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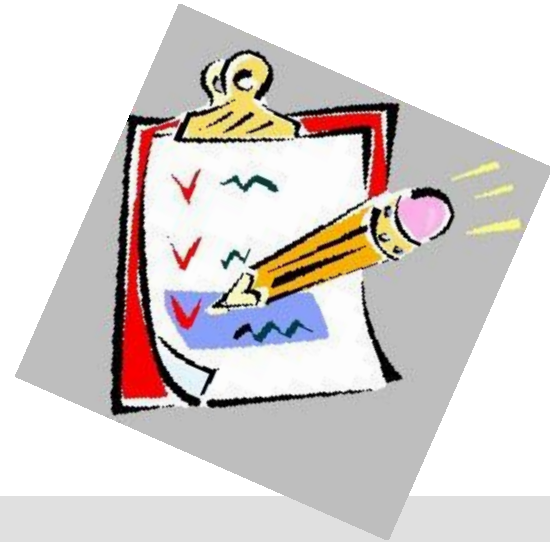
TN

HCBS Settings Final Rule and Heightened Scrutiny

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Agenda

- Employment and Community First CHOICES vs. the HCBS Settings Final Rule
- Intent of HCBS Settings Final Rule
- Preliminary Provider Self-Assessment Results
- Overview of Heightened Scrutiny Review Process
- Timeline of Activities
- Provider Perspective



ECF vs. HCBS Settings Final Rule

2 BIG things happening at the same time !

- 1 – ECF CHOICES

- HCBS program for **new** people with ID/DD focused on employment and community integration
- Current activities include developing program rules and policies, provider network development and capacity building, MCO readiness,
- Target Implementation Date: July 1, 2016

- 2 – Federal HCBS Settings Final Rule Compliance

- Separate and apart from ECF CHOICES (but applicable to ECF CHOICES)
- CMS final rule on expectations for HCBS services and settings
- All states must come into compliance
- Rule issued January 2014; training and assessment began in 2014; transition activities must conclude by March 2019; CMS guidance continues to be issued; CMS review is ongoing

Intent of HCBS Setting Final Rule

- *Applicable to*
 - 1915(c) HCBS Waivers
 - 1915(i) State Plan HCBS
 - 1915(k) Community First Choice
- CMS intends to apply to 1115 demonstration waivers as they are approved/amended/renewed
 - Will apply to ECF CHOICES

Intent of HCBS Setting Final Rule

- Codifies that person-centered service plan for participants in Medicaid HCBS programs must be developed through a person-centered planning (PCP) process—from guidance to rule—and specifies requirements pertaining to PCP
- For the first time, CMS has set standards to ensure Medicaid funded HCBS are provided in settings that are non-institutional in nature.
 - Establishes an outcome oriented definition **focused on the nature and quality of the member's experience**
 - Ensure members receiving HCBS:
 - have access to benefits of community living, and
 - have full opportunity to be integrated in their communities.
- Enhances protections for persons receiving services

Intent of HCBS Setting Final Rule

Establishes:

- Settings that are **not** HCBS
- Settings that are **presumed** as not HCBS
- Mandatory requirements for the qualities of an HCBS setting
- *Additional* requirements for provider-owned or controlled HCBS residential settings
- State compliance and transition requirements

Intent of HCBS Setting Final Rule

What is presumed not HCBS?

- Settings that have the qualities of an institution (applies to residential and non-residential services):
 - Located in a public or privately operated building that provides inpatient institutional treatment
 - Located on the grounds of, or immediately adjacent to a public institution
 - Has the effect of isolating members who receive Medicaid funded HCBS from the broader community of people who do not receive Medicaid funded HCBS

Intent of HCBS Setting Final Rule

Settings presumed as not HCBS:

- May **not** be included in states' HCBS programs unless:
 - State submits evidence (including public input) demonstrating that the setting does have the qualities of an HCBS setting and not the qualities of an institution; AND
 - The Secretary finds, based on a heightened scrutiny review of the evidence, that the setting meets the requirements of HCBS settings and does not have the qualities of an institution

Intent of HCBS Setting Final Rule

- CMS guidance on the heightened scrutiny process identifies settings that have the following two characteristics as *potentially* having the effect of isolating individuals:
 - *The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.*
 - *The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.*
- The guidance also identifies the following characteristics of settings that isolate:
 - *The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities.*
 - *People in the setting have limited, if any, interaction with the broader community.*
 - *Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).*

Intent of HCBS Setting Final Rule

- CMS guidance identifies **types of evidence** that should be submitted to CMS to demonstrate that a setting does not isolate individuals receiving HCBS from the broader community of individuals not receiving HCBS:
 - *The setting is integrated in the community to the extent that persons without disabilities in the same community would consider it a part of their community and not associate the setting with the provision of services to persons with disabilities.*
 - *The individual participates regularly in typical community life activities outside of the setting to the extent the individual desires and these activities:*
 - *Do not include only those organized by the provider agency specifically for a group of individuals with disabilities and/or involving only paid staff*
 - *Do foster relationships with community members unaffiliated with the setting*
 - *Services to the individual, and activities in which the individual participates, are engaged with the broader community*

