

STATE PLAN FOR ASSESSING HCB SETTINGS COMPLIANCE

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Purpose

In January 2014, the Centers for Medicaid and Medicare Services (CMS) announced a requirement for states to review and evaluate current home and community based (HCB) service settings, including residential and nonresidential settings, and to demonstrate how our waivers comply with the new federal HCB Settings requirements that went into effect March 17, 2014. The federal regulations are 42 CFR 441.301(c)(4)-(5). CMS posted additional guidance to help states assess compliance and remediate areas that are not fully in compliance. More information on the rules can be found on the CMS website at www.medicaid.gov/hcbs.

Overview

The waivers being reviewed for compliance include the Assisted Living Facility, Long Term Care, Adult Developmental Disabilities (DD), Child DD, Acquired Brain Injury, Supports, Comprehensive, and Children's Mental Health Waivers. In a report to CMS under this new requirement, the state must include:

- A plan for assessing all HCB settings, including a 30-day public comment period (*this document*);
- A response summary of public comment received;
- An inventory and description of all HCB service settings by size, type, location, and service delivery characteristics;
- A summary of how each setting meet or does not meet the federal HCB settings requirements;
- A list of any areas of non-compliance that need to be addressed;
- A transition plan and process for bringing all HCB settings into compliance; and
- A plan for ensuring the health and safety of participants who reside in locations that need to meet corrective action requirements for the setting to come into compliance during the state's specified transition timeline.

Assessment Plan

The Wyoming Department of Health State Medicaid Agency will work with the various providers, participants, guardians, and other stakeholders involved in the waiver programs to gather the information needed to assess our current compliance with HCB setting regulations through surveys, interviews, site visits, and data analysis.

Below is a summary of the assessment plan activities the state will use to develop and implement a HCB Setting Transition Plan, upon approval by CMS.

Assessment Activity	Start Date	End Date
Issue surveys to providers to evaluate their own settings by type and location (excluding services provided in the waiver participant's own home or family home).	5-15-2014	8-1-2014
Provide a survey to waiver participants, guardians, and other stakeholders to evaluate and give input on provider settings by type and location.	5-15-2014	8-1-2014
Conduct a review on a representative sample of settings to evaluate locations, characteristics, and other required institutional or isolation qualities.	5-15-2014	8-1-2014
Evaluate state services, policies, provider training, certification and licensing requirements to ensure compliance with the HCBS settings.	7-1-2014	9-1-2014
Summarize all HCB settings and areas of compliance and non-compliance	8-1-2014	10-1-2014
Convene a Transition Taskforce to review information gathered and provide input on a state <i>HCB Setting Transition Plan</i>	5-1-2014	12-1-2014
Draft transition plan to submit for state and federal approval	12-1-2014	1-15-2015

Summary of HCB Setting Assessment Requirements

The table summarizes the areas of the new federal regulation that will be evaluated.

HCB SETTING ASSESSMENT COMPONENTS

<p>CMS DESCRIPTIONS FOR INSTITUTIONAL SETTINGS AND QUALITIES</p> <p>State must assess if any of our provider facilities meet the qualities of an institution.</p>	<p>Settings that are Not Home and Community-Based include a nursing facility; an institution for mental diseases; an intermediate care facility for individuals with intellectual disabilities; a hospital; or any other locations that have qualities of an institutional setting, as determined by the Secretary.</p> <p>Settings that are Presumed to have the Qualities of an Institution:</p> <ul style="list-style-type: none"> • Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, • Any setting that is located 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.
<p>CMS GUIDANCE ON SETTINGS THAT MAY ISOLATE INDIVIDUALS</p> <p>State must evaluate settings for isolating characteristics and risks for isolation present.</p>	<p>Settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals:</p> <ul style="list-style-type: none"> • The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability. • The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them. <p>Settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:</p> <ul style="list-style-type: none"> • The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities. • People in the setting have limited, if any, interaction with the broader community. • Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).
<p>STATE STANDARDS TO ASSESS</p> <p>What does the state need to change in these areas to help provider settings be HCBS compliant?</p>	<p>At the state level, these actions include a review of:</p> <ul style="list-style-type: none"> • Licensing/certification standards • Provider qualifications • Service definitions and standards • Provider training requirements • Participant rights protections • Plan of care requirements

PROVIDER
CONTROLLED
SETTING ELEMENTS
TO ASSESS
PER NEW FEDERAL
REQUIREMENTS

State must collect information on providers settings from providers, participants, guardians, stakeholders, and state staff.

