

Home and Community Based Settings Stakeholder Update May, 2019

On March 22, 2019 the Centers for Medicare & Medicaid Services (CMS) issued a set of guidance responses to Frequently Asked Questions (FAQs) on implementation activities associated with the January 2014 home and community based settings (HCBS) final rule. You can access the full FAQs here:

(<https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf>).

The HCBS settings regulations describe three categories of residential or non-residential settings that are presumed to have the qualities of an institution requiring a heightened scrutiny review:

- Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution;
- Any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

CMS intends to take the following factors into account in determining whether a setting has the effect of isolating individuals (this response replaces prior guidance on the criteria of an isolating setting):

- Due to the design or model of service provision in the setting, individuals have limited, if any, opportunities for interaction in and with the broader community;
- The setting restricts beneficiary choice to receive services or to engage in activities outside of the setting; or
- The setting is located separate and apart from the broader community without facilitating beneficiary opportunity to access the broader community and participate in community services, consistent with a beneficiary's person-centered plan.

Settings in rural areas are not automatically presumed to have the qualities of an institution, specifically not considered as automatically isolating:

- States should only submit a specific setting for heightened scrutiny if the setting is presumed to have the qualities of an institution, and the state believes that the setting has or will overcome the presumption.
- To determine if a rural setting may be isolating, compare the access that other individuals living in the same geographical area, but who are not receiving Medicaid HCBS, have to engage in the community.

General Guidance:

- Nothing in the regulations requires an HCBS setting to finance recreational activities.
- It is not sufficient for HCBS settings to bring people from the broader community to the setting.
- It is the expectation that HCBS settings offer meaningful opportunity for interactions with the community outside of the setting, consistent with person-centered plans.

Heightened Scrutiny Review:

If a setting meets the criteria for isolation of HCBS beneficiaries, but implements remediation to comply with the regulation by July 1, 2020, there is no need to submit that setting to CMS for a heightened scrutiny review:

- However, the setting should be identified in the Statewide Transition Plan (STP) for public comment and/or identified in information disseminated separate from the STP for public comment.
- CMS reserves the right to review any setting that the state attests has remediated isolating characteristics if significant public comment disagrees with the state's assessment.
- As long as a state determines that an isolating setting can implement remediation prior to March 17, 2022, and can achieve compliance, states may also submit to CMS those isolating settings that have not completed remediation by July 1, 2020 within 120 days (by the end of October 2020).

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The State will submit a list of settings under each category of presumptively institutional settings to CMS:

- CMS will use the list to compile a random sample of settings to review, including any the state requests CMS to review and any setting that generated significant public comment in opposition to the state's assessment.
- CMS will review all information presented by the state and will either approve the state's assertion or provide feedback and questions for clarity or reason(s) why CMS can't agree with the State's determination.
- States can then provide additional information needed before CMS makes a final determination.
- The state will use the CMS feedback to remediate settings not included in the CMS review sample.
- If the sample highlights concerns with the state's approach for assessing presumptively institutional settings, CMS may request to review additional settings and/or suggest changes to the heightened scrutiny process.
- CMS may also ask for information on any setting for which the state received public comments that the setting was presumptively institutional but was not included on the state's heightened scrutiny list because the state determined it to meet the HCBS settings criteria.

CMS is collaborating with federal partners in the Administration for Community Living (ACL) to develop a comprehensive set of promising practices. CMS offers the following for state and provider consideration:

Increasing engagement with the broader community by:

- Developing partnerships with community-based entities, resulting in inclusion in the broader community;
- Establishing a community-based advisory group;
- Implementing a broad range of services and supports, programming and multiple daily activities to facilitate access to the broader community so individuals can select an array of options and control their own schedule. Such activities should:
 - Promote skills development and facilitate training to attain and expand opportunities for community-based integration;
 - Expose beneficiaries to community activities/situations comparable to those in which individuals not receiving HCBS routinely engage;
 - Encourage families/friends to participate regularly with the beneficiary onsite and in the broader community; and /or
 - Promote greater HCBS beneficiary independence and autonomy.
- Implementing organizational changes that:
 - Assure required staffing and transportation options to offer both group and individualized options that facilitate community engagement based on individual preferences; and/or
 - Decentralize staff structures to promote flexibility and encourage staffing focused on individuals' access to in the broader community, rather than insular staff models focused around a specific facility/site.
- Expanding strategies for increasing beneficiary access to transportation through existing means; could include providing transportation to promote ease of access and optimize individuals' ability to select their own options and make decisions about their services and supports.

Utah's STP Updates:

- The State's STP has been submitted to CMS for final approval.
- Remediation Plans: Providers/Settings are actively working on their corrective action plans (CAPs) and the State is verifying all CAPs that have been completed.
- The In-depth Additional Review: The State will convene the Settings Workgroup to review tools and begin conducting the reviews over the next couple of months.