

HCBS Final Rule: Current Issues and Future Directions

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2014 HCBS Final Rule

- Published January 2014 – Effective March 17, 2014
- Addressed CMS Requirements across HCBS provided through:
 - 1915(c) waivers, 1915(i) state plan, 1915(k) Community First Choice, and 1115 Demonstration Waivers
- Some requirements were effective immediately, others were given a transition period in order to allow states sufficient time to come into compliance.
- Guidance issued in May 2017 extended the transition period for settings in existence as of the effective date of the final regulation from March 2019 to March 17, 2022. Extension of the transition period recognized the significant reform efforts underway and is intended to help states ensure compliance activities are collaborative, transparent and timely.
- This session does not cover all aspects of the Final Rule; in today's presentation we will focus specifically on the regulation's impact on home and community-based settings.

Home and Community-Based Setting Criteria

- As the percentage of LTSS funding attributable to HCBS continues to rise, the settings criteria are an important tool for states' continuous quality improvement efforts
 - The home and community-based setting requirements establish an outcome oriented definition that focuses on the nature and quality of 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

Home and Community-Based Settings Criteria

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 HCBS

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

Home and Community-Based Settings Criteria (cont.)

The setting options are identified and documented in the person-centered service plan

The setting options are based on the individual's needs, preferences, and, for residential settings, resources available for room and board

Ensures an individual's rights of privacy, dignity, respect and freedom from coercion and restraint

Optimizes individual initiative, autonomy, and independence in making life choices

Facilitates individual choice regarding services and supports and who provides them

Provider-Owned or Controlled Settings: Additional Criteria (1 of 4)

- Unit/dwelling is a specific physical space owned, rented, or occupied under 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 Settings: Additional Criteria (2 of 4)

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

Provider-Owned or Controlled Settings: Additional Criteria (3 of 4)

Modifications of the additional criteria must be:

- Supported by specific assessed need
- Justified in the person-centered service plan
- Documented in the person-centered service plan

Provider-Owned or Controlled Settings: Additional Criteria (4 of 4)

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

- Specific individualized assessed need
- Prior positive 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/supports will not cause harm

Statewide Transition Plans: Status of Review and Implementation Activities

As of January 1, 2019:

- 10 States have final approval: AK, AR, DC, DE, KY, ID, OK, TN, WA, WY
- 43 States have initial approval: AL, AK, AR, AZ, CA, CO, CT, DC, DE, GA, HI, ID, IN, IA, KY, LA, MD, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, UT, VT, VA, WA, WV, WI, WY

Timelines for Approvals

- States should continue progress in assessing existing operations and identifying milestones for compliance that result in final Statewide Transition Plan approval by March 17, 2019.
- The transition period for states to demonstrate compliance with the home and community based settings criteria has been extended until March 17, 2022 for settings in which a transition period applies.

Review of the Criteria for Initial Approval

- Identification of all settings subject to the rule in the Statewide Transition Plan (STP);
- Systemic assessment completed, including outcomes;
- Remediation strategies outlined, with timelines, and actively worked on;
- Draft STP widely disseminated for 30-day public comment period; comments responded to, summarized and submitted to CMS.

Key Elements in the Process for Final Approval

- Summary of completed and validated site-specific assessments, including aggregated outcomes completed;
- Draft remediation strategies with timelines for resolution by the end of the transition period (March 17, 2022);
- Detailed plan for identifying and evaluating those settings presumed to have institutional characteristics;

Key Elements in the Process for Final Approval, cont.

- Process for communicating with beneficiaries who are currently in settings that cannot or will not come into compliance by March 17, 2022;
- Description of ongoing monitoring and quality assurance to ensure all settings remain in full compliance with the settings criteria;
- Updated version of the STP is posted for minimum 30-day public comment period.

Settings that are not Home and Community-Based

Settings that are not home and community-based include:

- A Nursing Facility;
- An Institution for Mental Diseases;
- An Intermediate Care Facility for Individuals with Intellectual Disabilities;
- A Hospital; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary.

Presumptively Institutional Settings

- In response to stakeholder comments/concerns about types of settings that may be presumed to have institutional characteristics and do not meet the threshold for Medicaid HCBS, regulatory language was included identifying these categories of settings and allowing states to present evidence that a particular setting is home and community-based.
 - Settings on the grounds of/adjacent to a public institution
 - Settings in the same building as a public or private institution
 - Settings that isolate HCBS beneficiaries from the larger community
- States can choose to include such settings in their HCBS programs by submitting information to CMS, through the heightened scrutiny process, demonstrating that the settings do have the qualities of home and community-based settings.

Key Themes

- The regulation is intended to serve as a catalyst for widespread stakeholder engagement on ways to improve how individuals experience daily life.
- The rule is not intended to target particular industries or provider types
- Federal financial participation (FFP) is available for the duration of the transition period
- The rule provides support for states and stakeholders making transitions to more inclusive operations
- The rule is designed to enhance choice

Resources

[HCBS Training and Resources on Medicaid.gov:](https://www.medicaid.gov/medicaid/hcbs/guidance/settings/index.html)

Home & Community Based Settings Requirements Compliance Toolkit

<https://www.medicaid.gov/medicaid/hcbs/guidance/settings/index.html>

Home & Community Based Services Training Series

<https://www.medicaid.gov/medicaid/hcbs/training/index.html>

Statewide Transition Plans

<https://www.medicaid.gov/medicaid/hcbs/transition-plan/index.html>