

Input/Comments from Adult Foster and Community Residential Setting Providers

Tuesday, July 8 2014

Minnesota is in the process of developing a Compliance and Transition Plan to address the new CMS rules governing home and community based services (HCBS.) **CMS rules require immediate compliance for new programs and allow 5 years for states to implement transition of existing HCBS waivers.** This video conference will provide an opportunity for adult foster and community residential setting providers to provide input and comment prior to the development of the initial draft of the plan. There will be opportunities for small group discussion at each site, with comments being submitted by a recorder to DHS. Please download and review the [PowerPoint](#) which provides an overview of the new CMS rules and important background information prior to the video conference.

Comments collected at each site should be submitted to DHS via fax to (651) 431-7411 or via email to HCBS.Settings@state.mn.us by Friday, July 11 2014. Comments from individuals or organizations may also be submitted to the HCBS.Settings@state.mn.us email box at any time during the development of the Compliance and Transition Plan. Please number your responses to questions as indicated below.

Thank you for your willingness to partner with DHS in the process.

Mandatory Qualities of all HCBS Settings:

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services
- Selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting
- Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices
- Facilitate individual choice regarding services and supports, and who provides them

- 1. Before we get into the specifics of the rule, we want to get some general impressions and thoughts from you.** What are your overall impressions of the CMS rule? What are you most excited about? What are you most concerned about? What overall barriers do you see to implementing the new rule?

2. Settings that are NOT home and community-based (CMS rule requirement)

- a. Nursing facilities
- b. Institutions for mental disease (IMD)
- c. Intermediate care facilities for individuals with developmental disabilities (ICF/MR)
- d. Hospitals

Question 1a: What, if any, adult foster or residential care services are currently provided in settings that are NOT HCBS based on the CMS rules?

Question 1b: What, if any impact do you project this provision of the rule will have on adult foster care or residential services in your county/for the participants you serve?

Question 1c: What alternatives could be developed to provide services in settings that comply with the new CMS rules?

Question 1d: What resources are needed to develop alternatives?

3. Settings PRESUMED NOT to be home and community-based (CMS rule requirement) These settings are subject to heightened scrutiny by CMS. States must submit evidence (including public input) demonstrating that the setting does have the qualities of a home and community-based setting and not the qualities of an institution.

- a. Settings in a publicly or privately--owned facility providing inpatient treatment
- b. Settings on the grounds of, or adjacent to a public institution
- c. Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS

Question 2a: What, if any, adult foster care or residential care settings do you have in your area that are PRESUMED NOT to be HCBS based on CMS rule requirements?

Question 2b: How would you demonstrate that these settings have home and community-based settings qualities and not those of an institution?

Question 2c: What modifications could be made to meet CMS rule requirements?

Question 2d: What modifications could be made to integrate individuals into the broader community?

Question 2e: What alternative HCBS settings could be developed to meet participant needs?

Question 2f: What resources are needed to develop alternative services?

- 4. Additional requirements for provider-owned or controlled residential settings:** The new CMS rules place additional requirements on provider-owned or controlled residential settings.
- Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement
 - Same responsibilities/protections from eviction as all tenants under landlord tenant law or state, county, city or other designated entity
 - If tenant laws do not apply, state ensures written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under landlord tenant law
 - Each individual has privacy in their sleeping or living unit
 - Units have lockable entrance doors, with the individual and appropriate staff having keys to doors, as needed
 - Individuals sharing units have a choice of roommates
 - Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
 - Individuals have freedom and support to control their schedules and activities and have access to food at any time
 - Individuals may have visitors at any time
 - Setting is physically accessible to the individual
 - Modification of the additional qualities must be:
 - Supported by specific assessed need
 - Justified in the person-centered service plan
 - Documented in the person-centered service plan
 - Documentation in the person-centered service plan of modifications of the additional qualities includes:
 - Specific individualized assessed need
 - Prior interventions and supports including less intrusive methods
 - Ongoing data measuring effectiveness of modification
 - Established time limits for periodic review of modifications
 - Individual’s informed consent
 - Assurance that interventions and supports will not cause harm

Question 3a: What, if any, of these requirements for provider-owned or controlled residential settings will necessitate modifications to current practice?

Question 3b: What modifications could be made to bring these settings into compliance with the new rules?

Question 3c: What resources will be needed to implement changes needed?

- 5. Other comments/input.** What additional comments/concerns/input do you have regarding the implementation of the new CMS rules, particularly any barriers or things that are working well that we haven’t discussed today?