



The Home and Community Based Settings Final Rule

Utah's Transition Plan for a Path
to Compliance

The Final Rule



Published in the Federal Register on January 16, 2014

- To ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs under the 1915(c), 1915(i) and 1915(k) Medicaid authorities 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

HCBS Setting Requirements



- The home and community-based setting requirements establish an outcome oriented definition that focuses on the nature and quality of individuals' experiences
- The requirements maximize opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting

HCBS Setting Requirements



- The final rule defines, describes, and aligns setting requirements for home and community-based services provided under three Medicaid authorities
 - 1915(c)-HCBS Waivers
 - 1915(i)- State Plan HCBS
 - 1915(k)-Community First Choice

HCBS Setting Requirements



The final rule establishes:

- Mandatory requirements for the qualities of home and community-based settings including discretion for the Secretary to determine other appropriate qualities
- Settings that are not home and community-based
- Settings presumed not to be home and community-based
- State compliance and transition requirements

HCBS Setting Requirements



The Home and Community-Based setting:

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services

HCBS Setting Requirements



- Is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting
 - Person-centered service plans document the options based on the individual's needs, preferences; and for residential settings, the individual's resources

HCBS Setting Requirements



- Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices
- Facilitates individual choice regarding services and supports, and who provides them

HCBS Requirements for Provider-Owned or Controlled Residential Settings



Additional requirements:

- Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement
- Same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity
- If tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law

HCBS Requirements for Provider-Owned or Controlled Residential Settings



- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with the individual and appropriate staff having keys to doors as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
- Individuals have freedom and support to control their schedules and activities and have access to food any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual

HCBS Setting Requirements



Modifications of the additional requirements must be:

- Supported by specific assessed need
- Justified in the person-centered service plan
- Documented in the person-centered service plan

HCBS Setting Requirements



Documentation in the person-centered service plan of modifications of the additional requirements includes:

- Specific individualized assessed need
- Prior interventions and supports including less intrusive methods
- Description of condition proportionate to assessed need
- Ongoing data measuring effectiveness of modification
- Established time limits for periodic review of modifications
- Individual's informed consent
- Assurance that interventions and supports will not cause harm

Settings that are NOT HCBS



- Nursing Facilities
- Institution for Mental Diseases (IMD)
- Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)
- Hospitals

Settings Presumed Not to be HCBS



- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on grounds of, or adjacent to, a public institution
- Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS

Heightened Scrutiny



These settings (previous slide) may NOT be included in states' 1915(c), 1915(i) or 1915(k) HCBS programs unless:

- A state submits evidence (including public input) demonstrating that the setting does have the qualities of a home and community-based setting and NOT the qualities of an institution; AND
- The Secretary finds, based on a heightened scrutiny review of the evidence, that the setting meets the requirements for home and community-based settings and does NOT have the qualities of an institution

Utah's Transition



For ALL existing 1915(c) HCBS waivers and 1915(i) HCBS State Plan benefits in the state, Utah was required to submit a plan within one year of the effective date of the final rule:

- The Plan detailed how the state will comply with the settings requirements in ALL 1915(c) HCBS waivers and 1915(i) HCBS State Plan benefits
- The Plan included elements, timelines, and deliverables as required by the Centers for Medicare and Medicaid Services

Utah's Transition



- Systemic Assessment
 - Review State standards, regulations, policies, rules, licensing, manuals, and provider contracts
- Site Assessments
 - Review all settings identified as potentially Not Compliant or potentially Not Yet Compliant
- Systemic and Site Remediation

Site Assessment and Remediation Processes



Action Item	Timeline
Provider completion of Residential or Non-Residential Self-Assessment for each setting	60 days
State returns findings from Self-Assessments to providers	60 days
Providers submit remediation plans to the State	30 days
Remediation feedback provided by the State	90 days
Provider rebuttal option	30 days
State rebuttal response	30 days
Final remediation plan required	March, 2018
Heightened scrutiny cases submitted to CMS throughout the assessment process as needed.	
Full compliance required by all HCBS providers	March, 2019
Utah's Comprehensive Transition Plan Timeline	 Utah Transition Timeline

Self-Assessment Tool



- Self-Assessment Instructions

<http://health.utah.gov/ltc/hcbstransition/>

- Residential or Non-Residential Self-Assessment Tool
- Remediation Plan



Self-Assessment
Instructions



Non-Residential
Self-Assessment



Residential
Self-Assessment



Remediation Plan
Template

Utah Settings Transition Resources



- The ListServe allows subscribers to receive updates about the planning process and updates to the plan itself.
- To join the list, send a BLANK (No subject, no message, no signature or footer) email to:

join-hcbstransitionplanning@list.utah.gov

- If you receive an error, please ensure the email did not contain a subject, message, header/footer or signature.
- After subscribing to this mailing list, a confirmation link will be returned. If you fail to notice this confirmation email, please check your "Spam" or "Junk" folder. You will be removed from this list if the confirmation link is not clicked.
- Please contact astephens@utah.gov if you have any problems with the Listserv.

Utah Settings Transition Resources



- HCBS Transition Home Page
<http://health.utah.gov/ltc/hcbstransition/>

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