

## Publications

### *Health Care Alert: CMS Issues Final Rule Regarding Medicaid Home and Community-Based Settings*

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**CLIENT ALERT** | 1.27.2014

In a recently published final rule, CMS established the requirements for settings that may be eligible sites for the delivery of reimbursable Medicaid home and community-based services (HCBS) provided under sections 1915(c), 1915(i) and 1915(k) of the Medicaid statute.

The Medicaid statute provides that states offering HCBS may reimburse providers for only those services provided in a home and community-based setting. However, the statute does not define “home and community-based setting.” In the final rule, CMS has transitioned away from defining home and community-based settings by what they are not (as it did in a 2011 proposed rule), and toward defining them by the nature and quality of individuals’ experiences. No longer is a home and community-based setting defined simply as something other than an “institution.” CMS declined to define home and community-based settings based on the size of the facility or number of residents, as had been proposed in the past. Rather, the home and community-based setting provisions in the final rule establish a more outcome-oriented definition of home and community-based settings, as opposed to one based solely on a setting’s location, geography or physical characteristics.

### **Qualities of a Home and Community-Based Setting**

The final rule requires that home and community-based settings have all of the following qualities:

- Integrated in and supportive of full access of the individual to the greater community;
- Selected by the individual from among setting options including non-disability specific settings, and an option for a private unit in a residential setting;
- Capable of ensuring an individual’s rights of privacy; dignity and respect; and freedom from coercion and restraint;
- Able to optimize, but not regiment, individual initiative, autonomy and independence in making life choices, including but not limited

to daily activities, physical environment and with whom to interact; and

- Facilitative of individual choice regarding services and supports, and who provides them.

With respect to provider-owned or controlled settings, in order to be considered a home and community-based setting, the following additional conditions must be satisfied:

- The individual has a lease or other legally enforceable agreement providing similar protections;
- The individual has privacy in his/her unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit;
- The individual controls his/her own schedule including access to food at any time;
- The individual can have visitors at any time; and
- The setting is physically accessible.

These requirements may have a significant impact on many of our provider clients and may necessitate various changes to provider operations, including leases, residential agreements and certain policies and procedures. Modifications to these additional requirements are permitted, but any such modification must be supported by a specific, assessed need and justified in any applicable person-centered service plan.

## Settings Inappropriate For HCBS

In addition to specifying the qualities of a home and community-based setting, the final rule prohibits Medicaid HCBS from being provided in certain settings. These settings include nursing facilities, institutions for mental diseases, intermediate care facilities for individuals with intellectual disabilities and hospitals. Other sources of Medicaid funding, however, may be available for services provided in these institutional settings.

## Other Particular Settings

The final rule identifies other settings that do not meet the threshold for a Medicaid home and community-based setting and are presumed to have institutional qualities. These settings include those in a publicly or privately owned facility that provides inpatient treatment; on the grounds of, or immediately adjacent to, a public institution; or that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. For those states that may seek to include such settings in Medicaid HCBS programs, CMS will make an ad hoc determination applying a standard of heightened scrutiny, based on information presented by the state demonstrating that the setting is in fact home and community-based, and does not have the qualities of an institution. The preamble indicates that CMS will issue future guidance describing the process for the review of settings subject to heightened scrutiny through either the transition plan process (for settings already in states' HCBS programs) or the HCBS waiver review processes (for settings states seek to add to their HCBS programs).

## Person-Centered Planning

The regulations also emphasize the importance of “person-centered planning” focused on outcomes in the development and provision of HCBS. Among other requirements, this process will include participants chosen by the individual, account for individual cultural considerations and include strategies for solving conflict or disagreement within the process. We anticipate that this emphasis will appropriately realign the service planning process in Ohio to involve interested stakeholders, including individuals, their families and providers.

The final rule, available [here](#), is effective March 17, 2014.