-residential HCBS settings. We'll notify providers once this guidance is available so adult day health care providers, as well as other non-residential waiver providers, can review it for relevance to their services.

17. Are there any ideas regarding how this impact the provision of therapy services received at ADTs?

As indicated above, CMS has indicated that additional guidance will be released on non-residential HCBS settings. We'll notify providers once this guidance is available so adult day training providers, as well as other non-residential waiver providers, can review it for relevance to their services.

18. What about clients who are receiving HCB in their own home? Any changes for this in the final rule?

Please see the response to question #1 above.

Miscellaneous Questions

19. When is the 30 day public comment period?

The public comment period required by the federal rule will occur after the draft HCBS transition plan is developed and published. We don't know the specific date yet.

20. How quickly do you foresee the transition plan being developed?

The transition plan for all waivers must be submitted within 120 days after any one of the waivers is amended or renewed. We anticipate that a waiver amendment may need to be submitted as early as this summer.

21. Does this mean that you guys have to write SCL2 regulations all over again?

We expect the federal HCB rule to require policy changes in Kentucky's residential waivers, so we'll probably have to amend the SCL2 regulations.

22. Does the 1915(c) waiver application have to be completed by the DMS office in each state? If so who would complete the application in DMS? Or do all the Area Agencies on Aging & Independent Living who offer HCBW have to fill out an application?

The transition plan for home and community based settings required by the federal rule must be completed and submitted by each state's Medicaid agency. Kentucky's plan will be developed by multiple Cabinet for Health and Family Services staff members who work with our home and community based waivers, with input from the public as required by CMS rules.