
NEW FEDERAL RULES FOR HCBS SETTINGS AND TRANSITION PLAN
June 18, 2014

New federal home and community-based services regulations went into effect on March 17, 2014. These new regulations impact 1915(c) [HCBS Waivers], 1915(i) [DD State Plan Amendment], and 1915(k) [Community First Choice--IHSS] programs and are intended to enhance integration of people with disabilities.

Pursuant to the new regulations, the State must develop a transition plan which explains how it will ensure that its HCBS-funded settings comply with the new requirements. The transition plan must include a public comment period. California's Transition Plan is due no later than March 17, 2015 but likely much sooner because a 120 day timeline is triggered by the first submission of any Waiver renewal, amendment, etc. No one has a definite date at this point, although the MSSP Waiver renewal was already submitted.

In the Transition Planning process, "...states will need to evaluate the [residential and non-residential] settings currently in their 1915(c) waivers and 1915(i) State plan programs and submit a transition plan that has been made available for public input. If there are settings that do not fully meet the final regulation's home and community-based settings requirements, the state must work with CMS to develop in the transition plan an approach to ensuring that either the settings come into compliance or that the individuals are offered settings that are compliant with the rule."

Waiver-funded HCBS settings must meet certain qualifications:

- The setting is integrated in and supports full access to the greater community;
- Is selected by the individual from among setting options;
- Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;

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- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.

In provider-owned or controlled HCBS residential settings, requirements include:

- The individual has a lease or other legally enforceable agreement providing similar protections;
- The individual has privacy in their unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit;
- The individual controls his/her own schedule including access to food at any time;
- The individual can have visitors at any time; and
- The setting is physically accessible.

Any exceptions must be justified by individual need and in the person-centered care plan.

Settings specifically not qualifying as HCBS settings (these are funded from Medicaid State Plan, not Waiver funds): nursing facilities, IMDs [state only funds for ages 18-65], ICF-DDs, and hospitals.

Settings that are presumed to have institutional qualities, and do not meet the threshold for Medicaid HCBS: “those that are in a publicly-owned or privately owned facility that provides inpatient treatment; on the grounds of, or immediately adjacent to, a public institution; or that have the effect of isolating individuals receiving Medicaid-funded HCBS from the broader community.” For those settings that are “presumptively institutional”: A state may only include such a setting in its Medicaid HCBS programs if CMS determines through a heightened scrutiny process, based on information presented by the state and input from the public that the state has demonstrated that the setting meets the qualities for being home and community-based and does not have the qualities of an institution.

The official sources of the information above can be found here:

CMS Fact Sheet re HCBS Settings: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/HCBS-setting-fact-sheet.pdf>

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Website with lots of info: <http://hcbsadvocacy.org/learn-about-the-new-rules/>

CMS Q&A re new HCBS Requirements: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Final-Q-and-A.pdf>