

## Office of Behavioral Health

### HOME AND COMMUNITY-BASED SERVICES SETTING

#### SUMMARY

The Centers for Medicare & Medicaid Services (CMS) has issued regulations that define the settings in which it is permissible for states to pay for Medicaid home and community-based services (HCBS).

The purpose of these regulations is to ensure that individuals receive Medicaid HCBS in settings that are integrated in and support full access to the greater community. This includes opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree as individuals who do not receive HCBS.

The regulations also aim to ensure that individuals have free choice of where they live and who provides services to them, as well as ensuring that individual rights are not restricted.

#### WHAT DOES THE RULE DO?

The rule sets expectations for settings in which HCBS can be provided. The rule requires that the settings:

- Be selected by the individual from options that include non-disability specific settings and options for private units. Individuals must also have choice regarding the services they receive and by whom the services are provided.
- Ensures the individual right of privacy, dignity and respect, and freedom from coercion and restraint.
- Optimizes independence and autonomy in making life choices without regimenting such things as daily activities, physical environment, and with whom they interact.

When a setting is owned or controlled by a service provider, additional requirements must be met:

- At a minimum, the individual has the same responsibilities and protections from eviction that tenants have under state or local landlord/tenant laws; or when such laws do not apply, a lease, or other written residency agreement must be in place for each HCBS participant to provide protections that address eviction processes and appeals comparable to the applicable landlord/tenant laws.
- Each individual has privacy in their sleeping or living unit. This includes having entrance doors which can be locked by the individual with only appropriate staff having keys; individuals having a choice of roommates in shared living arrangements; and having the freedom to furnish and decorate their own sleeping or living areas.

- Individuals have the freedom and support to control their own schedules and activities, including having access to food at any time, and having visitors of their choosing at any time.

These requirements may only be modified when an individual has a specific assessed need that justifies deviation from a requirement. In such cases, the need must be supported in the person-centered service plan.

In addition, the rule also specifies certain settings in which HCBS cannot be provided. This includes settings that have always been statutorily excluded such as hospitals, nursing facilities, intermediate care facilities for the developmentally disabled (ICF/DD), and institutions for mental disease (IMD). However, the rules also goes a step further and describes settings that are presumed to have the qualities of an institution:

*“Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.”*

Any settings that fit this description are presumed to be institutional in nature and HCBS cannot be allowed in the setting unless the state can demonstrate to CMS that the setting does not have the qualities of an institution. Based on information submitted by the state and input from the public, CMS will determine whether or not a setting meets the qualities for being HCBS.

## **LOUISIANA’S APPROACH TO TRANSITION**

The Office of Behavioral Health will partner with Medicaid members, providers, advocates, and other stakeholders throughout this process to provide input into the process and to assure that providers have access to needed information to assist with transition activities. The final outcome will be that Medicaid members will be served in a way that will enable them to live and thrive in truly integrated community settings.

The Office of Behavioral Health will strive to make this ongoing transition plan process transparent to the public, including members served through HCBS. We will include information on our webpage that will become the central hub for information on the transition to fully compliant HCBS settings. This will potentially include stakeholder communication, changes to the transition plan as it is revised, and remediation status.