

Home and Community Based Settings: Final Rule

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OVERVIEW OF INITIAL RESULTS OF THE STATE'S GAP ANALYSIS

HCBS FINAL RULE
SEPTEMBER 16, 2014

NOTE: THIS MEETING WILL BE TAPE RECORDED AND THE
RECODING WILL BE POSTED TO THE HCBS WEBPAGE

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 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

Providers will be required to comply with the new guidelines in order to continue receiving payment for Medicaid Waiver, State Plan PCS, and State Plan DD participants.

Topics for Today's Meeting

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Today we will:

- Summarize the results of Idaho Medicaid's initial analysis of our current level of compliance with the residential setting requirements in CFHs and RALFs.
- Summarize the actions Idaho Medicaid intends to take to strengthen compliance where needed.
- Solicit thoughts and/or questions.

How this Analysis was Completed

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Areas that were analyzed for possible support of each requirement include:

1. Rule
2. Service definitions
3. Licensing and certification requirements
4. Provider agreements
5. Provider qualifications
6. Individual plan monitoring requirements
7. Utilization review practices
8. Provider monitoring/participant outcomes
9. Provider reporting
10. Performance outcome measurement/outcome reviews etc.
11. Person centered planning requirements and documentation
12. Training requirements
13. Waiver and state plan language
14. Rate methodology
15. Operationally or in any other way

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
<p>1. The setting is integrated in, and facilitates the individual’s full access to the greater community to the same degree of access as individuals not receiving Medicaid HCBS.</p>	<p>Support</p>	<p>Rule supports that residents must be able to participate in community activities.</p>	<p>Rule supports that the setting must be integrated into the community and must facilitate the participant's access to the greater community.</p>
	<p>Gap</p>	<p>The state lacks standards for “the same degree of access as individuals not receiving Medicaid HCBS”.</p>	
	<p>Remediation</p>	<p>Recommend developing standards around "to the same degree of access as individuals not receiving Medicaid HCBS.”</p> <p>Recommend adding a list of minimum participant rights/provider requirements in provider controlled residential settings to A&D and DD waiver sections of 16.03.10 to incorporate new setting requirements.</p>	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
<p>2. The setting includes opportunities to seek employment and work in competitive integrated settings to the same degree of access as individuals not receiving Medicaid HCBS.</p>	<p>Support</p>	<p>Supported employment is available as a service on both the A&D and DD waivers.</p> <p>The State interprets this rule to mean that the provider does not restrict or prohibit participants from seeking employment.</p>	
	<p>Gap</p>	<p>The state lacks standards for “the same degree of access as individuals not receiving Medicaid HCBS”</p>	
	<p>Remediation</p>	<p>Recommend developing standards around "to the same degree of access as individuals not receiving Medicaid HCBS.”</p> <p>Recommend adding a list of minimum participant rights/provider requirements in provider controlled residential settings to A&D and DD waiver sections of 16.03.10 to incorporate new setting requirements.</p>	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
3. The setting includes opportunities to engage in community life to the same degree of access as individuals not receiving Medicaid HCBS.	Support	Rule, Provider Agreements and the CFH Provider Manual support that a Certified Family Home should provide opportunities for participation in community life.	Rule supports that the RALF must facilitate normalization and integration into the community for participants.
	Gap	The state lacks standards for “the same degree of access as individuals not receiving Medicaid HCBS”	
