

# CMS Home & Community-Based Settings Rule

How Other States Are Taking Steps to Ensure Compliance in Non-Residential Settings

# 5 Year Transition Period

- ▶ Assumes states are using some settings (places) for services that do not meet the new standards.
- ▶ Transition period for changes to be made to bring the setting into compliance.
- ▶ Each state must create a transition plan to guide its five-year effort to come into compliance
- ▶ All service settings must meet new standards by March, 2019

The logo consists of a red square with a white stylized 'TN' monogram. Below the red square is a thin horizontal dark blue bar.

**TN**

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# HCBS Settings Final Rule and Heightened Scrutiny

# Preliminary Provider Self-Assessment Results

- Total Non-Residential Settings: 541
  - Community-Based Day: 167
  - Facility-Based Day: 86
  - Supported Employment: 99
  - In-Home Day: 147
  - Adult Day Care: 42

# Preliminary Provider Self-Assessment Results

## Reported Compliance among Providers:

- Provider settings deemed 100% compliant with the HCBS Settings Rule - 14%
- Provider settings who have identified at least one area that is currently out of compliance with the HCBS Settings Rule - 84%
- Provider settings deemed non-compliant with HCBS Settings Rule and opting not to complete a provider level transition plan - 2% (27 settings)

# Preliminary Assessment Results

## 1048 Transition Plans Received

Areas identified as non-compliant:

- Physical Location: 367 or 35%
- Community Integration: 694 or 66%
- Residential Rights (Residential Only): 408 or 39%
- Living Arrangement (Residential Only): 552 or 53%
- Policy Enforcement Strategy: 936 or 89%

# Overview of Heightened Scrutiny Review

CMS guidance states:

- “*Importantly, any setting regardless of location that has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving HCBS is also presumed to be institutional, and therefore requires information from the state to overcome that presumption and describe how the HCBS settings requirements are met.*”

# Overview of Heightened Scrutiny Review

## Services/settings impacted by heightened scrutiny review:

- Adult Day Care (CHOICES)
- Assisted Care Living Facilities (CHOICES)
- **Facility Based Day (ID Waiver)**
- **Residential Habilitation settings with more than 4 persons (ID Waiver)**
- **Intensive Behavioral Residential Services (ID Waiver)**

# Intent of HCBS Setting Final Rule

- CMS guidance identifies **types of evidence** that should be submitted to CMS to demonstrate that a setting **does not isolate** individuals receiving HCBS from the broader community of individuals not receiving HCBS:
  - *The setting is integrated in the community to the extent that persons without disabilities in the same community would consider it a part of their community and not associate the setting with the provision of services to persons with disabilities.*
  - *The individual participates regularly in typical community life activities outside of the setting to the extent the individual desires and these activities:*
    - *Do not include only those organized by the provider agency specifically for a group of individuals with disabilities and/or involving only paid staff*
    - *Do foster relationships with community members unaffiliated with the setting*
  - *Services to the individual, and activities in which the individual participates, are engaged with the broader community*

# Overview of Heightened Scrutiny Review

## Heightened scrutiny review will consist of:

- A review of data pertaining to services utilized by all persons receiving services in the specified setting
- An on-site visit and assessment of physical location and practices
- A review of person-centered support plans and Individual Experience Assessments for individuals receiving services in the setting
- Interviews with service recipients
- A secondary review of policies and other applicable service related documents
- Additional focused review of the agency's proposed transition plan
  - Including how each of the above is expected to be impacted as the plan is implemented
  - Transition plans may require revisions
- Collection of evidence to submit to CMS to demonstrate compliance (if the state in fact feels the setting meets the HCBS requirements)

# Overview of Heightened Scrutiny Review

## Additionally:

- The CMS heightened scrutiny process requires public input and as such will be incorporated into the State's assessment process.
- TennCare will also engage advocacy organizations in the review of evidence gathered through the process.

# Tennessee Embracing Systems Change

- ▶ Conclusion of presentation to providers about state's plan to conduct heightened scrutiny reviews with all facility-based day providers:

Transitioning from Facility Based Day services;  
it *can* be done – presentation by TN provider

# Tennessee Embracing Systems Change

## Governor's 2016-2017 Budget Proposal:

- ▶ \$4.8 million in recurring state and federal funds to cover increased costs associated with the **planned transition over the next 3 years from facility based day services to community based day services**
- ▶ \$1.7 million in recurring state and federal funds for increased utilization of home and community based services for people currently in waiver funded services

# Tennessee Embracing Systems Change

## Governor's 2016-2017 Budget Proposal:

- ▶ \$24 million dollars for launch of new ID/DD long-term support program called *Employment and Community First Choices (ECF)*
- ▶ Existing ID waivers will be closed; all new people with ID or DD will be served through *ECF*
- ▶ *ECF* includes twelve different supported employment services and no facility-based services

# States May Limit Future Use of Some Settings

## CMS F.A.Q.: HCB Settings Requirements (6/26/15)

“Using their transition plan, a state may establish that certain settings currently in use in a home and community-based services waiver may continue within the waiver, as long as they will be able to meet the minimum standard set in the rule on or before the end of the transition period, but the state may suspend admission to the setting or suspend new provider approval or authorizations for those settings.

Oregon suspends admissions to workshops using this provision

# Massachusetts – Criteria for Approving Provider Transition Plans for Settings Likely to Isolate

- ▶ Specific plans should include strategies to enhance an individual's experience through:
  - More opportunity for individualized, rather than group activities, directly related to an individual's interests
  - More opportunity to develop relationships with individuals of the person's choosing, including people not a part of the setting
  - Choices and opportunities to engage in meaningful day activities other than in the same setting, especially focusing on activities in the broader community
  - Greater ability to determine one's own schedule and routines
  - Greater ability to choose the staff that render services to the individual
  - Increased transportation options where public transportation is not available
  - Increasing individuals' decision making opportunities from just "input" or "suggestions" to actual control over decisions
  - Increased focus on individual outcomes rather than programs
  - Implementation of modifications that address specific areas of the self-assessment that were identified as not in compliance with the HCBS Final Rule

# Washington

- State concluded that facility-based day/workshop settings are not, and cannot become, compliant with the HCBS settings rule
- Will end use of facility-based day/workshop settings for people with developmental disabilities
- Approximately 350 people statewide

# California

- ▶ The proposed budget (released January, 2016) includes \$15 million for compliance with the HCBS rule, including:
  - ▶ \$11 million from the general fund for state to “target rate increases to providers to transition services like segregated day programs and sheltered workshops to models that are more integrated in the community and consistent with the Home and Community-Based Services Waiver.”

# What's Next?

- ▶ Ohio
  - ▶ Maryland
  - ▶ Michigan
  - ▶ Iowa
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- ▶ Which State's Transition Plan will be approved first?

Other States to Watch

The Million Dollar Question