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We will begin shortly!

Home and Community Based Settings: Provider Training

Overview of the New IDAPA Rules for Provider Owned or Controlled Residential Settings

May 6, 2016

Note: This meeting will be recorded. The recording will be posted to the HCBS webpage

Webinar Topics for Today

- Brief history of the new HCBS rules
- Intent of the new HCBS Rules
- Today's overview will focus on the new IDAPA rules that apply to **provider-owned or controlled residential settings** where HCBS are delivered
 - This includes Residential Assisted Living Facilities (RALFs) and Certified Family Homes (CFHs)
- Compliance timeline review
- Upcoming additional training opportunities

Background

- The Centers for Medicare and Medicaid Services (CMS) published new regulations in 2014 that implemented new requirements for state Medicaid HCBS programs.
 - To ensure that individuals receiving long-term services and supports through home and community based service (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

Background

- CMS required states to develop Statewide Transition Plans that describe the state's plan to ensure full compliance with the regulations no later than March 2019.
- Idaho submitted its Statewide Transition Plan to CMS in October 2015 – it is still pending approval. This plan describes the steps that Idaho Medicaid is taking to move into full compliance.
- We recently completed one step of that Transition Plan with the promulgation of new IDAPA rules.

Intent of the IDAPA Rules

- To have sound regulatory support for implementing the new requirements
- To have HCBS rules specific to Idaho and its programs

IDAPA 16.03.10.310

- This first subsection of the new set of rules **indicates Idaho's HCBS programs are:**
 - Children's Developmental Disability Services
 - Adult Developmental Disability Services
 - Consumer-Directed Services
 - Aged and Disabled Waiver Services
 - Personal Care Services

IDAPA 16.03.10.311

- This subsection specifies that the **HCBS rules do not supersede the decision-making authority that has been legally assigned to another individual or entity.** These entities include:
 - Payee
 - Court-imposed restrictions related to probation or parole
 - Court-imposed restrictions when committed to the Director of Health and Welfare
 - Legal Guardians (including parents of minor children, unless the child has another legally assigned decision-making authority)

IDAPA 16.03.10.311 - continued

- This means that the HCBS requirements do not “trump” or replace a guardian’s decision-making role for a participant.
- This **does not mean** that a guardian may decide that a setting requirement does not need to be met for a participant just based on the guardian’s personal values or beliefs.

Examples of Decision-Making Authority

Example: A guardian does not want an individual to participate in the community activities offered by the Adult Day Health where she receives services. However, there are no identified health or safety risks to the participant – it is just the personal preference of the guardian. Therefore, the provider cannot prohibit the participant from participating in those community activities.

Examples of Decision-Making Authority

Another example: A guardian wants a CFH provider to limit an individual from going out into the community without supervision. The guardian is concerned because the individual has historically exhibited aggressive behaviors, and he fears that the individual could injure someone or be injured herself. The individual, guardian, plan developer and CFH work together to develop a **risk mitigation strategy** that is documented in the service plan.

IDAPA 16.03.10.312

- This subsection **defines HCBS settings** as all locations where people receiving HCBS live or receive their services.
- HCBS settings are NOT:
 - Nursing facilities
 - Institutions for mental diseases
 - Intermediate Care Facilities for persons with Intellectual Disabilities
 - Hospitals

IDAPA 16.03.10.312 - continued

- HCBS settings are NOT settings that have qualities of an institution. Qualities of an institution include:
 - Located in a building that provides inpatient institutional care
 - Located on the grounds of, or adjacent to, a state or federally operated inpatient facility
 - Has the effect of isolating participants from the broader community
- This means that **HCBS cannot be delivered in a setting that is an institution or has the qualities of an institution** – namely, isolating the participants that receive services or reside there.

IDAPA 16.03.10.313

- This subsection **describes the qualities that *all* HCBS settings must have.** Settings must:
 - Be integrated in and support full access to the greater community
 - Be selected by the participant, based on their needs and preferences, and include consideration of the participant's safety and the safety of those around the participant.
 - Ensure that participants' rights to privacy, dignity, respect, and freedom from coercion and unauthorized restraint are honored

IDAPA 16.03.10.313 - continued

- Settings must also:
 - Optimize an individual's initiative, autonomy, and independence. This means that individuals have opportunities to make choices about how they spend their time in a setting, in the context of the service being offered there.
 - Promote opportunities for participant choice regarding the service and supports provided in the setting. This means that participants have opportunities to make choices and provide feedback about the services they receive in that setting.

