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Redesign Medicaid in New York State

HCBS Settings Final Rule

Webinar

July 28, 2014

1:00 – 2:00 p.m.

Final Rule History

- ❑ Initially promulgated in 2008 and 2009.
- ❑ Establishes settings requirements under 1915(k) -- Community First Choice Option, which was published February 25, 2011.
- ❑ Final rule was effective March 17, 2014, however, allows for transition plans over 5 years.

Final Rule Intent

- ❑ The new “requirements maximize opportunity for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting.”
- ❑ To align policies and procedures for individuals in need of home and community based services across disability populations using three distinct Medicaid funded authorities: 1915(c), 1915(i) and 1915(k).

Many Provisions

- ❑ Not just about appropriate settings for certain Medicaid authorities; also
 - ❑ Implements 1915(i) State Plan HCBS as amended by the ACA;
 - ❑ Makes changes to 1915(c) waivers, including the ability to combine target populations and person-centered planning requirements;
 - ❑ Allows third-party payments (provider payment reassignment) to benefit direct care staff under certain circumstances;
 - ❑ Allows five year initial authorization and renewal periods for waivers and demonstration programs serving dual eligibles at the Secretary's discretion; and
 - ❑ Establishes new public notice requirements for substantive changes in waiver services or rates, new effective dates and new CMS monitoring and compliance tools.

Final Rule Goal and Effective Date

- ❑ Goal is to establish conformity across HCBS authorities for person centered planning, allowable settings, and cross-disability applicability.
- ❑ **Effective March 17, 2014.**
- ❑ SPAs, waiver applications, and other program changes made in advance of effective date will be reviewed and must transition to meet new requirements.

HCBS Waiver Changes Under 1915(c)

- ❑ States may combine existing three waiver targeting groups to include aged, physically disabled, mentally or behaviorally disabled and developmentally/intellectually disabled in a single waiver;
- ❑ Rule specifies requirements for person-centered plans of care;
- ❑ Rule establishes characteristics and qualities of allowable home and community based settings; and
- ❑ Rule clarifies timing of when amendments take effect and establishes public input requirements for changes in services or rates.

Key Provisions of 1915(i)

- ❑ Like 1915(c) HCBS but a state plan benefit;
- ❑ Does not require institutional level of care;
- ❑ Does not have to be cost neutral;
- ❑ Must be statewide;
- ❑ Cannot be limited to certain individuals; however, can be carefully targeted to certain populations;
- ❑ Allows presumed eligibility;
- ❑ May be used to provide transitional assistance to those leaving institutional care; and
- ❑ Allows non-duplicative services during short term acute care stays.

Section 2601 Changes

- ❑ Permits Secretary to approve a waiver that provides MA to dual eligible individuals for an initial period of up to 5 years and a renewal period of up to 5 years at State's request.
 - ❑ Enhances existing tools to improve and coordinate care and services for this population.

Settings Expectations

- ❑ Allowable settings will exhibit characteristics and qualities most often articulated by persons with disabilities as key determinants of independence and community integration.
- ❑ States electing to implement 1915(k), 1915(i) and/or 1915(c) must include a definition of home and community-based setting that incorporates these qualities.
- ❑ States with approved 1915 (k) or (i) SPAs and 1915(c) waivers will be given a reasonable transition time to come into compliance with HCB setting requirements in final rule.

Home and Community-Based Setting Requirements

The final rule establishes:

- ❑ Mandatory requirements for the qualities of home and community-based settings including discretion for the Secretary to determine other appropriate qualities;
- ❑ Settings that are not home and community-based;
- ❑ Settings presumed not to be home and community-based; and
- ❑ State compliance and transition requirements.

Settings that are NOT Home and Community-Based

- ❑ Nursing facility
- ❑ Institution for mental diseases (IMD)
- ❑ Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
- ❑ Hospital

Settings PRESUMED NOT to be Home and Community-Based

- ❑ Settings in a publicly or privately owned facility providing inpatient treatment;
- ❑ Settings on grounds of, or adjacent to, a public institution; and/or
- ❑ Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS.

