ADDRESSING THE NEEDS OF ADULTS WITH AUTISM

CMS Final Rule Implementation & State Transition Plans

Prepared and presented by Desiree Kameka

Madison House Autism Foundation
National Coordinator, Coalition for Community Choice
The HCBS Final Rule, Guidance, and STP’s- where to find information about your state.

What we know from State Transition Plans given initial and final approval

Guidance from CMS and its Challenges

Are you ready for the assessment of your HCBS setting/s?
2008: Notice of Proposed Rule Making for 1915(i) - not finalized
2009: NPRM for 1915(c)
2011: NPRM for 1915(c)
2011: NPRM for 1915(k)
2012: NPRM for 1915(i) and 1915(k)
2013: NPRM for 1915(c), (i), and (k)
2014: CMS-2249-F/CMS-2296-F published

“In this Final Rule, **CMS is moving away from defining home and community settings by “what they are not” and toward defining them by the nature and quality of individuals experiences.** The home and community-based setting provisions in this final rule establish a more outcome-oriented definition of home and community-based settings, rather than one based solely on a setting’s location, geography, or physical characteristics.” –CMS Final Rule Q&A
What’s in the Final Rule?

• New regulations and criteria for residential and non-residential settings that use HCBS funding
• Settings eligibility based on individual outcomes and experiences
• Emphasis on integration in, and full access to, community same as those who are not receiving waiver services
• No setting size, physical characteristics, prohibition of disability-specific person limits
• Emphasized authority of and mandates Person Centered Plans to be created and reviewed in order to access HCBS funds
• Ensuring transparency and accountability via public comment periods
• Set a baseline, but gave states the flexibility to implement more restrictive regulations
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>Jan. 10, 2014</td>
<td>- HCBS Final Rule published</td>
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<tr>
<td>March 17, 2014</td>
<td>- Transition Clock Starts&lt;br&gt;- Person-centered requirements of Final Rule apply</td>
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<tr>
<td>March 17, 2015</td>
<td>- State Transition Plans Due to CMS, revised by public comment</td>
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<tr>
<td>March 30, 2016</td>
<td>- CMS expects states to submit an amended STP with their systemic assessment results [regulations, licensing requirements, survey assessment results, etc.] This includes posting the amended STP for public comment and including the states’ responses.</td>
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<tr>
<td>July 31, 2016</td>
<td>- CMS expects states to complete their site-specific assessments and post these results for public comment.</td>
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<tr>
<td>September 30, 2016</td>
<td>- CMS expects results to be submitted CMS</td>
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<tr>
<td>March 17, 2019</td>
<td>- Transition Complete, All Settings Must be in Compliance</td>
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Where to Find Resources on HCBS Final Rule

Medicaid website gives links to Final Rule, CMS guidance documents, State Transition Plans, and any official correspondence between states and CMS regarding the State Transition Plans: [http://www.medicaid.gov/HCBS](http://www.medicaid.gov/HCBS)
Medicaid website:
Complete Final Rule. First ~70 pages is CMS responses to public comment of NPRM’s.

CMS webinar that gives overview of Final Rule

Q&A about the Final Rule

CMS email for questions and concerns

Where to Find Resources on HCBS Final Rule

- Self Direction
- Integrating Care
- Money Follows the Person
- Real Choice System Change
- Health Homes
- PACE
- Community Living
- Workforce

Information provided by the Disabled and Elderly Health Programs Group. To request clarifications please contact hcbs@cms.hhs.gov

Recent Guidance

<table>
<thead>
<tr>
<th>Authorities</th>
<th>State Transition Plans</th>
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The final Home and Community-Based Services regulations set forth new requirements for several Medicaid authorities under which states may provide home and community-based long-term services and supports. The regulations enhance the quality of HCBS and provide additional protections to individuals that receive services under these Medicaid authorities.

