Iowa Department of Human Services

Home and Community Based Services Settings

Summary

The Centers for Medicare & Medicaid Services (CMS) have issued regulations that define the settings in which it is permissible for states to pay for Medicaid Home and Community-Based Services (HCBS).

The purpose of these regulations is to ensure that individuals receive Medicaid HCBS in settings that are integrated in and support full access to the greater community. This includes opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree as individuals who do not receive HCBS.

Key Facts:

1. HCBS settings will now be defined based on the nature and quality of the member's experiences.
2. New regulations ensure member choice in where they live and who provides services.
3. Iowa Medicaid is seeking public comment and input on the transition process.

The regulations also aim to ensure that individuals have a free choice of where they live and who provides services to them, as well as ensuring that individual rights are not restricted. While Medicaid HCBS has never been allowed in institutional settings, these new regulations clarify that HCBS will not be allowed in settings that have the qualities of an institution.

In order to assist states in making this transition, CMS has published guidance to provide further information about the settings in which HCBS may or may not be allowed. States will be allowed a maximum of five years to make the transition and must submit a transition plan to CMS within one year of the effective date of the rule.

History and Background

Since the inception of the Medicaid program in 1965, care provided in Skilled Nursing Facilities has been a covered service. With the addition of certain optional services in 1972, many states have covered services in other institutional settings such as Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/ID). During this time, institutional care was often the only choice for persons with disabilities. In 1981, Section 1915(c) of the Social Security Act was established, which allowed states the opportunity to provide optional Medicaid services to individuals with disabilities in their own homes and communities as an alternative to institutional care.

Since that time, HCBS has been provided in a wide variety of settings, many of which are truly integrated in the community. However, some of these settings may still retain, or appear to retain, the qualities of institutional care. In order to ensure that HCBS

programs offer a true alternative to institutions, CMS has proposed regulations to better define settings in which states can provide Medicaid HCBS. On June 22, 2009, CMS published an advance notice of proposed rulemaking (ANPRM) that indicated CMS' intention to initiate rulemaking on a number of areas within the section 1915(c) program, including the settings in which Medicaid HCBS may be delivered. On April 15, 2011, CMS published the Notice of Proposed Rule Making (NPRM) that addressed many of the same issues raised in the ANPRM. After considering extensive public comments, many revisions were made and the final rule was published in January 2014 and became effective March 17, 2014.

What Does the Rule Do?

The rule sets the expectations for settings in which HCBS can be provided. During the rule making process, and from the public comments received, CMS has moved away from defining HCBS settings based on specific locations, geography, or physical characteristics to defining them by the nature and quality of the member's experiences. Although the final rule deals largely with residential settings, CMS has stated that it will apply to other settings where HCBS is provided such as vocational or day program service settings. The overarching theme is stated in the rule:

> *"The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS."*

The rule also requires that the setting:

- Is selected by the individual from options that include non-disability specific settings and options for private units. Individuals must also have choice regarding the services they receive and by whom the services are provided.
- Ensures the individual right of privacy, dignity and respect, and freedom from coercion and restraint.
- Optimizes independence and autonomy in making life choices without regimenting such things as daily activities, physical environment, and with whom they interact.

When a residential setting is owned or controlled by a service provider, additional requirements must be met:

- At a minimum, the individual has the same responsibilities and protections from eviction that tenants have under state or local landlord/tenant laws; or when such laws do not apply, a lease, or other written residency agreement must be in place for each HCBS participant to provide protections that address eviction processes and appeals comparable to the applicable landlord/tenant laws.
- Each individual has privacy in their sleeping or living unit. This includes having entrance doors which can be locked by the individual with only appropriate staff

having keys; individuals having a choice of roommates in shared living arrangements; and having the freedom to furnish and decorate their own sleeping or living areas.

- Individuals have the freedom and support to control their own schedules and activities, including having access to food at any time, and having visitors of their choosing at any time.

These requirements may only be modified when an individual has a specific assessed need that justifies deviation from a requirement. In such cases, the need must be supported in the person-centered service plan.

In addition to setting out the above qualities of HCBS settings, the rule also specifies certain settings in which HCBS cannot be provided. This includes settings that have always been statutorily excluded such as hospitals, nursing facilities, ICF/IDs, or institutions for mental disease (IMDs). However, the rule also goes a step further and describes settings that are presumed to have the qualities of an institution:

> *"Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS".*

Any settings that fit this description are presumed to be institutional in nature and HCBS services cannot be allowed in the setting unless the state can demonstrate to CMS that the setting does not have the qualities of an institution. Based on information submitted by the state and input from the public, CMS will determine whether or not a setting meets the qualities for being HCBS.