	Remediation	Recommend developing standards around "to the same degree of access as individuals not receiving Medicaid HCBS." Recommend adding a list of minimum participant rights/provider requirements in provider controlled residential settings to A&D and DD waiver sections of 16.03.10 to incorporate new setting requirements.	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
<p>4. The setting includes opportunities to control personal resources to the same degree of access as individuals not receiving Medicaid HCBS.</p>	<p>Support</p>	<p>Rule, the Provider Manual and the Provider Agreement support the participant's right to manage funds.</p>	<p>Rule supports the participant’s right to manage funds by indicating that RALF providers cannot require the participant to deposit his or her personal funds with the provider except with the consent of the participant.</p>
	<p>Gap</p>	<p>The state lacks standards for “the same degree of access as individuals not receiving Medicaid HCBS”</p>	
	<p>Remediation</p>	<p>Recommend developing standards around "to the same degree of access as individuals not receiving Medicaid HCBS.”</p> <p>Recommend adding a list of minimum participant rights/provider requirements in provider controlled residential settings to A&D and DD waiver sections of 16.03.10 to incorporate new setting requirements.</p>	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
<p>5. The setting includes opportunities to receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.</p>	<p>Support</p>	<p>Rule supports the participant’s free choice on where and from whom a medical service is accessed and allows free access to religious and other services delivered in the community.</p>	<p>Rule supports the participant’s right to participate in the community.</p>
	<p>Gap</p>	<p>The state lacks standards for “the same degree of access as individuals not receiving Medicaid HCBS”</p>	
	<p>Remediation</p>	<p>Recommend developing standards around "to the same degree of access as individuals not receiving Medicaid HCBS.”</p> <p>Recommend adding a list of minimum participant rights/provider requirements in provider controlled residential settings to A&D and DD waiver sections of 16.03.10 to incorporate new setting requirements.</p>	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
<p>6. 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. The setting options are identified and documented in the person-centered service plan and based on the individual’s needs, preferences, and for residential settings, resources available for room and board.</p>	<p>Support</p>	<p>Department processes support that participants must sign the service plan that includes documentation that choice of residential setting was offered.</p> <p>Waivers and State Plan language support that the service plan development process must use the preferences of the participant and that the residential setting selection must be documented.</p>	<p>Department processes support that participants must sign documentation that choice of residential setting was offered.</p> <p>Waivers and State Plan language support that the service plan development process must use the preferences of the participant and that the residential setting selection must be documented.</p>
	<p>Gap</p>	<p>The state lacks support for ensuring that options are available for participants to potentially choose a private room and that the service plan must document location selection for all service settings.</p>	
	<p>Remediation</p>	<p>Recommend adding clarifying language to Service Plan sections of A&D and DD waiver rule in 16.03.10 to include this new CFR language such that service plans must document location selection for ALL service settings, not just residential. Through operational processes, the state will ensure that participants are aware of options available for a private unit.</p>	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
7. An individual's essential personal rights of privacy, dignity and respect, and freedom from coercion and restraint are protected.	Support	Rule supports that the individual's right to privacy, dignity and respect, and freedom from coercion and restraint are protected.	Rule supports that the individual's right to privacy, dignity and respect, and freedom from restraint are protected.
	Gap	None.	None.
	Remediation	None.	None.

