

Home and Community Based Settings: Final Rule

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**OVERVIEW OF SETTINGS THAT
ARE PRESUMED TO HAVE
QUALITIES OF AN INSTITUTION**

**HCBS FINAL RULE
AUGUST 15, 2014**

**NOTE: THIS MEETING WILL BE TAPE RECORDED AND
THE RECORDING WILL BE POSTED AT
HCBS.dhw.idaho.gov**

CMS HCBS Final Rule Name

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Published in the Federal Register on 01/16/2014,
effective March 17, 2014

Title:

Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice (Section 1915(k) of the Act) and Home and Community-Based Services (HCBS) Waivers (Section 1915(c) of the Act); Final Rule

Who and What Does this Rule Impact?

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The new CMS HCBS rule impacts

- Participants receiving HCBS services
- Medicaid providers providing HCBS services
- People involved in developing HCBS service plans
- Non-residential settings where HCBS services are provided
- Residential settings where participants receiving HCBS services live
- How HCBS service plans are developed
- The documentation HCBS service plans must contain

Topics for Today's Meeting

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Today we will:

- Provide a summary of the CMS criteria for facilities presumed by CMS to be an institution.
- Discuss next steps: how might we refute the classification as an institution where appropriate?
- Solicit initial thoughts and/or questions.

NOT Home and Community-Based

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Before we start, remember these are the settings that are not home and community based:

- A nursing facility
- An institution for mental diseases (IMD)
- An intermediate care facility for individuals with intellectual disabilities (ICF/IID)
- A hospital



Settings PRESUMED NOT TO BE Home and Community-Based

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Rule specifies that the following settings are presumed to have the qualities of an institution:

1. Settings in a publicly or privately-owned facility providing inpatient treatment
2. Settings on grounds of, or immediately adjacent to, a public institution
3. Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS



So What Does This Mean?

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The first two characteristics are very clear; settings in a publicly or privately-owned facility providing inpatient treatment or settings on grounds of, or immediately adjacent to, a public institution

- Let's discuss the third characteristic: Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS
- CMS has given us some additional guidance on this characteristic.

Settings that Isolate

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Taken From the CMS Tool Kit

Settings that have the following two characteristics alone might, but will 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 provides many services to them.



Settings that Isolate cont.

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Taken From the CMS Tool Kit

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 are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

In Summary

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If the facility:

1. is in a publicly or privately-owned facility providing inpatient treatment, or
2. is on the grounds of, or immediately adjacent to, a public institution, or
3. has the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS,

then that facility will be presumed by CMS to be an institution and thus not eligible to serve participants receiving home and community based services.

Unless....

Settings PRESUMED NOT to Be Home and Community-Based: Heightened Scrutiny

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- A state submits evidence (including public input) demonstrating that the setting does have the qualities of a home and community-based setting 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 home and community-based settings and does NOT have the qualities of an institution

Your Input is Needed

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If you think your facility falls into the CMS criteria to be presumed to be an institution, BUT you believe your facility MEETS the qualities of a home and community based setting, then we will need to work together to provide the evidence needed to refute the institutional setting assumption.

We would like to hear your ideas about the kind of evidence that might be provided.

CMS tells us that to refute the institutional setting assumption we must provide evidence that the setting meets the characteristics of HCBS settings.

So let's review those characteristics.

Home and Community-Based Setting:

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- 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 home and community-based services

Home and Community-Based Setting Requirements cont.

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- 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
- Person-centered service plans document the options based on the individual's needs, preferences; and for residential settings, the individual's resources



Home and Community-Based Setting Requirements cont.

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- The setting ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- It optimizes individual initiative, autonomy, and independence in making life choices
- It facilitates individual choice regarding services and supports, and who provides them



Additional Requirements for Provider-Owned or Controlled Residential Settings

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- CMS has laid out some specific requirements for congregate settings where the services and living arrangements are combined, that is housing and supports are “bundled” together by one provider.
- These requirements are in addition to the setting requirements/qualities presented in the previous slides.
- They are.....

ADDITIONAL CHARACTERISTICS

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- The specific unit/dwelling is owned, rented, or occupied under a legally enforceable agreement
- Residents have the same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity
- If tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law

ADDITIONAL CHARACTERISTICS cont.

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- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with appropriate staff having keys to doors as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement

ADDITIONAL CHARACTERISTICS cont.

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- Individuals have freedom and support to control their schedules and activities and have access to food any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual



So What is Next?

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- We encourage you to assess your facility against the characteristics for settings presumed to be an institution.
- We also encourage you to begin a self assessment of the HCBS setting requirements to determine if you meet the characteristics of a home and community based setting.

Your Input is Needed

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- Providers, participants and stakeholders are asked to provide Medicaid with ideas on how facilities that fall into CMS' presumed qualities of an institution might where appropriate refute that presumption.
- What evidence might be provided?
- If your facility does not meet the HCBS setting requirements or is presumed to be an institution will you make changes to come into compliance?
- If so we want your ideas on how your facility might transition to full compliance if you are currently not in compliance. How long will it take?

FYI: From CMS Tool Kit

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“In CMS’ experience, most Continuing Care Retirement Communities (CCRCs), which are designed to allow aging couples with different levels of need to remain together or close by, do not raise the same concerns around isolation as the examples above, particularly since CCRCs typically include residents who live independently in addition to those who receive HCBS.”

Important Resource

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CMS has published fact sheets, webinars and regulatory guidance at the following website:

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Homeand-Community-Based-Services.html>

It has everything and anything CMS has available on the new regulations.

How to Contact Us

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- You may view materials from the state and access an 'Ask The Program' feature at HCBS.dhw.idaho.gov. That feature will allow you to send comments to Medicaid staff.
- The draft transition plan will be posted at that site for comment for 30 days once it is available
- You may email the program directly at: HCBSSettings@dhw.idaho.gov

QUESTIONS or Comments?