KENTUCKY

Cabinet for Health and Family Services

HOME AND COMMUNITY BASED SERVICES (HCBS) FEDERAL FINAL RULES

STAKEHOLDER UPDATE MEETING
SEPTEMBER 22ND AND 30TH 2016

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Kentucky Implementation of Rules

Following is a summary of major implementation activities completed by the Cabinet for Health and Family Services (CHFS) staff since February 2016, with input and involvement from stakeholders.

	Completed Activities
February – August 2016	• Obtained initial approval of Statewide Transition Plan (second state, June 2) • Designed the process and tools for heightened scrutiny site visits • Trained site visitors (staff and volunteers) conducting heightened scrutiny visits (April) • Completed 350+ heightened scrutiny site visits, collected evidence forms for each visit, and received additional supporting evidence from providers (through August 2016) • Notified providers and provider associations of additional settings requiring heightened scrutiny • Distributed provider letter re: requirements for new providers and newly opened settings

	Current Activities
On-Going	• Complete updates on Statewide Transition Plan and submit for Final Approval • Develop a template to summarize the evidence that settings subject to heightened scrutiny are appropriate HCBS settings • Create a process to summarize and review the evidence to be submitted to CMS for each setting

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New CMS Guidance

Since our last stakeholder meeting in February 2016, CMS has provided additional guidance on a number of topics ranging from our submission timeline, to how CMS is reviewing settings submitted for heightened scrutiny, and non-residential settings. Guidance has been provided mainly in webinars and conference presentations. Additional written guidance on non-residential settings is still expected.

Non-Residential Settings

- Reverse integration ALONE is not enough to overcome presumed not home and community based characteristics

Heightened Scrutiny

- States are only to submit a setting to CMS for review if the state believes the setting is home and community-based in nature and does not have the qualities of an institution
- If the setting does not fully comply with all HCBS requirements, a setting-specific transition plan should be in place

Evidence Packages

- CMS has requested evidence packages for each setting submitted for heightened scrutiny
- The package should be a summary of evidence, a 10 page limit is expected. CMS can request back-up documentation (e.g. full interview report, documentation shared by provider, etc.)
- Evidence packages are to be published for public comment

New CMS Guidance

Submission Timeline

- The Kentucky submission timeline has been pushed back to allow more time to review and build evidence packages to submit to CMS
- Kentucky will be doing the staggered submission process that CMS encouraged

CMS HCBS Setting Review

- CMS indicated in one technical assistance venue that they will only be reviewing a sample of the settings in each submission and that all settings in the submission will pass or fail based on the sample review
- Settings are able to be resubmitted if they complete remediation steps that enable them to overcome the presumption

Public Comment

- Kentucky anticipates publishing its first round of providers and settings requiring heightened scrutiny in late 2016 to early 2017
- Additional written guidance from CMS on how to publish the settings is still forthcoming.

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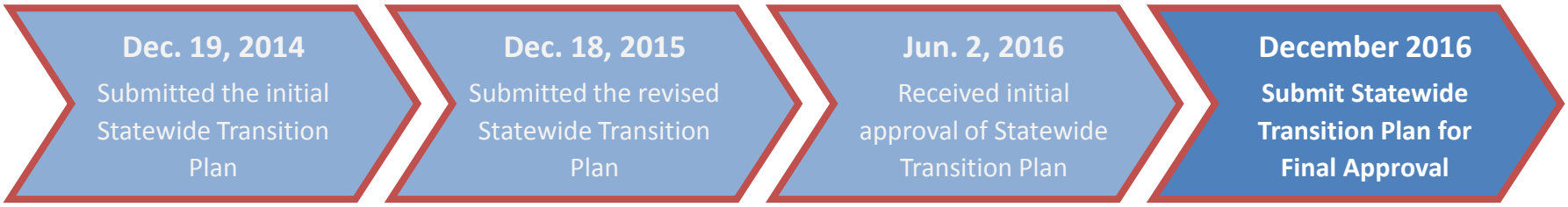
Statewide Transition Plan

The Department for Medicaid Services is working to receive final approval of our Statewide Transition Plan. Kentucky was the second state (along with Ohio) to received initial approval at the beginning of June.



In our Statewide Transition Plan initial approval letter CMS outlined additional changes the Commonwealth needs to make in order to receive Final Approval:

- Include information related to site-specific assessment of HCBS settings and the validation strategy of those results
- Draft remediation strategies and a timeline for the site-specific settings assessment process
- Develop a communication strategy and plan for beneficiaries that will be impacted by settings being unable to come into compliance with the HCBS settings rule by March 17, 2019
- Establish ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS remain fully compliant with the rule in the future

DMS plans to publish the updated Statewide Transition Plan for public comment in November 2016.

