

# THE 2014 CMS MEDICAID HCBS REGULATION

PRESENTATION TO DELAWARE FAMILIES SPEAKING UP (6/10/14)

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# MEDICAID WAIVER BACKGROUND

- I. PURPOSE: ALTERNATIVE INSTITUTION
- II. HISTORICAL FEATURES
  - A. LEVEL OF CARE (LOC)
  - B. INCOME CAP
  - C. IDENTIFIED POPULATION
- III. CURRENT MOVEMENT: FLEXIBILITY (2948)
  - EXAMPLE: DHSS PATHWAYS TO EMPLOYMENT WAIVER (NO LOC; MULTIPLE POPULATIONS)

# SCOPE OF SERVICES

- I. STATES CHOOSE FROM FED LIST (3029)
  - A. CASE MANAGEMENT
  - B. HOMEMAKER
  - C. HOME HEALTH AIDE
  - D. PERSONAL CARE
  - E. ADULT DAY HEALTH
  - F. HABILITATION
  - G. RESPITE
  - H. SELECT SERVICES: CHRONIC MENTAL ILLNESS
  - I. \*OTHER SERVICES\*
- II. ROOM & BOARD EXCLUDED

# SCOPE OF SERVICES (CONT.)

- I. “OTHER SERVICES” BROAD (2954-2955)
- II. STATE CAN’T LIMIT ACCESS TO SERVICE BASED ON INCOME, COST OF SERVICE, OR PERSON’S LOCATION IN STATE (3038)
- III. STATE CAN ADOPT TARGETING CRITERIA (3035; 3038) AND UTILIZATION LIMITS/CAPS (2986; 2998) (E.G. \$6,000 HOME MOD./5 YRS.)

# DEVELOPMENT OF REGULATION

- I. STATUTORY STANDARDS LIMIT “SETTINGS”
  - NO HOSPITAL, NURSING FACILITY, ICF/MD, ICF/IID (2949)
- II. INFLUENCE: ADA; OLMSTEAD; DOJ (2956-2957; 2976) DATING BACK TO 7/29/98 HCFA LETTER TO STATE MEDICAID DIRECTORS
- III. MULTIPLE SETS OF PROPOSED REGS. & HUNDREDS OF COMMENTS (2952)

# FINAL REGULATION FEATURES

- I. STATUTORY EXCLUSIONS APPLY (E.G. ICD/IID)
- II. PRESUMPTION FOR FOLLOWING SETTINGS:
  - A. LOCATED IN BLDG WHICH IS PUBLIC OR PRIVATE FACILITY PROVIDING INPATIENT INSTITUTIONAL TREATMENT
  - B. LOCATED IN BLDG, ON GRNDS OF, OR IMMEDIATELY ADJACENT TO PUBLIC INSTITUTION
  - C. SETTING W/EFFECT OF ISOLATING HCBS PARTICIPANTS FROM BROADER COMMUNITY OF INDIVIDUALS NOT RECEIVING HCBS

# FINAL REGULATION FEATURES (CONT.)

- IF “PRESUMPTION” APPLIES, CMS APPLIES “HEIGHTENED SCRUTINY” TO ASSESS IF HCB SETTING (3013) AND REQUIRES “STRONG EVIDENCE” TO REBUT PRESUMPTION. (2969)
- EXAMPLES: FARM COMMUNITIES & CLUSTERS OF HOMES IN GATED COMMUNITIES AND CAMPUS SETTINGS SUBJECT TO HEIGHTENED SCRUTINY. (3014)



# FINAL REGULATIONS FEATURES (CONT)

- PHILOSOPHY (3011; 3014-3015):
  - MOVING AWAY FROM DEFINING HCB SETTINGS BY WHAT THEY ARE NOT AND TOWARDS DEFINING THEM BY NATURE AND QUALITY OF PARTICIPANT EXPERIENCES.
  - OUTCOME ORIENTED DEFINITION OF HCB SETTINGS RATHER THAN SOLELY BASED ON LOCATION, GEOGRAPHY, OR PHYSICAL CHARACTERISTICS.

