

# THE BIG PICTURE:

---

COMING INTO  
COMPLIANCE WITH  
CMS SETTINGS RULE

# Glossary

<b>CMS</b>	Centers for Medicare and Medicaid Services
<b>HCBS</b>	Home and Community-Based Services
<b>OCDD</b>	Office for Citizens with Developmental Disabilities
<b>IMD</b>	Institution for Mental Diseases
<b>ICF/DD</b>	Intermediate Care Facility for Individuals with Developmental Disabilities
<b>SW</b>	Supports Waiver
<b>ROW</b>	Residential Options Waiver
<b>CC</b>	Children's Choice Waiver
<b>NOW</b>	New Opportunities Waiver

# Goals of Presentation

- Build a common understanding of CMS HCBS Community Rule related to settings
- Build an understanding of changes that will occur with vocational programs
- Build an understanding of the expectations for employment
- Build an understanding of expectations for residential programs
- Build an understanding of expectations for Person-Centered Planning Process

# MEDICAID FINAL RULE: CMS 2249-F AND CMS 2296-F

- Published in Federal Register on January 16, 2014
- Finalized on March 17, 2014
- Applies to all HCBS 1915(i) State Plans, Community First Choice Section 1915(k), and HCBS Waivers Section 1915(c)

# HCBS Settings Final Rule

## The 'intent' of the rule:

- Sets federal standards to ensure that Medicaid-funded HCBS are **NOT INSTITUTIONAL** in nature and are fully integrated
- Apply to residential and non residential services and settings
- Focus on the **EXPERIENCE** of each person receiving services and supports....
  - Are they living the life they want to live
  - Are they working in the community and integrated
  - Are they part of the community
- Goal is to ensure every person receiving HCBS:
  - Has access to benefits of community living
  - Has full opportunity to be integrated in their community
  - Has enhanced protections

# Time Frame

- Louisiana's Statewide Transition Plan was submitted to CMS for approval on March 17, 2015
- Louisiana's proposed date for final compliance is **March 17, 2019** (still waiting for CMS approval)

# HCBS Setting Requirements

- Establish an outcome-oriented definition that focuses on the nature and quality of **individuals'** experiences
- Maximize opportunities for individuals to have access to the benefits of **community living and the opportunity to receive services in the most integrated setting**

# HCBS Setting Requirements

## **The final rule establishes:**

- Mandatory requirements for the qualities of home and community-based settings including discretion for the Secretary to determine other appropriate qualities
- Settings that are **NOT** home and community-based
- Settings **PRESUMED NOT** to be home and community-based
- State compliance and transition requirements



# HCBS Setting Requirements

## **The Home and Community-Based setting:**

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services

# HCBS Setting Requirements

- Is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting
  - Person-centered service plans document the options based on the individual's needs, preferences; and for residential settings, the individual's resources
- Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices
- Facilitates individual choice regarding services and supports and who provides them

# HCBS for Provider Owned or Controlled Residential Settings

## **Additional requirements:**

- Dwelling owned, rented, or occupied under agreement
- Same responsibilities/protections from eviction as others
- Tenant laws/eviction processes
- Privacy in their sleeping or living unit
- Locks and access to dwelling
- Choice of roommates
- Freedom to furnish and decorate their sleeping or living units
- Freedom and support to control their schedules and activities
- Access to food any time
- Visitors at any time
- Physically accessible

# HCBS for Provider Owned or Controlled Residential Settings

Modifications of the additional requirements must be:

- Supported by specific assessed need
- Justified in the person-centered service plan
- Documented in the person-centered service plan

# Community Setting Qualities

- **A more outcome-oriented definition of home and community-based settings**
- **Not solely based on:**
  - Location
  - Geography
  - Physical characteristics
  - Size

# Community Setting Qualities

- Integrated and supports full access to the greater community
- Selected by the individual from among setting options
- Ensures privacy, dignity, respect and freedom from coercion and restraint
- Facilitates individual choice regarding services and supports

# Criteria For Settings That Isolate

Settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals:

- The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.
- The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.

# Characteristics Of Settings That Isolate

Settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:

- Designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities
- People have limited, if any, interaction with the broader community
- Use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).