- Final Regulation: 1915(i) State Plan HCBS, 5-Year Period for Waivers, Provider Payment Reassignment, Setting Requirements for Community First Choice, and 1915(c) HCBS Waivers - CMS-2249-F/CMS-2296-F
  - Informational Bulletin - Final regulations for HCBS provided under Medicaid’s 1915(c), 1915(i) and 1915(k) authorities
  - Press Release - Final regulations for HCBS provided under Medicaid’s 1915(c), 1915(i) and 1915(k) authorities
  - Fact Sheets Regarding Final Regulation CMS-2249-F/CMS-2296-F
    - Overview of Regulation
    - 1915(c): Changes to HCBS Waiver Program
    - 1915(i): Key Provisions for HCBS State Plan Option
    - Summary of Key Provisions of the HCBS Settings Final Rule
    - HCBS Final Rule Webinar Presentation Download
    - Final Rule: Questions and Answers

Settings Requirements Compliance Toolkit

Additional Resources
Medicaid website:
Summary of fully compliant setting regulations based on Final Rule (States can add more stringent criteria)

CMS guidance, NOT part of the Final Rule but is guiding targeted heightened scrutiny settings

Q&A for HCBS settings and public comment requirements
Helps clarify the heightened scrutiny process

Visual of STP and heightened scrutiny process
CMS questions being used by states and 3rd party assessment teams in determining if settings have HCBS characteristics

Most recent CMS guidance on planned projects and PCP requirements
HCBS Setting Compliance Implementation

From CMS Compliance Flowchart:

Assessment Results
Discuss HCBS settings included in the waiver application in terms of how they conform to HCBS characteristics, in 3 categories:

YES
Settings meet HCBS characteristics

Propose Changes
State proposal with timeline & milestones to conform to HCBS

CMS Review
Approval; Monitor completion

Not Yet
Settings currently do not meet HCBS characteristics, but may:

Presumptively Non-HCBS Settings
State decides to submit evidence to CMS

Heightened Scrutiny Process
CMS reviews evidence presented by the state and other stakeholders

NO
Settings cannot meet HCBS characteristics:
• Settings cannot conform
• Presumptively institutional and state determines setting is incompatible with HCBS
• IMD, NF, ICF/IID, Hospital

Coalition for Community Choice
Summary of regulatory requirements on fully compliant HCBS settings:

**Regulatory Requirements for Home and Community-Based Settings:**

For 1915(c) home and community-based waivers and, for 1915(i) State plan home and community-based services, home and community-based settings must have all of the following qualities defined at §441.301(c)(4) and §441.710 respectively, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

- The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including 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.
- 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. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.
- Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.
- 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.
- Facilitates individual choice regarding services and supports, and who provides them.
- In a provider-owned or controlled residential setting, in addition to the qualities specified above, the following additional conditions must be met:

1. 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 a minimum, the same responsibilities and protections from eviction that tenants have under the landlord-tenant law of the State in which the setting is located.

2. Any modification of the additional conditions specified in items 1 through 4 above, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:
   - Identify a specific and individualized assessed need.
   - Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
   - Document less intrusive methods of meeting the need that have been tried but did not work.
   - Include a clear description of the condition that is directly proportionate to the specific assessed need.
   - Include regular collection and review of data to measure the ongoing effectiveness of the modification.
   - Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
   - Include the informed consent of the individual.
   - Include an assurance that interventions and supports will cause no harm to the individual.
**Settings That are Not Home and Community-Based:**

For 1915(c) home and community-based waivers, settings that are not home and community-based are defined at §441.301(c)(5) as follows:

- A nursing facility;
- An institution for mental diseases;
- An intermediate care facility for individuals with intellectual disabilities;
- A hospital; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary.

For 1915(i) State plan home and community-based services, settings that are not home and community-based are defined at §441.710(a)(2) as follows:

- A nursing facility;
- An institution for mental diseases;
- An intermediate care facility for individuals with intellectual disabilities;
- A hospital; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary.
**HCBS Final Rule Setting Requirements**

**Settings that are Presumed to have the Qualities of an Institution:**

For 1915(c) home and community-based waivers, section 441.301(c)(5)(v) specifies that the following settings are presumed to have the qualities of an institution:

- any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,
- any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or
- any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

For 1915(i) State plan home and community-based services, section 441.710(a)(2)(v) specifies that the following settings are presumed to have the qualities of an institution:

- any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,
- any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or
- any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

*These are PRESUMED to be institutional thus MAY need to undergo the heightened scrutiny process as determined by the State.*

Further CMS guidance was then released on ‘settings that tend to isolate’
CMS Guidance: Settings that tend to isolate

