

South Carolina Department of
Disabilities and Special Needs



Home & Community-Based Services (HCBS) Rule

*(Slides adapted from presentations by CMS,
NASDDDS, and Montana DDP)*



The Centers for Medicare & Medicaid Services (CMS) implemented new regulations for Medicaid's 1915(c) Home and Community-Based Services (HCBS) waivers on **March 17, 2014**.



The Intent of the “Final Rule”

- ▶ To ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs under the 1915 (c) Medicaid authorities have:
 - full access to benefits of community living and
 - the opportunity to receive services in the most integrated setting that is appropriate, based on assessed needs.

- ▶ To enhance the quality of HCBS settings and provide protections to participants

Person-Centered Plan

Reflect the needs identified through an assessment, as well as the individual's strengths, preferences, identified goals, and desired outcomes.

Conflict Free Case Management

Providers of HCBS for the individual must not provide case management or develop the person-centered service plan.

Key Elements of the Final Rule

Person-Centered Planning

The individual leads the process to the greatest extent possible and is provided information and support to make informed choices regarding his/her services, as well as providers.

Provider Settings

The setting is integrated in and supports full access of individuals receiving HCBS to the greater community, giving the individual initiative and independence in making life choices, to make informed choices regarding his/her services, as well as providers.

Summary of Person-Centered Planning Process Requirements



- The person supported leads the process.
- The person supported is provided necessary information to make informed choices about his/her services.
- The Planning meeting is scheduled at a convenient time and place for the person supported and those invited to participate.
- The Plan reflects cultural considerations of the person supported.
- The Plan includes a method for the person supported to request updates to the plan as needed.

Summary of Person-Centered Planning Process Requirements



- The Plan describes the alternative settings that were considered by the person supported.
- The Plan includes strategies for solving conflict or disagreement within the process.
- The providers of HCB Services for the person supported must not provide case management or develop the person-centered service plan.

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Summary of Person-Centered Service Plan Requirements



- The Plan reflects the needs identified through a functional assessment.
- The Plan reflect the strengths, preferences, identified goals, and desired outcomes of the person supported.
- The Plan reflect the services and supports (paid and unpaid) that will meet the needs of the person supported.
- The Plan reflects that the residential setting is chosen by the person supported.
- The Plan prevents the provision of unnecessary or inappropriate services and supports.

Summary of Person-Centered Service Plan Requirements



- The Plan reflects risk factors and measures to minimize them.
- The Plan identifies the individual responsible for monitoring the plan.
- The Plan must be understandable and distributed to the person supported and others involved in the plan and/or authorized by the person supported.
- The Plan must be finalized, agreed to, and signed by all planning participants, including the person supported, and providers responsible for implementation

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Home and Community-Based Settings

- ▶ **Are integrated and support access to the greater community**

- ▶ **Provide opportunities to**
 - **seek employment and work in competitive, integrated settings**
 - **engage in community life, and**
 - **control personal resources**

- ▶ **Ensure the person supported receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services**

- ▶ **Are selected by the person supported from among setting options, including non-disability specific settings and an option for a private unit in a residential setting.**



Summary of Settings Requirements

- The person supported is integrated in and has full access to the greater community.
- The person supported selects both the setting and provider.
- The person has an opportunity to seek employment in integrated settings.
- The person controls his/ her personal resources.
- The person participates in both scheduled and unscheduled community activities in the same manner as others in the community and of similar ages.



Summary of Settings Requirements

- The person supported has rights of privacy, dignity and respect, and freedom from coercion and restraint.
- The person supported has access to make and receive telephone calls/ text/ emails according to their own preference and convenience.
- The person supported has direction and independence in making life choices, to the extent possible. The choices are incorporated into the service plan.
- The person supported is provided choice regarding services and supports, and who provides them.
- The person supported determines when to eat and with whom they wish to have meals.

Home and Community-Based 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 or state, county, city or other designated entity
- ▶ SC has landlord-tenant laws to protect consumers. A lease, residency agreement or other written agreement must be 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 Settings Additional Requirements



Each person supported has privacy in their sleeping or living unit:

- ▶ Units have lockable entrance doors, with person supported 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 person supported



Home and community-based settings do not include:

- A nursing facility
- An institution for mental diseases
- An intermediate care facility for individuals with intellectual disabilities
- A hospital



Settings presumed not to be HCB include:

- Any other locations that have qualities of an institutional setting
- Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment
- Any setting in a building on the grounds of, or immediately adjacent to, a public institution. A public institution is defined as an inpatient facility that is financed and operated by a county, state, municipality or other unit of government.
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS

Settings presumed not to be home and community-based must undergo heightened scrutiny to continue providing HCBS services.

