

# Final Rule Medicaid HCBS



Disabled and Elderly Health Programs Group  
Department of Medicaid Services



# 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) 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



# Input to the Final Rule

The final rule reflects:

- Combined response to public comments on two proposed rules published in the Federal register –
  - May 3, 2012
  - April 15, 2011
- More than 2000 comments received from states, providers, advocates, employers, insurers, associations, and other stakeholders



# Highlights of the Final Rule

- Defines, describes, and aligns home and community-based setting requirements across Medicaid authorities
- Defines person-centered planning requirements for persons in HCBS settings under 1915(c) HCBS waiver



# Home and Community-Based Setting Requirements

- The home and community-based setting requirements establish an outcome oriented definition that focuses on the nature and quality of individuals' experiences
- The requirements maximize opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting



# Home and Community-Based Setting Requirements

The final rule establishes:

- Mandatory requirements for the qualities of home and community-based settings including discretion for the Secretary of Health and Human Services (HHS) to determine other appropriate qualities

The final rule identifies:

- Settings that are not home and community-based
- Settings presumed not to be home and community-based

The final rule also establishes:

- State compliance and transition requirements



# Home and Community-Based Setting Requirements

The Home and Community-Based settings as defined in Federal Register 441.301(c)(4) and 441.710 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



# Home and Community-Based Setting Requirements

- The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private room in a residential setting
  - The person-centered plan of care will document the options available that would meet the individual's needs, preferences; and their resources



# Home and Community-Based Setting Requirements

These settings:

- Ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimize individual initiative, autonomy, and independence in making life choices
- Facilitate individual choice regarding services and supports, and who provides them



# Home and Community-Based Setting Requirements For Provider-Owned or Controlled Residential Settings

Additional requirements:

- Specific dwelling is owned, rented, or occupied under legally enforceable agreement
- Same responsibilities/protections from eviction as all tenants under landlord tenant law of county of residence



# Home and Community-Based Setting Requirements For Provider-Owned or Controlled Residential Settings

- Each individual has privacy in their homes
- Homes have lockable entrance doors, with the individual and appropriate staff having keys to doors as needed
- Individuals sharing living space have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living areas within the lease or other agreement allowances
- Individuals have freedom and support to control their schedules and activities and have access to food any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual



# Home and Community-Based Setting Requirements For Provider-Owned or Controlled Residential Settings

Any modifications of the additional requirements must be:

- Supported by specific assessed need and
- Justified and documented in the person-centered plan of care



# 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



# Settings **PRESUMED NOT** to be Home and Community-Based

- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings 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



# Guidance on Settings that have the Effect of Isolating People from the Broader Community

Settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals from the broader community:

- 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



# Characteristics of Settings that Isolate People from the Broader Community

Other characteristics of a setting that isolate people from the broader community include:

- 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).



# Characteristics of Settings that Isolate People from the Broader Community

- Farmstead or disability-specific farm community
  - These settings are often in rural areas on large parcels of land.
- Gated/secured “community” for people with disabilities
  - These communities typically consist primarily of people with disabilities and the staff that work with them.
- Residential schools
  - These settings incorporate both the educational program and the residential program in the same building or in buildings in close proximity to each other.



## More Information to Come

The majority of guidance provided by CMS has been on residential services. Guidance on non-residential services will be disseminated as soon as it released.



# Person-Centered Service Plans

Final rule includes changes to the requirements regarding person-centered service plans for HCBS waivers under 1915(c)

- The person-centered service plan must be developed through a person-centered planning process



# 1915(c) Home and Community-Based Services Person-Centered Service Plans

- The person-centered planning process is driven by the individual
- Includes people chosen by the individual
- Provides necessary information and support to the individual to ensure that the individual directs the process to the maximum extent possible
- Is timely and occurs at times/locations of convenience to the individual



# 1915(c) Home and Community-Based Services Person-Centered Service Plans

- Reflects cultural considerations/uses plain language
- Includes strategies for solving disagreement
- Offers choices to the individual regarding services and supports the individual receives and from whom
- Provides method to request updates



# 1915(c) Home and Community-Based Services Person-Centered Service Plans

- HCBS service providers must not provide case management for a person they serve, except when the state is granted a geographic exception.
- When an exception is granted, the state must devise conflict of interest protection.