Settings that isolate people receiving HCBS from the broader community may have *any* of the following characteristics:

- 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)

Non-exhaustive list of examples of residential settings that *typically* have the effect of isolating people receiving HCBS from the broader community:

- Farmstead or disability-specific farm community
- Gated/secured “community” for people with disabilities
- Residential schools
- Multiple settings co-located and operationally related (i.e. operated and controlled by the same provider)
  - Excluded CCRCs (Continuing Care Retirement Communities)
• First case of a setting presumed to be institutional as it was located on the grounds of an institutional setting: Life Skills & Training Center, Grafton, ND
• CMS contracted with an independent social research organization, NORC of the University of Chicago, to conduct the review
• Information was provided by State and other parties
• Determined that is does not have qualities of an institution and
• Does have the qualities of HCBS

LSTC met HCBS setting criteria based on access to and integration of residents in community.
State Transition Plans & CMS Approval

- States document how they will evaluate HCBS settings, state policy & procedures in the form of a STP
- Public Comment
- Revision

Final Rule

STP submitted to CMS

- CMS reviews and sends CMIA letter
- State makes revisions based on CMIA
- Public comment if applicable

Amended STP submitted to CMS

Includes results of systematic and setting assessment, public comment, subsequent remediation actions

CMS gives initial / final approval

- State continues to implements remediation activities and/or Heightened scrutiny process

Tennessee is the only state to have **Final Approval**

Ohio and Kentucky have received **Initial Approval**
Where to Find your STP

Medicaid website:

1) CLICK THIS TAB to change the information displayed

2) CLICK THIS LINK to get to page with STP and CMIA
Where to Find your STP

Medicaid website:

State Transition Plan submitted by your state including summary of public comments.

Clarifications and/or Modifications required for Initial Approval (CMIA): The communication CMS sends to the state notifying the state that public comment, input and summary requirements are met, but CMS has identified issues that must be resolved in the STP prior to initial approval.

Statewide Transition Plans (STP)

The table below provides all available documents related to Statewide Transition Plans. The table will be updated as states submit additional documents and additional documents are available from CMS. More information about the statewide transition plans and the final HCBS reauthorization published January 26, 2014, is available under Recent Guidance on the HCBS page.

<table>
<thead>
<tr>
<th>State</th>
<th>Proposed Plan URL</th>
<th>CMIA</th>
<th>Initial Approval</th>
<th>Final Approval</th>
<th>Approved Plan</th>
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***Look for deadlines!
Where to Find your STP

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<tr>
<th>State</th>
<th>Medicaid website</th>
<th>Proposed Plan URL ¹</th>
<th>CMIA ²</th>
<th>Initial Approval ³</th>
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<th>Approved Plan ⁵</th>
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**Initial Approval with Milestones and a Resubmission Date:** The communication CMS sends to the state notifying the state that public comment, input and summary requirements are met, the STP is sufficient, but Systematic and/or site-specific assessments are not yet completed. The response to the state will vary dependent on whether the state has or has not identified settings that are presumed to have institutional characteristics and any information the state may wish CMS to consider under the heightened scrutiny process.

