

Improving lives THROUGH  
supports and services  
THAT FOSTER self-determination.

# Home and Community Based Services (HCBS) Settings Final Rule

**Missouri Mental Health Commission**

**February 11, 2015**

**Tonya Piephoff**

**Angela Brenner**

**Kim Stock**

**Cory McMahon**



# Overview of Presentation

- 👤 Home and Community Based Services (HCBS)
- 👤 Final HCBS Rule
- 👤 Introduction to the Statewide Transition Plan
- 👤 Transition Plan
- 👤 Progress to Date



# Home and Community Based Services Background

- 🕒 In 1981, federal law established Home and Community Based Services (HCBS) Medicaid Waivers.
- 🕒 HCBS Medicaid Waivers permit the state to draw down federal funding for allowable services to participants whose needs would otherwise require services delivered in an institutional setting.



# Home and Community Based Services Background

- 👤 HCBS Medicaid Waivers offer a robust menu of services and supports predicated upon the principles of:
  - 👤 Person-centered planning to support individual choice in what services they receive; and how, where, and when they receive services; and
  - 👤 Self-direction to give individuals more decision-making power about how their service dollars are spent and who is hired to provide services to them



# Home and Community Based Services Settings Rule

- Effective March 17, 2014, CMS published a final rule designed to improve the quality of services for individuals receiving HCBS and defining home and community based settings and person-centered planning requirements in HCBS Medicaid Waiver programs

**Final Rule Intent:** “To ensure that individuals receiving services and supports through Medicaid’s home and community based service (HCBS) programs have full access to benefits of community living and are able to receive services in the most integrated setting”



# Home and Community Based Services Settings Rule

## Key Provisions:

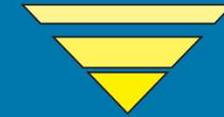
- **Conflict-free case management**
- **Conditions and timelines for filing transition plans and coming into compliance with HCBS settings requirement**
- **Person-centered planning**
- **Moving away from defining home and community-based settings by “what they are not” and toward defining them by the nature and quality of participants’ experiences**
- **Establishing a more outcome-oriented definition of home and community-based settings rather than one based solely on a setting’s location, geography, or physical characteristics**



## **Final HCBS Rule Key Provisions Self Advocates**

**Individuals have the right to receive services in the community to the same degree as those not receiving HCB waiver services:**

- **Individuals must be allowed to select the services they receive, where they live among available options, and the providers of those services.**
- **Individuals have the freedom to control their own schedules, personal resources, and other aspects of their living arrangement.**
- **Individuals must be treated with dignity and respect and be free from coercion or restraint.**



# Final HCBS Rule Setting Requirements

## Defining Community

### HCBS Rule requires that an HCB Waiver Service setting:

- Is fully 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
- Is selected by the individual from more than one setting option, including non-disability specific settings and an option for a private room in a residential setting



# Final HCBS Rule Setting Requirements Defining Community

## HCBS Rule requires that an HCB Waiver Service setting:

- Supports individual choice of services and supports
- Ensures 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



# Final HCBS Rule Settings Requirements

What is NOT Community	What is Likely NOT Community
Nursing Facility	Settings in a publicly or privately owned facility providing inpatient treatment
Institution for Mental Disease	Settings on ground of, or adjacent to, a public institution
Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)	Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS
Hospital	



# Final HCBS Rule Setting Requirement

## What is Not Community

### Characteristics of settings that Isolate People from the Broader Community:

- The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or recreational activities.
- People in the setting have limited, if any, interaction with the broader community.
- Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g., seclusion).



# Final HCBS Rule Setting Requirement

## What is Not Community

### Characteristics of Settings that Isolate People from the Broader Community:

- **Farmstead or disability-specific farm community**
- **Gated/secured “community” for people with disabilities - These communities typically consist primarily of people with disabilities and the staff that work with them.**
- **Residential schools - These settings incorporate both the educational program and the residential program in the same building or in buildings in close proximity to each other.**



## **Final HCBS Rule Setting Requirement Heightened Scrutiny**

**If states seek to include such settings (residential care facilities, campus-like settings, day programs, services provided on the grounds of or adjacent to a public institution) in Medicaid HCBS programs, a determination will be made through heightened scrutiny, based on information presented by the state, demonstrating that the setting is home and community-based and does not have the qualities of an institution.**



## **Provider Owned or Controlled Residential Settings Final HCBS Rule Setting Requirement**

### **Individuals have:**

- **Privacy in their homes**
- **Choice of roommates**
- **Freedom to furnish and decorate their sleeping or living areas within the lease or other agreement**
- **Freedom and support to control their schedules and activities and have access to food any time**
- **Visitors at any time**



## **Provider Owned or Controlled Residential Settings Final HCBS Rule Setting Requirement**

### **Characteristics of Dwellings:**

Homes have lockable entrance doors - with the individual and appropriate staff having keys to doors as needed.

Setting is physically accessible to the individual.

Specific dwelling is owned, rented, or occupied under a legally enforceable agreement.

Same responsibilities and protections from eviction as all tenants under landlord tenant law of the county of residence.

Modification of the above must be:

- Supported by specific assessed need,
- Justified in the person-centered service plan, and
- Documented in the person-centered service plan.



# Final HCBS Rule HCBS Providers

**HCB Waiver Providers may need to make changes to comply with the new definitions:**

- **Allowing individuals more flexibility in their scheduling, access to food, visitation hours, and privacy**
- **Creating more opportunities for consumers to be active in the community**

**CMS will pay particular attention to settings that “have the effect of isolating individuals from the community.”**



# Introduction to the Statewide Transition Plan

- 👤 Each state that operates a Home and Community Based Waiver is required to file a Statewide Transition Plan before March 17, 2015.
- 👤 The Division of Developmental Disabilities operates five Home and Community Based Waivers.



