
SCARY OR NOT SCARY: UNDERSTANDING HCBS SETTINGS RULE

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OBJECTIVES

- Who are the stakeholders and important partners in your area?
- Start to understand the rule and how it applies to your work.
- Where do I find information on this rule?
- Knowing what to do next to promote these rules or to find the information around it.

PARTNERSHIP

- APRIL is working with NASILC and HSRI on the HCBS Settings Rule
- CILs have been doing this work for a long time, now there is language to support our philosophy on transition and diversion along with key partnerships we can use in our work.
- Our role:
 - To bring awareness to our membership and IL partners on these rules
 - To equip CILs and SILCs with the information to increase their advocacy around transition and diversion.
 - To share resources with the IL field on the rules and how to educate your consumers and community.
 - To inform CILs and SILCs on potential partners within your state and service areas to work on issues around transition and systems and individual advocacy.
 - Help identify CILs and SILCs that are doing work around this that can provide some peer mentoring for others.

HOME AND COMMUNITY-BASED SERVICES STAKEHOLDER ENGAGEMENT

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THE WHAT AND WHO OF HCBS

What are Home and Community-Based Services (HCBS)?

HCBS provide funded support for:

- Employment
- Transportation
- Homecare/home health
 - Medications and in-home therapy (PT, OT, Speech, etc.)
 - Housekeeping
- Activities of daily living such as bathing, dressing, toileting and cooking.
- Finances
- Assistive Technology and Home Modifications

Who receives HCBS?

- In 2018 more than 4.7 million people received Medicaid-funded HCBS
- Each state has its own system and decides to which populations they will offer HCBS waivers

SETTINGS RULE: WHERE IT CAME FROM AND WHERE IT'S GOING

- People living in community-based settings were often living a life that is closer to institutional experience
- The 2014 HCBS final rule attempts to define “community based” for the first time.
- The March 17, 2023, transition period deadline for full state compliance with the HCBS settings regulation, effective March 17, 2014, is fast approaching.
- ACL & CMS remain steadfast in ensuring adherence to the tenets of the rule and the regulatory criteria, which provide the framework for ensuring that HCBS are truly person-centered, and the settings within which they are provided facilitate autonomy and independence.



RULE REQUIRES THAT SERVICES AND SUPPORTS:

- Are integrated in and support full access to greater community
- Ensure the person receives services in the community with the same degree of access as people not receiving federal Medicaid funding
- Provide opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources

WHAT MAKES A SETTING HOME AND COMMUNITY- BASED?

- It is in the community and supports the person's full access to the community
- Provides opportunities to:
 - seek employment in integrated settings at competitive wages
 - participate in community life
 - control personal resources
- It is selected by the individual from options that include non-disability specific settings
- Ensures the right to privacy, dignity, respect, and freedom from coercion and restraint
- Facilitates individual initiative, autonomy, and independence in making life choices

CORE REQUIREMENTS OF THE CMS HCBS FINAL SETTINGS RULE (2014)

- Requires every state to ensure that services meet minimum standards for integration, access to community life, choice, autonomy, and other important consumer protections
- Person-centered planning
- States must receive final Statewide Transition Plan approval.
- All states and settings will be fully compliant with the following regulatory settings criteria:
 - Privacy, dignity, respect, and freedom from coercion and restraint; and
 - Control of personal resources.

ADDITIONAL CONDITIONS: PROVIDER-OWNED OR CONTROLLED SETTINGS

Unit is owned, rented or occupied under a legally enforceable agreement

Privacy, lockable doors
Choice of roommates

Freedom to furnish and decorate

Freedom to control one's own schedule/activities

Access to food at any time

Person can have visitors they choose at any time

IN PROVIDER-OWNED OR -CONTROLLED RESIDENTIAL SETTINGS



Person must have:

- A lease or other legally enforceable agreement to protect from eviction
- Privacy in their unit including entrances lockable by the person (staff have keys as needed)
- Choice of roommates
- Freedom to furnish and decorate their unit
- Control of their schedule and activities
- Access to food at any time
- Visitors at any time
- Physical accessibility

Deviations from this rule (except accessibility) must be supported by a specific assessed need and justified in the person-centered service plan (ISP-individualized service plan)

A PERSON-CENTERED PLAN MUST...