# 1915(c) Home and Community-Based Services Person-Centered Service Plans

- Conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare
- Identifies the strengths, preferences, needs (clinical and support), and desired outcomes of the individual



# 1915(c) Home and Community-Based Services Person-Centered Service Plans

- May include whether and what services are self-directed
- Includes individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education and others



# 1915(c) Home and Community-Based Services Person-Centered Service Plans

- Includes risk factors and plans to minimize them
- Is signed by all individuals and providers responsible for its implementation and a copy of the plan must be provided to the individual and his/her representative



# 1915(c) Home and Community-Based Services Written Person-Centered Service Plan Documentation

Written plan reflects -

- Setting is chosen by the individual and is integrated in, and supports full access to the greater community
- Opportunities to seek employment and work in competitive integrated settings
- Opportunity to engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS



# 1915(c) Home and Community-Based Services Written Person-Centered Service Plan Documentation

- Reflects individual's strengths and preferences
- Reflects clinical and support needs
- Includes goals and desired outcomes
- Providers of services/supports, including unpaid supports provided voluntarily in lieu of waiver or state plan HCBS



# 1915(c) Home and Community-Based Services Written Person-Centered Service Plan Documentation

- Risk factors and measures in place to minimize risk
- Individualized backup plans and strategies when needed
- Individuals important in supporting individual
- Individuals responsible for monitoring plan



# 1915(c) Home and Community-Based Services Written Person-Centered Service Plan Documentation

- Distributed to the individual and others involved in plan
- Includes purchase/control of self-directed services
- Exclude unnecessary or inappropriate services and supports



# 1915(c) Home and Community-Based Services Written Person-Centered Service Plan Documentation

- Modification of the additional conditions as previously discussed in the home and community-based setting requirements
- Must be reviewed, and revised upon reassessment of functional need as required every 12 months, when the individual's circumstances or needs change significantly, and at the request of the individual.



# 1915(c) Home and Community-Based Services Written Person-Centered Service Plan Documentation

- Plain language and understandable to the individual
- Who is responsible for monitoring the plan
- Informed consent of the individual in writing
- Signatures of all individuals and providers responsible



# Transition

- Final rule includes a transition process for states to ensure that all waiver programs meet the HCBS settings requirements.
- For NEW 1915(c) HCBS to be approved, states must ensure that HCBS are only delivered in settings that meet the new requirements



# Transition

For renewals and amendments to existing HCBS 1915(c) waivers submitted within one year of the effective date of final rule:

- The state submits a plan in the renewal or amendment request 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



# Transition

For ALL existing 1915(c) HCBS waivers in the state, the state must submit a 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
- The level and detail of the plan will be determined by the types and characteristics of settings used in the individual state



# Transition

When a state DOES NOT renew or amend an existing 1915(c) HCBS waiver within one year of the effective date of the final rule, the plan to document or achieve compliance with settings requirements must:

- Be submitted within one year of the effective date of the final rule (March 17, 2015)
- Include all elements, timelines, and deliverables as required



# Transition Public Comment Period

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



# Transition

- Implementation of the plan begins upon approval by CMS
- States are expected to transition to the new settings requirements as quickly as possible and demonstrate substantial progress over time.
- Maximum transition time allowed is 5 years.
- 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



# For More Information

More information about the final regulation is available:

<http://www.medicaid.gov/HCBS>

This presentation was taken from information gathered from this website.

Email any additional questions to:

[cmsfinalrule@ky.gov](mailto:cmsfinalrule@ky.gov)

Questions will be added to the DMS and BHDID website and updated as needed.