Settings PRESUMED NOT to be Home and Community-Based (Heightened Scrutiny)

These settings may NOT be included in states' 1915(c), 1915(i) or 1915(k) HCBS programs unless:

- ❑ A state submits evidence (including public input) demonstrating that the setting does have the qualities of a home and community-based setting and NOT the qualities of an institution; AND
- ❑ The Secretary finds, based on a heightened scrutiny review of the evidence, that the setting meets the requirements for home and community-based settings and does NOT have the qualities of an institution.

Home and Community-Based Setting Requirements

- ❑ Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint;
- ❑ Optimizes individual initiative, autonomy, and independence in making life choices; and
- ❑ Facilitates individual choice regarding services and supports, and who provides them.

Home and Community-Based Setting Requirements

Allowable Home and Community-Based Settings:

- ❑ Are integrated in and support access to the greater community;
- ❑ Provide opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources; and
- ❑ Ensure the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services.

Home and Community-Based Setting Requirements

- ❑ Selected by the individual from among setting options, including non-disability specific settings and an option 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, the individual's resources.

Home and Community-Based Setting Requirements for Provider-Owned or Controlled Residential Settings

Additional requirements:

- ❑ Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement;
- ❑ Same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity; or
- ❑ If tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

Setting Requirements for Provider-Owned or Controlled Residential Settings

- ❑ Each individual has privacy in their sleeping or living unit;
- ❑ Units have lockable entrance doors, with the individual and appropriate staff having keys to doors as needed;
- ❑ Individuals sharing units have a choice of roommates;
- ❑ Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement;
- ❑ Individuals have freedom and support to control their schedules and activities and have access to food any time;
- ❑ Individuals may have visitors at any time; and
- ❑ Setting is physically accessible to the individual.

Home and Community-Based Setting Requirements for Provider-Owned or Controlled Residential Settings

Modifications of the additional requirements must be:

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

What About Waivers Serving Children?

- ❑ CMS representatives have acknowledged that the decision power of parents and guardians will not be supplanted by the rule.
- ❑ Person-centered planning would consider the age of the individual and the fact that freedoms that would be appropriate for grown-ups aren't appropriate for minors, thus the care plan would reflect age-appropriate modifications to the rule such as freedom of visitors or access to food at any time.
- ❑ CMS is unlikely to exempt a specific waiver and its participants from the settings requirements due to age, however. Modifications must be individualized and reflective of and documented in the person-centered service plan.

Transition Plan

- ❑ **If states submit a new waiver or State Plan Amendment within a year of the effective date, it must include a transition plan detailing how it will be in compliance with the settings requirements; AND**
- ❑ The submission triggers the clock for transition plans for all 1915(c), 1915 (i), and 1915 (k) waivers and state plan amendments that may exist in the state. The state has 120 days from the date of the initial submission to develop and submit plan.
- ❑ CMS intends to extend these requirements to 1115 Medicaid demonstration projects' terms and conditions upon renewal or amendment.

Transition Public Comment Period

- ❑ Rule requires states to provide at least a 30-day public notice and comment period on the transition plan they intend to submit to CMS. Specifically, states must:
 - ❑ Provide a minimum of two statements of public notice and public input procedures;
 - ❑ Ensure the full transition plan is available for public comment;
 - ❑ Consider public comments;
 - ❑ Modify the plan based on public comment, as appropriate; and
 - ❑ Submit evidence of public notice and summary of disposition of the comments.

Compliance in New York

- ❑ The Administration convened an interagency workgroup to review current settings, determine scope of impact, monitor new submissions and amendments and develop statewide transition plan;
- ❑ The workgroup established a time line for completion of transition plan; and
- ❑ Agencies are currently reviewing existing settings to identify potentially problematic settings and where we already meet the new standard.

Time Line

Key Activity	Notes	Date
OPWDD transmission of 1915(c) amendment to implement transformation plan	Triggers need to develop transition plan for remaining 1915(c) waivers.	July 1, 2014
Post plan on website, notify stakeholders		June 30, 2014
Public comment period ends		July 31, 2014
Summarize public comments; consider revisions		August 15, 2014
Finalize for Executive Review		August 30, 2014
Submit to CMS	Include summary and evidence of public notice	By October 1, 2014
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Public Comments Welcome!

- ❑ Please review the plan and send any comments you may have to OLTCDHCBS@health.state.ny.us with comment in the subject line.
- ❑ The full draft transition plan is available at http://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm.

Questions?

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