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Site Visit Overview

Over the past several months, DMS has prepared for and completed site visits of settings currently designated as category 4; presumed not to be home and community-based.

November 2015	• Providers received their compliance plan evaluations and were notified of their categorizations.
March 2016	• Category 4 providers were notified that heightened scrutiny site visits would be occurring and received their visit schedules.
April 2016	• Heightened scrutiny site visits began.
June 2016	• Additional category 4 settings were identified.
July 2016	• Additional heightened scrutiny visits began.
August 2016	• Over 350 site visits have been completed since April 2016 concluded at the end of August.

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Developing Evidence Packages

Kentucky has collected a significant amount of documentation from the site visits that help describe a setting's home and community-based characteristics.

- DMS is developing a process to build **evidence packages** that will be submitted to CMS
- CMS has requested **a short summary** of the home and community-based characteristics of each setting and evidence that the setting is not institutional in nature
- All information that Kentucky has collected will be listed in the evidence packet and **provided to CMS upon request**
- Kentucky's goal is to **engage stakeholders** in the development and review of packets that will be shared with CMS

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Next Steps

Outlined below are the next steps the department will take in regards to the Statewide Transition Plan, Site Visits, and on-going compliance and monitoring the HCBS Final Rules.

Heightened Scrutiny

- Develop documentation template to be submitted to CMS for each setting
- Develop setting specific transition plans for settings to be submitted to CMS
- Formulate the documentation review/compilation process
- Create a staggered submission process to submit providers/settings to CMS for review

Ongoing Compliance

- Design a process to ensure that all new settings and providers are compliant with the Final Rules
- Providers will receive communication on this process once it is finalized and approved

Statewide Transition Plan

- Revise sections as needed based on feedback
- Post Statewide Transition Plan for public comment (November)
- Submit revised Statewide Transition Plan to CMS

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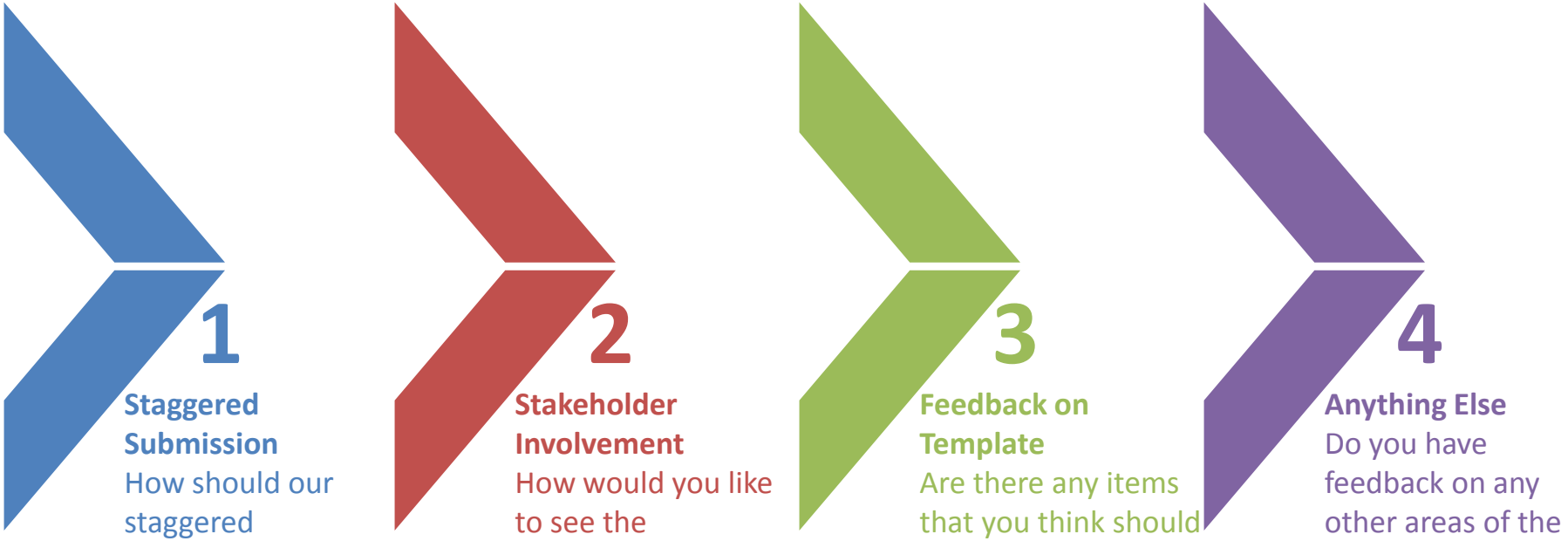
We'd Like to Hear from You!

