

Talking Points related to Home and Community Based Services Settings Rule

What is the final home and community-based services (HCBS) regulation?

- Known as the “Final Rule”
- Published in the Federal Register on January 16, 2014 and became effective March 17, 2014
- Designed to enhance the quality of HCBS, provide additional protections, and ensure full access to the benefits of community living
- Established requirement for home and community based settings in the Medicaid HCBS programs
- Created a more outcome-oriented definition on home and community based settings, rather than one based solely on a setting’s location, geography or physical characteristics and focuses on the quality of individuals’ experiences
- Requirements maximize opportunities for individual’s to have access to the benefits of community living and the opportunity to receive services in the most integrated setting and protects individual choice

Which services are impacted by this rule?

Any residential or non-residential setting where individuals live and/or receive HCBS.

What are the five qualities that any residential or non-residential setting where individuals live and/or receive HCBS must demonstrate?

- Integrated in and supports full access of individuals to the greater community
 - Provides opportunities to seek employment, work in competitive integrated settings, engage in community life, control personal resources, and
 - Ensures that individuals receive services in the community, to the same degree of access as individuals not receiving HCBS
- Selected by the individual from among setting options including non-disability specific settings and options for a private unit in a residential setting
 - Person-centered service plan documents options based on the individual’s needs, preferences, and for residential settings, resources available for room and board
- Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact
- Facilitates individual choice regarding services and supports and who provides them

What is a provider-owned or controlled setting?

A residential setting is considered provider-owned or controlled when the setting in which the individual resides is a specific place that is owned, co-owned, and/or operated by a provider of HCBS. All settings that meet this definition are subject to additional requirements related to ensuring tenant protections, privacy, and autonomy for individuals receiving HCBS who do not reside in their own private (or family) home.

Settings Presumed to have the qualities of an institution:

- The regulations identify other settings that are presumed to have institutional qualities and do not meet the requirements for Medicaid home and community-based settings:
 - Settings in a publically or privately operated facility that provide inpatient institutional treatment
 - Settings in a building on the grounds of, or adjacent to, a institution
 - Settings with the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS
 - 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 specific 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 isolate people receiving HCBS from the broader community may have any of the following characteristics:
 - The setting is 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
 - Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion)
 - A non-exhaustive list of examples has been provided by CMS in their “Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community”. Link to resource: <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf>

Heightened Scrutiny Process

- A state may overcome the presumption that a setting has institutional qualities by submitting evidence to CMS demonstrating that the setting does not have the qualities of an institution and that it does have the qualities of home and community-based setting
- When the state submits this evidence to CMS, the state triggers a process known as “heightened scrutiny”
- Under the “heightened scrutiny” process, CMS reviews the evidence submitted by the state and makes a determination as to whether the evidence is sufficient to overcome the presumption that the setting has the qualities of an institution

Settings that are excluded from the final rule include:

- Nursing Facility
- Institution for Mental Disease

- Intermediate Care Facility for Individuals with Intellectual Disabilities
- Hospital
- Other locations that have qualities of an institutional setting, as determined by the Secretary

What are the requirements identified by CMS for a Systemic Assessment Process?

- All States are required to conduct a systemic assessment
- The process involves reviewing and assessing state standards to determine compliance with the regulation
- States must review state standards related to all setting types in which HCBS is provided
- The federal regulations set the floor for requirements, but states may elect to raise the standard for what constitutes an acceptable home and community based setting.
- At a minimum, states are expected to conduct site-specific assessments of a representative and statistically significant sample of settings to determine the number of providers that are or are not in compliance with the federal setting requirements
- States may use a variety of methods to conduct site-specific assessments including:
 - Provider self-assessments
 - Licensure surveys
 - Site visits
 - Policy and record reviews
 - Reviews by case managers affiliated with the state and managed care organization staff
- Site-specific assessments help a state determine:
 - The category of compliance in which to place each setting, and
 - The remedial actions that must be taken by the state and providers to bring specific sites into compliance
- CMS has the following expectations about site-specific assessments:
 - Should be sufficiently rigorous to be a reliable indicator of setting compliance
 - Should be completed early enough in the transition period to allow time for remediation and to ensure full compliance by March 2019 of both residential and non-residential settings

What does CMS expect related to Provider self-assessments?

- If a state uses provider self-assessments as part of its site-specific assessment process, CMS expects states to include certain information about the self-assessment process and outcomes in its STP:
 - Description of the provider self-assessment tool
 - The outcome of the survey by setting type
 - The response rate and how the state addressed providers who did not complete the survey
- The state should describe its process for validating the provider self-assessment results

What are CMS' expectations related to Consumer/Participant Surveys?

- If a state administers a consumer/participant survey as part of its site-specific assessment process, the information from the survey must be linked to specific sites

- This is particularly important if a consumer or participant survey is being used to validate provider self-assessment results and the state does not have any other data linked to specific sites

What are CMS' expectations related to Site Visits?

- If conducting site visits, the state should explain who will conduct the site visits and what activities will be conducted during the site visit (e.g. observation, interviews and/or surveys of staff and/or residents, document review)
 - Important to assess the qualities that are present in an individual's life; thus, an essential activity of the site visit is observing what is occurring in the setting
- If only conducting onsite visits for certain types of settings, the state should explain the reason why it selected those specific settings

What does CMS mean regarding Remediation Strategy?

- Remediation strategy describes the actions the state plans to take to ensure compliance with HCBS requirements
- Home and community –based settings subject to remediation are:
 - Settings where HCBS are provided
 - Settings where HCBS beneficiaries reside

What should be included in Remediation actions?

- A state's remedial actions should include, as applicable:
 - Systemic Remediation-necessary remediation required of state standards
 - Examples include:
 - amending statutes, regulations, and policy manuals;
 - preparing amendments to waivers and state plans and submitting to
 - Site-specific remediation-remediation of specific sites or providers
 - State actions to remediate the non-compliance of providers and specific sites include:
 - Developing and conducting provider trainings on new requirements
 - Providing technical assistance to providers
 - Holding education sessions for advocates, beneficiaries, and families and distributing education materials
 - Monitoring efforts by providers to comply with the setting requirements through corrective action plans, licensing surveys, inspections and other methods
 - Developing and implementing plans to relocate individuals to settings that are compliant with regulations
 - Remedial actions providers might take to come into compliance include, but are not limited to:
 - Changing operational policies of the setting to ensure that individuals have greater access to activities of his/her choosing in the larger community, including the opportunity to seek and maintain competitive employment

- Revising lease agreements to provide protections to address eviction processes and appeals (provider owned/controlled settings)
- Implementing policies and procedures to ensure privacy when the individual is visiting with friends and family
- Providing for choice in terms of things such as roommates
- Relocation of beneficiaries-this will occur when settings cannot be brought into compliance

What is OCDD's approach to Systemic Assessment?

- OCDD has opted to take a multifaceted approach to the systemic and site specific assessment process. Details regarding the process of evaluating the system as a whole and individual providers can be found in the updated Statewide Transition Plan including timelines to complete these activities. The updated plan is posted on OCDD's website:
<http://new.dhh.louisiana.gov/index.cfm/page/1991>

What is OCDD's approach to Remediation?

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