

Home and Community-Based Setting Requirements: Systemic and Site-Specific Assessments and Remediation

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Overview

- Background
- Systemic Assessments
- Site-Specific Assessments
- Systemic Remediation
- Site-Specific Remediation – State and Provider Actions
- Relocation of Beneficiaries
- Implementing and Documenting Remedial Actions (including Oversight and Monitoring)

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

Assessment Processes

Assessment Processes – Overview

- States use two types of assessment processes to evaluate whether their standards and settings are in compliance with the federal home and community-based setting regulations
 - **Systemic:** The state's assessment of the extent to which its regulations, standards, policies, licensing requirements, and other provider requirements ensure settings are in compliance
 - **Site-Specific:** The process by which a state assesses specific settings in which home and community-based services are provided to determine whether the settings are in compliance

Assessment Processes – Overview cont'd

- For both the systemic and site-specific assessments, states should:
 - Identify all types of home and community-based program settings in their state where HCBS are provided and where beneficiaries reside
 - Describe the outcomes of its assessments by waiver and setting within the waiver
- Once the state has completed its assessments, the state must amend its Statewide Transition Plan (STP) to include the outcomes of the assessments and give the public an opportunity to comment on them

Completion of Systemic and Site-specific Assessments

- In order to allow states to address all remedial actions and complete their transition no later than March 17, 2019, it is CMS' expectation that states will have completed their systemic and site-specific assessments no later than July 31, 2016
 - CMS expects states to submit an amended STP with their systemic assessment results no later than March 31, 2016
 - CMS expects states to complete their site-specific assessments no later than July 31, 2016, with results submitted to CMS no later than September 30, 2016
- If a state has not completed both its systemic and site-specific assessments by July 31, 2016, CMS will ask the state to provide quarterly updates until the assessments have been completed

Systemic Assessment Process

- States are required to conduct a systemic assessment
- This process involves reviewing and assessing state standards to determine compliance with the federal home and community-based setting regulations
- States must review state standards related to all setting types in which HCBS is provided

Systemic Assessment Process (cont'd)

- Examples of documents in which state standards are likely to be articulated include:
 - Statutes
 - Licensing/certification regulations
 - Waiver regulations
 - Waivers
 - Guidelines, policy and procedure manuals, and provider manuals
 - Provider training materials

Systemic Assessment Process (cont'd)

- States must ensure that the language in their state standards is fully consistent with the requirements in the federal setting regulations:
 - 42 CFR §441.301(c)(4) for 1915(c) waivers
 - 42 CFR §441.710(a)(1) for 1915(i) state plan programs
 - 42 CFR §441.530(a)(1) for 1915(k) state plan programs
- The federal regulations set the floor for requirements, but states may elect to raise the standard for what constitutes an acceptable home and community-based setting

Systemic Assessment Outcomes

- As part of the STP, states should submit a detailed crosswalk that includes the outcomes of their systemic assessment
- The crosswalk should include:
 - Each specific setting criterion
 - Each related state standard identified by specific citation(s) and the type of setting it applies to
 - An analysis of whether the relevant state standards are compliant, conflict with, or are silent with respect to the federal regulation
 - A state must address each federal setting requirement somewhere in its state standards

Systemic Assessment Outcomes (cont'd)

- If the state has not completed its systemic assessment, it should submit a modified STP and indicate therein:
 - Any outcomes from work already completed
 - What remains to be done
 - The date when the results of its systemic assessment will be included in an amended STP and submitted to CMS

Site-Specific Assessment Process

- At a minimum, states are expected to conduct site-specific assessments of a representative and statistically significant sample of settings to determine the number of providers that are or are not in compliance with the federal setting requirements
- States use a variety of methods to conduct site-specific assessments, including:
 - provider self-assessments
 - licensure surveys
 - site visits
 - policy and record reviews
 - reviews by case managers affiliated with the state and managed care organization staff

Site-Specific Assessment Process (cont'd)

- Site-specific assessments help a state determine:
 - The category of compliance in which to place each setting, and
 - The remedial actions that must be taken by the state and providers to bring specific sites into compliance

Site-Specific Assessment Process (cont'd)

- CMS has certain expectations about:
 - How site-specific assessments should be conducted
 - What states should include in their STPs about the site-specific assessment process and outcomes
- CMS has been communicating these expectations to states in its feedback letters concerning the states' STPs

Site-Specific Assessment Process (cont'd)

- CMS has the following expectations about site-specific assessments:
 - Should be sufficiently rigorous as to be a reliable indicator of setting compliance
 - Should be completed early enough in the transition period to allow time for remediation and to ensure full compliance by March 2019 of both residential and non-residential settings
 - If the state uses an outside entity to conduct site-specific assessments, the state should ensure that the entity does not have a conflict of interest with the service providers

Site-Specific Assessment Process (cont'd)

- CMS expects states to include the following information about their site-specific assessment processes in their STP so CMS and the public can understand and evaluate the process:
 - A detailed description of the state's setting types
 - A clear description of each assessment activity by setting type, including detail on the state's methodology for conducting the assessments and determining setting compliance with the requirements
 - Include description of the sampling process, assessment tools, and how the results can be tied to specific sites

Site-Specific Assessment Process (cont'd)

- CMS expects states to include the following information about their site-specific assessment processes in their STP (cont'd):
 - A clearly delineated timeline for the site-specific assessments
 - The timing and sequencing of activities related to site-specific assessment is critical because of the impact on transition timeframes
 - States should not wait to begin site-specific setting assessments until after state standards have been updated

Site-Specific Assessment Process – Provider Self Assessments

- If a state uses provider self-assessments as part of its site-specific assessment process, CMS expects states to include certain information about the self-assessment process and outcomes in its STP:
 - A description of the provider self-assessment tool
 - The outcome of the survey by setting type
 - The response rate and how the state addressed providers who did not complete the survey
- The state should describe its process for validating the provider self-assessment results