**Final Approval:** The communication CMS sends to the state notifying the state that public comment, input and summary requirements are met, the STP has provided all necessary information including but not limited to; systemic assessment, site specific assessment, settings presumed to have institutional characteristics, information regarding heightened scrutiny or the state’s decision to let the presumption stand, and clear remedial steps with milestones are delineated.
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<tr>
<th></th>
<th>Tennessee</th>
<th>Ohio</th>
<th>Kentucky</th>
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<tbody>
<tr>
<td><strong>Date of first public comment period</strong></td>
<td>December 23, 2014</td>
<td>December 15, 2014 [April 2014 began hosting forums]</td>
<td>November 2014</td>
</tr>
<tr>
<td><strong>Date STP submitted</strong></td>
<td>January 26, 2015 [The state submitted waiver renewals to CMS on October 1, 2014 thus started the 120 day clock to submit their STP.]</td>
<td>March 13, 2015</td>
<td>December 2014 [Transition plan for the MPW waiver submitted August 28, 2014 to CMS, thus started the 120 day clock to submit their STP.]</td>
</tr>
<tr>
<td><strong>Date Amended STP submitted</strong></td>
<td>February 1, 2016 (extended comment period request granted by CMS)</td>
<td>March 2016 Modified: June 1, 2016</td>
<td>March 2016 Modified: May 2016</td>
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<tr>
<td><strong>Date of Initial Approval</strong></td>
<td>April 13, 2016</td>
<td>June 2, 2016</td>
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<tr>
<td><strong>Date of Final Approval</strong></td>
<td>April 13, 2016</td>
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<td><strong>3rd Party Used</strong></td>
<td>Contracted case management entity, Personal Outcome Measure ® Plan (POM) from the Council on Quality and Leadership (CQL)</td>
<td>Consultant to create a new service package to maximize opportunities for integrated employment and integrated wrap-around supports</td>
<td>Contracted Quality Improvement Organization (QIO)</td>
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<td></td>
<td>Tennessee</td>
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<tr>
<td><strong>Waiver Details</strong></td>
<td>Utilizing fee-for-service and managed care delivery systems</td>
<td>-4 IDD HCBS waivers, one is a participant-directed waiver.</td>
<td>6 HCBS waivers under the 1915(c) benefit. Each waiver, except for 1, includes the option for Participant Directed Services (PDS).</td>
</tr>
<tr>
<td><strong>Length of Final STP</strong></td>
<td>56 pages</td>
<td>136 pages</td>
<td>97 pages</td>
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<tr>
<td><strong>Assessment Details</strong></td>
<td>48-question provider self-assessment with stakeholder input, built-in validation and transition plan, and individual experience assessments</td>
<td>Provider self-assessments, county board assessments, and participant experience assessments</td>
<td>Provider self-assessment surveys included additional questions about location of setting/s and competitive employment/volunteer work</td>
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<tr>
<td><strong>On-site reviews</strong></td>
<td>Start April 1, 2016</td>
<td>Start March 2016</td>
<td>Start April 2016</td>
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<tr>
<td><strong>% of settings fully compliant</strong></td>
<td>14% Not willing to comply: 2%</td>
<td>IDD waivers only: 91% Not willing to comply: 3%</td>
<td>Residential: 0% Non-Res: 19%</td>
</tr>
<tr>
<td><strong>% of settings going under heightened scrutiny</strong></td>
<td>n/a, still under review</td>
<td>Residential: 1%, ~75 settings</td>
<td>Residential: 9% (potentially) Non-Res: 6% (potentially)</td>
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<tr>
<td><strong>Additional state-specific regs</strong></td>
<td>No</td>
<td>No</td>
<td>No</td>
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<td>TN</td>
<td>KY</td>
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<td>• Tools used available online</td>
<td>• “Reverse integration” is not a replacement for integration requirements</td>
<td>• All of KY details described here were also in Ohio’s initial approval letter.</td>
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<tr>
<td>• Chose to consider ALL of the following settings for heightened scrutiny: Adult Day Care, Assisted Care Living Facilities, Critical Adult Care Homes, Facility Based Day, Residential Habilitation settings with more than 4 persons, Supported Living and Residential Habilitation settings in close proximity</td>
<td>• Requests differentiation of specific settings presumed to have institutional characteristic due to their location and which specific settings have the effect of isolating individuals.</td>
<td>• Ohio hires people with disabilities to create “easy-read” materials</td>
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<td>• Quarterly updates to CMS on implementation progress</td>
<td>• Requests info on how the state will increase capacity of non-disability specific settings</td>
<td>• Ohio has invested in a web-based platform to give citizens access to a PCP tool</td>
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<td>• Approval of STP not settings</td>
<td>• Inclusion of aging community in public comments</td>
<td>• Multiple workgroups including public stakeholders have helped shape STP implementation including evaluation tools</td>
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<td>• Condescending to public comments who advocate for an array of options- not neutral</td>
<td>• Need validation of survey results</td>
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Ohio Department of Developmental Disabilities released a document stating the Final Rule regulations for HCBS settings including a clear chart on what the Final Rule DOES and DOES NOT require.
Overall Concerns

