

# New Federal Rules for Home & Community – Based Services

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# Purpose of Today's Meeting

- Provide History of Home & Community-Based Services
- Introduce new Federal legislation
- Examine what ALL states are required to do
- Detail the process of developing a transition plan
- Manage expectations – today's discussion will be general
- Specifics will follow as part of the transition plan process

# Stakeholder Involvement

- Louisiana wants your input and will listen
- Several opportunities for your voice to be heard
- This is just the beginning of that relationship
- Sure, programs are not perfect but let's focus on HCB setting compliance
- New regulations must be met to continue Federal dollars
- Will take working together to make this work

# Home & Community-Based Services

- Waiver services are known as Home & Community-Based Services or HCBS
- HCBS are available to individuals whose functional needs would otherwise make them eligible for Medicaid to receive services in a hospital, nursing home, intermediate care facilities or other similar institution
- Waivers allow individuals to choose services, a home, or in an institution

# Home & Community-Based Services

- When waivers were first introduced (1981), we didn't know much about what an HCBS setting looked-like
- After 35 years, we have learned a lot
- We've introduced:
  - Self-direction
  - Person-centered planning practices
  - New Medicaid authorities tied to institutions and those not tied
- Also, learned that not all community settings are homelike
  - Some as restrictive as an institution
  - Some segregate Medicaid eligibles into one location
  - Some restrict activity to only the facility and do not allow individuals to go out into the community

# Home & Community-Based Setting

- Advocates sought changes to make settings more home-like, more integrated, and having greater access to the community
- Now, new Federal laws have been changed to include HCBS into a more home-like environment
- Called the **HCB Setting Rule**
- Congress has asked the Centers for Medicare & Medicaid Services (CMS) to publish new rules about where and how services are to be provided
- First time CMS has had Congressional guidance on offering definitions and descriptions on HCB settings
- States are required to develop a plan for how they will make sure the definitions and descriptions in their waivers, match the definitions in the rule

# Overview of the HCBS Rule

- Important Parts of the HCB Rule
  - Went into effect March 17, 2014 but states have until March 17, 2019 to implement changes
  - Provides the definition and qualifications of a home and community- based setting for Medicaid HCBS waivers services
  - Defines person-center planning as a requirement and conflict of interest standards for case management
  - Requires states to submit transition plans to ensure they adopt and follow the new rule

# New HCB Rule Requires

- Setting is fully integrated in the community and provides full access to the greater community
- Setting is selected by the individual from more than one setting option
- Setting supports individual choice of services and supports
- Setting ensures privacy, dignity, respect
- Setting never forces an individual to do something they don't want to do or keeps them from doing something they want to do



# What the New Rule Means for HCBS Providers

- HCBS providers may need to make changes to comply:
  - Allow residents/consumers more flexibility in their scheduling, access to food, visitation hours, and privacy
  - Train and evaluate staff on person-centered practices
  - Create more opportunities for consumers to be active in the community
  - CMS will pay particular attention to settings that “have the effect of isolating individuals from the community”

# What the Rule Means for Consumers

- Right to receive services in the community to the same degree as those not receiving Medicaid HCBS
- Right to lead their own person-centered planning process and choose who is on their planning team
- Right to express their strengths, preferences, and goals to their case manager
- Consumers must be allowed to select the services they receive, where they live among available options, and who provides those services
- Freedom to control their own schedules, personal resources and other aspects of their living arrangements
- Right to be treated with dignity and respect and be free from coercion or restraint

# Settings PRESUMED NOT to be HCBS

- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on the grounds of, or adjacent to, a public institution
- Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS
- But.....
  - The rule gives the Secretary of DHS the discretion to ascertain if certain settings meet the HCBS settings character
  - In other words, providers and the State may make the case that the setting **does** meet the HCB setting character
  - A state must submit evidence demonstrating that the setting does have qualities of HCBS
  - These situations are referred to as requiring “**heightened scrutiny**”

# Settings that will Never be HCBS

- Nursing facility
- Institutions for mental diseases (IMD)
- Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
- Hospitals

# Affected Services

- Adult Day Care Services – typically segregated
- Assisted Living – on the grounds of an institution
- Habilitation Services – close look at home-based and center based
- Prevocational Services – Prepare for paid or unpaid employment
- Educational Services – Supported employment/sheltered workshops

# What the Rule Means in Practice

- Do individuals have access to public transportation? The internet?
- Do individuals have information about community activities?
- Does the setting isolate individuals?
- Does the setting apply to only those with a specific diagnosis?
- Is the setting designed to provide people with disabilities multiple types of services and activities on-site including behavioral and therapeutic service

# Some Additional Information

- What does isolation mean?
  - The setting is set-up and operated in such a way that individuals do not have experiences outside the setting
  - Applies to the isolation of persons with disabilities - do persons with disabilities have access to persons who do not have disabilities
  - Are individuals eligible for Medicaid kept isolated from the greater population
  - Definitely applies to large populations without meaningful interaction with the broader community
  - Size matters – states may establish state laws to implement a requirement regarding size

# Additional Provider Owned or Controlled Residential Settings

- Privacy in their sleeping or living unit
- Units have lockable entrance doors, the individual and appropriate staff having keys to doors, as needed
- Individuals sharing units have a choice of roommate
- 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 at any time
- Setting is physically accessible to the individual
- CMS has developed criteria that must be met when the above conditions are modified