IDAPA 16.03.10.313 - continued

- If a setting quality poses a **health or safety risk** to a participant or those around a participant, then the participant, guardian, and person-centered planning team may discuss the implementation of risk mitigation strategies during the person centered planning process.

IDAPA 16.03.10.313 - continued

- This subsection also specifies that providers of services furnished in a participant's own home can't limit these setting qualities without **risk mitigation goals and strategies** that are documented in the person-centered plan.
- For example, if a person receives Personal Care Services or Residential Habilitation – Supported Living in their own home, the agency would have to document a risk mitigation goal and strategy based on the participant's needs if a setting quality poses a health or safety risk.

Risk Mitigation Goals and Strategies

- Remember, **risk mitigation goals and strategies must** be implemented when one or more of the setting qualities poses a health or safety risk to the participant or those around the participant. They must be documented in the person-centered plan.
- Rule does not outline *how* risk mitigation goals and strategies are implemented or documented: **these processes will be program-specific**. Additional information on these processes will be available soon through each program.

IDAPA 16.03.10.314

- Subsection 314 includes the *additional setting qualities that RALFs and CFHs must have*. The intention of these rules is to ensure that people receiving HCBS can enjoy the same rights and freedoms in their own homes that all community members have.

IDAPA 16.03.10.314.01

- In addition to the qualities just described, RALFs and CFHs must make sure there is a **written occupancy agreement in place for each resident**. The agreement must document protections and eviction/discharge processes comparable to those afforded under landlord tenant laws.

IDAPA 16.03.10.314.02

- Participants living in RALFs and CFHs have the **right to privacy** in their living unit. This includes:
 - **The right to have a lock on their door.** Appropriate staff can still have a key to the door in case of an emergency.
 - **A choice of roommate.** This means that participants should be able to meet their potential roommate(s) before move-in. The provider should have a mechanism in place for participants to request a change of roommate. No one wants to be forced to live with a complete stranger or someone they're uncomfortable with!

IDAPA 16.03.10.314.03

- Participants living in RALFs and CFHs are **free to furnish and decorate their sleeping or living units.**
- Providers can impose reasonable limitations if they are comparable to limitations anyone in the community might encounter – for example, many landlords don't allow tenants to change wall paint or have a water bed. These types of limits must be in the written occupancy agreement.
- This **doesn't mean** that providers have to pay for participants' decorations, it means that participants should have the opportunity to personalize their space so that it looks and feels like their home.

IDAPA 16.03.10.314.04

- Participants living in RALFs and CFHs **have the freedom and support they need to control their own schedules and activities.**
- This means that-participants have **meaningful opportunities** to make choices about their day-to-day activities.
- This can include asking for participant feedback in selecting community activities, offering choices in menu preparation and food options, etc.

IDAPA 16.03.10.314.05

- Participants living in RALFs and CFHs must **have access to food at any time.**
 - This **does not** mean that the provider must pay for meals to be available 24-hours a day.
- Some **examples** of ways that providers can meet this:
 - Allowing participants to have a small refrigerator in their room
 - Having individual cupboards in the kitchen where a participant can store their own snacks and food items
 - Having a variety of snacks and food items available in between mealtimes

IDAPA 16.03.10.314.06

- Participants living in RALFs and CFHs **are able to have visitors of their choosing at any time.**
- This **does not mean** that providers are prohibited from locking their doors. It also **does not mean** that residents can be disruptive to other residents of the home by having visitors.
- This **does** mean that providers have to allow residents to have visitors. **Some examples** of ways to meet this include:
 - Having a guest sign-in/sign-out book
 - Locking the front door at a certain time, but requiring that visitors ring the doorbell if it is after hours.
 - Having a space where participants can entertain guests without disturbing roommates or other residents.

IDAPA 16.03.10.315

- If one of the residential setting requirements under Subsection 314 poses a **health or safety risk** to the participant, or those around the participant, **an exception** can be made for that setting quality.
- All exceptions must be submitted to the Department or its designee for review and approval.
- Exceptions for these qualities require that some specific elements be documented in the individual's person centered plan.

