

DBHDS

Virginia Department of
Behavioral Health and
Developmental Services

Medicaid HCBS Final Rule

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Final Rule CMS 2249-F and CMS 2296-F



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- Title: *Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice (Section 1915(k) of the Act) and Home and Community-Based Services (HCBS) Waivers (Section 1915(c) of the Act)*

Intent of the Final Rule

- To ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate
- To enhance the quality of HCBS and provide protections to participants

Highlights of the Final Rule

- Defines, describes, and aligns home and community-based setting requirements
- Defines person-centered planning requirements for persons in HCBS settings
- Provides CMS with additional compliance options for waiver programs

Home & Community-Based 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 Settings Requirements

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

HCBS Requirements



- Selected by the individual from among setting options, including
 - non-disability specific settings
 - 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

HCBS Requirements (cont'd)

- 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 & supports and who provides them

HCBS Requirements for Provider-Owned or Controlled Residential Settings

- Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement
- Same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity
- If tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law

HCBS Requirements for Provider-Owned or Controlled Residential Settings (cont'd)

- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with the individual and appropriate staff having keys to doors as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement



HCBS Requirements for Provider-Owned or Controlled Residential Settings (cont'd)

- 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



HCBS Requirements for Provider-Owned or Controlled Residential Settings (cont'd)

- Modifications to the additional requirements must be:
 - Supported by specific assessed need
 - Justified in the person-centered service plan
 - Documented in the person-centered service plan

HCBS Requirements for Provider-Owned or Controlled Residential Settings (cont'd)

- Documentation in the PCP of modifications to the additional requirements includes:
 - Specific individualized assessed need
 - Prior interventions and supports including less intrusive methods
 - Description of condition proportionate to assessed need
 - Ongoing data measuring effectiveness of modification
 - Established time limits for periodic review of modifications
 - Individual's informed consent
 - Assurance that interventions and supports will not cause harm

Settings that are NOT HCB

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



Settings Presumed Not to Be HCB

- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on 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

Settings that Have the Effect of Isolating Individuals

- Settings that *might*, but will not necessarily, meet the criteria for isolating
 - 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.

Settings that Have the Effect of Isolating Individuals (cont'd)

- 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 in the setting have limited, if any, interaction with the broader community
 - Uses/authorizes interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g., seclusion)

Settings that Have the Effect of Isolating Individuals (cont'd)

- Examples of settings that isolate:
 - Farmstead or disability-specific farm community
 - Gate/secured “community” for people with disabilities
 - Residential schools
 - Multiple settings co-located and operationally related (i.e., numerous group homes co-located on a single site or multiple units on the same street)



Required Transition Plan

- For renewals and amendments to existing HCBS 1915(c) waivers submitted within one year of the effective date of final rule:
 - The state submits a plan in the renewal or amendment request detailing any actions necessary to achieve or document compliance with **setting requirements** for the specific waiver or amendment
 - Renewal or amendment approval will be contingent upon inclusion of an approved transition plan

Required Transition Plan

For ALL existing 1915(c) HCBS waivers in the state, the state must submit a plan:

- Within 120 days of first renewal or amendment request detailing how the state will comply with the settings requirements in ALL 1915(c) HCBS waivers



More Information

More information is available about the final regulation at:

<http://www.medicaid.gov/HCBS>



Questions?