- Identify the strengths, preferences, needs (clinical and support), and desired outcomes of individual
- Include individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education and others
- Reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare
- Identify risk factors and plans to minimize them
- Be understood by the individual
- Reflect cultural considerations



IMPORTANCE OF PUBLIC ENGAGEMENT

- ACL works closely with CMS to implement the Settings Rule
- The Rule is a key to engaging community members in the development, provision, and oversight of HCBS programs.
- For the first time, ACL is specifically funding public engagement efforts.

OPPORTUNITIES FOR ENGAGEMENT

Now

- Statewide Transition Plans
 - **View STPs:**
<https://www.medicaid.gov/medicaid/home-community-based-services/statewide-transition-plans/index.html>
- Heightened Scrutiny Packages:
 - CMS Site Visits
 - ACL Stakeholder calls

In the future

- Corrective Action Plans
 - States must be able to show that their policies and procedures reflect the settings criteria and they have made efforts to implement the criteria to the fullest extent possible and work with CMS on a concrete, time-limited plan to come into full compliance with remaining criteria.
- **Waiver Amendments and Renewals**

1

Statewide Transition
Plans

2

Heightened Scrutiny
Packages:

- CMS Site Visits
- ACL Stakeholder
calls

3

Corrective Action
Plans

4

Waiver Amendments
and Renewals

WHERE ARE THE STAKEHOLDERS?

INDIVIDUAL PEOPLE WITH
DISABILITIES THEIR
FAMILIES, AND NEIGHBORS

ADVOCACY GROUPS:

Parent Groups

Sibling groups

Self-advocate groups.

PROTECTION FROM HARM
RESOURCES:

State P&A

Ombudsman

Adult Protective Services

CENTERS FOR
INDEPENDENT LIVING

&

STATEWIDE INDEPENDENT
LIVING COUNCILS

ENGAGEMENT ACTIVITIES



Show up

Show up and give in person public comment



Submit

Submit written comments



Coordinate

Coordinate templates for others to use in submitting comments.



Consult

Consult partners about submitting joint comments



Call

Call your legislators and other elected officials



Support

Support someone receiving services to be aware of their rights and decipher if those rights are being violated.

REVIEW: ALL HCBS SETTINGS MUST

-
- Be integrated in and support full access to community
 - Be selected by the individual from among setting options;
 - Ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
 - Optimize autonomy and independence in making life choices; and
 - Facilitate choice regarding services and who provides them
-
- Provider owned or controlled settings have additional obligations
 - Any modification of these conditions must be supported by a specific assessed need and justified in the Person-Centered Plan (PCP)

KEY TAKEAWAYS

- **March 17th, 2023, is the deadline** for state compliance. States advised to seek CMS final approval of transition plan by July 31, 2022

<https://www.medicaid.gov/medicaid/home-community-based-services/downloads/hcbs-settings-rule-imp.pdf>

- **PHE exception** requires corrective action plan
 - CAPs – due January 1, 2023
- **Continued CMS heightened scrutiny reviews** for “presumptively institutional” settings that state claims comply. Many States under-identify these settings.
- Plans complex often missing required data – **work in coalition.**

TO RECEIVE FEDERAL HCBS REIMBURSEMENT BEYOND MARCH 17, 2023, STATES MUST

Receive final Statewide Transition Plan approval (advised by 7/31/22)

Comply with all settings criteria NOT directly impacted by PHE disruptions, including PHE-related workforce challenges.
(CAP due 1/1/23)

Time-limited CAPs available to states to authorize extension for criteria directly impacted by PHE

States must document their efforts to meet these requirements, to the fullest extent possible and comply with all other settings criteria.

