



Monitoring of Compliance with the Home and Community-Based Setting Requirements



March 9, 2016



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Background – Final Rule

- The final home and community-based services (HCBS) regulations (known as the “Final Rule”) were published in the Federal Register on January 16, 2014; they 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

Background – Home and Community-Based Setting Requirements in Final Rule

- Establishes requirements for the qualities of settings where individuals live and/or receive Medicaid-reimbursable HCBS provided under sections 1915(c), 1915(i), 1915(k), 1915(b)(3), and 1115 of the Social Security Act
- Focus on the quality of individuals' experiences
- The intent is that individuals receiving Medicaid-funded HCBS have the opportunity to receive these services in a manner that protects individual choice and promotes community integration

Background – Home and Community-Based Setting Qualities

Any residential or non-residential setting where individuals live and/or receive HCBS must have the following five qualities:

- 1) Is 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

Background – Home and Community-Based Setting Qualities (cont'd)

- 2) Is 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 plans document the options based on the individual's needs, preferences, and for residential settings, resources available for room and board

Background – Home and Community-Based Setting Qualities (cont'd)

- 3) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint
- 4) Optimizes individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact
- 5) Facilitates individual choice regarding services and supports, and who provides them

Background – Home and Community-Based Setting Qualities (cont'd)

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

Background – Home and Community-Based Setting Requirements

- States must submit a Statewide Transition Plan for existing 1915(c) and 1915(i) programs
 - Describes the state’s process for ensuring compliance with home and community-based setting requirements
- New 1915(c) waivers or new 1915(i) or 1915(k) state plan amendments must be compliant as of the effective date of the waiver or state plan amendment approved by CMS
- States must be in full compliance no later than March 17, 2019

Background - Excluded Settings

Settings that are not home and community-based are specified in the Final Rule:

- 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

Background - 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 publicly or privately operated facility that provides inpatient institutional treatment
 - Settings in a building on the grounds of, or adjacent to, a public institution
 - Settings with the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS

Background - Heightened Scrutiny Process

- A state may overcome the presumption that a setting has institutional qualities by **submitting evidence to CMS** demonstrating the setting does not have the qualities of an institution and that it does have the qualities of a 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

Monitoring: Overview (cont'd)

- This presentation will discuss the two types of monitoring for home and community-based settings:
 - Monitoring implementation of remedial actions
 - States are responsible for monitoring the implementation of remedial actions to achieve setting compliance, both those that are the responsibility of the state (state-level) and those that are primarily the responsibility of providers (provider-level)
 - Monitoring to ensure ongoing compliance
 - Once remedial actions have achieved setting compliance, the state must continue to engage in monitoring and oversight activities to ensure ongoing compliance

Monitoring: Overview (cont'd)

- Monitoring for compliance with the federal home and community-based setting requirements is in addition to, and does not replace, the waiver assurances for monitoring that are part of the HCBS 1915(c) waivers, or the quality requirements for state plan services under 1915(i) and 1915(k)

Monitoring State-Level Remedial Actions

- Monitoring implementation of state-level remedial actions
 - States should have a process for checking that each milestone in the STP for state-level actions is being met according to the timeline
 - If the state anticipates that a milestone will not be met, it should take proactive steps to address the issue to minimize the delay
 - If a milestone is delayed, the state should notify CMS

Monitoring Provider-Level Remedial Actions

- Examples of how states can monitor progress in implementation of provider-level remedial actions:
 - Seeking input from beneficiaries and advocacy groups while provider remediation is underway
 - Requiring regular reporting by providers concerning their progress in achieving each remedial action
 - Requiring providers to submit their revised policies and procedures to the state for review

Monitoring Provider-Level Remedial Actions (cont'd)

- Once providers report that remedial actions have been completed, the state should verify compliance
- Settings compliance can be verified using existing state oversight resources such as licensing and certification agencies and case managers
- CMS encourages states to consult with beneficiaries, families, and advocacy groups for their opinions about specific setting compliance
 - However, this strategy alone is not sufficient

Monitoring State Process for Alternative Options for Beneficiaries

- States will develop a process for offering alternative options for beneficiaries who live and/or receive HCBS in settings that do not take the necessary steps to meet the requirements for home and community-based settings
- The state should develop a plan to monitor compliance with the following aspects of this process:
 - Beneficiaries provided with reasonable notice and due process
 - Beneficiaries given the opportunity, information, and supports to make an informed choice of an alternate setting that is either compliant with the federal home and community-based setting requirements or uses a funding stream other than Medicaid-funded HCBS
 - Critical services/supports in place for the beneficiary prior to transition
 - Process adheres to the timelines specified in the STP