CCC concerns:
• Lack of waiver recipient participation and access to information about the Final Rule to offer meaningful public comment
• States creating restrictive criteria that would automatically exclude settings from being evaluated or put through the higher scrutiny process
• States or other organizations telling advocates and providers that CMS prohibits people with I/DD from using waiver funding to live or work in campus settings, farmsteads, intentional communities, etc.
• States and CMS guidance reverting back to physical characteristics instead of outcome oriented criteria
• Planned projects being halted by CMS guidance
• Consumer-controlled, affordable housing settings at risk
• Paid, non-state resident advocates sharing incorrect information about specific settings with the state Medicaid authority and CMS
The content stayed consistent with the Final Rule and Guidance, but for the first time specifically addressed private homes as settings:

- A state may presume that an individual’s private home or relative’s home where the individual resides meets the HCBS requirements. However, it is still the state’s responsibility to ensure that individuals living in a private home or a relative’s home have opportunities for full access to the greater community.
- If the state presumes that private homes meet the settings requirements, the state needs to confirm that the homes were not purchased or established in a manner that isolates the individual from the community of individuals not receiving Medicaid-funded home and community-based services. For example, did a group of families purchase an isolated property solely for their family members with disabilities using waiver services?

*Two consumer-controlled housing communities in CA were identified in a CMS CMIA letter as isolating without CMS ever having had any contact with waiver recipients or their landlord, one of the settings identified has not broken ground nor is a service provider.*
• CMS differentiated a “modified” STP from an “amended” STP. A Modified STP is one that includes additional data in support of or expanding on existing content in the STP without making any substantive changes. An Amended STP is one that includes determinations from systemic and site-specific assessments, includes remedial actions or changes to milestones, or contains changes substantive enough to warrant public comment.

• When asked what should be the possible state responses if public comment disagrees with the state list of non-compliant settings. CMS responded that it will depend on the nature of the comments, the evidence presented in support of the comments, and the weight of the comments.

• When asked if a person living in a setting believes the setting fulfills the requirements of HCBS, but the state reviewer makes a contrary assessment, whose view will prevail? CMS responded that a person’s individual choice will not overrule whether the state determines that a setting has the qualities of an institution or whether it meets the HCBS settings requirements.

“A person can choose the setting they want to live in... even institutional. But they can’t choose a noncompliant setting and receive Medicaid HCBS funding.” – TN STP webinar
CMS Guidance and Challenges

From CMS Guidance on **Planned Construction of Presumed Institutional Settings**: “… a setting presumed to have the qualities of an institution cannot be determined to be compliant with the home and community-based setting regulatory requirements until it is operational and occupied by beneficiaries receiving services there. To comply with the HCBS settings regulations, requirements beyond the physical structure of the setting itself must be met. These requirements ensure that the individuals residing or receiving services in the setting actually experience the setting in a manner that promotes independence and community integration.... It was CMS’ expectation that after the publication of the final regulation, stakeholders would not invest in the construction of settings that are presumed to have institutional qualities, but would instead create options that promote full community integration, per the regulatory requirements... CMS strongly encourages states to limit the growth of these settings. ”

• This was the first time CMS has put in writing that regulations were developed to shape future options for individuals with I/DD regardless of what the market demands.
• This guidance is literally halting the development of desperately needed housing options across the country.
From CMS Guidance on Planned Construction of Presumed Institutional Settings: “If states do not submit heightened scrutiny requests for settings presumed to be institutional under the regulation (including settings that isolate), the institutional presumption will stand. Beneficiaries will then need to be provided options to receive HCBS in alternative settings that are compliant with the rule, or the state or provider will need to access other funding sources in order to continue to provide services in the existing setting presumed institutional.”

• Does this imply that states do not have the authority to determine what settings they consider isolating or not isolating, but that CMS will make this judgement despite state efforts?
• How would CMS decipher a setting as “isolating” without on the ground presence/evaluation in light of the outcome-oriented intent of the Final Rule?
CMS Guidance and Challenges

From CMS Guidance on Heightened Scrutiny: “Q6. How can a state demonstrate that a setting does not have the effect of isolating individuals receiving home and community-based services (HCBS) from the broader community of individuals not receiving HCBS?

A6. The state has several options for the type of evidence it can submit to overcome the presumption that a setting is isolating. The evidence should support the following qualities:

• The setting is integrated in the community to the extent that a person or persons without disabilities in the same community would consider it a part of their community and would 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. Such 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; community activities should 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.”

