

# Home and Community Based Services (HCBS) Settings Federal Rule Changes:

## A Discussion with Providers and Stakeholders



# Today's Agenda

- To talk about the new federal rule, including:
  - Understanding the rule;
  - Learning about New Jersey's compliance, and
  - Knowing your rights with regards to the rule.

# HCBS Settings History

- On January 16, 2014, the Centers for Medicare & Medicaid Services (CMS) issued a final rule with regard to HCBS settings.
- While the final rule was effective March 17, 2014, CMS published its intent back in 2009.
- Its intent is to ensure that states, getting federal Medicaid funds, meet the needs of constituents who want to get their long term services and supports in their home or community, rather than in institutions.

## Where are the Regulatory Requirements?

- Here are the federal regulatory requirements for HCBS settings, which need to be reviewed in the Statewide Transition Plan:
  - 42 Code of Federal Register (CFR) Section 441.301 (c) (4) (5)
  - 42 CFR Section 441.710 (a) (1) (2)
- States are awaiting further guidance from CMS on non-residential HCBS settings so most of this discussion focuses on the residential mandate.

## New Jersey is on Deadline

- Each state is required to submit a Statewide Transition Plan by March 17, 2015.
- The Plan is the vehicle through which states determine their compliance with regulation requirements for HCBS settings.
- States have until March 17, 2019 to be in full compliance with the federal requirements.

# Who does the New Rule Affect in NJ?

1. Consumers receiving HCBS under the Comprehensive Medicaid Waiver (CMW) 1115 demonstration on these initiatives:
  - Managed Long Term Services and Supports (MLTSS) Supports
  - Supports Program
  - Managed Behavioral Health Organization
  - Demonstration programs for children
    - Autism Spectrum Disorder (ASD) pilot
    - Intellectual/Developmental Disabilities and Co-Occurring Mental Illness Diagnoses (ID-DD-MI) pilot
    - Program for Children diagnosed with Serious Emotional Disturbance (SED) pilot



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# Who does the New Rule Affect in NJ?

2. Consumers receiving HCBS on the Community Care Waiver (CCW).
3. Providers of HCBS services which are funded by NJ FamilyCare under the CMW and the CCW.

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# Why is the Rule Important for You?

- If you are a provider receiving NJ FamilyCare HCBS funding under MLTSS or the CCW, this new rule applies to you. 
- You need to ensure that your NJ FamilyCare beneficiaries' services and supports under MLTSS or the CCW are provided in settings that are truly non-institutional in nature. 



# What defines an HCBS Setting?

- The focus is on the quality of a person's full experience in the HCBS setting and looks at the outcomes and possibilities.
- An HCBS setting is defined in the rules by the access and integration that it can provide for an individual to the community.

# What is definitely NOT an HCBS Setting?

- Nursing home
- Institution for mental diseases (IMD)
- Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
- Hospital

# What is “Presumed” not to be HCBS?

- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on the grounds of, or right next to, a public institution
- Settings with the effect of isolating beneficiaries from the greater community of people not receiving NJ FamilyCare HCBS.

# Examples of “Isolated” Settings

CMS guidance defines these settings as having the effect of isolating individuals from the greater community:

- Gated/secured “community” for people with disabilities
- Residential schools
- Multiple settings co-located and operationally related where a large number of individuals with disabilities are grouped together and get shared programming and staff, and have limited interaction with the greater community

# What about Continuing Care Retirement Communities (CCRCs)?

- CMS guidance stated that the isolation risk in CCRCs is not characteristic since “CCRCs typically include residents who live independently in addition to those who receive HCBS.”

# “Heightened Scrutiny” is an Option

- NJ Department of Human Services may submit strong evidence (with public input) to the federal government that a particular setting, which is presumed not to be HCBS, DOES qualify as an HCBS setting and is not an institution.
- The federal government (Centers of Medicare & Medicaid Services or CMS) must then agree that the setting meets the HCBS requirements in the final regulation.

