

Guidance to providers to assist in compliance with HCB setting requirements

Criteria for DDS Review of Provider Plans for Compliance with the HCBS Settings Requirements

Introduction

In January 2014, CMS promulgated regulations which identify specific qualities for sites at which home and community based services may be provided. A compliant setting is integrated in the community and provides access to the whole range of opportunities available to the general population. During the summer of 2014, 14 providers representing approximately 58 different settings engaged in a self-assessment process to determine their compliance with the CMS HCB settings requirements. The 14 providers that participated in the self-assessment were selected based on the characteristics of their settings, and which may be presumed to have challenges meeting the HCB settings requirements. Examples of such settings included: campus-based homes, settings that are clustered together, settings adjacent to hospitals or educational facilities, and settings that may have the effect of isolating individuals from the greater community.

DDS staff met with the 14 providers and reviewed their self-assessments. Based on the results of the self-assessments and CMS guidance regarding settings that may be presumed not to be home and community-based, DDS is requesting providers to engage in an in-depth strategic planning process with their stakeholders. The intent of this process will be to actively engage participants, families, and board members in shaping the future direction of services and supports. Providers will need to develop specific and detailed plans regarding modifications they will make between now and March 16, 2019 to assure that they meet the standards contained in the CMS home and community setting rule/regulation.

DDS is committed to working collaboratively with providers to reach the shared goal of integration, access and inclusion in community life. Towards this end, DDS is outlining some general criteria for providers to use, in addition to the guidance materials provided by CMS, to shape strategic plans and future direction. In addition, DDS will utilize these criteria to review the quality and content of the detailed plans to be submitted to DDS no later than December 31, 2015.

Criteria to be applied

The criteria listed below are not intended to be all inclusive, but are put forth as general guidelines. Providers should also review the governing regulation 42 CFR 441.301(c)(4) and (5). They are divided by criteria to be applied to the individual's experience and criteria to be applied to the physical and programmatic components of the setting itself.

Criteria based on the individual's experience

- Specific plans should include strategies to enhance an individual's experience through:
 - More opportunity for individualized, rather than group activities, directly related to an individual's interests

- o More opportunity to develop relationships with individuals of the person's choosing, including people not a part of the setting
- o Choices and opportunities to engage in meaningful day activities other than in the same campus or setting, especially focusing on activities in the broader community
- o Greater ability to determine one's own schedule and routines, including schedules related to waking up, personal care, participating in activities and going to bed
- o Greater ability to choose the staff that render services to the individual, including staff providing personal care
- o Increased transportation options where public transportation is not available
- o Greater choice over roommates/ housemates and housing options
- o Eliminating any rules regarding when one must eat, what access to food one has (unless medically contra-indicated), where one must dine, where one must sit during mealtime, when one may have visitors, or when one must go to sleep, get up, and bathe that are based on staff convenience rather than personal choice
- o Increasing individuals' decision making opportunities from just "input" or "suggestions" to actual control over decisions
- o Increased focus on individual outcomes rather than programs
- o Development of specific processes to ensure that modifications to any of the experience requirements of the HCBS Final Rule are supported by an assessed need and justified in planning documents for each individual
- o Implementation of modifications that address specific areas of the self-assessment that were identified as not in compliance with the HCBS Final Rule

Criteria based on the configuration of the physical setting

- Specific plans should include strategies to modify the physical setting through, where applicable:
 - o Developing legally enforceable written agreements signed by the individual and/or his or her guardian to safeguard against eviction
 - o Reducing the number of individuals residing in one location and identifying potential towns/sites where individuals might be relocated
 - o Providing single bedrooms
 - o "Unbundling" residential and day services when they are provided in the same location through providing choice and access to non-co-located services in the community
 - o Moving homes that are clustered or co-located to other settings more integrated into the community, significantly limiting the number of homes in any one setting
 - o Increasing the number of services that are provided off-site, e.g. health, wellness, day activities, clinical/behavioral, recreational to increase participation in more services/supports/activities in the community
 - o Placing locks on bedroom doors
 - o Increasing the physical accessibility of the setting, particularly for individuals with mobility impairments

- o Developing specific processes to ensure that modifications to any of the setting requirements are supported by an assessed need and justified in planning documents for each individual
- o Implementing modifications that address specific areas of the self-assessment that were identified by the provider

In reviewing the plans submitted by providers, DDS will look at:

- How well the plan addresses the issues above in the timeframe allotted
- Whether the specificity of the strategies and modifications contained in the plan is sufficient
- Whether the plan identifies specific steps and milestones that would assist in measuring progress
- How individuals, family members, board members and other stakeholders were included in the development of the plan