

# Key Provisions of the Medicaid Home and Community-Based Services (HCBS) Rule

## Overview

- The federal rule supports enhancing the quality in HCBS programs as well as adding protections for individuals receiving services.
- The rule reflects CMS' intent to ensure that individuals receiving 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 became effective March 17<sup>th</sup>, 2014.

## Key Provisions of the HCBS 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 operated under sections 1915(c), 1915(i), and 1915(k) of the Act;
  - Defines person-centered planning requirements;
  - Provides states with the option to combine multiple target populations into one waiver to allow for more streamlined administration of HCBS waivers;
  - Offers clarity on the timing of amendments and public input requirements when states propose modifications to HCBS waiver programs and service rates; and
  - Provides CMS with additional compliance options for HCBS programs.
- The rule implements the section 1915(i) HCBS state plan option, including new flexibilities enacted under the Affordable Care Act, which offers states:
  - The option to provide expanded HCBS and to target services to specific populations
  - A set of requirements for HCB settings in Medicaid HCBS programs operated under sections 1915(c), 1915(i), and 1915(k) of the Act.
- The rule provides for a five-year approval or renewal period for demonstration and waiver programs in which a state serves individuals dually eligible for Medicaid and Medicare benefits.
  - This allows states to use a five-year renewal cycle to align concurrent waivers that serve dually eligible individuals (such as 1915(b) and 1915(c)).

## 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:
  - The setting is integrated in and supports full access to the greater community;
  - Is selected by the individual from among a variety of setting options;
  - Ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;
  - Optimizes autonomy and independence in making life choices;
  - Facilitates choice regarding services and who provides them;

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- 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 settings where HCBS are delivered.
      - CMS will issue further guidance on applying the HCB setting requirements to nonresidential settings.
- 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 services plans with individually identified goals and preferences; and
  - CMS will issue further guidance regarding operationalizing person-centered planning to bring the states' programs into compliance.
- 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. Virginia submitted its transition plan on March 17, 2015, a revised STP in April 2016 and additional clarifications in December 2016. An updated plan is due to CMS in June 2017.
    - 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 plan timelines for compliance may extend to March of 2019.

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