# CMS Standards Applicable to ALL HCBS Settings

- **Community Integration** = Setting is integrated in and supports full access to the greater community.
- **Choice** = The beneficiary has the opportunity to select among the HCBS options; the choices are documented in a person-centered service plan.
- **Independence** = Beneficiary is able to make life choices with regard to his/her daily activities, physical environment and with whom to interact.
- **Resident Rights** = Beneficiary must have the rights of privacy, dignity and respect, and freedom from coercion and restraint.

# HCBS Settings Standard: Community Integration

- Is the setting integrated in the greater community and is a NJ FamilyCare beneficiary able to regularly participate in unscheduled and scheduled community activities?
- Are NJ FamilyCare beneficiaries able to join in community life, from shopping, going to appointments or a job, attending religious services, etc. -- when and where they want?
- Is there access to public transportation or is there an accessible van to bring NJ FamilyCare beneficiaries to appointments and events in the community?



# HCBS Settings Standard: Choice

- Is the HCBS setting chosen by the NJ FamilyCare beneficiary from among various options, including the option for a private unit in a residential setting?
- Is the NJ FamilyCare beneficiary able to choose his/her roommate or request a change in roommate?
- Is the NJ FamilyCare beneficiary able to choose and control his/her own schedule?

# HCBS Settings Standard: Independence

- Does the HCBS setting optimize individual initiative, autonomy and independence in making life choices from deciding what to do each day, how to decorate a sleeping or living unit and deciding with whom to socialize?
- Do NJ FamilyCare beneficiaries have full access in the HCBS setting? Are there barriers from entering certain areas and is the setting physically accessible with no obstructions?

# HCBS Settings Standard: Resident Rights

- Does the HCBS setting ensure an NJ FamilyCare beneficiary's rights of privacy, dignity and respect and freedom from coercion and restraint?
  - Is health information kept private?
  - Does staff speak in a respectful and dignified manner?
  - Does the staff ask the NJ FamilyCare beneficiary about his/her needs and preferences?
  - Are requests for services and supports accommodated as opposed to ignored or denied?

# HCBS Setting Requirements for Provider-Owned/Controlled Residential Settings

- CMS has set additional requirements for residential settings where services and supports are bundled, including:
  - Protection from eviction;
  - Privacy rights;
  - Freedom of choice;
  - Right to receive visitors at any time, and
  - A setting that is physically accessible.

## Provider-Owned/ Controlled Residence: Protection from Eviction

- The unit or dwelling where a NJ FamilyCare beneficiary on MLTSS or CCW lives must have a legally enforceable agreement like a lease.
- If the landlord tenant laws don't exist, there must be a written residency agreement or other form of written agreement.
- The NJ FamilyCare beneficiary must have the same responsibilities and protections that all tenants have under the state and local landlord/tenant laws.
- This condition applies to Assisted Living facilities and residential habilitation.

## Provider-Owned/ Controlled Residence: Privacy Rights

- NJ FamilyCare beneficiaries must have privacy in their sleeping or living units.
- They must be able to lock the unit's entrance door and have a say as to who has keys to the unit.
- The rule does not require that a beneficiary has a private room, but it specifies that the person be able to share the room with a roommate of choice.
- They must be free to furnish and decorate their personal space.

## Provider-Owned/ Controlled Residence: Freedom of Choice

- The NJ FamilyCare beneficiary must have freedom and support to control his/her own schedule and activities and to take part in the life of the greater community.
- The NJ FamilyCare beneficiary must have access to transportation, including the ability to use public transportation and the availability of a van.
- There must be access to food at any time: the ability to ask for a meal at any time (not just snacks) and to eat wherever and with whomever, or privately.

## Provider-Owned/ Controlled Residence: Right to Receive Visitors at Any Time

- The NJ FamilyCare beneficiary must be able to have visitors of his/her own choosing at any time.
- The residential setting must have comfortable places for private visits with family and friends.



## Provider-Owned/ Controlled Residence: Physically Accessible

- The HCBS setting is physically accessible to the individual.
- The HCBS setting meets the needs of those who require supports, such as grab bars, seats in the bathroom, etc.
- The HCBS setting has appliances, tables and chairs that the individual can use.

