

Federal Medicaid Home and Community-Based Services (HCBS) Settings Rule

Maine Coalition for Housing and Community Services
September 09, 2019

Created by Lisa Mills, PhD



What is the HCBS Settings Rule?

- ▶ A federal regulation that defines **standards** for settings where Medicaid HCBS services are provided using federal funding.
- ▶ The Rule is the result of a nearly **5 year rule-making process** during which over 2,000 public comments were submitted during multiple public comment periods.
- ▶ The final Rule was issued in March 2014. States were given until **March 2022** (8 years) to bring all existing HCBS settings into compliance with all of the standards in the Rule.

Maine HCBS Programs

- ▶ Section 18 Waiver
- ▶ Section 19 Waiver
- ▶ Section 20 Waiver
- ▶ Section 21 Waiver
- ▶ Section 29 Waiver

Why is Federal Medicaid Funding Important to the Maine's HCBS Waiver Program?

- ▶ Federal funding makes up **63.8%** of the total funds used to operate Maine's HCBS waivers.
 - This means for every \$1 in state funding, the federal government provides **\$1.76 match**.
- ▶ If waiver service delivery settings are not in full compliance with the HCBS Settings Rule by March 2022, the state loses the federal match for every setting that is not in full compliance.
 - Reimbursement rates would need to be reduced by 63.8% for non-compliant settings... not a viable option for Maine.

HCBS Setting Standards

Setting standards are designed to improve HCBS services by:

- ▶ Ensuring the quality of Home and Community-Based Services
- ▶ Providing rights protections for participants
- ▶ Maximizing opportunities for individuals to have full access to the benefits of community living
- ▶ Ensure individuals can receive services in the most integrated setting

HCBS Setting Standards

- ▶ **Must not be** institutional or have the qualities of an institutional setting.
 - Must not isolate HCBS participants from the broader community, including the broader community of people not receiving HCBS
- ▶ **Must be** integrated in and supports full access to the greater community, including opportunities to:
 - Seek employment and work in competitive integrated settings
 - Engage in community life
 - Control personal resources
 - Receive services in the community, in a way that offers the same degree of access to the community that people not receiving HCBS have.

Focus on “greater community” is not just about places – it is also about people (members of the greater community).

HCBS Setting Standards (continued)

- ▶ Must ensure an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.
- ▶ Must optimize, but not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact.
- ▶ Must facilitate individual choice regarding services and supports, and who provides them.
- ▶ State must also ensure, through person-centered planning, that **the setting** is selected by the individual, based on his/needs and preferences.
 - **Setting options offered for each service must include non- disability specific setting.**
 - The settings options offered, from which the person selected, must be identified and documented in the person-centered plan.
 - If residential setting, selection also based on individual's resources.

Additional HCBS Setting Standards for Provider-Owned or Controlled Residential Settings

The individual must have:

- A **choice** of residential setting options including a non-disability specific setting option.
- The **same responsibilities and protections from eviction** as all tenants under landlord-tenant laws of state, county, city, or other designated entity.
- A setting that is **physically accessible** to the individual.
- An **option for a private room/unit** in a residential setting, taking account of a person's needs, preferences, and available resources.
- A **choice** in determining with whom they share their living unit.

Additional HCBS Setting Standards for Provider-Owned or Controlled Residential Settings

Individuals must have the right to:

- ▶ **Privacy** in their sleeping or living unit
- ▶ **Lockable entrance door(s)**: only the individual and appropriate staff shall have keys to door(s)
- ▶ **Furnish and decorate** their sleeping and/or living units as they wish, so long as consistent with the terms of the lease or residency agreement
- ▶ Freedom and support to **control their schedules and activities**
- ▶ Freedom and support to ensure **access to food** at any time
- ▶ Have **visitors at any time**, taking into account respect for others sharing the unit

HCBS Setting Standards for Provider–Owned or Controlled Non–Residential Settings

- ▶ The following requirements will be applied to all provider owned and/or controlled settings in Maine’s HCBS programs, not just residential settings.
- ▶ (1) freedom and support to control their daily schedule and activities; (2) access to food at any time; (3) an ability to have visitors at any time; and (4) a right to receive services in a setting that is physically accessible.

Modifications to Setting Standards for Individuals

Modifications of any HCBS Setting Standard must be:

- Supported by specific **assessed need** of the individual
- **Justified** in the person-centered service plan by documenting less restrictive strategies that have been tried but did not work for the person
- **Documented** in the person-centered service plan with steps that are being taken to remove or reduce the modification as soon as feasible

An individual modification cannot be applied to an entire group/household.

State and/or Provider policies/practices that impose modifications on everyone served must be changed.

Settings that are NOT Home and Community-Based

- ▶ Nursing facility
- ▶ Institution for Mental Disease (IMD)
- ▶ Intermediate Care Facility (ICF)
- ▶ Hospital
- ▶ Any other settings that have the qualities of an institutional setting

These settings are not eligible for HCBS funding.

Settings PRESUMED to have the qualities of an institutional setting

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

These settings are presumed institutional (not approved for HCBS) unless it is determined, through a “heightened scrutiny” process, that the setting **does not** have the qualities of an institutional setting and the setting **does** meet all of the standards for HCBS settings.

Heightened Scrutiny (HS) Process

- ▶ Recent CMS guidance changes process
- ▶ States can work with settings to bring them into compliance
- ▶ For settings that must go through “Heightened Scrutiny” review by CMS:
 - ▶ States must submit settings they want to continue as HCBS settings to CMS for final decision
 - ▶ Submission to CMS requires creation of a HS evidentiary packet – these **must be posted for public comment** before submitted to CMS

Transition to Compliance

- ▶ All states must have a federally approved Statewide Transition Plan (STP) that lays out the entire process for assuring all HCBS service settings are **fully** compliant with the Rule by March 2022.
- ▶ STP also includes plan for assuring **ongoing** setting compliance after March 2022.
- ▶ Maine is using a process similar to processes used in other states but timeframes are tight.

Statewide Transition Plan (STP)

- ▶ Must be posted for public comment before can be submitted to CMS
- ▶ “Initial” STP submitted first:
 - After state completes **Systemic Assessment** which is a comprehensive review of state statutes, policies, rules, contracts to ensure they address HCBS Settings Rule standards.
- ▶ “Final” STP submitted second:
 - After assessment of existing HCBS settings is done

Next Steps

- Stakeholder Education Strategy Implementation
 - Self-Assessment Survey Tool
 - EconSys Compliance Portal
- Communication Plan Implementation
 - Town Hall Meetings, letters and emails, social media
 - Commissioner's Video Message
- Dissemination of FAQ
- Launch of website

HCBS.DHHS@Maine.gov

www.Maine.gov/dhhs/oads/HomeandCommunityBasedServices