This guidance again sways from outcome-oriented characteristics to physical characteristics: How do any of these relate to one’s experience of isolation (EX: due to lack of transportation or support staff)? Of not feeling as if they belong to a community (lack of access to meaningful, voluntary, reciprocal relationships)? Why hold superiority of neurotypical friendship over the value of neurodiverse friendships when discussing if a setting “isolates”?"
From CMS Guidance on Public Comment: “6. Question: What would CMS consider an appropriate summary of the comments received in a waiver-specific renewal or state plan amendment or statewide transition plan? Answer: The summary of comments submitted to CMS should include a list of comments; multiple comments that convey the same meaning should be consolidated. Where possible, there should be an indication of how many people made each comment, whether it led to a change in the transition plan or not, and if not, the reason for not incorporating a change. The state is not required to provide the names and affiliations of the commenters. If there is a transition plan change due to the comment, that change should be referenced to the comment (in the summary in the transition plan document).”

• Public comment have come from non-state residents both in-person and in written comment.
• Public comment from paid advocates regarding non-compliance of specific settings of which they had not contacted or confirmed information has occurred in several states.
• States have added biased interpretation to consolidated, summarized comments.
Do all the waiver recipients you serve have Final Rule compliant Person Centered Plans?

• Look at the CCC resource for the Final Rule Requirements for PCP’s- what’s missing?
• Use the PCP tools from the Autism Housing Network
• Increase self-advocacy skills of HCBS recipients so they can lead the process as much as possible

Expect for PCP plans of those you support to be examined during on-site assessment!
Next Steps: Exploratory Questions & Assessments

If presumed institutional, a setting will be required to submit evidence that it is indeed HCBS. What can you do to prepare?

• Look at the setting requirements for the Final Rule and any additional state regulations and begin thinking about how you will bear evidence for compliance.

• Make sure you are prepared to answer and have evidence for your responses to the CMS Exploratory Questions.

• Review the CMS guidance on heightened scrutiny as it offers direction on evidence CMS will be looking for.

• If given the opportunity, offer input for any assessment tools still being developed.
  - Remove questions that are based on physical characteristics.
  - Add questions that will identify and document barriers to access

Example:
How many times a month does Maria go out to dinner?
How many times does she want to go out to dinner?
What prevents her from going out to dinner as often as she would like?
See if your state has created a STP advisory committee / workgroup and ask to join!

Stakeholders from your organization who should also join include:
- HCBS recipients who reside or work in different settings
- Parents of HCBS recipients
- Direct Support Professionals

• If a STP Advisory Committee does not exist, request that your state creates one!
• If your STP Advisory Committee is comprised of only state staff, DD Council members, UCEDD staff, or Protection & Advocacy staff- request that more public stakeholders are involved as to improve transparency and not generate conflicts of interest.
1. Read your STP and CMIA and use the CCC Mini-Toolkit to identify timelines and key areas of advocacy.

2. Educate waiver recipients, staff, volunteers and families about the Final Rule and the importance of their public comment.

3. Empower self-advocates to talk about their home, LTSS and barriers to accessing their community and/or life goals.

4. Be ready for the short 30-day window for public comment to open to inform advocates.
Public comment must be sought for a) substantive changes to an STP, and b) after results of state assessment is posted.

From CMS Final Rule Q&A document.

8. How does CMS define substantive changes with respect to the public input process?

A: The regulation defines substantive changes as including, but not limited to, revision to services available under the waiver including elimination or reduction of services; reduction in the scope, amount, and duration of any service; a change in the qualification of service providers; changes in rate methodology; or a constriction in the eligible population. In addition, changes in the settings included in the waiver or changes to the state’s transition plan for bringing settings into compliance would require public input.

Additional requirements that must be met:

• A minimum, 30-day public notice and comment period on transition plans.
• At least two forms of public notice must be provided, along with at least two ways for the public to provide input.
• The state must make the complete transition plan available for review by the public, including individuals being served and individuals eligible to be served by the program.
• A minimum expectation is that the document be available at the state’s Medicaid website, which should meet requirements for access by people with disabilities, and through an alternative method for those without internet access.
Did your state sufficiently educate citizens, collect public comment, and interpret public comment accurately? If not, CMS should be informed immediately as the [CMS Basic Review Tool](#) clearly states:

“If there are concerns regarding the elements for public notice or the content of what the state has submitted is insufficient to provide necessary information to stakeholders, it may indicate that the Statewide Transition Plan needs to be sent back to the state before the Content Review begins.”

