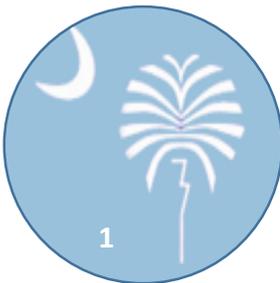




SOUTH CAROLINA DEPARTMENT OF
Disabilities and Special Needs

CAP Work Session

October 24, 2018



Home and Community-Based Setting Requirements

The Home and Community-Based setting*:

- 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

** Any setting where HCBS are delivered.*



Home and Community-Based Setting Requirements

- 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
- 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
- Facilitates individual choice regarding services and supports, and who provides them



Settings PRESUMED NOT to Be Home and Community-Based

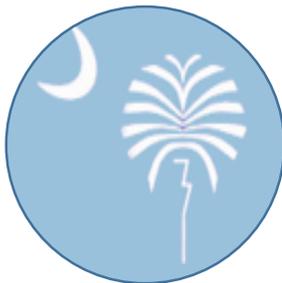
- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on grounds of, or adjacent to, a public institution
- Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS



Home and Community-Based Setting Requirements for Provider-Owned or Controlled Residential Settings

Additional requirements:

- Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement
- Same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity
- If tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law



Home and Community-Based Setting Requirements for Provider-Owned or Controlled Residential Settings

- 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 any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual



Home and Community-Based Setting Requirements for Provider-Owned or Controlled Residential Settings

Modifications of the additional requirements must be:

- Supported by specific assessed need
- Justified in the person-centered service plan
- Documented in the person-centered service plan



Home and Community-Based Setting Requirements for Provider-Owned or Controlled Residential Settings

Documentation in the person-centered service plan of **modifications** of the additional requirements includes:

- Specific individualized assessed need
- Prior interventions and supports including less intrusive methods
- Description of condition proportionate to assessed need
- 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



Site Specific Assessments

Conducted by Public Consulting Group (PCG) as the contractor for the SC Department of Health and Human Services.

Results reflect a snapshot in time (on the day of the survey).

Some results from the assessments may not appear reliable; therefore, 80% compliance threshold for response was established.



If you disagree...

The HCBS Settings Rule requires that **all** home and community-based settings meet the qualifications.

Therefore, your CAP should focus should be on how all participants in the setting:

- Are integrated in and supported to have full access to the greater community;
- Provided opportunities to seek employment and work in competitive integrated settings, engage in community life, and control their personal resources;
- Receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services;
- Are ensured individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimize autonomy and independence in making life choices; and
- Choice regarding services and who provides them is facilitated.



Findings Related to Communication

As part of the site specific assessment, waiver participants were asked, “do you have...?”, “do you get to...?”, “can you...?”, etc.

The argument has been made that if the waiver participant couldn't talk, the result was noted as “non-compliant”.



Communication

National Joint Committee for the Communication Needs of Persons With Severe Disabilities (NJC) has issued a “COMMUNICATION BILL OF RIGHTS” which states:

“All people with a disability of any extent or severity have a basic right to affect, through communication, the conditions of their existence.

Beyond this general right, a number of specific communication rights should be ensured in all daily interactions and interventions involving persons who have severe disabilities.”

<http://www.asha.org/uploadedfiles/njc-communication-bill-rights.pdf>



Communication: Question for Consideration

How will your agency comply with the HCBS Settings Requirements if you (all staff) do not have the ability to effectively communicate with all who are supported?



What about fences?

When CMS was asked, “what should states consider when performing a site visit?”

“...Look for evidence that settings have institutional characteristics, such as cameras; individual’s schedules or other personal information posted; lack of uniqueness in room décor; indicators of seclusion or restraint such as quiet rooms with locks, restraint chairs, or posters of restraint techniques; regimented meal times and other daily activities; and barriers that inhibit community member involvement, such as fences or gates”



Fences

There are fences.



And, there are FENCES!



Fences

Fences that are typical of the neighborhood are fine.

Backyard fences (including locked fences) are fine.

Fences that are not just in the backyard and not typical of the neighborhood but are needed for safety are fine **if** documented appropriately with appropriate consideration given to all residents of the home.

Having a locked fence is fine if documented appropriately with appropriate consideration given to all residents of the home.



Choice of Services – Facilitator for Planning

- The use of "facilitators" as required by DDSN in the late 90's /early 00's is not currently available.
- There is **no** intent to return to this practice.
- DDSN offers a service called “Life Planning” which is assessed by the case manager and if needed and desired, can be arranged by the case manager.
- Life Planning is not available annually and the participation of a life planner in service planning is neither expected nor intended.



Choice of Services – Facilitator for Planning

- In the context of the HCBS Settings Rule, the use of a facilitator is about offering the person the option of having someone else (not service provider staff) participate in or lead the planning meeting.
- Therefore, if service recipients are being offered the opportunity to have others of their choosing participate in or lead their planning meetings, it seems that the intent of the requirement will be met.
- Staff and service recipients should be aware of /knowledgeable about the option.
- Staff should also be aware that, along offering the choice, it is important and necessary to make reasonable efforts to honor it.