Iowa's Approach to Transition

Per the CMS regulations, the Iowa Medicaid Enterprise (IME) was required to submit a draft version of a transition plan to CMS on March 31, 2014, due to the required renewal of the Intellectual Disability (ID) Waiver to be effective July 1, 2014. The IME has asked for CMS assistance in reviewing the draft prior to public comment and submission of a final transition plan. The regulations require that the state must also submit a statewide transition plan for all of Iowa's HCBS waivers, as well as the state plan HCBS Habilitation program, within 120 days.

As required by CMS, Iowa's draft transition plan addresses the areas of assessment, remediation, and public input. The IME will partner with Medicaid members, provider associations, advocates and other stakeholders throughout this process to provide input into the process and to assure that providers have access to needed information to assist with transition activities. The final outcome will be that Medicaid members will be served in a way that will enable them to live and thrive in truly integrated community settings.

Public Input: The rule requires that states seek input from the public in the development of the transition plan. The IME is making the draft transition plan available for public comment from May 1, 2014 through May 31, 2014. The plan is being posted on the IME website at: http://www.ime.state.ia.us/HCBS/HCBSTraining.html, and is being distributed to provider associations, consumer advocacy organizations, and other potentially interested stakeholders. Stakeholder forums will also be held during May 2014 to collect additional comments. All comments will be reviewed, summarized, and responses developed. The state will incorporate appropriate suggestions into transition plan and will post responses to public comments on the IME website.

Assessment: States are required to review and analyze all settings in which Medicaid HCBS are delivered and settings in which individuals receiving Medicaid HCBS services reside, and to report the results to CMS. Iowa is planning a multi-faceted approach to assessment. This will begin with a high-level assessment of the types of settings where HCBS is provided. This stage will not identify specific providers or locations, but rather will identify general categories of settings that are likely to be in compliance; settings not in compliance; or settings that are not yet, but could become compliant.

Other planned avenues for assessment include:

- Identifying HCBS settings during Medicaid provider enrollment and re-enrollment,
- Incorporating assessment of settings into the HCBS quality assurance onsite review process.
- Adding related questions to the annual Provider Quality Management Self-Assessment.
- Performing a Geographic Information System (GIS) evaluation of HCBS provider locations and HCBS member addresses.
- Monitoring of Iowa Participant Experience Survey (IPES) results for member experiences related to control over choices and community access.

Remediation: The IME will take a series of steps to aid providers in making the transition to full compliance with HCBS settings. In addition to a series of Informational Letters, updates to Administrative Rules and provider manuals, and other targeted communications, an educational component will also be incorporated into the provider enrollment process. As the assessment process is completed for a setting, the IME will notify the provider of the results.

For settings that are found not to be in compliance, the provider will be required to submit a corrective action plan to Iowa Medicaid that describes the steps to be taken and expected timelines to achieve compliance. In some cases, the state may prescribe certain requirements to become compliant. Consideration of corrective action plans by the state will take into account the scope of the transition to be achieved and the unique circumstances related to the setting in question.

Compliance status will be determined through a combination of activities including onsite reviews, technical assistance activities, and the provider annual self-assessment process. Providers that fail to remediate noncompliant settings will be subject to

sanctions up to and including disenrollment. When a provider is unable to remediate a setting, it may be necessary to arrange alternate funding for individuals receiving services, or to transition individuals to a compliant setting. In any instance where an individual would need to move to an alternate setting, the individual will be given timely notice and will be afforded a choice of alternative providers through the person-centered planning process.

Iowa Medicaid's Goal

The goal of the IME is for Medicaid members to live and thrive in truly integrated community settings. We will strive to make this ongoing transition process transparent to the public, including the members served through HCBS. We will develop a webpage that will become the central hub for information on the transition to fully compliant HCBS settings. This will potentially include stakeholder communications, changes to the transition plan as it is revised, finalized results of onsite assessments, and remediation status.

Goals:

1. Open and transparent transition planning process.
2. Develop webpage as central source for new information.
3. Solicit public and stakeholder feedback through open forums and material reviews.