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The New HCBS Rule: Moving Forward With Implementation

Presenter:

Katherine Berland, Director of Government Relations
American Network of Community Options and Resources



Virginia Network of Private Providers, Inc.
VNPP

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Overview

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Major Provisions in New HCBS Rule

- Released January 10, 2014, effective date of March 17, 2014.
- Defines and describes home and community based settings under section 1915(c) waivers and section 1915(i)/1915(k) state plan options.
- Sets forth requirements for person-centered planning process and service plan.
- Lays out transition timeframe and requirements.
- Allows states to combine multiple target populations under one 1915(c) waiver.

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Authorities for HCBS Affected by this Rule

Section 1915(c)	Waiver authority to offer HCBS services to beneficiaries who would otherwise meet institutional level of care.	State may limit the number of eligible participants and/or have a waiting list. State can waive statewideness.
Section 1915(i)	Statutory authority to offer HCBS as a state plan service. Level of care threshold must be lower than the state's institutional level of care.	State may not limit the number of eligible participants or have a waiting list. Service must be offered statewide.
Section 1915(k)	Statutory authority to offer attendant services and supports controlled by the beneficiary (Community First Choice Option). Beneficiaries must meet institutional level of care and financial eligibility requirements. Enhanced federal match.	State may not limit the number of eligible participants or have a waiting list. Service must be offered statewide.

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CMS Definition of Community

This definition applies to

- 1915(c) HCBS waivers
- 1915(i) HCBS state plan options
- 1915(k) Community First Choice state plan options

These criteria will also be used for other HCBS authorities, including

- 1115 demonstrations



CMS Definition of Community

An HCBS Setting must:

- Be integrated in and support full access to the greater community;
- Be selected by the individual from among setting options (including non-disability specific settings and an option for a private unit in a residential setting);
- Ensure rights of privacy, dignity and respect;
- Optimize individual initiative, autonomy and independence; and
- Facilitate individual choice regarding services, supports, and providers.



CMS Definition of Community

Settings that are always excluded from HCBS

- Nursing facilities
- Institutions for mental diseases, intermediate care facilities for individuals with intellectual disabilities (ICF/IID)
- Hospitals providing long-term care services
- Any other location that has the qualities of an institution, *as determined by the Secretary*

Note – CMS expressly declined to categorically exclude congregate settings from the definition of HCBS, though they must meet the criteria set forth in the rule.



CMS Definition of Community

Settings that will receive higher scrutiny

- Share a building with an inpatient facility
- Share space with, or are next to, a public institution
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community

This presumption is rebuttable, and the Secretary may, upon applying heightened scrutiny, determine that such settings are HCB settings.



Provider-Controlled Settings

Additional requirements that must be met:

- There is a written lease or other residency agreement in place that affords the same protections as others in the jurisdiction;
- Each individual has privacy in their sleeping or living unit:
 - Units have lockable entrance doors, with the individual and only appropriate staff having keys;
 - Individuals sharing units have a choice of roommates in that setting;
 - Individuals can decorate within the terms of the lease/residency agreement;



Provider-Controlled Settings

Additional requirements that must be met:

- Individuals control their own schedules and have access to food at any time;
- Individuals are able to have visitors of their choosing at any time;
- The setting is physically accessible;
- Any modification to additional conditions must be supported by a specific assessed need and justified in the person-centered plan.



Person-Centered Planning Process

The State must develop a written service plan jointly with the individual using a process driven by the individual. The process must:

Be person-centered



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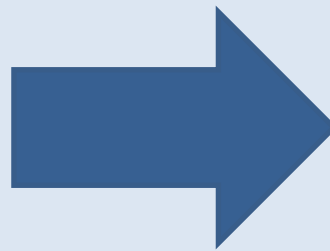
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Person-Centered Service Plan

The person-centered service plan must:

*Document that it is person-centered
and be reviewed frequently*



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Person-Centered Service Plan

The person-centered service plan must also:

- Be conducted with written safeguards in place to protect individuals' health and welfare;
- Be conducted according to conflict of interest standards;
- Be conducted by qualified agents performing independent assessments and plans.



Person-Centered Service Plan

To modify any of the requirements in the provider-controlled housing section:

- Identify and document a specific and individualized assessed need;
- Document less intrusive methods of meeting the need that have been tried;
- Review periodically to ensure that the modification is still appropriate;
- Obtain the individual's informed consent.



Transition Plans

Timing for Submission

- All states that operate a 1915(c) waiver or 1915(i) state plan must submit a transition plan for that waiver or state plan upon its renewal or amendment.
- Within 120 days, the state must submit a statewide transition plan that includes all HCBS authorities within the state.
- The statewide transition plan must be submitted by March 16, 2015 unless required earlier because of the above requirements.
- Though outside the scope of this rule, CMS expects states operating 1115 waiver demonstrations will comply with the criteria in the rule.



Transition Plans

Public Notice and Comment Period

States must:

- Post the transition plan publicly and solicit comments;
- Consider comments and modify the plan (or justify not modifying it) based on comments;
- Include a summary of comments with the transition plan.

Virginia's draft transition plans are available at

<http://www.dbhds.virginia.gov/individuals-and-families/developmental-disabilities>

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Additional Resources

CMS Home and Community Based Services Rule and Fact Sheets

<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 Advocacy – Resources and Information by State

<http://hcbsadvocacy.org/>

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FAQs/Q&A/Further Discussion

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Contact Information

Katherine Berland, Director of Government Relations
kberland@ancor.org, (703) 535-7850 ext. 104

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