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### **Background**

On March 17<sup>th</sup>, 2014 the Centers for Medicare and Medicaid Services (CMS) published its final rule governing the settings in which home and community-based services (HCBS) are provided. The rule, which was several years in the making and subject to much public input, sets out CMS' expectations for settings in which HCBS services are provided. The purpose of these regulations is to ensure that individuals receive HCBS Waiver services in settings that are integrated in and support full access to the greater community. This includes opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.

### **What the Rule Does**

In setting out the final rule, CMS moved away from defining settings based solely on specific location, size, geography or physical characteristics to defining them based on outcomes, that is, the nature and quality of the person's experiences.

Settings must have the following characteristics:

- Setting is integrated in and supports full access to the greater community
- Setting is selected by the individual from setting options including non-disability specific settings and option for private unit in residential setting
- Setting ensures privacy, dignity, respect and freedom from coercion and restraint
- Setting facilitates individual choice regarding services and supports
- Setting ensures individuals receive services in the community to the same degree of access as individuals not receiving Medicaid Home and Community-based services
- In a provider owned or controlled setting:
  - 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.
  - Each individual must have privacy in their sleeping or living unit, including entrance doors lockable by the individual, choice of roommates, and freedom to furnish and decorate their sleeping or living unit
  - Freedom to control their own schedules and activities, access to food at any time, able to have visitors at any time
  - A physically accessible setting
  - Documentation in the person-centered service plan of any modifications to the above to demonstrate that the least restrictive interventions are being used

CMS is also very clear about what does not and cannot constitute a community setting including the following:

- Nursing Facility
- IMD (Institutions for Mental Disease)
- ICF/ID
- Hospital
- Any other locations that have qualities of an institutional setting

Other settings are presumed to have the qualities of an institution if:

- 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
- Setting has the effect of isolating individuals receiving HCBS from the broader community of individuals
- Settings that have the effect of isolating individuals from the broader community may have the following characteristics:
  - 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
  - Some examples of such settings are
    - farmstead in rural areas with little ability access 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, and
    - multiple settings co-located and operationally related that congregate a large number of people with disabilities together and provide shared programming and staff (exception to this: Continuing Care Retirement Communities).

### **State Process for Achieving Compliance with HCBS Community Requirements**

States have 120 days from the time that a new waiver application, a renewal, or an amendment to an existing waiver is done to submit a transition plan to CMS, or one year (March 16, 2015) if there is no new, renewal, or amendment to an existing waiver. States will then have up to March 16, 2019 to implement the plan once approved by CMS

Massachusetts will need to conduct a review and analysis of its regulations, policies and quality assurance systems to determine how they meet the spirit and intent of the new HCBS rule as well as an assessment of specific settings in which HCBS are delivered in order to determine:

- Which settings fully comply with the requirements
- Which settings, with changes, will comply
- Which settings are presumed to be out of compliance, but for which the State will provide evidence to show that those settings do have the qualities of a HCBS setting (“heightened scrutiny”)
- Which settings cannot meet the requirements

Massachusetts must then submit a transition plan to CMS that describes the actions it will take or require providers to take to bring non-compliant settings into full compliance.

Since the new rule applies to all of a State's Waiver Programs, the Office of Medicaid (MassHealth) will be responsible for submitting the State's overall transition plan to CMS for review and approval. Prior to submission of the transition plan, the State must seek input from the public for its proposed transition plan, with a minimum of 30 days advance notice of the Plan, provide a summary of public comments, a summary of modifications made to the plan in response to comments, and posting of modifications made to the plan no later than the date of submission to CMS.

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