THE 2014 CMS MEDICAID HCBS REGULATION

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

BRIAN J. HARTMAN, PROJECT DIRECTOR
DISABILITIES LAW PROGRAM
COMMUNITY LEGAL AID SOCIETY, INC.
100 W. TENTH ST. , WILMINGTON, DE 19801
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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.
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)
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