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
8. Individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact are optimized and not regimented.	Support	Rule supports a participant’s right to individual initiative, autonomy, and independence in making life choices.	Rule supports participant independence.
	Gap	The state lacks support for ensuring that participant activities are not regimented.	The state lacks support for ensuring that participant initiative, autonomy, and independence in choosing daily activities, physical environment, and with whom to interact are optimized and not regimented.
	Remediation	Recommend adding a list of minimum participant rights/provider requirements in provider controlled residential settings to A&D and DD waiver sections of 16.03.10 to incorporate new setting requirements.	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
9. Individual choice regarding services and supports, and who provides them, is facilitated.	Support	Rule supports that participant choices regarding services and supports, and who provides them, are facilitated.	
	Gap	None.	
	Remediation	None.	

CMS Requirement

10. The unit or room is a specific physical place that can be owned, rented or occupied under another legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the State, county, city or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.”

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
10. The unit or room is a specific physical place that can be owned, rented or occupied under another legally enforceable agreement ...	Support	Rule supports that the admission agreement be completed and indicates residents must have advance notice at least 15 days prior to transfer, which is greater than the 3-day notice required under Idaho landlord tenant law (Title 6, Chapter 3 of Idaho Statute).	Rule supports that participants are given 30-day notice of discharge/transfer, which is greater than the 3-day notice required under Idaho landlord tenant law (Title 6, Chapter 3 of Idaho Statute).
	Gap	None.	
	Remediation	None.	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
11. Each individual has privacy in their sleeping or living unit: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	Support	Rule supports a participant’s right to privacy.	
	Gap	The state lacks support for ensuring that individuals have lockable entrance doors to their sleeping or living units.	
	Remediation	Recommend adding a list of minimum participant rights/provider requirements in provider controlled residential settings to A&D and DD waiver sections of 16.03.10 to incorporate new setting requirements.	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
12. Individuals sharing units have a choice of roommates in that setting.	Support	None found.	
	Gap	The state lacks support for ensuring that individuals sharing units have a choice of roommates.	
	Remediation	Recommend adding a list of minimum participant rights/provider requirements in provider controlled residential settings to A&D and DD waiver sections of 16.03.10 to incorporate new setting requirements.	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
13. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	Support	The provider agreement supports that individuals have the right to furnish and decorate their living area.	Rule and Idaho Statute support that individuals have the right to furnish and decorate their living area.
	Gap	None.	
	Remediation	None.	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
14. Individuals have the freedom and support to control their own schedules and activities.	Support	Rule supports a participant’s freedom and support to choose services.	
	Gap	The state lacks support for ensuring that individuals control their own schedules and activities.	
	Remediation	Recommend adding a list of minimum participant rights/provider requirements in provider controlled residential settings to A&D and DD waiver sections of 16.03.10 to incorporate new setting requirements.	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
15. Individuals have access to food at any time;	Support	None found.	
	Gap	The state lacks support for ensuring that individuals have access to food at any time.	
	Remediation	Recommend adding a list of minimum participant rights/provider requirements in provider controlled residential settings to A&D and DD waiver sections of 16.03.10 to incorporate new setting requirements.	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
16. Individuals are able to have visitors of their choosing at any time.	Support	Rule and the Residents Rights Policy and Notification Form support that individuals are able to have visitors of their choosing at any time.	Idaho Statute supports that individuals are able to have visitors of their choosing at any time.
	Gap	None.	
	Remediation	None.	

CMS Requirement		Certified Family Home Assessment	Residential Assisted Living Facilities Assessment
17. The setting is physically accessible to the individual	Support	Rule and the Residents Rights Policy and Notification Form support that the setting must be physically accessible to the individual.	Rule supports that the setting must be physically accessible to the individual.
	Gap	None.	
	Remediation	None.	

Quality Assurance and Monitoring

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- States are required to demonstrate to CMS ongoing compliance with the new regulations.
- Idaho will enhance its existing quality assurance (QA) and monitoring activities to ensure compliance.
- The Transition Plan draft will outline a projected timeframe for analysis of our QA processes and options for change.

What's Next?

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- Medicaid is developing a timeframe for completing actions necessary to come into full compliance.
- Medicaid is conducting an analysis of how site-specific assessments might be completed and how ongoing monitoring should occur.
- The Transition Plan with the timeline will be posted October 3 – Nov. 2 at www.HCBS.dhw.idaho.gov ; you are encouraged to comment.
- Medicaid will complete an analysis of non-residential settings upon receiving further guidance from CMS.
- Medicaid will continue outreach efforts and trainings with providers on the new requirements.

How to Comment on the Draft Transition Plan

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- The draft Transition Plan will be posted at www.HCBS.dhw.idaho.gov October 3 – Nov. 2. There you will see an option to email your comments to the program.
- Hard copies of the Transition Plan will be provided in all Regional Medicaid offices for review.
- A toll free phone line will be set up beginning Oct. 3rd for receiving comments: Call 1-(855) 249-5024.
- You may email comments on the Transition Plan directly to the program at: HCBSSettings@dhw.idaho.gov

How to Comment on the Draft Transition Plan cont.

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Written comments can also be sent to:

HCBS

Division of Medicaid

P.O. Box 83720

Boise, ID 83720-0009

FYI: 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/Home-and-Community-Based-Services.html>

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

QUESTIONS or Comments?