IDAPA 16.03.10.315

- Exceptions **must include the following** in the service plan:
 - The specific assessed need related to the exception
 - Positive interventions and supports used prior to the exception
 - Any less intrusive methods of meeting the participant's need that were tried but didn't work
 - A detailed description of the exception
 - Regular collection of data to identify how the exception is working
 - An established time limit for reviewing if the exception is still needed
 - The participant and/or their decision-making authority must agree to the exception
 - An assurance that the exception will not cause harm to the individual

IDAPA 16.03.10.315

- The process for submitting exception requests to the Department or its designee for review and approval will be program-specific.
- Additional information and training on this process will be available soon.

Risk Mitigation vs. Exceptions

- **What is the difference?**
- A **risk mitigation** strategy is necessary if the qualities described in **section 313** present a health or safety risk:

- Community access and integration
- Choice of supports
- Opportunities to make choices

- Privacy
- Freedom from coercion and restraint

- The service plan must identify **goals with strategies** to mitigate the risk. It must include the methods or activities used to minimize risk to the participant.

Risk Mitigation vs. Exceptions

- An **exception** can be made to the residential setting qualities in 314 if an assessed need clearly demonstrates that an adjustment is necessary.

- Ability to have visitors
- Locks on entrance and/or bedroom and bathroom doors
- Freedom to choose furniture/decorations

- Choice of roommate
- Freedom and support to make choices about daily life
- Access to food

- **Exceptions** require additional documentation and **must** be approved by the Department.

Risk Mitigation vs. Exceptions

- It is **important to note that** a person receiving residential services may have **both** risk mitigation strategies **and** exceptions in place, depending on their specific needs.
- **Risk mitigation** and **exceptions** ensure a participant has the support needed to successfully be part of their community.
- **Remember:** We will have additional program-specific guidance to help you understand when and how **risk mitigation strategies** and **exceptions** can be made.

IDAPA 16.03.10.316-317

- Subsections 316-317 are specific to the **person-centered service planning process** and the **person-centered service plan**. Program-specific information and training on person-centered planning will be available in the coming months.

IDAPA 16.03.10.318

- This subsection indicates that **all providers must complete a Department-approved self-assessment.**
 - This self-assessment will be available from the Department in August 2016
 - It will help you determine if you are in compliance with the setting requirements
 - It will also help you identify areas where you might need to make changes to move into compliance
 - You will be asked to keep this self assessment on file, with evidence to support your responses, until December 31, 2017
 - Additional training on how to complete this self assessment will be provided in August 2016

IDAPA 16.03.10.318

- This subsection specifies that any **new HCBS providers** will be expected to fully comply with the HCBS qualities as a condition of becoming a Medicaid provider
- In addition, the Department will **begin enforcement of quality assurance compliance with the setting requirements on January 1, 2017.**
 - This means that the Department will not request corrective action for compliance issues identified between now and January 1.
 - This does **not** mean that providers do not have to comply with the requirements until January 1.

Compliance Timeline

July 1, 2016

Rules go into effect

January 1, 2017

Enforcement of
HCBS begins
Idaho's formal
assessment of HCBS
settings begins

January 1, 2018

Transition of
participants to
HCBS-compliant
settings if non-
compliant settings
are identified.

March, 2019

Full compliance
established.
Ongoing
monitoring of
HCBS compliance
continues.

Upcoming Training Opportunities

Date	Topic
<i>May 10</i> 1-2:00PM Mountain Time (12-1:00PM Pacific Time)	Repeat of All Settings Rules Overview (Teleconference only)
<i>May 16</i> 3-4:00PM Mountain Time (2-3:00PM Pacific Time)	Repeat of Residential Settings Rules Overview (Teleconference Only)
<i>July 26</i> 1-2:00PM Mountain Time (12-1:00PM Pacific Time)	Provider Toolkit Overview (WebEx)
<i>August 2</i> 1-2:00PM Mountain Time (12-1:00PM Pacific Time)	Provider Toolkit Overview (Teleconference Only)

Keep in Touch!

Additional training will be offered over the next several months. You can stay informed about training opportunities, educational materials, and other HCBS-related information by:

Visiting the HCBS webpage at: www.HCBS.dhw.idaho.gov

Emailing the program at: HCBSSettings@dhw.idaho.gov to be added to our distribution list.

QUESTIONS?