CRITERIA THAT MUST BE MET BY 3/17/23 (NO EXCEPTIONS) NOT IMPACTED BY PHE

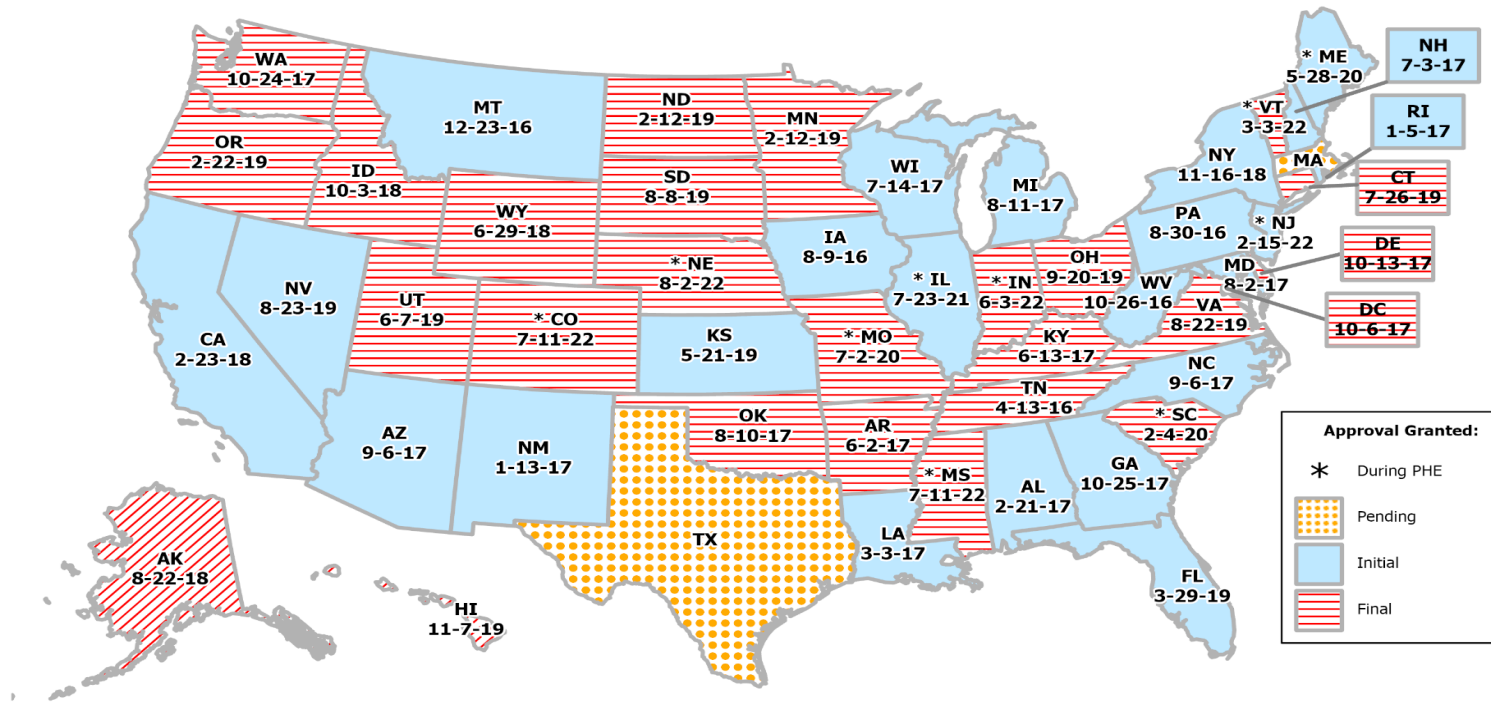
- Criteria not impacted by PHE, including:
 - Privacy, dignity, respect, and freedom from coercion and restraint; and
 - Control of personal resources.
- All states and provider-owned and controlled residential settings.
 - A lease or other legally enforceable agreement providing similar protections;
 - Privacy in their unit
 - Access to food and visitors at any time; and
 - PCS plan documentation of modifications to Rule

STATES MUST SUBMIT TO CMS BY 1/1/23

- **Description of oversight systems** (licensure and certification, standards, provider manuals, person-centered plan monitoring by case managers, etc.) have been modified to comply;
- **Description of assessment process** for initial compliance and ongoing compliance*; and
- **Description of a beneficiary's recourse** to notify state of provider non-compliance (grievance process, notification of case manager, etc.) and how state will address beneficiary feedback.

