



HCBS Settings Rule: Status of Implementation



Medicaid and CHIP Payment and Access Commission

Kristal Vardaman

Overview

- Background
- Overview of the rule
- Implementation process
- Results of stakeholder interviews
- Next steps

Background

- Medicaid home- and community-based services (HCBS) include a wide range of services that help individuals with disabilities live in the community
 - Personal care services
 - Adult day centers
 - Supported employment
 - Home delivered meals
- While optional, all states cover some HCBS
- Since 2013, Medicaid has spent more on HCBS than institutional services

HCBS Settings Rule

- Published in April 2014; providers must comply by March 17, 2022
- Intent to ensure that HCBS settings are different from institutions
- Beneficiaries should have same employment access, ability to control personal resources, and engagement in community life as others
- Applies to Section 1915(c) waivers and Sections 1915(i) and 1915(k) state plan options
 - CMS also applying to terms and conditions of Section 1115 demonstration waivers

Eligible Settings

- Allow individuals to seek employment in competitive integrated settings
- Are selected by the individual among a variety of settings
- Ensure individual's rights of privacy, dignity and respect, and freedom from coercion and restraint
- Optimize individual autonomy in making life choices including activities of daily living, environment, and with whom to interact (e.g., choice of roommates or a private room)
- Facilitate individual choice in services and providers
- Have leases or written resident agreements in place, if provider-owned

Implementation Process: Statewide Transition Plans

- Describes how states will assess providers and bring them into compliance
- States must also evaluate regulations and processes
- 17 states have final approval of their transition plan
- States without final approval are working with CMS to address certain issues before resubmission
 - e.g., needing additional information on monitoring and oversight for continued compliance

Implementation Process: Assessments of HCBS Settings

- States use a variety of methods to assess compliance in HCBS settings
 - Provider self-assessments
 - Site visits
 - Beneficiary surveys and interviews

Implementation Process: Heightened Scrutiny

- March 2019 CMS guidance on factors that have the effect of isolating beneficiaries
- States must determine if settings with isolating characteristics have adequate mitigating factors (e.g., community activities)
 - States must identify for public comment settings deemed compliant by July 1, 2020, but do not have to submit additional information to CMS
 - States must submit evidence package of mitigating factors to CMS for settings that have not achieved full compliance by July 1, 2020
 - CMS will review a random sample and agree or disagree

Implementation Process: Transitioning Beneficiaries

- Providers who do not comply with the rule by March 17, 2022 will be ineligible for Medicaid HCBS payment
- Unclear extent to which providers may choose not to comply
 - Some HCBS providers may serve few Medicaid beneficiaries and not wish to invest in necessary changes
- Statewide transition plans describe how states will manage transitions to other providers

Stakeholder Perspectives: Federal

- CMS and the Administration for Community Living (ACL) are providing technical assistance to states and providers
 - e.g., stakeholder meetings, webinars, and conference presentations
- Officials emphasized rule's potential to make HCBS delivery more person-centered and integrate beneficiaries in the community

Stakeholder Perspectives: States

- Largely supportive of rule's goals
- Slow rollout of CMS guidance affected implementation efforts
 - Expectations of statewide transition plans changed over time
 - March 2019 heightened scrutiny guidance came after one state interviewed had submitted information to CMS
- Educating providers, beneficiaries, and families
- Challenges bringing some providers into compliance

Stakeholder Perspectives: Providers and Beneficiaries

- Concerns about applying the rule uniformly across populations whose needs and wants vary
- Mixed opinions on CMS's communication
- Beneficiary advocates concerned about state transparency and ability to provide meaningful public comment
- Uncertainty about adult day centers ability to comply, particularly those in or adjacent to nursing facilities
- Providers concerns about costs of compliance (e.g., transportation to community activities)

Next Steps

- Continue to monitor and update Commission
- Feedback on other information Commission would find useful
- Publish issue brief



HCBS Settings Rule: Status of Implementation



Medicaid and CHIP Payment and Access Commission

Kristal Vardaman