<table>
<thead>
<tr>
<th>1. Requirement and Instructions for Reviewers</th>
<th>2. Questions to be Answered</th>
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<td>with the state’s determinations about compliance with the settings requirements.</td>
<td>state’s determinations about compliance with the HCB settings requirements?</td>
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<td>10. In the case where the state’s determination differs from public comment, the Statewide Transition Plan includes the additional evidence and the rationale the state used to confirm the determination.</td>
<td>□ Yes □ No □ N/A (the state has not made determinations about compliance with the requirements, or did not receive any comments that address its determinations about compliance)</td>
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<td>If the state includes a summary of the public comments, do any of the state’s determinations about compliance differ from the public comments?</td>
<td>□ Yes □ No □ N/A</td>
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<td>If yes, does the state include additional evidence and the rationale it used to confirm the determination (e.g., site visits to specific settings)?</td>
<td>□ Yes □ No □ N/A</td>
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<td>If yes, for each comment with which the state’s determination differs, copy and paste here the comment and the state’s response that includes the additional evidence and its rationale.</td>
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<td>11. The Statewide Transition Plan includes a description of any changes the state made as a result of the public comments.</td>
<td>Does the state include a description of any changes the state made as a result of public comment?</td>
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<td>□ Yes □ No □ N/A</td>
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**State Assessment of Compliance**

| 12. The Statewide Transition Plan describes an assessment process that includes a systemic review (e.g., a review of statutes, regulations, policies, and provider contracts). Note to reviewers: It is fine if the assessment is planned or ongoing at the time of the Statewide Transition Plan. At this time, we are not evaluating the details of the assessment process. However, if the state indicates that its systemic review assessment will not be completed within 6 months, we | Does the state describe a systemic review process under which it assesses or will assess whether its standards for HCB settings (e.g., statutes, regulations, policies, and provider contracts) comply with the federal HCB settings regulations? |
| □ Yes □ No |
| If yes, does the state indicate that it has completed the systemic review? | □ Yes □ No |
| If yes, has the state completed any part of the systemic review? | |

Coalition for Community Choice
Next Steps: Be Ready for Public Comment

Additional resources for members only:
- Monthly newsletters
- Conference Calls
- Calls to Action
- Technical Assistance from National Coordinator

www.CoalitionForCommunityChoice.org
Build relationships with your legislators! They MUST become more aware of the stories AND statistics of their constituents with I/DD who are struggling to be supported in their community and find appropriate affordable housing options.

- Use the CCC presentation, “Accessing and Tackling the Data to Help Support Choice” to help you identify and frame important statistics in your state!

Next Steps: Know your Legislators and Statistics

- Trends in LTSS
- Affordable housing
- Competitive employment rates
- Abuse & Loneliness
From TN, KY, OH initial/final approval letter:

“It is important to note that CMS’ initial or final approval of a STP solely addresses the state’s compliance with the applicable Medicaid authorities. CMS’ approval does not address the state’s independent and separate obligations under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act or the Supreme Court’s Olmstead decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the Olmstead decision is available at http://www.ada.gov/olmstead/q&a_olmstead.htm.”

What exactly does this mean and why was it included?
If we are considering how the DOJ will be responding to these policy shifts, they must consider the bigger issue of the LTSS and housing crisis:

• Will the continuation of endless waiting lists, particularly for individuals at increased risk of forced institutionalization for lack of appropriate LTSS supports, violate Olmstead or the ADA?
• Will state prohibition to access of waiver funding in a person’s chosen residence and/or their individually determined least restrictive setting that would otherwise put them at risk of institutionalization violate Olmstead or the ADA?
• Will lack of affordable, accessible housing that results in the increased risk or forced institutionalization violate Olmstead or ADA?
For More Information:

www.MadisonHouseAutism.org
www.CoalitionForCommunityChoice.org
www.AutismHousingNetwork.org

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