



NASHIA Tip of the Month!

Overview of the CMS Final Rule on Characteristics of Home and Community-Based (HCBS) Settings

Carol Hansen RN, BSN, CBIS, Medicaid TBI Specialist, Home and Community-Based Services Section, Michigan Department of Community Health

September 2014

Final Rule – CMS 2249-F and CMS 2296-F (Published in the *Federal Register* on January 16, 2014, effective March 17, 2014).

Centers for Medicare and Medicaid Services (CMS) Intent of the Final Rule – to ensure that individuals receiving long-term services and supports through Home and Community-Based Services (HCBS) programs under the 1915(c), 1915(i) and 1915(k) 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.**

A few highlights of the rule:

- Aligns HCBS settings requirements across three Medicaid authorities
- Defines person-centered planning (PCP) requirements
- Allows combining multiple target populations into one 1915(c) waiver
- New compliance options for 1915(c) waiver programs, not just approve/deny
- Establishes five year renewal cycle to align concurrent authorities.

Breaking down the Rule relating to HCBS Settings –

HCBS characteristics for Settings where HCBS is delivered:

- Mandatory requirements for the qualities of HCBS settings including discretion for the Secretary of Health and Human Services (HHS) to determine other appropriate qualities,
- Settings that **are not** home and community based (HCB) or **presumed not** to be HCB
- State compliance and transition requirements,
- Establishes an outcome oriented definition that focuses on the **nature and quality of individuals' experiences,**
- Maximizes opportunities for individuals to have **access to the benefits of community living** and the opportunity to receive services in the **most integrated setting.**

These rules **will apply to all settings where HCBS services are delivered**, not just the place where the person lives:

- Residential settings such as group homes
- Day programs
- Workshops
- Pre-vocational Centers

These settings are **integrated in and support access to** the greater community, provide opportunities to seek employment, **work in competitive integrated** settings, **engage in community life, control personal resources**, and ensure the individual receives services in the community **to the same degree of access as individuals not receiving Medicaid HCBS**. The HCB setting is **selected by the individual from among setting options**, including non-disability specific setting. The State must assure an option for a private unit in a residential setting. PCP plans must document the options based on the individual's needs, preferences, and for residential settings, the individual's resources.

The HCBS setting characteristics ensure:

- An individual's **rights to privacy, dignity, 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**.

Additional requirements in Provider-owned/controlled settings: The Individual

- Has a **lease or other legally enforceable agreement** providing similar protections,
- Has **privacy in their unit including lockable doors**, choice **of roommates** and freedom to **furnish or decorate the unit**,
- **Has freedom and support to control their schedules and activities, including access to food** at any time, may **have visitors at any time**,
- Setting is **physically accessible** to the individual,
- Modifications of the additional requirements must be supported by specific assessed need, justified in the PCP plan. Example might be limits on access to food or visitors. (The modification **is required to meet the individual's needs, not the setting requirements**.)

The following settings are **NOT** home and community based:

- Nursing facility
- Institution for mental diseases
- Intermediate care facility for individuals with intellectual disabilities
- Hospitals.

Settings that are **PRESUMED NOT TO BE** HCB:

- In a publicly or privately-owned **facility providing inpatient treatment**,
- **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**,
(Note - CMS does not specify the size of the setting but focuses on the person's experience and opportunities to interact in the broader community)
- Settings that have the following two characteristics alone might, but not necessarily, meet the criteria for having the effect of isolating individuals:
 - 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 provide many services to them.

Settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:

- 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 is used in institutional settings or is deemed unacceptable in Medicaid institutional settings (e.g., seclusion).

CMS provides a non-exhaustive list and describes these examples of types of settings that are **PRESUMED NOT** to meet HCBS because they isolate:

- Farmstead or disability-specific farm community,

- Gated/secured “community” for people with disabilities,
- Residential schools,
- Multiple settings co-located and operationally related.

The State can make a case to CMS that a setting that appears to be included in the **PRESUMED NOT TO BE** HCB does meet the requirements:

- A State submits evidence (**including public input**) demonstrating that the setting does have the qualities of HCBS and **NOT** the qualities of an institution, and
- The Secretary finds, based on a heightened scrutiny review of the evidence, that the setting meets the requirements for HCBS and does **NOT** have the qualities of an institution.

CMS has provided several documents to use as a HCBS setting toolkit:

- A **summary of the regulatory requirements** of fully compliant HCB settings and those settings that are excluded,
- Schematic drawings of the **heightened scrutiny process** as a part of the regular waiver life cycle and the HCBS 1915(c) compliance flowchart,
- Additional technical guidance on regulatory language regarding **settings that isolate**, and
- **Exploratory questions** that may assist states in the assessment of **residential** settings.

The “**test**” for any HCBS setting will be **qualities and characteristics** of the setting that make it HCB and how the **individual experiences** the community **to the same extent as other in the community** who do not receive HCBS.

(Language has been directly taken from materials available from CMS.)

For further information contact NASHIA at info@nashia.org.