# Employment

- Setting must be integrated to “same degree” of access as people not receiving HCBS.
  - Includes rural, at home or other setting where interaction may be limited for reason other than disability.
  - A Person with a disability may work at home or in a non-disability setting.
  - Full access to competitive integrated employment
    - Person is not required to seek employment, but cannot waive the opportunity to seek employment or personal resources in the future.
    - Segregated “pre vocational” or habilitation programs that have a poor track record of placing people in competitive employment to be targeted for improvement

# Possible Corrective Action Strategies

- Use transportation for community inclusion
- Insure folks have a choice of setting – create new options
- Providing group activities – not enough
  - “must be afforded choice regarding the activities in which they wish to participate including whether to participate in a group activity or to engage in other activities which may not be pre-planned”
- Provide a legal right to a specific physical place, with protection against eviction – may develop a model agreement – reasonable limits can be set so long as they are not discriminatory and do not deny legal rights
- Provide privacy including lockable doors & the right to select a roommate
- Physically accessible-
- Visitation overnight must be allowed
- Should apply to all residents – not just Medicaid

# Myth Busters

- Applies only to residential settings
  - The HCB setting rule applies to **ALL HCBS** including non-residential
  - CMS has promised to provide additional guidance on non-residential settings
- CMS is prohibiting all congregate setting
  - No – but congregate and non-congregate settings must have the qualities and experiences of a permissible HCB setting
- Private rooms must be available
  - States must have options available for individuals to potentially choose a private room
  - Does **NOT** mean all providers must now offer or provide private rooms

# More Myth Busters

- Provider-owned or controlled residential settings will never meet the HCB setting rule
  - No, CMS has issued specific guidance for settings where services and living arrangements are combined
  - Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement
  - Same responsibilities/protections from eviction as all tenants under landlord tenant state laws, county, city, or other designated entities
  - If tenant laws do not apply, state must ensure lease, residency agreement, or other written agreements are in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law

# How is it Going in Other States?

- Only two transition plans have been approved (IN & GA)
- Most are in the process of assessing current programs to identify areas of non-compliance
- Most have submitted 30-day public comment period
- We are all trying to read the mind of CMS
- All are following this plan: Assessment, Remediation, and Public Input
- All plans must be to CMS by March 17, 2015

# Every State must Include the Following:

- Assessment of current settings
  - Ask providers to complete a self-assessment
  - Verify results to ensure accuracy of the self-assessments
- Propose remedial or corrective strategies and timelines
  - Amend waivers, change state rules & regulations, and/or modify provider qualifications
  - Providers may need to change day-to-day operations
  - Relocating residents to a compliant setting
- Ensure public input process is in place
  - Allow for a 30 day comment period
  - Post all activity on their state website
  - Post all changes as a result of public comments

# So What Must Louisiana Do Now?

- Submit a “statewide transition plan” to CMS that addresses how it will comply with HCB setting requirements for all waivers
- Issue changes within five (5) years to bring all HCB settings into compliance
- Develop a Statewide transition plan - must be submitted by March 17, 2015
- Provide public input on their transition plan
- The Statewide Transition Plan must clearly describe what activity will occur over the next 5 years that will result in complete compliance

# Louisiana's Transition Plan

- Departments working together (OCDD and OBH) to:
  1. Identify or make a list of every setting in each waiver
  2. Assess settings to see if they follow the rule or not
  3. Apply remedies to those setting not fully in compliance
  4. Engage consumers, providers, advocates and the community to listen to stakeholder comments, concerns, and recommendations
  5. Based on public comment and assessment findings, a final transition plan will be finalized



# OCDD' s Transition Plan - Assessment

- Assess HCBS rules, regulations, policy and procedures
- Determine level of compliance
  - Setting meets criteria
  - Setting meets criteria with modifications
  - Setting cannot meet the criteria
- Obtain feedback from HCBS participants to determine if setting comply with regulations
- Conduct an assessment of providers using a self-assessment process
- Analyze findings and present to stakeholders

# OCDD's Transition Plan - Remediation

- Issue informational letters to describe transition needed, deadlines for compliance, and technical assistance
- Revise rules as necessary to reflect Federal regulations
- Revise service definitions as necessary
- Provide training to Statewide Management Organization's enrollment staff to heighten scrutiny of providers/settings
- Submit to HCBS providers, a corrective action plan for any setting that do not meet the new requirement
- Develop a plan to assist participants needing to transition to a compliant setting
- Monitor setting outcome measures

# OCDD Transition Plan – Public Comment

- Issue public notice to describe setting plan
  - First or many notices filed October 30, 2014
- Host public forum events
- Obtain ongoing stakeholder feedback in several ways – comments via emails, letters, and during in-person meetings

# We Need Your Input

- We'll respond to all comments
- Remember, this is about HCB settings only
- Read materials sent to you
- Access the Louisiana website
- Comment, comment, comment
- For this to work, we all must be engaged

# Opportunities Abound!

Tremendous amount of work but can potentially represent an incredible opportunity to bring our supports and services closer to what we aspire to in our system of values and vision statements

Please free to contact us

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