# Introduction to the Statewide Transition Plan

**CMS defines a Statewide Transition Plan as the vehicle through which states determine their compliance with the regulation requirements for HCB settings:**

- **It describes to CMS how the state will comply with the new regulations.**
- **States must be in full compliance with the federal requirements by the time frame approved in the Statewide Transition Plan but no later than March 17, 2019.**



# Transition Plan

## Assessment Component:

- **Assesses current level of compliance with the settings requirements using Settings Analysis, Provider and Participant Surveys, On-Site Assessments, Crosswalk of Final Rule to Waiver, and Ongoing Monitoring.**
- **Assesses individual settings/types of settings to further document compliance.**
- **Describes the state's oversight process to ensure continuous compliance by revising current integrated quality functions to align with the HCBS requirements.**



# Transition Plan Assessment Timelines

Action Item	End Date
Initial Settings Provider Self-Assessment Survey	09/10/14
Initial Settings Assessment Tool Development	12/15/14
Participant Survey Development	12/31/14
Settings Analysis	02/02/15
GIS Mapping	03/30/15
Ongoing On-Site Assessment	04/02/17 and Annually
Provider Enrollment Process	03/02/15
Exploratory Questions Distribution	01/01/15
Assessment Results Report	06/01/16 and Annually



# Transition Plan Remediation Component

**Includes a detailed description of the remedial actions the state will use to assure full compliance in the HCB waiver setting, including:**

- **Timelines**
- **Milestones and Monitoring Process**
- **State Level Remediation Actions**
- **Provider Level Remediation Actions**
- **Settings Presumed Not to Be Community Based**



# Transition Plan Remediation Timelines

Action Item	End Date
Informational Letters	04/01/17
CSR Review / Filing	03/01/15 - 10/01/16
Provider Manual Revisions	12/31/2015
Provider Update Meetings and Training	04/01/14 and Quarterly
Waiver Settings Assessment Findings	05/15/16 and Annually
Provider Individual Remediation	03/17/2017
Assessment Results Report	03/17/17 and Annually
Provider Sanctions	03/16/15 Ongoing
Individuals Transition to Compliance	05/01/15 Ongoing



# Transition Plan

## State Level Remediation Actions such as:

- **New requirements promulgated in statute, licensing standards, and/or provider qualifications (RSMo, CSR, Provider Enrollment, Provider Contracts)**
- **Revised service definitions and standards (Waiver Manual, Service Catalog)**
- **Revised training requirements (Support Coordinator Manual, MELS)**
- **Plans to relocate individuals to settings that are compliant with the regulation**



# Transition Plan

**Provider Level Remediation Actions for Changes to Facility or Program Operations such as:**

- **Access to activities of his/her choosing in the larger community**
- **Opportunity to seek and maintain competitive employment**



# Progress To Date

## Transition Plan Development

**Missouri will ensure ongoing transparency and input from the stakeholders on the process of the Transition Plan.**

- On October 27, 2014, DD first met with the HCBS stakeholder group to gather input for the Transition Plan. Meetings are ongoing.
- Representative membership of the HCBS stakeholder group includes:

**TCM Entities  
DD Council  
MARF  
MACDDS**

**State Habilitation Centers  
Advocacy Organizations  
Protection and Advocacy  
Self Advocates**



# Progress To Date Training

**4 Support Coordinator Trainings via WebEx  
(and posted on web)**

**Provider Training Being Developed**



# Progress To Date

**DD's Federal Programs Unit and Quality Enhancement Unit have met at least weekly since September of 2014 to address the rule.**

**DD and MO HealthNet meet regularly ensure deadlines are met and channels of communication are seamless.**

**DD has identified Central Office staff as Team Leads for the on-site assessment requirement and are beginning training.**

**DD is working with the Office of Administration to implement a GIS system to identify clustered service settings.**

**DD presented to MACDDDS on October 24, 2014.**

**DD presented the MARF Task Force on November 19, 2014, and to MARF on January 21, 2015.**

**DD presented to the DD Council on January 16, 2015.**



## Progress To Date: Transition Plan

**Provide a minimum of two statements of public notice and public input procedures:**

- On December 29 and 30, the MO HealthNet Division posted public notice in five Missouri newspapers.

**Ensure the full transition plan is available for public comment:**

- On December 30, the MO HealthNet Division posted the Transition Plan online for a 30 day public comment period.

**Consider public comment:**

- Public Hearings were held on January 5<sup>th</sup> and 12<sup>th</sup>.



## Progress To Date: Assessment

**Assessment Process: The state's assessment of the extent to which its regulations, standards, policies, licensing requirements, and other provider requirements ensure settings comport with the regulation.**

- **MO HealthNet provided an online provider self-assessment and communicated its availability through its listserve. There were 33 respondents. DD relayed that notification as well.**
- **DD has conducted random sampling and determined that approximately 950 on-site assessments must be conducted in order to comply with rule.**
- **DD has developed and piloted an on-site assessment to determine compliance with settings rule.**



# Final Rule Timeline

<b>March 2014</b>	<b>Final Rule Issued by CMS</b>
<b>August 2014</b>	<b>MO HealthNet Posted Provider Survey</b>
<b>December 2014</b>	<b>Transition Plan Posted for Public Comment</b>
<b>December 2014 – April 2016</b>	<b>On-site Assessments</b>
<b>January 2015</b>	<b>Public Hearings</b>
<b>March 2015</b>	<b>Transition Plan Due to CMS</b>
<b>March 2019</b>	<b>Full Implementation of Rule</b>



# Sources

<http://dmh.mo.gov/dd/hcbs.htm>



Improving lives THROUGH  
supports and services  
THAT FOSTER self-determination.

**Thank You**