Information will be collected through observations, Site Visits, Interviews, and State data repositories.

For each service setting within a provider facility, the participant receiving services shall have these rights and freedoms.

Settings that are integrated within the community so the participant can:

- Receive services in the community to the same degree as those not receiving HCBS
- Receive services in a setting that is not segregated from people receiving services without disabilities
- Receive services in a location among other private residences and retail businesses, in an area with consistent traffic patterns and where visitors are present and visiting regularly

A choice in where to live with as much independence as possible, in the least restrictive environment, and:

- Be given opportunities to visit other settings options, such as an apartment, smaller home, fewer roommates, private bedroom
- Choose a specific roommate or opt for a private unit.
- Have a unit with entrance doors lockable by the individual, with only appropriate staff having keys to doors
- Access to the typical facilities in a home, such as the kitchen, dining area, laundry, and comfortable seating/lounging areas
- Have a signed lease or written agreement with tenant/landlord protection to document protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law
- Have a setting physically accessible to the individual
- Have unrestricted access in the setting to roam to common areas

Exercise Informed Choice and be able to:

- Choose the living environment, services, providers and types of supports based on one's needs and preferences
- Optimize one's initiative, autonomy, and independence in making life choices, in such activities as daily activities, physical environment, and with whom to interact
- Design a schedule that meets one's wishes and is reflected in a person-centered plan
- Participate in unscheduled and scheduled access to the community, can come and go at any time, and not have a regimented routine

A setting that ensures the one's rights and protections so the participant can:

- Actively participate in the development of a person-centered plan of care
- Have dignity and respect, where people communicate and interact respectfully. Staff greet and converse with participants without talking down to them or acting as though the person is not present and talking around them to other staff
- Expect privacy with protected health information and know that personal care is conducted privately, with help only as needed
- Control personal resources
- Be free from coercion and restraint
- Have visitors of their choosing at any time and access to a private area for visitors
- Have access to make private calls, text, email at their preference or convenience
- Choose when and what to eat and have access to food at any time, and chooses with whom to eat or to eat alone
- Have appropriate clothes for their preferences and the weather and activities performed
- Furnish and decorate their sleeping or living units within the lease or other agreement

A setting that optimizes personal autonomy so the participant can:

- Engage in community life
- Engage with friends and family
- Have support to control their own schedules and activities, and access to activities of his/her choosing in the larger community
- Make money by accessing and seeking employment
- Work in a competitive integrated setting

PLAN OF CARE
REQUIREMENTS
FOR MODIFICATIONS
OR RESTRICTIONS OF
A PARTICIPANT'S
RIGHTS

****Any modification or restriction of the participant's rights and freedoms must be supported by a specific assessed need and be approved by the participant or a legally authorized representative, who has the authority to restrict the specific right.**

State must assess whether these items are currently in and required of the IPC

If a right or freedom is modified or restricted, the following requirements must be documented in the person-centered service plan:

- A specific assessed need which requires a modification or restriction of a specific right or freedom.
- Positive interventions and supports used prior to any modifications to the person-centered service plan.
- Less intrusive methods of meeting the need that were tried but did not work.
- A clear description of the modification or restriction that is directly proportionate to the specific assessed need.
- Regular collection and review of data to measure ongoing effectiveness of restricted right.
- Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- Informed consent of the individual.
- An assurance that interventions and supports will cause no harm to the individual.

STATE MUST
DEVELOP A
RESPONSE FOR
AREAS OF
NONCOMPLIANCE

- What are the types, size of settings, and locations not in compliance?
- What will the state do if a provider is found to be in violation of these standards?
- What compliance action will we expect?
- What timeframe is appropriate?
- How will the state help the providers come into compliance?

IMPACT RESPONSE

- If current participants are living in a facility that is determined to be out of compliance with an HCB setting, what is the plan to bring the facility into compliance in order for individuals to remain in the setting?

PUBLIC COMMENT
SUBMISSION
PROCESS

To provide input on this plan, please email bhdmail@wyo.gov.

You may also send written comments to:
Wyoming Department of Health – Behavioral Health Division
Attention: Jamie Staunton
6101 Yellowstone Road Suite 220
Cheyenne, Wyoming 82009

Public Comment
Conference Call
Scheduled:

To ask questions during the public comment period, a conference call is scheduled at April 28, 2014 at 2 pm during the Behavioral Health Division's regular Monthly provider support call. The phone line is toll-free for the public: 1-877-278-8686 Access Code: 252484.