STATEWIDE TRANSITION PLAN STATUS AS OF AUGUST 2, 2022

Statewide Transition Plan as of 8/2/2022



CMS WILL AUTHORIZE CAPS TO INCLUDE:

Access to the broader community;

Opportunities for employment;

Option for a private unit and/or choice of a roommate;

Choice of non-disability specific settings

CAPS MUST BE Concrete and limited (CMS did not set deadline)

- Show that policies reflect the rule;
- Show efforts to bring providers into compliance and to overcome PHE and provider barriers; and
- Show efforts to comply with rule to the fullest extent possible.

CORRECTIVE ACTION PLANS (STATE FLEXIBILITIES)

CMS will authorize CAPs to continue federal reimbursement of HCBS beyond the end of the transition period, if states need additional time to ensure full provider compliance with the regulatory criteria NOT mentioned above. For example:

Access to the broader community;

Opportunities for employment;

Option for a private unit and/or choice of a roommate; and

Choice of non-disability specific settings.

States must be able to show that their policies and procedures reflect the settings criteria and they have made efforts to implement the criteria, to the fullest extent possible and work with CMS on a concrete, time-limited plan to come into full compliance with remaining criteria.

States should seek stakeholder input when developing CAPs.

HEIGHTENED SCRUTINY PROCESS

States urged to allow public comment on evidentiary packet;

States must submit evidentiary packet to CMS that demonstrates compliance with every aspect of the rule;

CMS will select a sample of settings, the size informed by whether the state has submitted an assessment tool that fully assesses each of the settings rule criteria.

CMS will ask state to respond to questions;

CMS works with the state to determine ability to add a settings' compliance into the CAP.



STATE INDEPENDENT LIVING COUNCILS (SILCS)

EMBRACING THE SPOOKY HCBS SETTING RULE

AMBER O'HAYER, EXECUTIVE DIRECTOR

INDIANA STATEWIDE INDEPENDENT LIVING COUNCIL

THE HCBS SETTINGS RULE: THE ROLE OF SILCS

- Building & Bridging Partnerships or Collaborations
 - State Agencies
 - State Advocacy Entities
 - Consumer-Directed Entities or Groups
- Information Dissemination & Educational Awareness
 - To CILs
 - To Consumers & Peers with Disabilities

THE HCBS SETTINGS RULE: THE ROLE OF SILCS CTD

- Systems Advocacy
 - Engaging in Current Advocacy Opportunities
 - Leading & Directing Advocacy Opportunities
- Consumer Engagement
 - Recruitment
 - Empowerment
 - Leverage SILC Privilege & Platform

THE HCBS SETTINGS RULE: CURRENT SILC FOCUS

- Does Your State Have A FINAL Approved HCBS State Transition Plan (STP)?
 - www.hcbsadvocacy.org
 - Ask your DSE and / or Other State Agency Folks
 - Request A Copy of the STP
- Review HCBS STP
 - How does your State plan to enforce The Rule and ensure the rights of our peers with disabilities are upheld?
 - Is there a clear and transparent consumer grievance process / procedures?
 - Is there a Corrective Action Plan process / procedures for facilities?
 - How does your STP address any needed consumer transitions? Process / Procedures?
 - How does your STP address issues of equity?

THE HCBS SETTINGS RULE: CURRENT SILC FOCUS CTD

- Review Other State Plans – How Do These Address The Rule? Equitable Lens?
 - State Plan for Independent Living (SPIL)
 - DD Council 5-Year Strategic Plan
 - WIOA State Plan
 - Priorities & Objectives (P&Os) of State Protection & Advocacy (P&A) Services State Entity
 - State Plan on Aging (Indiana)
 - Other State Plans that are applicable???

THE HCBS SETTINGS RULE: FUTURE SILC FOCUS

- SPIL 2025 – 2027 Development (Other Plans and P&Os?)
- Leverage SILC seat on State Commission on Rehabilitation
- Host / Conduct (with Partners) Education & Training Events for Peers with Disabilities on Their Rights in Accordance with The Rule
 - What is The Rule & its Purpose?
 - Why is it needed?
 - How does it apply to & impact me as a consumer?
 - Examples of Violations of The Rule
 - What do I do if my rights are violated?
- Engagement of Consumers / Peers with Disabilities in ensuring compliance with The Rule?

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