

HCBS Settings Rule Fact Sheet

OVERVIEW

On March 17th, 2014 the Centers for Medicare and Medicaid Services (CMS) enacted a Federal rule (CMS 2249-F and CMS 2296-F) to ensure individuals receiving Long Term Services and Supports through Home and Community-Based Service (HCBS) waiver programs have full access to the greater community and reside in home-like residences.

CMS FINAL RULE SUMMARY¹

- The setting is integrated in and supports full access to the greater community;
- Is selected by the individual among setting options;
- Ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;
- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.

The final rule requires that all home and community-based settings meet certain qualifications. These 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 setting is physically accessible.

NEVER A COMMUNITY SETTING

- Nursing Facility
- IMD
- ICF/ID
- Hospital
- Any other locations that have the qualities of an institutional setting

PRESUMPTIONS

CMS presumes that the following settings have the qualities of an institution and would not qualify as a community setting:

- Setting located in a building that provides inpatient institutional treatment
- Setting located in a building on the grounds of, or immediately adjacent to a public institution
- any other setting that has the effect of isolating individuals receiving HCBS from the broader community of individuals
- The setting is designed to provide people with disabilities with multiple types of services and activities on site
- People in the settings have limited interaction with the broader community
- Settings use/authorize interventions that are used in institutional settings such as seclusion

These presumptions are rebuttable. A state may provide evidence to show that a setting presumed to be out of compliance does have a quality of a HCBS setting. This evidence will be subject to “heightened scrutiny” from CMS.

¹ Fact Sheet: Summary of Key Provisions of the Home and Community-Based Services (HCBS) Settings Final Rule (CMS 2249-F/2296-F) CMS' HCBS Fact Sheet can be found here: <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>