Monitoring to Ensure Ongoing Compliance

- Once remedial actions have achieved compliance with the home and community-based setting requirements, the state should have a process for ensuring ongoing compliance of settings during and after the transition period
- States may choose to use processes similar to those used to initially assess compliance and oversee provider remediation

Monitoring to Ensure Ongoing Compliance (cont'd)

- States should regularly assess the compliance status of home and community-based settings
- State are encouraged to use existing infrastructure and processes to monitor settings
 - Tools used in these processes (e.g., licensing, agency inspection manuals) may need to be updated to reflect the new setting requirements

Monitoring to Ensure Ongoing Compliance (cont'd)

- Examples of processes a state might use to assess ongoing setting compliance include:
 - Site visits (to observe settings, review records, interview staff and residents)
 - Licensing and certification reviews
 - Case manager visits
 - Provider self-assessment surveys that are validated
 - Consumer satisfaction surveys linked to specific sites
 - MCO performance monitoring

Monitoring to Ensure Ongoing Compliance (cont'd)

- If the state finds that a setting is out of compliance with the setting requirements, it should consider taking the following steps to support provider remediation:
 - Report assessment results to the provider and identify provider actions needed to remedy areas of non-compliance
 - Assist providers to achieve compliance and address issues that appear to be preventing compliance
 - Require providers to implement corrective action plans to remedy non-compliance

Monitoring to Ensure Ongoing Compliance (cont'd)

- States are encouraged to educate stakeholders so that they can assist with settings monitoring
- Examples of this type of activity include:
 - Developing and implementing a communication plan to educate stakeholders (e.g., beneficiary advocacy groups and provider associations) about how to assist the state with monitoring
 - Providing beneficiaries with information targeted to their specific situation(s) that explains their rights and related provider requirements

Monitoring to Ensure Ongoing Compliance (cont'd)

- States should have a system for tracking:
 - Monitoring activities and results for each setting
 - State actions to bring non-compliant settings back into compliance
 - Required actions for those providers that fail to maintain compliance

Monitoring Process Description in the STP

- In their STP, states should provide enough detail about their monitoring processes during and after the transition period so that they can be evaluated by CMS and other readers
- At a minimum, describe:
 - Processes and tools the state will use
 - Who will perform the monitoring
 - Timelines for implementing the monitoring process

Monitoring Process Description in the STP (cont'd)

- Monitoring processes and tools
 - Indicate how existing licensing and recertification processes will be integrated into the monitoring process
 - CMS strongly suggests that states use their existing licensing, recertification, and case management processes as part of their monitoring and oversight of home and community-based setting compliance

Monitoring Process Description in the STP (cont'd)

- Who will perform the monitoring
 - Specifically identify the entities and individuals that the state will use to monitor compliance and what their roles will be in the monitoring process
 - If a stakeholder advisory group or work group will be involved, clearly describe the composition of the group and frequency of meetings

Monitoring Process Description in the STP (cont'd)

- Who will perform the monitoring (cont'd)
 - Describe the specific monitoring responsibilities of staff at state government agencies
 - If the state plans to delegate monitoring responsibilities to other entities (e.g., to MCOs or case management organizations), describe:
 - What functions were delegated
 - How the state will provide oversight of those entities

Monitoring Process Description in the STP (cont'd)

- Timelines for implementing the monitoring process
 - Detail the milestones for each step of the monitoring process and the timelines for each milestone
 - For example, if the state is planning to develop a provider self-monitoring tool, include the specific dates by when:
 - The tool will be completed
 - The tool will be sent to providers
 - Providers must complete the tool and return it to the state
 - Provider responses will be validated
 - Data from the tool will be analyzed by the state

Milestone Tracking by CMS

- CMS will track each state's milestones—including those related to the monitoring process—based on the descriptions and due dates detailed in the Statewide Transition Plan and confirmed with the state
- CMS will enter these milestones into an automated system and states will use this system to inform CMS of milestone updates

Questions

For More Information

Final rule and additional resources are available at:

<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>

HCBS Training webinars posted at:

<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/hcbs-training.html>

Additional questions can be sent to:

HCBS@cms.hhs.gov