



**CMS HCBS Final Rule,  
Community Settings and DDS  
Summer 2014**



# Goals of presentation

- Build a common understanding of CMS HCBS Community Rule related to settings
- Present information on what work DDS has completed to date
- Explain next steps and timelines for DDS and its providers

# Glossary

- CMS= Centers for Medicare and Medicaid Services
- HCBS= Home and Community-Based Services

# Note

- This presentation only highlights the residential setting requirements of the CMS Final Rule. Further CMS guidance and additional DDS action is expected for:
  - Community Rule application to Day and Employment Services
  - Person-Centered Planning
  - Additional administrative Waiver changes

# Background

- In March 2014, CMS published its final rule on the definition of community settings for HCBS Waivers.
- The purpose to maximize the opportunities for HCBS Waiver participants to have access to the benefits of community living and to receive services in the most integrated setting.
- Ensures that individuals receive services in the community to the same degree of access as individuals not receiving HCBS services.

# What qualifies as a community setting?

- A more outcome-oriented definition of home and community-based settings
- Not solely based on:
  - Location
  - Geography
  - Physical characteristics
  - Size

# What qualifies as a community setting?

- Setting is integrated in and supports full access to the greater community
- Setting is selected by the individual from among setting options
- Setting ensures privacy, dignity , respect and freedom from coercion and restraint
- Setting facilitates individual choice regarding services and supports



# In provider-owned and controlled settings

- 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, including protections from eviction that tenants have under the landlord/tenant law of the state.

# In provider-owned and controlled settings

- Each individual must have
  - privacy in their sleeping or living unit, including entrance doors lockable by the individual
  - choice of roommates
  - freedom to furnish and decorate their sleeping or living unit

# In provider-owned and controlled settings

- Freedom to control their own schedules and activities, access to food at any time, able to have visitors at any time
- Setting must be physically accessible
- Documentation in the person-centered service plan of any modifications to the requirements.

# Never a community setting

≠ Nursing facility

≠ IMD

≠ ICF/ID

≠ Hospital

≠ Any other locations that have the qualities of an institutional setting

# Presumptions

- CMS presumes that the following settings have the qualities of an institution and would not qualify a community setting
  - Setting located in a building that provides inpatient institutional treatment
  - Setting located in a building on the grounds of, or immediately adjacent to a public institution

# Presumptions

- Any other setting that has the effect of isolating individuals receiving HCBS from the broader community of individuals
  - The setting is designed to provide people with disabilities with multiple types of services and activities on site
  - People in the settings have limited interaction with the broader community
  - Settings use/authorize interventions that are used in institutional settings such as seclusion

# Presumption Examples

- Farmstead in rural areas with little access to the broader community
- Gated/secured community for people with disabilities consisting primarily of people with disabilities and the staff that work with them
- Residential schools with both the educational and residential program in the same building or buildings in close proximity
- Multiple settings co-located and operationally related that congregate a large number of people with disabilities together and provide shared programming and staff.

# Rebuttable presumptions

- These presumptions are rebuttable.
- A state may provide evidence to show that a setting presumed to be out of compliance does have a quality of a HCBS setting.
- This evidence will be subject to “heightened scrutiny” from CMS.

# To comply with the rule

- The state must engage in an extensive self-assessment process of its HCBS settings to determine whether we meet the established standards and based on this assessment, develop a transition plan to demonstrate to CMS how we intend to come into compliance.

# To comply with the rule

- States will have 120 days from the submission of a Waiver application, renewal or amendment to submit a transition plan to CMS.
- If no applications or amendments are submitted, States must submit a plan no later than March 16, 2015.
- Once approved, states will have up to 5 years (from March 17, 2014) to implement their transition plans.

# DDS work to date

- With 8 of the 10 waivers (DDS waivers, ABI and MFP waivers), DDS has the majority of settings and providers in MA.
- DDS has conducted a review of existing regulations, licensure and certification standards and Waiver service definitions to assess compliance with HCBS requirements.
  - ✓ This review indicated major areas of compliance.
- DDS has developed a tool to assess settings' compliance with HCBS requirements.
- DDS is developing overall policy statement re: settings.

# DDS Next steps

- Regions and Areas will work with providers to cooperatively assess specific settings (that may be challenged to meet the rule) with the tool that addresses all of the qualifications necessary to be considered a community setting.
- The tool is based on CMS' exploratory questions and involves a series of yes/no answers along with either a listing of evidence for yes answers or proposed changes (if any) for no answers.

# Depending on the assessment...

- Settings will be categorized:
  1. The setting fully complies with the CMS requirements.
  2. The setting, with changes, will comply with the requirements.
  3. The setting is presumed to have the qualities of an institution but for which the State will provide evidence to show that the setting does have the qualities of an HCBS setting (“heightened scrutiny”).
  4. The setting cannot meet the requirements.

# DDS Next steps

- DDS will develop the transition plan for its Waiver providers and settings by paying close attention to categories 2, 3 & 4.
  2. The setting, with changes, will comply with the requirements.
  3. The setting is presumed to have the qualities of an institution but for which the State will provide evidence to show that the setting does have the qualities of an HCBS setting (“heightened scrutiny”).
  4. The setting cannot meet the requirements

# Transition Plan and Stakeholder Input

- As DDS' plan is developed, we will be involving a small, dedicated and time-limited stakeholder group to review recommendations and provide further input into the plan.
- DDS' plan will then be forwarded to MassHealth for their review and inclusion in the statewide transition plan.
- MassHealth will present the statewide plan for public comment and review in late fall.
- MassHealth, with DDS and other agency help, will address all comments before the plan is submitted to CMS.

Task	Start	End
1. Distribute locations of settings to Areas/Regions a. Verify settings that initial analysis indicates may not meet requirements b. Cooperatively conduct self-assessment using tool	<b>July 15</b>	<b>Sept 1</b>
2. Develop draft transition plan regarding: a. Regulatory changes, if necessary b. Policy changes, c. Specific transition plans for settings e.g., “lease” agreements, locks on unit doors d. Preliminary recommendations regarding settings that can or cannot meet requirements	<b>Aug 15</b>	<b>Sept 30</b>
3. Form Stakeholder Group to review and finalize draft transition plan	<b>Aug 15</b>	<b>Sept 30</b>
4. Submit draft transition plan to MassHealth		<b>Oct 1</b>
5. Post draft transition plan		<b>Oct 16</b>
6. Hold public forums ( coordinated by MassHealth)	<b>Nov 1</b>	<b>Nov 16</b>
7. Review comments/revise plan	<b>Nov 16</b>	<b>Jan1</b>
8. Finalize and post plan	<b>Jan 1</b>	<b>Jan 15</b>
9. Submit plan to CMS		<b>Jan 15</b>

# Thank you

- Questions?

