Department of Medical Assistance Services
Division of Long-Term Care

Key Provisions of the Final Rule (CMS 2249-F/2296-F) on Medicaid Home and Community Based Services (HCBS)

Overview of Provisions of the Final Rule

- The Rule reflects CMS' intent to ensure that individuals receiving Home and Community Based Services (HCBS) through Medicaid have full access to the benefits of community living and receiving services in the most integrated setting.

- The regulations contained in the Rule went into effect on **March 17th, 2014.**

Key Provisions of the Final Rule

- The Rule **amends the regulations for the 1915(c) HCBS waiver program**, authorized under **section 1915(c) of the Social Security Act** (the Act) in several ways:
    - It establishes requirements for home and community based (HCB) settings in Medicaid HCBS programs
    - It defines person-centered planning requirements
    - It provides states the option to combine multiple target populations into one waiver program
    - It offers clarity on the timing of amendments and public input requirements when states propose modifications to HCBS waiver programs and service rates
    - It provides CMS with additional compliance options for HCBS programs.

Additional Highlights from the Rule

- According to the Rule, **HCB settings,** cannot be any of the following:
    - A Nursing Facility
    - An Institution for Mental Disease
    - An Intermediate Care Facility for Individuals with Intellectual Disabilities
    - A Hospital that provides long-term care services
    - A setting that is located in a publicly or privately operated facility that provides inpatient, institutional care, or in a building that is on the grounds of or immediately adjacent to a public institution.
    - A setting that isolates individuals receiving Medicaid HCBS from the community more so than individuals not receiving Medicaid HCBS.

- According to the Rule, the following characteristics **must be present** in order for a **setting to be considered HCB**, and therefore continue to receive Medicaid funding to provide home and community based services:
    - The setting is integrated in and supports full access to the greater community
    - The setting is selected by the individual from among a variety of setting options
    - The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint
    - The setting optimizes autonomy and independence in making life choices
    - The setting facilitates choice regarding services and who provides them

- Furthermore, individuals living in provider owned or operated residential settings must:
  - Have a signed lease or other legally enforceable agreement providing similar protections
  - Have access to privacy in their sleeping units including lockable doors, choice of roommates, and freedom to furnish or decorate their unit
  - Have the ability to control their daily schedules and activities and have access to food at any time
  - Have the ability to have visitors at any time
  - Be able to physically maneuver within the residential setting (e.g. setting is physically accessible).
    - Any modifications made to any of the above criteria must be the result of identified specific needs discovered through an independent (re)assessment, and then documented and justified in a **person-centered service plan**.
    - Additionally, the **HCB setting requirements** (excluding the additional requirements for provider operated residential settings) applies to **all non-residential setting**s where HCBS are delivered.

- According to the Rule, CMS specifies that **service planning** for participants in **Medicaid HCBS programs** under **section 1915(c)** and **1915(i)** of the Act must be developed through a **person-centered planning process** that reflects individual preferences and goals. The Rule:
  - Requires that **the person-centered planning process** is directed by the individual or the individual's chosen representative
  - Outlines the **minimum requirements for person-centered service plans** with individually identified goals and preferences

- According to the Rule, states will need to **evaluate the settings** currently in their 1915(c) waivers and 1915(i) state plan programs. If there are settings that do **NOT** meet the final regulation's **HCB setting requirements**, then the states:
  - Must develop a **transition plan** to bring their program(s) into compliance.
    - For a **waiver renewal or amendment** after **March 17, 2014**, states must submit a **transition plan** detailing how that particular waiver will comport with the HCB setting requirements.
      - Within **120 days** of the original submission of a waiver renewal/transition plan to CMS, states must **submit a master transition plan for the rest of the states' waiver programs** that may not be in complete compliance with the **HCB setting requirements**.
      - The **public** must have the opportunity to **provide input** on the states' transition plans
      - CMS expects states to transition to compliance in as short of time as possible; however **transition plans may be approved for a period of up to five (5) years.**

For more information on the **CMS Final Rule on Home and Community Based Services** including fact sheets, guidance, and a copy of a the Final Rule regulations published in the **Federal Register**, click here.