# Settings that are NOT Home and Community- Based

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

# Setting PRESUMED NOT to be Home and Community- Based

- Publicly or privately-owned facility providing inpatient treatment
- On grounds of, or adjacent to, a public institution
- Have effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS

***If a setting is presumed NOT to be HCB, there is a process known as Heightened Scrutiny- whereby the state may work to prove that the setting is indeed a HCB setting.***

# Residential V. Non-Residential Settings

- Regulations provide additional requirements for **provider-owned residential settings**
- However, ***regulations apply to non-residential settings as well***, including places where people receive environmental supports

# Services In Non-Residential Settings

- **Day Habilitation**
- **Prevocational or Employment Related Training (ERT)**
- **Supported Employment- Individual/Group**

These services are sometimes provided in settings that are *segregated*.

# Full Access To Competitive Integrated Employment

## **Final rule:**

**The setting in which the person receives services “is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.”**

# Full Access To Competitive Integrated Employment

- Person is not ***required*** to seek employment, but cannot waive the *opportunity* to seek employment or control personal resources in the **future**
- Segregated “prevocational” or habilitative programs that have a poor track record of placing people in competitive integrated employment may not be considered to provide adequate opportunities

# Person-Centered Service Plans

Final rule includes changes to the requirements regarding person-centered service plans for HCBS waivers under 1915(c) and HCBS state plan benefits under 1915(i)

- Identical for 1915(c) and 1915(i)
- **The person-centered service plan must be developed through a person-centered planning process**

# Person-Centered Planning Process

- Driven by the individual
- Includes people chosen by the individual
- Provides necessary information and support to ensure the individual able to direct the process to the maximum extent possible
- Timely and occurs at times/locations of convenience to the individual
- Reflects cultural considerations/uses plain language
- Includes strategies for solving disagreement
- Offers choices regarding services and supports the individual receives and from whom
- Provides method to request updates



# Person-Centered Planning Process

- Reflects what is important to the individual
- Identifies the strengths, preferences, needs (clinical and support), and desired outcomes of the individual
- May include whether and what services are self-directed
- Includes individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education and others
- Includes risk factors and plans to minimize them
- Signed by all individuals and providers responsible for its implementation
- Copy of the plan must be provided to the individual and his/her representative

# Person-Centered Service Plans

Written plan reflects:

- Setting is chosen by the individual and is integrated in / supports full access to the greater community
- Opportunities to seek employment and work in competitive integrated settings
- Opportunities to engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS
- Reflects individual's strengths and preferences
- Reflects clinical and support needs
- Includes goals and desired outcomes
- Providers of services/supports, including unpaid supports provided voluntarily in lieu of waiver or state plan HCBS

# Person-Centered Service Plans

- Risk factors and measures in place to minimize risk
- Individualized backup plans and strategies when needed
- People important in supporting individual
- Individuals responsible for monitoring plan
- Plain language and understandable to the individual
- Who is responsible for monitoring the plan
- Informed consent of the individual in writing
- Signatures of all individuals and providers responsible

# Person-Centered Service Plans

- Distributed to the individual and others involved in plan
- Includes purchase/control of self-directed services
- Excludes unnecessary or inappropriate services and supports
- Modification of the additional conditions as previously discussed in the home and community-based setting requirements
- Must be reviewed, and revised upon reassessment of functional need as required every 12 months, when the individual's circumstances or needs change significantly, and at the request of the individual.

# Informed Choice

- Individuals must have the opportunity for “**informed choice**” during the person-centered planning process
- Options must include “**non-disability specific settings**”

# Conflict Of Interest

- **Providers** of HCBS services for the individual **CANNOT** be part of person-centered planning process unless there are robust conflict of interest provisions
- This applies to sheltered workshop operators, who may otherwise encourage sheltered work during planning process

# OPPORTUNITY TO CONTROL PERSONAL RESOURCES

- Employment or other habilitative services must offer opportunity to “control personal resources”
- Counseling may be needed in regards to financial competency

# NEXT STEPS

- OCDD must engage in an extensive assessment process of its HCBS settings to determine whether the settings are compliant with CMS standards to be considered integrated with the established standards.
- This will include:
  - Provider self-assessment completed by all agencies for each **service** they provide
  - Random onsite visit



