

Disability and Aging Collaborative Webinar

Implementation of the Home and Community Based Services (HCBS) Settings Rule

Friday October 30, 2015

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[Confirmation Number: 2765350](#)



National Council on Aging

Disability and Aging Collaborative

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- American Association of People with Disabilities
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Power Point

- Can I get a copy of the Power Point?
- Will an Archive of the webinar be available?

YES! YES! YES!

- You will receive copies in a follow up e-mail early next week. Please share with others!
- Or visit www.ncoa.org

Questions and Comments



**All Lines Will Be Muted During the Call
To Ask A Question Use the Chat Function**

Webinar Overview

- Introduction
 - Joe Caldwell (National Council on Aging)
- Speakers:
 - Nicole Jorwic (The Arc of the United States)
 - Elizabeth Edwards (National Health Law Program)
 - David Machledt (National Health Law Program)
 - Dan Berland (National Association of State Directors of Developmental Disabilities Services)
- Questions and Answers (15 – 20 minutes)

Implementation of the Home and Community-Based Settings Rule: State Transition Plan Implementation, Emerging Themes & Opportunities for Advocacy

Disability and Aging Collaborative
October 30, 2015

Presented By:

- Nicole Jorwic, The Arc
- David Machledt & Elizabeth Edwards, National Health Law Program
- Daniel Berland, NASDDDS

Overview

- Quick Review of the HCBS Settings Rule
- State HCBS Transition Plans
 - Past and Present
 - Emerging Issues
- State Perspectives
 - Opportunities for Advocates to Help States
- The Work Ahead: Continuing Opportunities for Engagement & Comment
- Q&A

QUICK REVIEW

Home and Community Based Regulations

Quick Review-HCBS Regulations

- CMS issued regulations effective March 17, 2014
- Most states had until March 17, 2015 to submit a transition plan to CMS
- Plan for compliance by March 17, 2019
 - **Up to 5 years of transition→5 years of advocacy engagement**
- Applies to 1915(c) waivers and 1915(i) and 1915(k) state plan options
- Requires all home and community-based services (HCBS) be provided in community-based settings

- Supports compliance with ADA, Section 504, and *Olmstead*
- Supports access to the community
- Defines the qualities of HCBS settings
- Provides one definition of HCBS Setting across HCBS authorities
- **REMEMBER!** Intent of the regulations is to improve HCBS participants' community integration and experiences
- The goal is not to shut down settings, but to ensure that HCBS funds are used in settings that are truly community-based
- Most states plan on technical assistance for providers to help them move towards compliance

Focus is supposed to be on the HCBS participant's experience!!

Quick Review: Institutional Settings

- Excluded settings: NF, IMD, ICF-ID/DD, hospitals
- Presumed to have institutional qualities:
 - Facilities that provide inpatient treatment
 - Settings on the ground of, or immediately adjacent to, a public institution
 - Settings that have the effect of isolating individuals receiving HCBS from the broader community of individuals not receiving HCBS

Quick Review: Community Settings

- All HCB settings must:
 - be integrated in and support full access to the greater community
 - be selected by the individual from among setting options;
 - ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
 - optimize autonomy and independence in making life choices; &
 - facilitate choice regarding services and who provides them
- Provider owned or controlled settings have additional obligations
 - Any modification of these conditions must be supported by a specific assessed need and justified in the PCP

Nonresidential Settings

- HCBS settings, including residential, day or other, must be delivered in settings that meet HCBS setting requirements
 - CMS issued [guidance](#) on non-residential settings and included information on non-residential settings in the Q&As and other documents
- A person must live in a setting that meets the HCBS requirements if they receive HCBS services, including day services

CMS Guidance

- Exploratory questions
- Non-residential exploratory questions
- Settings that isolate
- Transition plan toolkit
- Q&A on HCBS Settings
- STP basic elements review
- Q&A on HCBS Setting Requirements
 - Heightened scrutiny, respite, tenancy, visitors, (b)(3), tiering
- CMIA letters

