National Council for Behavioral Health
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Key Themes of the Rule

- The regulation is intended to serve as a catalyst for widespread stakeholder engagement on ways to improve how individuals experience daily life
- There is no HHS initiative to shut down particular industries or provider types
- FFP is available for the duration of the transition period
- The rule provides support for states and stakeholders making transitions to more inclusive operations
- The rule is designed to enhance choice among settings that meet a level playing field
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
The Home and Community-Based setting:

• 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
Provider Owned and Controlled Settings – Additional Requirements

- 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
Provider Owned and Controlled Settings – Additional Requirements

- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with 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
- 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
Home and Community-Based Setting Requirements

Provider Owned and Controlled Settings – Additional Requirements

• 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
Provider Owned and Controlled Settings – Additional Requirements

• Documentation in the person-centered service plan of modifications of 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
Statewide Transition Plans

- CMS sent letters to states requesting additional information based on the content of their STPs.
- Letters are customized to articulate the next steps for each state and the timeframes by which the additional information is to be submitted.
- As states complete their systemic and setting specific assessments, states should ensure continued public input on assessment results and implications.
Statewide Transition Plans – What Are We Seeing

• Several STPs did not provide enough information to facilitate meaningful public input
• States are very early in the process of conducting assessments of their current systems
  – Many states have not completed initial systemic assessments
  – Some states have indicated that specific information on the scope of providers needing to revise operations, and the scope of information to be submitted for heightened scrutiny review, won’t be known until very late into the transition period
  – Many states are still identifying the specific policies, rules, licensure or certification process to be reviewed, the settings they apply to and/or the qualities of home and community-based settings that they address
  – Many states have not completely identified the specific settings to be included in the assessment, the number of such settings, or the number of individuals served
• Without a complete settings assessment, states cannot:
  – Identify which settings are/are not in compliance or could transition to compliance
  – Identify settings *Presumed Institutional* in nature
  – Submit evidence for *Heightened Scrutiny*
  – Provide specific remedial actions
  – Provide more than general milestones/timeframes

• Concerns with the amount of time some states are projecting to complete the assessment phase and leaving adequate time for the actual transformation

• States need to develop plans for ongoing monitoring which should ensure settings currently in compliance remain in compliance during and after the transition period
Statewide Transition Plans – CMS Actions and Assistance for States

• State-by-state communication to discuss statewide transition plans (calls with RO/CO, letters, etc.)
• Continued issuance of implementation guidance
• Maintenance of Home and Community-Based Services website and Implementation Toolkit on Medicaid.gov
• All-state SOTA calls on STPs and other major home and community-based settings implementation challenges identified by states
• Technical assistance training series of all-state webinars on a variety of HCBS topics
Heightened Scrutiny
(Frequently Asked Questions)

• Published June 26, 2015 on medicaid.gov website
• Instructs states when to consider submitting information to CMS on a setting presumed to have institutional qualities for which the state wishes to overcome the presumption and have the setting be considered home and community-based
The HCBS regulation describes three types of settings that are presumed institutional for which the state may request heightened scrutiny to overcome the presumption. They are settings in a privately or publically owned facility that also provides inpatient treatment; settings on the grounds of or adjacent to a public institution; and other settings that could have the effect of isolating individuals from the community.
Resources

• HCBS Website – http://www.medicaid.gov/hcbs
  – Final HCBS regulation
  – Guidance
  – Fact Sheets
  – FAQ
  – Compliance Toolkit
  – State Transition Plan Information

• State Technical Assistance

• Mailbox to send questions: hcbs@cms.hhs.gov
Benefits of the Home and Community Based Services Rule

• Potential to maximize opportunities for people with disabilities to realize benefits of community living
• Potential for people with disabilities to experience more choice, autonomy, and community integration
• Increased focus on outcomes as a result of integrated and inclusive services
Financial Impact

• Insufficient funding to fully support the intended outcomes
• Additional expenses to the system to come in compliance with the Rule, in a variety of areas
• Individualized staffing = need for more staff
Financial Impact

• Additional costs to the provider to convert from private ICF/ID

• Impact on providers of residential services if individuals choose to leave residential services under the protection of the required landlord/tenant agreement

• What is the impact on states’ waiting lists?
Implementation Barriers

• Lack of public transportation, especially in rural areas, making community integration less likely to occur
• Lack of competitive employment opportunities
• What tool will be used to satisfy the requirement to develop needs based criteria to determine which services are unnecessary or inappropriate for an individual?
Implementation Barriers

• Consideration must be given to the service needs for those with the most challenges

• The expectation that the person in service drives the person planning process ignores the reality of limited capabilities

• Difficulty in securing guardians or personal representatives when there is no involved family member
Implementation Barriers

• Rental agreements could lead to fewer protections for individuals if providers can discharge people more easily

• Will there be limitations on new or innovative services models under the Rule?
How Can Providers Prepare?

• Stay on top of status of states’ transition plans, and work with provider associations to influence policy development and have a voice

• Review current service models, policies and procedures, and self assess if you have the characteristics expected of inclusive and integrative services
How Can Providers Prepare?

- How will you measure your compliance?
- Staff training
Learn how the latest trends from Capitol Hill will affect your daily practice – and what you can do to prepare.

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