
CMS FINAL RULE: HOME AND COMMUNITY BASED SERVICES (HCBS) SETTING REQUIREMENTS

DDSD STAKEHOLDER STRATEGIC PLANNING MEETING, JUNE 14, 2016

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NEW MEXICO HCBS PROGRAMS

- 1915 (c) Developmental Disabilities Waiver
- 1915 (c) MiVia Waiver
- 1915 (c) Medically Fragile Waiver
- Section 1115 Centennial Care Demonstration

CMS FINAL RULE

- January 16, 2014 the Centers of Medicare and Medicaid Services (CMS) published a Final Rule making changes to Home and Community Based Services waivers (HCBS)
 - Ensure quality of HCBS
 - Provides protections to participants
 - Enable people to receive services in the most integrated setting appropriate
 - Maximizes opportunities for people to have full access to the benefits of community living
 - Enhancement and expansion of human rights
 - Requires demonstration and evidence-based individualized and person-directed service delivery
 - Allows participants to have maximum control over their lives and day-to-day decision making

HCBS SETTING REQUIREMENTS-ALL SETTINGS

Is integrated in and supports access to the greater community

Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources

Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS

Is selected by the individual from among setting options including non-disability specific settings

Ensures an individual's rights of privacy, respect, and freedom from coercion and restraint

Optimizes individual initiative, autonomy, and independence in making life choices

Facilitates individual choice regarding services and supports and who provides them

PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTING REQUIREMENTS

- 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 landlord tenant law of the state, county, city or other designated entity.
- For settings where 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 participant and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTING REQUIREMENTS

- Privacy in sleeping or living unit
- Units have entrance doors lockable by the individual (appropriate staff having keys as needed)
- Choice of roommates in setting
- Freedom to furnish and decorate sleeping or living units within the lease or other agreement
- Freedom and support to control their own schedules and activities, and to have access to food at any time
- Ability to have visitors of their choosing at any time
- Setting is physically accessible

*Any modification of the above requirements must be supported by a specific assessed need and justified in the person-centered service plan.

CMS-IDENTIFIED SETTINGS THAT ARE NOT HOME AND COMMUNITY-BASED

- Nursing facilities
- Institutions for mental disease
- Intermediate care facility for individuals with intellectual disabilities
- Hospitals
- Other locations that have qualities of institutional setting

CMS IDENTIFIED SETTINGS PRESUMED NOT TO BE HOME AND COMMUNITY-BASED

- Settings in a publically or privately-owned facility providing inpatient treatment
- Settings on grounds of or next to a public institution
- Settings with the effect of isolating people from the broader community of people not receiving Medicaid HCBS

SETTINGS WITH THE EFFECT OF ISOLATING INDIVIDUALS- CMS GUIDANCE

- The setting is designed specifically for people with disabilities, or for certain people with a certain type of disability
- Individuals in the setting are primarily or exclusively people with disabilities and the on-site staff that provides services to them
- Section 3 in binder, page 5

HEIGHTENED SCRUTINY PROCESS

- State must identify in STP any settings that are presumed to have qualities of an institution
- If settings are identified CMS must determine the setting
 - Does not have the qualities of an institution and
 - Does have the qualities of an home and community-based setting

HEIGHTENED SCRUTINY PROCESS

- Exploratory Questions for Residential Settings and/or Non-Residential Settings
 - <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/exploratory-questions-re-settings-characteristics.pdf>
 - <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/exploratory-questions-non-residential.pdf>
- Public notice and input associated with settings the state is requesting heightened scrutiny-settings listed by name and location and identify number of people served in each setting

PERSON-CENTERED PLANNING

- Person-centered planning process
- Directed by individual and includes people chosen by the individual
- Uses plain language
- Offers choices
- Considers self-direction
- Includes risk factors and plans to minimize them
- Person-centered plan with individually identified goals and preferences, including those related to:
 - Community participation
 - Employment
 - Income and savings
 - Healthcare and wellness
 - Education

PERSON-CENTERED PLANNING

- Empowerment
- Self-determination
- Meaningful lives
- Inclusion
- Quality of life
- Dignity of risk
- Autonomy
- Valued social roles
- Contribution

PERSON-CENTERED SERVICE PLAN DOCUMENTATION

- Setting is chosen by the person 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
- Reflects person's strengths and preferences
- Reflects clinical and support needs

PERSON-CENTERED SERVICE PLAN DOCUMENTATION

- Includes goals and desired outcomes
- Providers of supports/services, including unpaid supports, provided
- Risk factors and measures to minimize risk
- Backup plans and strategies when needed
- Important people in supporting the individual
- People responsible for monitoring plan

STATEWIDE TRANSITION PLAN-BINDER SECTION 6

- Systemic crosswalk
- Provider self-assessment
- Training
- On-site validity
- Participant surveys
- Transitions
- Ongoing monitoring
- Compliance!

STATEWIDE TRANSITION PLAN TIMELINE

- Initial and final approvals
- Received 2nd formal CMS feedback on STP 4-2016
 - Systemic assessment
 - Validation process
- Response due to CMS 9-30-2016 after formal public comment

PUBLIC COMMENT PERIOD

- 60-day public notice and comment period, including tribal consultation, on statewide transition plan
- Ensure full STP available for public comment
- Consider public comments
- Modify STP based on public comment, as appropriate
- Submit evidence of public notice and summary of disposition of the comments

COMPLIANCE

- All states must fully comply with all new settings requirements by March 17, 2019
- In order to receive federal funding you must comply