STATE HCBS TRANSITION PLANS

Status of Plans & Emerging Trends

Transition Plan Status

- Statewide transition plans
 - CMS [website](#)
 - All have turned in a plan
 - CMIA letters for all but 7
- Iterative process
- Individual program transition plans

Early Transition Plan Trends

- Plans to plan v. full initial plan
- Systemic review v. minimum compliance
- Ongoing compliance
- Reliance on biased results
- Participant v. provider focus
- Stakeholder involvement

Ongoing Issues

- Assessments
- Integration standards
- Update of state regulations and policies
- Transparency
- Public education and involvement
- Capacity building

CMS Feedback-CMIA Letters

- Importance of public comment and state responses
- Settings descriptions
- Standards crosswalk and level of compliance
- Assessment processes
 - Comprehensiveness
 - Methodology
 - Reporting

CMS Feedback-CMIA Letters (cont.)

- Setting remediation
- Heightened scrutiny
- Ongoing monitoring
- Beneficiary notice and protections

Settings & Stakeholders

- Full information on settings includes the perspective of stakeholders, especially participants
 - Need multiple sources of information
- Transparency in information and results
- Opportunity for input
- Settings for heightened scrutiny
 - Identification
 - Evidence to overcome the presumption

Appropriate Timing for Capacity-Building, Transitions

- Assume that *some* people may want/need to change settings
 - Due process protections
 - Sufficient time for transition
- Build capacity – especially non-disability-specific settings
- Waiting until the end of five-year process = recipe for bad placements, bad experiences
- States not planning for provider changes/closures

STATE PERSPECTIVES

State Issues & Opportunities for Stakeholders to Help

A Moment of Clarity?

- Some key language is aspirational
- Need concrete standards
- States must rely on stakeholders to help decide what values will drive the system

How much, how long?

- Timeframes are short
- Need to meet deadline may drive scope
- States need stakeholders at the table to develop new approaches

Public Input Process

- Is it working?
- What additional information/communication do you need?
- Process is ongoing for all new waivers/amendments

“Tiered Standard”

- “a state may establish that certain settings currently in use in a home and community-based services waiver may continue within the waiver, as long as they will be able to meet the minimum standard set in the rule on or before the end of the transition period, but the state may suspend admission to the setting or suspend new provider approval or authorizations for those settings. Simultaneously, the state may establish or promote new or existing models of service that more fully meet the state’s standards for home and community-based services. This arrangement, though established through the transition plan, may continue beyond the transition period.”

“Tiered Standard”

- Must be in the transition plan
- Settings that meet the federal standard can remain in the waiver
- New settings must meet higher state standard for particular waiver
- Can continue beyond 2019

THE WORK AHEAD:

Continuing Opportunities for Engagement & Comment

Stakeholder Involvement & Education

- HCBS participants and their families as well as other stakeholders need meaningful, timely, accessible information throughout the process
 - Direct outreach – not just postings on agency websites/state listservs
 - Accessible formats, including cognitive/lay accessibility
 - Without outreach, states lack meaningful input from the right stakeholders at the right times
- Lack of appropriate information can create confusion and fear

The Work Ahead

- Build strategy for educating stakeholders, soliciting more public comments and involvement
 - Significant regulatory and policy changes
- Stakeholder engagement in assessment design, validation
- Monitoring ongoing compliance – even after transition period ends
 - Review/survey methodology
 - Ongoing participant input mechanisms
 - Including complaint process

Resources

- hcbsadvocacy.org
 - Updated information on state processes
 - Factsheets & Q&As
 - Alerts on comment periods
- CMS
 - [Guidance & Toolkit](#)
 - State Transition Plan status [site](#)

Thank You

Questions?

Thank You

- Everyone who registered will receive a follow up email with the power point and recording
- To access this previous Disability and Aging Collaborative Webinars: www.ncoa.org/hcbswebinars
- Look for future webinars on:
 - Rebalancing
 - HCBS quality measures

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