

## Publications

### *Health Care Alert: The Centers for Medicare and Medicaid Services Issues Home and Community-Based Settings Toolkit*

#### Related Professionals

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On March 20, 2014, the Centers for Medicare and Medicaid Services (CMS) posted a “Transition Plan Toolkit” to assist states in developing their Home and Community-Based Settings (HCBS) 1915(c) waiver and section 1915(i) state plan amendment or renewal application(s) so that they comply with new requirements in the HCBS Final Rule, released earlier this year. The toolkit includes:

- A summary of the regulatory requirements of fully compliant HCB settings and those settings that are excluded. This document summarizes the final rule’s requirements for HCB settings, including the additional criteria for provider-controlled settings. It also sets forth the settings that are statutorily excluded from HCB settings as well as those presumed to not be HCB settings;
- Schematic drawings of the “heightened scrutiny process” as a part of the regular waiver life cycle and the HCBS 1915(c) compliance flowchart to assist states in developing their transition plans;
- Additional technical guidance on regulatory language regarding “settings that isolate.” This document describes characteristics of settings that may have the effect of isolating individuals receiving HCBS from the broader community. In broad terms, the guidance points to settings that have the effect of isolating individuals as those that are designed for or inhabited by primarily people with disabilities, settings that provide residents with an array of services and activities on-site, settings that give individuals limited, if any, interaction with the broader community, and settings that use interventions/restrictions that are used in institutional settings or that are deemed unacceptable for use in Medicaid institutional settings (i.e., seclusion). This document also provides a non-exhaustive list of particular settings that tend to isolate people from the broader community. This list includes farmsteads or disability-specific farm communities, gated communities for people with disabilities, residential schools, and settings that are co-located and operationally related (i.e., operated and controlled by the same provider) that congregate a large number of people with disabilities together and provide for significant shared programming and staff.

CMS mentioned that depending on the program design, this could include, for example, group homes on the grounds of a private ICF or numerous group homes co-located on a single site or close proximity (multiple units on the same street or a court, for example). Notably, CMS also mentioned that most Continuing Care Retirement Communities (CCRCs) do not raise the same concerns around isolation as these examples, particularly since CCRCs typically include residents who live independently in addition to those who receive HCBS. Though none of the listed characteristics is dispositive in and of itself, settings that exhibit one or more of these characteristics will be subjected to heightened scrutiny in order for the Secretary to make a determination regarding its status as an HCB setting; and

- Exploratory questions that may assist states in the assessment of residential settings. This document in the toolkit sets forth questions that states may use as an optional guide in assessing whether the characteristics of Medicaid HCBS as required by the final rule are present. Characteristics that are expected to be present in all HCB settings, as well as all provider owned or controlled HCB settings, and associated traits that individuals in those settings might experience, are listed. For example, several questions in this document focus on individual choice, asking questions such as whether the setting was chosen by the individual and if the individual chooses when and where to eat. Other questions focus on isolation and access to services, such as whether individuals receiving HCBS receive services in a different area of the setting separate from individuals not receiving Medicaid HCBS. Specific privacy concerns are also highlighted, including whether an individual's activity, diet, and medication schedule is posted publicly and whether a person has the ability to lock his or her bedroom or bathroom door. For provider owned or provider controlled HCB settings, states must address whether there is a legally enforceable agreement for the unit or dwelling where the individual resides such as a lease or written residency agreement. Further, for settings in which landlord tenant laws do not apply, states are to determine if the written agreement includes language that provides protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant laws.

Absent from the toolkit was technical assistance or guidance regarding non-residential settings. However, according to CMS, they are currently developing additional information for states with regard to non-residential settings for HCBS participants. In the comments accompanying the regulations, subregulatory guidance was referenced in several areas: adult day and prevocational services, the process of operationalizing person centered planning, and issues associated with a client's right to refuse. We will update you on any additional guidance that is issued.

The toolkit can be located at <http://www.medicaid.gov/HCBS>. If you have any questions, please contact Suzanne Scrutton at 614.464.8313 or Maureen Corcoran at 614.464.5461.