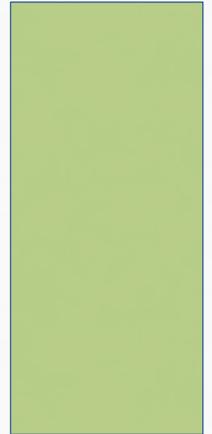




# FINAL RULE: CHANGES TO 1915(c) HOME AND COMMUNITY-BASED MEDICAID WAIVER REGULATIONS

CMS REGULATIONS EFFECTIVE MARCH 17, 2014



# CHANGES TO 1915(c) REGULATIONS OVERVIEW

- Intent of the Final Rule
  - “To ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs ... have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate”
  - “To enhance the quality of HCBS and provide protections to participants”

From the presentation “Final Rule Medicaid HCBS” (2014). Disabled and Elderly Health Programs Group, Centers for Medicaid and CHIP Services.



# CHANGES TO 1915(c) REGULATIONS OVERVIEW

- Clarification on what is, and is not, a “home and community-based setting” in which services may be provided;
- Additional guidance on person-centered planning;
- Clarifications on timing of waiver amendments (program or rates) and public input requirements;
- New State options designed to simplify waiver administration



# CHANGES TO 1915(c) REGULATIONS

- Home and Community-Based Settings - 42 CFR 441.301(c)(4)
  - Must have all of the following qualities:
    - Integrated in and supporting full access of individuals to the greater community, to the same degree of access as individuals not receiving HCBS, including opportunities to
      - seek employment and work in competitive integrated settings
      - engage in community life
      - control personal resources
      - receive services in the community
  - Selected by the recipient from among setting options, including non-disability specific settings, and an option for a private unit in a residential setting.



# CHANGES TO 1915(c) REGULATIONS

- Home and Community-Based Settings 42 CFR 441.301(c)(4), continued
  - In a provider-owned or controlled residential setting the following conditions must be met:
    - Can be owned, rented or occupied under a “legally enforceable” agreement such as a lease or rental agreement;
    - Have the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state;
    - Privacy in sleeping or living unit;
    - Entrance doors lockable by the individual with only appropriate staff having keys to doors.



# CHANGES TO 1915(c) REGULATIONS

- Home and Community-Based Settings – 42 CFR 441.301(c)(4), continued
  - Physically accessible;
  - Choice of roommates;
  - Freedom to furnish and decorate;
  - Freedom and support to control their own schedules and activities;
  - Access to food (snacks) at any time;
  - Visitors at any time



# CHANGES TO 1915(c) REGULATIONS

- Home and Community-Based Settings-441.301(c)(4), continued
  - Settings that are not home and community-based:
    - Nursing facility;
    - Institution for mental disease (16+ beds);
    - ICF/IDD;
    - Hospital;
    - Any setting co-located with, on the grounds of, or immediately adjacent to an inpatient institution;
    - Any other location that has the effect of isolating individuals from the broader community.



# CHANGES TO 1915(c) REGULATIONS

- Person-Centered Planning – 441.301(c)(1)(vi)
  - “Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual, must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS.”



# CHANGES TO 1915(c) REGULATIONS

- **Person-Centered Planning Process**
  - Must be “led” by the applicant or recipient with representative (as defined by recipient) participation;
  - Must “reflect cultural considerations” and be made accessible to individuals with disabilities and persons with limited English proficiency;
  - Records the alternative HCB settings that were considered by the individual;
  - Plan signed by and distributed to all individuals and providers responsible for the plan implementation.



# CHANGES TO 1915(c) REGULATIONS

- **Person-Centered Planning Process; Amendments must**
  - Identify a specific and individualized assessed need;
  - Document positive interventions and supports, as well as less intrusive methods that meet the need, have been tried, but did not work prior to decision to amend;
  - Include a clear description of the condition that is “directly proportionate” to the specific assessed need;
  - Include regular collection of data to measure ongoing effectiveness of amendment;
  - Include established time limits for periodic reviews to determine if the amendment should continue.



# STEPS TO STATE COMPLIANCE

## *1. Assess all service settings on the basis of HCBS settings regulatory criteria*

Regulatory criteria and CMS guidance for States available at:

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>



# STEPS TO STATE COMPLIANCE

## 2. Determine setting's level of conformity to HCBS setting characteristics; categorize as:

- Meets HCBS characteristics - fully compliant;
- Not yet fully compliant, but will be with changes;
- "Presumptively" non-HCBS setting
  - In a "heightened scrutiny" process  
State/stakeholders may offer evidence to refute; CMS decides
- Non-HCBS setting – cannot meet criteria



# STEPS TO STATE COMPLIANCE

## *3. Develop “Transition Plan” to include:*

- Results of State’s assessment of settings;
- State’s proposed remedial strategies;
- Detailed actions the State must take to achieve or document compliance with all new regulations;
- Justification for length of transition (up to five years)



# STEPS TO STATE COMPLIANCE

## 4. *Provide opportunity for Public Comment*

- Public Notice and comment period of at least 30 days;
- State must consider public comment and modify the plan as it deems appropriate, to account for public comment;
- Submit plan by 3/17/15



# NEXT STEPS

- *Additional information-sharing webinars for input on:*
  - HCBS setting assessment process;
  - “Heightened scrutiny” process;
  - Person-centered planning/conflict-free care coordination;
  - State statutory/regulatory strategies

# QUESTIONS

- Please send questions to the SDS Policy mailbox:

[HSS-DSDS-policy@alaska.gov](mailto:HSS-DSDS-policy@alaska.gov)