# GUIDANCE DOCS.; RESOURCES

- I. CMS TRANSITION PLAN TOOLKIT (3/17/14)
  - A. TEMPLATE: STATE SETTINGS ANALYSIS
  - B. HCBS SETTINGS REGULATORY REQUIREMENTS
  - C. FLOW CHARTS FOR STATE TRANSITION PLANS
  - D. GUIDANCE ON “ISOLATING” SETTINGS
  - E. EXPLORATORY QUESTIONS FOR SETTING ASSESSMENT
- II. 1-STOP WEBSITE: [HCBSadvocacy.org](http://HCBSadvocacy.org).

# NON-RESIDENTIAL SETTINGS

- I. ALL HCB SERVICES (RESIDENTIAL, DAY, OR OTHER) MUST BE DELIVERED IN SETTING DEFINED IN REGULATION (2972; 3030; 3032)
- II. SETTING MUST SUPPORT FULL ACCESS OF PARTICIPANTS TO GREATER COMMUNITY, INCLUDING OPPORTUNITIES TO SEEK EMPLOYMENT & WORK IN COMPETITIVE, INTEGRATED SETTINGS (2968; 3011; 3030; 3032)

# NON-RESIDENTIAL SETTINGS (CONT.)

- I. CMS PROMISES FURTHER GUIDANCE ON NON-RESIDENTIAL SETTINGS (2960; 2968; 2972)
- II. PARTICIPANTS MUST BE LIVING IN HCB SETTING “REGARDLESS OF WHETHER THEY ARE RECEIVING HCBS IN THAT RESIDENCE.” (2960)

# SETTINGS EXCEPTIONS

- I. EMERGENCY ROOM PRIOR TO ADMISSION (2971)
- II. TEMPORARY HOSPITALIZATION: PERSONAL CARE PROVIDER (2951; 2954-2955)
- III. INSTITUTIONAL RESPITE (2957; 2959; 3011)
- IV. DISCHARGE PLANNING/TRANSITION SERVICES (2951; 2971)

# POPULATIONS

- CHILDREN & ADULTS COVERED (2955; 2983)
- AGING POPULATION & PERSONS WITH DISABILITIES COVERED (2970-71)
- PERSONS WITH MILD – SEVERE DISABILITIES COVERED (2970)
- “WE BELIEVE OUR HCB SETTING REQUIREMENTS ARE BENEFICIAL TO EVERYONE REGARDLESS OF AGE, CONDITION OR LEVEL OF DISABILITY.” (2970)

# SPECIFIC GUIDANCE

- I. NO SET LIMIT ON NUMBER OF PERSONS IN RESIDENTIAL SETTING (2968; 3011) BUT SMALL ICF/IID DOESN'T QUALIFY (2970) AND SIZE MAY TRIGGER HEIGHTENED SCRUTINY (2968)
- II. NO “DURATION” OR “GRANDFATHER” SAFE HARBOR (2969; 2983; 3012): “STATES NEED TO UNDERSTAND WHAT QUALIFIES AS A HCBS SETTING, AND ALSO UNDERSTAND THAT THIS MIGHT TRIGGER CHANGE AND EVEN DISLOCATION.”

# SPECIFIC GUIDANCE (CONT.)

- I. CONGREGATE SETTINGS: “IT IS NOT THE INTENT OF THIS RULE TO PROHIBIT CONGREGATE SETTINGS FROM BEING CONSIDERED HCB SETTINGS.” (2957; 3013)
- II. NO “BEST INTERESTS” OPT OUT (2970)
- III. BUNDLING: NO BAN ON HOUSING PROVIDER ALSO SUPPLYING HCB SERVICES BUT TEMPERED BY FREEDOM FROM COERCION AND CHOICE OF PROVIDER RIGHTS (2958; 2981; 3012)