Modifications of Requirements must be:

- ▶ Supported by specific, assessed individual needs
- ▶ Justified in the person-centered service plan
- ▶ Documented in the person-centered service plan:
 - 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- this may be weekly or monthly, as appropriate.
 - Individual's informed consent
 - Assurance that interventions and supports will not cause harm



What Does Integration Look Like?

The same *planned activities* in the home community within all of life's activity domains (examples):

- ❑ Work – with non-disabled individuals
- ❑ Volunteer – work on a political campaign, volunteer at a soup kitchen; volunteer at a shelter
- ❑ Learning experiences and activities – adult learning education
- ❑ Recreation - having fun, a social life, getting together with friends
- ❑ Shopping – in the community
- ❑ Maintain health and wellness – exercise, gym memberships, diet groups, self-help and support groups
- ❑ Personal Care – barbershop, spa
- ❑ Maintaining Home – cleaning, laundry
- ❑ Spirituality: worship, meditation, yoga classes
- ❑ Hobbies: art classes, fishing

What Does Integration Look Like?

The same *unplanned interactions* (examples):

- ❑ Run to the store to pick something up,
- ❑ Walk to a local store,
- ❑ Walking around the block and saying “hi” to people,
- ❑ Hanging out at a local restaurant, or
- ❑ Participating in Community festivals or neighborhood activities.

Compliance vs. Non-Compliance Determinations



- The settings rule is about the experience a person is having while in the setting.
- If a setting serves only those with intellectual disabilities, how does the agency ensure the setting isn't isolating?
- The rule also applies to vocational settings, including mobile work crews and individual employed by the agency to do work as a group off-site.
- Does the person get all of their services in one setting? This includes medical appointments, therapies, and recreation opportunities.
- If bedrooms are shared, what is the process to ensure individuals were given a choice or can ask for a change in roommate?
- How are "House Rules" developed?
- How are health and safety modifications (restrictions) implemented?

Where is DDSN in the Process?



- DDSN is working with SC DHHS to address global concerns regarding the impact of the HCBS Rule on settings in South Carolina.
- DDSN providers have completed their agency's Self-Assessment regarding HCBS Compliance.
- Validation visits have been coordinated by The Public Consulting Group (PCG) as a contractor for DHHS. PCG staff completed on-site assessments of all DDSN Day programs and CTH I, CTH II and CRCF settings. A sample of SLP I and SLP II settings also had on-site reviews. A "Summary of On-Site Assessment Findings" will be sent to DDSN providers beginning in October 2017.
 - Additional Review and Validation will be completed by DDSN staff, also incorporating data gathered by the QIO during Contract Compliance Reviews, Licensing Reviews, and Day and Residential Observation evaluations.



“Summary of On-Site Assessment Findings”

- Findings will be summarized for specific setting types.
- Indicators found not to be in compliance on the date of the on-site review will be noted in the summary.
- It is important to remember that the initial on-site assessment is only one data point that will be used in determining compliance with HCBS.
 - Areas of non-compliance identified by the on-site review may be addressed through:
 - On-going training and/or conversations with people supported by the agency
 - On-going training and/or conversations with staff
 - Other areas of non-compliance may require minor environmental adjustments to increase participant access or create a more home-like setting.

“Summary of On-Site Assessment Findings”

- It is understood that providers may feel they are in compliance with certain areas, but a person supported indicated non-compliance.
 - It will be important for the provider to address actions taken to address the intent of the HCBS Rule
 - Additional reviews will focus on the supports in place, even if the person supported has indicated non-compliance.
- Providers may find it helpful to cross-reference their self-assessment data completed in 2016.

Compliance Action Plans

- **DDSN cannot tell providers what to put into their agencies' Compliance Action Plan (CAP).**
- **DDSN will review remediation plans with a panel and DHHS will approve.**
- **The provider's compliance action plans (CAP) must be submitted within 45 days of receipt of findings.**

Considerations when developing an agency CAP:

- **Provider's policies and procedures**
- **Provider's staff training requirements**
- **Provider's personal support planning tools/assessments**
- **Provider's quality assurance and oversight**
- **Provider's community outreach activities**
- **Provider's organizational structure and settings**
- **DDSN will work with providers to address co-location issues**



Additional Resources

- ▶ CMS HCBS Web-site: <https://www.medicare.gov/medicaid/hcbs/guidance/index.html>
- ▶ HCBS Advocacy Website: <https://hcbsadvocacy.org/learn-about-the-new-rules/>
- ▶ SC DHHS HCBS website: <https://msp.scdhhs.gov/hcbs>
- ▶ SC DDSN website: <http://www.ddsn.sc.gov>

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