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| **OVERVIEW** |

SLIDE #1

This session will provide you with information about the Community Settings Rule as a requirement for waiver services. Your application must include a discussion of how your agency complies with the Community Settings Rule in your delivery of services.

SLIDE #2

In January 2014 the Centers for Medicare and Medicaid Services (CMS) published the final rule that amended Medicaid regulations to define and describe state plan section 1915i home and community-based services under the Social Security Act amended by the Affordable Care Act. Often referred to as the “Community Settings Rule” or the “HCBS Settings Rule” this final rule amended Medicaid regulations related to section 2401 of the Patient Protective and Affordable Care Act of 2010.

SLIDE #3

The final rule accomplished several objectives, among them:

* Offered states new flexibilities in providing necessary and appropriate services to elderly and disabled populations
* Conveyed expectations regarding person-centered plans of care, including the requirement that these plans document an individual’s choice of an HCB setting from among options that meet the individual’s needs
* Provided characteristics of settings that are home and community-based as well as settings that may not be home and community-based

SLIDE #4

The final rule also sought to improved Medicaid HCBS and to support strategies to help states meet their obligations under the Americans with Disabilities Act (ADA) and the Supreme Court decision in Olmstead v. L.C. In the Olmstead decision the Court affirmed a state’s obligations to provide covered program services to eligible individuals with disabilities in the most integrated setting appropriate to their need (Final Rule, p. 5)

SLIDE #5

In its final rule, CMS moved from defining HCBS settings by “what they are not” and toward defining them by the nature and quality of individual’s experiences. These settings now focus on a more outcome-oriented definition rather than one based on the setting’s location or physical characteristics.

CMS has determined that home and community-based settings must exhibit specific characteristics to be eligible for delivery of HCBS under Medicaid.

HCBS settings must have all the following qualities:

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community. This includes:
   1. Opportunities to seek employment and work in competitive integrated settings
   2. Engage in community life
   3. Control personal resources
   4. Receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS
2. The setting 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.
3. Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.
4. Optimizes, but does 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.
5. Facilitates individual choice regarding services and supports, and who provides them

SLIDE #6

Provider-owned or controlled residential settings must meet the following conditions in addition to those previously mentioned:

* The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has at least the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.
* Each individual has privacy in their sleeping or living unit
  + Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors
  + Individuals sharing units have a choice of roommates in that setting
  + Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
* Individuals have the freedom and support to control their own schedules and activities
* Individuals may have visitors of their choosing at any time
* The setting is physically accessible to the individual
* Any modifications of the additional considerations specified in 1-4 must be supported by a specific assessed need and justified in the person-centered service plan

SLIDE #7

Home and community-based settings do not include the following:

* A nursing facility
* An institution for mental diseases
* An intermediate care facility for individuals with intellectual disabilities
* A hospital
* Any other locations that have qualities of an institutional setting.

Any setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution.

SLIDE #8

The final rule established additional requirements for Medicaid HCBS waivers:

* The State must establish needs-base criteria for determining an individual’s eligibility under the State plan for HCBS benefit and may establish needs-based criteria for each specific service.
* The State must establish needs-based criteria for nursing facilities, ICF for individuals with intellectual disabilities, and hospitals that are more stringent than the needs-based criteria for the State plan HCBS benefit.
* The State must determine eligibility for the State Plan HCBS benefit through an independent evaluation of each individual.
* The State must perform independent reevaluations of each individual receiving the State plan HCBS benefit at least every 12 months to determine whether the individual continues to meet eligibility requirements.

SLIDE #9

Based on the independent assessment, the State plan HCBS benefit must include a person-centered planning process driven by the individual. This process must:

* Include people chosen by the individual
* Provide necessary information to enable the individual to make informed decisions
* Occur at times and locations convenient to the individual
* Reflect cultural considerations of the individual and provide information in plain language and in a manner accessible to individuals with disabilities and persons who are limited English proficient
* Include strategies for solving conflict or disagreement within the process
* Offer choices to the individual regarding services and supports and who provides them
* Include a method for the individual to request updates to the plan
* Record the alternate HCBS settings the individual considered

The person-centered plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual regarding preferences for delivery of these services and supports.

The person-centered plan must:

* Reflect that the individual has chosen the setting in which they reside
* Reflect the individual’s strengths and preferences
* Reflect the clinical and support needs as identified through an assessment of functional need
* Include individually identified goals and desired outcomes
* Reflect the services and supports (paid and unpaid) that will the assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports.
* Reflect risk factors and measures in place to minimize them
* Be understandable to the individual and their supports
* Identify the person responsible for monitoring the plan
* Be agreed to with the informed consent of the individual and everyone responsible for its implementation
* Be distributed to everyone involved in the plan
* Include services that the individual self-directs
* Prevent unnecessary or inappropriate services
* Document how to modify the plan

The final rule also includes requirements for self-directed options for individuals and state plan administration that includes a quality improvement strategy that incorporates program performance and quality of care.