# PERSON-CENTERED SERVICE PLAN

- KEY DOCUMENT: IDENTIFY HCBS AND NON-HCBS SUPPORTS (2985; 3008; 3030)
- DEVELOPMENT: ADULT PARTICIPANT LEADS DISCUSSION (PROFESSIONALS AND OTHERS SECONDARY) (2979; 2983; 3005-3006; 3037)
- HCBS SETTING MUST BE IDENTIFIED IN PLAN (3008; 3010; 3030; 3033)

# PERSON-CENTERED PLAN (CONT.)

- I. “INFORMED CONSENT” REQUIRES DOCUMENTATION (3010) OF REVIEW OF OPTIONS (2980; 2989; 3007) EVEN IF NOT READILY “AVAILABLE” (2976).
- II. REVIEW: EVERY 12 MONTHS OR IF NEEDS CHANGE OR IF PARTICIPANT REQUESTS. (2979; 2987; 2991; 3030; 3037)

# PERSON-CENTERED PLAN (CONT.)

- I. CASE MANAGER: SHOULD GENERALLY NOT BE EMPLOYEE OF PROVIDER AND SHOULD NOT DEVELOP PLAN. (3007; 3030)
- II. TENSION: INDEPENDENCE VS. SAFETY: PLAN SHOULD INCLUDE RISK FACTORS & MEASURES TO MINIMIZE & INDIVIDUALIZED BACK-UP PLANS & STRATEGIES (2991; 2994-2995; 3007; 3030)
- III. APPEALS: FAIR HEARING (2989; 2991; 3038)

# MINIMUM RIGHTS

- I. HCBS MUST HAVE CERTAIN QUALITIES (3030):
  - A. INTEGRATED
  - B. SELECTED FROM OPTIONS INCLUDING NON-DISABILITY SPECIFIC SETTINGS & OPTION FOR PRIVATE UNIT
  - C. INCORPORATING PRIVACY, DIGNITY, RESPECT, & FREEDOM FROM COERCION & RESTRAINT W/O EXCEPTION (2977; 3030; 3032; 3033)
  - D. NOT “REGIMENTING” AUTONOMY IN LIFE CHOICES AND DAILY ACTIVITIES (2977; 3031)

# MINIMUM RIGHTS (CONT.)

- E. FACILITATING CHOICE OF SERVICES & PROVIDER
- F. IF PROVIDER OWNED OR CONTROLLED RESIDENTIAL SETTING (3030):
  - 1. LEASE OR CONTRACT TO PROTECT FROM DISCHARGE (2960-2962)
  - 2. LOCKABLE DOORS
  - 3. ACCESS TO VISITORS & FOOD AT ANY TIME
  - 4. DECORATION, FURNISHING & ROOMMATE CHOICE
  - 5. ALL SUBJECT TO LIMITS IN PLAN (2979; 3031)

# STATE TRANSITION PLANS

- I. REGULATIONS EFFECTIVE 3/17/14 (3034)
- II. NEW OR AMENDED WAIVERS/PLANS SUBMITTED W/I 1 YEAR MUST INCLUDE TRANSITION PLAN (OR EXTENSION REQUEST) FOLLOWED BY PLAN FOR BALANCE OF WAIVERS W/I 120 DAYS (3012; 3034)
- III. IF NO NEW OR AMENDED WAIVERS/PLANS SUBMITTED W/I 1 YEAR, TRANSITION PLAN DUE IN 1 YEAR (3/15)

# STATE TRANSITION PLANS (CONT.)

- IV. CMS MAY APPROVE TRANSITION PLANS LASTING UP TO 5 YEARS BUT MUST SHOW PROGRESS DURING TRANSITION PERIOD (3012; 3034)

# STATE TRANSITION PLANS (CONT.)

- DELAWARE DDDS:
  - AWAITING FURTHER CMS GUIDANCE
  - EXPECTS TO SOLICIT PUBLIC INPUT IN LATE SUMMER OR EARLY FALL TO INFORM PLAN DEVELOPMENT