# Modifications to Standards

- There will be situations in which not following the new rule's requirements for provider owned/controlled residential settings will be necessary to protect a NJ FamilyCare beneficiary's health and safety. For example:
  - Freedom to access the greater community may not be safe for an individual who has Alzheimer's Disease.
  - Certain meal choices may not be allowed for an individual based on medical restrictions placed by the physician.

# Steps to Take if Rule Can Not be Followed

- As a NJ FamilyCare provider, if you change any portion of the new rules for a beneficiary, there must be a specific assessed need, which is justified in the service plan. You must:
  - first try other strategies in compliance with the rule and document why they do not work.
  - document part of the rule that will not be followed along with the rationale.
  - regularly collect data to show that the change is working with periodic reviews to assess the need for it.
  - assure there is no harm to the individual by not following it.
  - include an informed consent that the person or representative agrees to it.

# New Jersey's Compliance with the New Rule

- NJ must produce a Statewide Transition Plan to meet its regulatory requirements with CMS on the HCBS settings, which must include an assessment process, a remedial strategy and public input.
- NJ is evaluating its HCBS programs and services to see if they comply with the new rule:
  - Review of the state's regulations, standards and policies
  - Assessment of residential NJ FamilyCare HCBS providers

## HCBS Residential Providers under Review

- DHS will do site specific evaluations of these HCBS settings, which it licenses:
  - Group Homes; Supervised Apartments; Supported Living; Community Care Residences; Private Residential Facilities; Day Programs and Supported Employment programs
- DHS will require that these HCBS settings licensed under the NJ Department of Health use a self-assessment survey to gauge compliance:
  - Assisted Living Residences, Comprehensive Personal Care Homes, Assisted Living Programs and Adult Family Care providers

# Assessment Timeline for HCBS Residential Providers Subject to New Rules

Action Items	Due Date
Self-Assessment Survey via SurveyMonkey sent to HCBS providers licensed under N.J.A.C. 8:36 and N.J.A.C. 8:43B	02/15
Due Date for Return of Self-Assessments Survey to the DHS	04/15
Assessment by DHS to be Conducted of Residential Providers Licensed under N.J.A.C. 10:44A, N.J.A.C. 10:44B and N.J.A.C. 10:44C	02/15-04/15
HCBS Provider Assessment Compliance Analysis and Report	06/15
Determination of Heightened Scrutiny	06/15-08/15
Remedial Actions of HCBS Providers	TBD
Compliance Monitoring of Providers with Sanctions and Disenrollment	TBD
New Jersey reaches full compliance.	On or before 03/17/19

# Key Dates to Watch for in Early 2015

January 2015

- Draft Statewide Transition Plan is posted on DHS website.
- DHS promotes 30-Day public comment period for input.
- One Public Input Session is held.

February 2015

- Second public input session is held.
- Public comment period ends.
- Written testimony is summarized and incorporated.
- Statewide Transition Plan is revised.

# We are on Deadline and You are Too

- NJ's Statewide Transition Plan is due to the federal government (CMS) on March 17, 2015.
- A DRAFT version of the Statewide Transition Plan will be posted for comments at [www.state.nj.us/humanservices/dmahs/info/](http://www.state.nj.us/humanservices/dmahs/info/)
- Written comments can be sent to:
  - Office of Deputy Commissioner Lowell Arye
  - Department of Human Services
  - PO Box 700
  - 222 West State Street
  - Trenton, NJ 08625-0700



## Remember: Your Input is Key

- Submit your written comments to us when the draft of the Statewide Transition Plan is posted during the 30-day public comment period.
- The state will consider your comments and update its Statewide Transition Plan, as appropriate.
- You can submit your comments to us at [mahs.hcbs@dhs.state.nj.us](mailto:mahs.hcbs@dhs.state.nj.us) , on the website address shown in the previous slide or by Parcel Post.

# Questions & Answers