Site-Specific Assessment – Consumer/Participant Surveys

- If a state administers a consumer/participant survey as part of its site-specific assessment process, the information from the survey must be linked to specific sites
 - This is particularly important if a consumer or participant survey is being used to validate provider self-assessment results and the state does not have any other data linked to specific sites

Site-Specific Assessment – Site visits

- If the state is conducting site visits, it should explain who will conduct the site visits and what activities will be conducted during the site visit (e.g. observation, interviews and/or surveys of staff and/or residents, document review)
 - It is important to assess the qualities that are present in an individual's life; thus, an essential activity of a site visit is observing what is occurring in the setting
- If the state is conducting onsite visits only for certain types of settings, it should explain the reason why it selected those specific settings

Site-Specific Assessment Outcomes

- Once the state has completed its site-specific assessments, it should calculate a best estimate of the number of settings in each of the four categories of compliance:
 - Fully align with the Federal requirements
 - Do not comply and will require modifications
 - Cannot meet the requirements and require removal from the program and/or relocation of individuals
 - Are presumed to have institutional qualities, but the state will submit evidence to CMS for heightened scrutiny
- The STP must be amended to provide the public an opportunity to comment on the assessment outcomes

Remediation Strategy and Actions

Remediation Strategy Overview

- The state's remediation strategy describes the actions the state plans to take to ensure compliance with the home and community-based setting requirements
- Home and community-based settings subject to remediation are:
 - Settings where HCBS are provided
 - Settings where HCBS beneficiaries reside

Remediation Strategy Overview (cont'd)

- A state's remedial actions should include, as applicable:
 - **Systemic Remediation:** remediation of state standards
 - **Site-Specific Remediation:** remediation of specific sites or providers
 - **Relocation of beneficiaries** when settings cannot be brought into compliance

Systemic Remediation

- Examples of remedial actions to bring state standards into compliance with the federal home and community-based setting requirements include:
 - Amending statutes, regulations, and policy manuals
 - Preparing amendments to waivers and state plans and submitting them to CMS
 - Developing model leases for specific residential settings

Systemic Remediation (cont'd)

- As part of their STP, states must submit a detailed description of the remedial actions they will take to ensure full compliance of state standards with the federal setting requirements
- CMS strongly suggests that states submit a remediation crosswalk that details:
 - Which categories of standards require revisions and the step-by-step remediation process
 - The timeframes for each step of the process
 - Milestones for each step of the process

Site-Specific Remediation – State Actions

- State actions to remediate the non-compliance of providers and specific sites include:
 - Developing and conducting provider trainings on new requirements
 - Providing technical assistance to providers, particularly:
 - Providers that indicated through self-assessments that they do not meet the home and community-based setting requirements, and
 - Providers whose self-assessment of compliance conflicted with the result of a validity check
 - Holding education sessions for advocates, beneficiaries, and families and distributing education materials

Site-specific Remediation – State Actions (cont'd)

- State actions to remediate non-compliance of providers and specific sites include (cont'd):
 - Monitoring efforts by providers to comply with the setting requirements through corrective action plans, licensing surveys, inspections, and other methods
 - Developing and implementing plans to relocate individuals to settings that are compliant with the regulations

Site-Specific Remediation – Provider Actions

- Remedial actions providers might take to come into compliance include, but are not limited to:
 - Changing the operational policies of the setting to ensure that individuals have greater control over critical activities, such as access to activities of his/her choosing in the larger community, including the opportunity to seek and maintain competitive employment
 - Revising a residency agreement to provide protections to address eviction processes and appeals
 - Adding an entrance door to the individual's sleeping or living unit that is lockable by the individual

Site-Specific Remediation – Provider Actions (cont'd)

- Remedial actions providers might take to come into compliance include, but are not limited to (cont'd):
 - Ensuring that individuals have access to food at any time in compliance with the federal setting regulations
 - Implementing policies and procedures to ensure privacy when the individual is visiting with friends and family
 - Providing for a choice of roommate

Relocation of Individuals to Compliant Settings

- When relocation of beneficiaries is part of the state's remediation strategy, the STP should include:
 - A detailed plan for relocation, including a process for providing reasonable notice and due process to beneficiaries
 - A description of the timeline for the relocation process
 - The number of beneficiaries impacted

Relocation of Individuals to Compliant Settings (cont'd)

- When relocation of beneficiaries is part of the remedial strategy, the STP should include (cont'd):
 - A description of the state's process to ensure that:
 - The individual has the opportunity, the information, and the supports to make an informed choice of an alternate compliant setting and
 - That critical services and supports are in place before the transition

Implementing and Documenting Remedial Actions

- Timelines
 - The state must include a complete timeline for coming into full compliance with the federal home and community-based setting requirements
 - The state's remedial strategy should be based on reasonable timelines
 - The timeline should ensure that settings will be in full compliance no later than March 17, 2019

Implementing and Documenting Remedial Actions (cont'd)

- Milestones
 - The STP must include milestones for state actions, including assessment and remedial actions
 - The milestones should be measurable
 - CMS will compile milestones provided in the STP
 - CMS will track those milestones based on information received from the state and other interested parties
 - States will inform CMS of milestone updates using an automated system

Implementing and Documenting Remedial Actions (cont'd)

- Oversight and monitoring process
 - In its STP, the state should include:
 - A description of its oversight and monitoring process to ensure that timelines and milestones are met during the transition period; and
 - Its process to ensure continuous compliance of settings after the transition period ends

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>

Additional questions can be sent to:
HCBS@cms.hhs.gov