Intent of HCBS Setting Final Rule

Per CMS, any residential or non-residential setting where individuals live and/or receive HCBS must have the following five qualities by March, 2019:

- 1) Is integrated in and supports full access of individuals to the greater community
 - Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and
 - Ensures that individuals receive services in the community, to the same degree of access as individuals not receiving HCBS

- 2) Is selected by the individual from among setting options including non-disability specific settings and options for a private unit in a residential setting
 - Person-centered service plans document the options based on the individual's needs, preferences, and for residential settings, resources available for room and board

Intent of HCBS Setting Final Rule

- 3) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint
- 4) Optimizes 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

Preliminary Provider Self-Assessment Results

Total Number of Provider Settings Assessed: 1245

- Total Residential Provider Settings: 704
 - Residential Habilitation and Medical Residential: 170
 - Family Model Residential: 290
 - *Intensive Behavioral Residential Services: 0
 - Supported Living: 144
 - Assisted Care Living Facility: 99
 - Adult Care Home: 1
- *Note: IBRS was a relatively new waiver service and a provider had not been established at the time of the provider self-assessment. DIDD has since certified IBRS sites. IBRS sites will be subject to the heightened scrutiny review process to ensure compliance.

Preliminary Provider Self-Assessment Results

- Total Non-Residential Settings: 541
 - Community-Based Day: 167
 - Facility-Based Day: 86
 - Supported Employment: 99
 - In-Home Day: 147
 - Adult Day Care: 42

Preliminary Provider Self-Assessment Results

Reported Compliance among Providers:

- Provider settings deemed 100% compliant with the HCBS Settings Rule - **14%**
- Provider settings who have identified at least one area that is currently out of compliance with the HCBS Settings Rule - **84%**
- Provider settings deemed non-compliant with HCBS Settings Rule and opting not to complete a provider level transition plan - **2%** (27 settings)

Preliminary Assessment Results

1048 Transition Plans Received

Areas identified as non-compliant:

- Physical Location: 367 or 35%
- Community Integration: 694 or 66%
- Residential Rights (Residential Only): 408 or 39%
- Living Arrangement (Residential Only): 552 or 53%
- Policy Enforcement Strategy: 936 or 89%

Overview of Heightened Scrutiny Review

CMS guidance states:

- *“Importantly, any setting regardless of location that has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving HCBS is also presumed to be institutional, and therefore requires information from the state to overcome that presumption and describe how the HCBS settings requirements are met.”*

Overview of Heightened Scrutiny Review

Services/settings impacted by heightened scrutiny review:

- Adult Day Care (CHOICES)
- Assisted Care Living Facilities (CHOICES)
- **Facility Based Day (ID Waiver)**
- **Residential Habilitation settings with more than 4 persons (ID Waiver)**
- **Supported Living and Residential Habilitation settings in close proximity**
- **Intensive Behavioral Residential Services (ID Waiver)**

Overview of Heightened Scrutiny Review

Heightened scrutiny review will consist of:

- A review of data pertaining to services utilized by all persons receiving services in the specified setting
- An on-site visit and assessment of physical location and practices
- A review of person-centered support plans and Individual Experience Assessments for individuals receiving services in the setting
- Interviews with service recipients
- A secondary review of policies and other applicable service related documents
- Additional focused review of the agency's proposed transition plan
 - Including how each of the above is expected to be impacted as the plan is implemented
 - Transition plans may require revisions
- Collection of evidence to submit to CMS to demonstrate compliance (if the state in fact feels the setting meets the HCBS requirements)

Overview of Heightened Scrutiny Review

Additionally:

- The CMS heightened scrutiny process requires public input and as such will be incorporated into the State's assessment process.
- TennCare will also engage advocacy organizations in the review of evidence gathered through the process.

Timeline of Activities

February 17th, 24th, 25th and 26th

- Consumer/family conference calls/webinars
 - These sessions will be specific to the impact on Facility Based Day and sheltered workshop services

March 2nd, 3rd, 9th, 10th and 11th

- Provider information sessions
 - These sessions will include a walk through of the review process and any tools that may be utilized
 - Knoxville, Chattanooga, Nashville, Jackson and Memphis – details to follow soon

April – December 2016

- TennCare, DIDD and MCOs conduct heightened scrutiny review process
 - These reviews will consist of a more in depth assessment of individual service settings, with particular focus on the experiences of persons served in those settings.
 - *Remember - per CMS, evidence of how a setting overcomes its presumed institutional qualities should focus on the qualities of the setting and how it is integrated in and supports full access of individuals receiving HCBS into the greater community, **not** on the aspects and/or severity of the disabilities of the individuals served in the setting.*

Provider Perspective

Transitioning from Facility Based Day services;
it *can* be done -