

# Home and Community Based Settings: Final Rule

1

**OVERVIEW OF THE SETTING  
REQUIREMENTS  
HCBS FINAL RULE  
AUGUST 4, 2014**

**NOTE: THIS MEETING WILL BE TAPE RECORDED AND  
THE RECORDING WILL BE POSTED AT  
[HCBS.dhw.idaho.gov](http://HCBS.dhw.idaho.gov)**

# CMS HCBS Final Rule Name

2

Published in the Federal Register on 01/16/2014

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?

3

This 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

# Webinar Topics for Today's Meeting

4

Today we will cover the home and community based setting requirements.

They include:

- Requirements that are for both residential and non-residential settings
- Additional requirements that are specific to and only for provider-owned and controlled residential HCB settings

# CMS HCBS Setting Requirements (High Level Goals)

5

- The home and community-based setting requirements establish an outcome oriented definition that focuses on the nature and quality of an individuals' experiences
- The requirements maximize opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting



So what are the  
setting  
requirements?

# Home and Community-Based Setting:

7

- 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.

8

- 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





# Private Rooms?

9

What we have heard so far:

- States must have options available for individuals to potentially choose a private room
- This does NOT mean all providers must now offer or provide private rooms

Note that the person centered service plan must document options presented as well as selected. However planning can take into account the “resources available for room and board”.

# Home and Community-Based Setting Requirements cont.

10

- 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



# Requirements for Provider-Owned or Controlled Residential Settings

- 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.
- Again, they apply only to those settings that are provider-owned or controlled residential settings.

## PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS: ADDITIONAL CHARACTERISTICS

12

- Specific unit/dwelling is owned, rented, or occupied under a legally enforceable agreement
- 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

## PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS: ADDITIONAL CHARACTERISTICS

13

- 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

# PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS: ADDITIONAL CHARACTERISTICS

14

- 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



# Modifications to the HCBS Provider-Owned or Controlled Setting Requirements

15

- CMS has developed a set of criteria that must be met when there are “modifications” to the additional settings requirements for an individual
  - Basically this is about any restrictions imposed on a participant that go against the provider-owned or controlled setting requirements, such as limiting access to food or not allowing a lock on someone’s bedroom door
- Any modification must be documented in the person-centered service plan (PCP).

# Modifications to the HCBS Provider-Owned or Controlled Setting Requirements cont.

16

Documentation in the person-centered service plan of modifications of the additional requirements includes:

- Specific individualized assessed need
- Prior interventions and supports including less intrusive methods
- Description of condition proportionate to assessed need
- Ongoing data measuring effectiveness of modification
- Established time limits for periodic review of modifications
- Individual's informed consent
- Assurance that interventions and supports will not cause harm





# A Note Worth Repeating

17

Application of setting requirements to non-residential settings –

- This CMS Final Rule applies to settings where HCBS are delivered, not just to residential settings
- CMS will provide additional information about how states should apply the standards to non-residential settings
- Idaho will wait for that guidance before completing an analysis of where there may be gaps in compliance.



# Upcoming Meetings

18

**8/11**  
**1-2:30**

**Person centered planning requirements**

**8/15**  
**1-2:30**

Presumptive institutional settings

**8/18**  
**10 – 11**

Presumptive institutional settings (conference call only)

# Important Resource

19

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

20

- You may view materials from the state and access an 'Ask The Program' feature at [HCBS.dhw.idaho.gov](https://HCBS.dhw.idaho.gov)
- The draft transition plan will be posted at that site for comment for 30 days once it is available
- You may email the program at: [HCBSSettings@dhw.idaho.gov](mailto:HCBSSettings@dhw.idaho.gov)

# Time to Tell Us What You think

21

- If you are a provider, how do you think you are doing in meeting these setting requirements?
- If you are a participant, how is your HCBS provider doing in meeting these setting requirements?
- Advocates, others do you have any comments?

# OTHER QUESTIONS?