# Residential Provider Self Assessment

If an agency provides any of the following residential services, a residential assessment must be completed for each service provided:

- Community Living Supports/Shared Supports
- Substitute Family Care
- Individual and Family Supports/Shared Supports
- Host Home
- Intensive Community Supports

# Non-Residential Provider Self Assessment

If an agency provides any of the following non-residential services, a non-residential assessment must be completed for each service provided:

- Day Habilitation
- Prevocational
- Employment Related Training (ERT)
- Supported Employment

# Depending On The Assessment...

Settings will be categorized as 1 of the following:

1. Fully complies with the CMS requirements.
2. With changes, will comply with the requirements.
3. Presumed to have the qualities of an institution but for which the State will provide evidence to show that the setting does have the qualities of an HCBS setting (“heightened scrutiny”).
4. Does not meet the requirements and/or chooses not to come into compliance.

**Each provider receiving a 2 – 4 categorization will have to complete a Compliance Plan with measureable steps of how each agency will come into compliance and provide documentation on a quarterly basis of the progress made.**

# Individual's Role

- Understand the importance of meaningful day activity versus paid in home services
- Discuss employment goals with support coordinator and provider agency
- Cooperate in job development and placement
- Ask questions about benefits, services or anything else that may be confusing
- Attend meetings with Louisiana Rehabilitation Services (LRS), providers and Work Incentive Coordinators
- Guide the development of the person centered planning process
- Make informed choice about their services, including where they live, where they work and community activities

# Support Coordinator's Role

- Attend educational sessions provided by OCDD State Office and local governing entity (LGE)
- Educate individuals/families about employment, what it means to work and the benefits of working
- Have the employment conversation with individuals and families and work through barriers
- Provide or set up benefits (SSI/SSDI) counseling to individuals/families
- Assist individuals in referrals to LRS when the time is appropriate
- Work closely with LRS during the employment process
- Facilitate the on going person centered planning process
- Ensure the plan of care (POC) reflects the appropriate services for each individual
- Collect Employment data

# Provider's Role

- Assess their agency and services
- Develop plan to transition into compliance if not in compliance as per assessment
- Attend educational sessions provided by OCDD State Office and LGE
- Assess each individual for the appropriate services
- Offer choice to individuals in services as well as activities within the services
- Provide community integration based on each individual's desires
- Provide or set up benefits counseling to individuals/families
- Assist individuals in referrals to LRS when the time is appropriate
- Work closely with LRS during the employment process
- Assist individuals in locating jobs
- Provide follow along to help individuals maintain employment
- Collect and provide employment data

# LGE's Role

- Receive and review the provider self-assessments in their offices for their respective regions
- Monitor at least 10% of the providers in their region as part of the assessment process (OCDD Central office will assist in randomly choosing the providers)
- Receive the Corrective Action Plans (CAP) for each provider that is not in compliance as a result of the provider self-assessments
- Monitor the CAPs to ensure that providers are making a progress in the milestones that are set forth in the CAPs
- Roll up a summary report to OCDD Central Office on the self-assessments and progress made towards compliance
- Attend educational sessions provided by OCDD State Office on such things as how to review the self-assessments and on what to look for when monitoring along with the report summary format
- Capture employment data

# State Office's Role

- Develop transition plan
- Obtain plan approval from CMS
- Report quarterly to CMS until compliance is obtained
- Maintain Transition Plan website with up-to-date information
- Collect public input
- Report Employment Outcomes based on data collected
- Develop provider self-assessments
- Guide statewide compliance process
- Educate and train stakeholders
  - BIG picture training will be provided to providers, LGE staff and Support Coordinators, which will include changes set forth by the new CMS settings rule to include changes to employment/vocational services, Workforce Innovation and Opportunity Act, and working with LRS
  - Training will be provided on both of the residential and non-residential provider self-assessments
  - Specific training to the LGE staff will be provided on their role in this whole process
  - Ongoing technical assistance and training to providers, support coordinators and stakeholders
  - Roundtable discussions in each region for vocational providers



# OCDD Website

To locate the updates to OCDD Transition Plan and documents:

<http://new.dhh.louisiana.gov/index.cfm/page/1991>

# CMS' Final Rule and Guidance

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>