The Department for Medicaid Services would appreciate stakeholder input on a number of topics as we move towards Final Approval of our Statewide Transition Plan and submission of settings to CMS for heightened scrutiny. Please send additional comments to CMSfinalHCBRule@ky.gov.



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Appendix

Site Visit Overview

November 2015
Initial categorization of settings completed

April – August 2016
Conduct on-site visits and collect evidence of category 4 settings

Late 2016 – Early 2017
Begin submitting HCBS evidence to CMS for review

A group consisting of **two staff** and a **self-advocate or family member** will conduct **264 on-site visits** to settings that have been identified as requiring heightened scrutiny in order to comply with the HCBS federal final rules. Staff members visiting are interviewing and observing each setting and **NOT** making any final determinations about setting compliance.

State staff will use their laptops to fill out the observation and survey tools related to the **location, setting, staff, and participants** at each setting. They will take photos of the setting that show home and community based characteristics. Examples of photos include bedrooms, exterior of the building, locks, etc. Photos should **NEVER** include the participant and should only be taken if permission is received.

Once the on-site visit is complete, observers will submit their surveys and additional evidence to DMS. If, at the conclusion of the visit, the setting is still presumed to be not home and community based, the setting will need to undergo heightened scrutiny and collected evidence will be sent to CMS to make a final determination on each setting.

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Appendix: HCBS Federal Final Rules

HCBS Final Rule – Federal Language
Person-Centered Planning Process Rules
The individual will lead the person-centered planning process where possible. The individual's representative should have a participatory role, as needed and as defined by the individual, unless State law confers decision-making authority to the legal representative. All references to individuals include the role of the individual's representative.
Includes people chosen by the individual.
Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions.
Is timely and occurs at times and locations of convenience to the individual.
Reflects cultural considerations of the individual and is conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with § 435.905(b) of this chapter.
Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants.
Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS. In these cases, the State must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process.
Offers informed choices to the individual regarding the services and supports they receive and from whom.
Includes a method for the individual to request updates to the plan as needed.
Records the alternative home and community-based settings that were considered by the individual

Appendix: HCBS Federal Final Rules

HCBS Final Rule – Federal Language
Person-Centered Service Plan Rules
The person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports
Reflect that the setting in which the individual resides is chosen by the individual. The State must ensure that the setting chosen by the individual is integrated in, and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, 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.
Reflect the individual's strengths and preferences.
Reflect clinical and support needs as identified through an assessment of functional need.
Include individually identified goals and desired outcomes.
Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports. Natural supports are unpaid supports that are provided voluntarily to the individual in lieu of 1915(c) HCBS waiver services and supports.
Reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies when needed.
Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with § 435.905(b) of this chapter.
Identify the individual and/or entity responsible for monitoring the plan.

Appendix: HCBS Federal Final Rules

HCBS Final Rule – Federal Language
Person-Centered Service Plan Rules (Continued)
Be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation.
Be distributed to the individual and other people involved in the plan.
Include those services, the purpose or control of which the individual elects to self-direct.
Prevent the provision of unnecessary or inappropriate services and supports.
Home and Community Based Settings Rules
Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, 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.
The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
Facilitates individual choice regarding services and supports, and who provides them.

Appendix: HCBS Federal Final Rules

HCBS Final Rule – Federal Language
Home and Community Based Settings Rules (Continued)
Home and community-based settings do not include the following: (i) A nursing facility; (ii) An institution for mental diseases; (iii) An intermediate care facility for individuals with intellectual disabilities; (iv) A hospital; or (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.
Provider-Owned or Controlled Residential Settings Rules
The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.
Each individual has privacy in their sleeping or living unit: • Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. • Individuals sharing units have a choice of roommates in that setting. • Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

Appendix: HCBS Federal Final Rules

HCBS Final Rule – Federal Language
Provider-Owned or Controlled Residential Settings Rules (Continued)
Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
Individuals are able to have visitors of their choosing at any time.
The setting is physically accessible to the individual.
Any modification of the additional conditions, except the physically accessible rule must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: identify a specific and individualized assessed need, document the positive interventions and supports used prior to any modifications to the person-centered service plan, document less intrusive methods of meeting the need that have been tried but did not work, include a clear description of the condition that is directly proportionate to the specific assessed need, include regular collection and review of data to measure the ongoing effectiveness of the modification, include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated, include the informed consent of the individual, include an assurance that interventions and supports will cause no harm to the individual.