



*Department of Health
and Human Services*

*Maine People Living
Safe, Healthy and Productive Lives*

An Overview of New Federal Rules for Home and Community-Based Settings

Office of Aging & Disability Services

October 2014



Who is requiring these changes?

- Medicaid (which is known as **MaineCare** in Maine) is a joint federal and state program. The federal agency that oversees Medicaid is the **Centers for Medicare and Medicaid Services** (known as CMS).
- Services that are paid for through MaineCare must meet federal CMS requirements.
- CMS has issued new rules for certain Medicaid-funded **Home and Community-Based Services** (HCBS).
- This presentation outlines those changes and the process Maine is using to be sure it meets the requirements of the new rules.



Why were these changes made?

- The rule changes were made to make sure that services received by members support full access to the benefits of living in the community.
- These new rules define standards for the settings in which certain HCBS may be provided.
- All states must meet these new requirements in order to have the federal government continue to help pay for these services.
- If necessary, CMS will allow states up to four years to phase in these changes



How will Maine Know if it Needs to Make Changes?

- The federal government is requiring all states, including Maine, to evaluate its HCBS and complete a thorough assessment of services that fall under this new rule.
- Maine is working with members, families, providers and other stakeholders as part of this process. This presentation outlines that process.



Which Programs are Affected?

These home and community-based services (HCBS) waiver programs are affected by the new rules:

§18	Home and Community Benefits for Adults with Brain Injury
§19	Home and Community Benefits for the Elderly and for Adults with Disabilities
§20	Home and Community Services for Adults with Other Related Conditions
§21	Home and Community Benefits for Members with Intellectual Disabilities or Autistic Disorder
§22	Home and Community Benefits for the Physically Disabled*
§29	Support Services for Adults with Intellectual Disabilities or Autistic Disorder
§32	Waiver Services for Children with Intellectual Disabilities or Pervasive Developmental Disorders

*Soon to be merged with §19.



Which Types of Settings are Affected?

Type of Setting	Provider-Owned or Controlled
Residential Providers*	<ul style="list-style-type: none">• Group Homes• Family Centered Support Homes• Shared Living• Certain PNMs
Non-Residential Providers	<ul style="list-style-type: none">• Adult day health centers• Center-based community support• Enclaves and sheltered work shops

*Rules apply to the setting in which a member receiving HCBS is living, whether or not the member receives HCBS in that setting.



What does the New Rule Mean for these Settings?

- States must decide whether services in these settings meet the community standards set forth in the rules.
- The new rules looks at a number of factors, including whether the services are institutional in nature or otherwise isolating to an individual.
- HCBS provided to a member in his or her own home are assumed to meet the requirements of the new rule.



Some Settings are not Considered HCBS Settings

- These settings are not considered community settings:
 - Nursing facilities
 - Psychiatric institutions (“IMDs”)
 - Intermediate Care Facilities for Individuals with Intellectual Disability
 - Hospitals
 - Any other setting having the **qualities of an institution**



Some Settings are Presumed not to be HCBS Settings

- Under the new rules, some settings are **presumed** to have the **qualities of an institution** if they are:
 - Located in publicly or privately operated facility that provides inpatient institutional treatment (*e.g.*, a unit located inside a nursing facility)
 - Located on the grounds of or immediately adjacent to a public institution (*e.g.*, on the campus of Riverview)
 - Any other setting having the **effect of isolating** individuals receiving HCBS from the broader community of individuals not receiving HCBS



CMS Provides Guidance on the Kinds of Settings that Isolate

- These settings are presumed to have institutional qualities:
 - The settings are designed to provide multiple types of services and activities on site (*e.g.*, housing, day, therapeutic, social & recreational)
 - People in the setting have limited interaction with the broader community
 - The settings use or authorize interventions used in institutional settings or deemed unacceptable in Medicaid institutional settings



CMS has also Identified the Kind of Settings that **Might** Isolate

- CMS says that settings that meet **all three** of these criteria might have an isolating effect:
 1. Designed specifically for people with disabilities or people with a certain type of disability AND
 2. Individuals in the setting are primarily or exclusively people with disabilities AND
 3. On-site staff provides many services



If a State Chooses it Can Present Evidence that a Setting is Not Institutional

- Only for settings **presumed to be institutional**, a state may submit evidence to CMS to demonstrate how the setting complies with the new HCBS standards
- CMS reviews the evidence with “heightened scrutiny.” This means that, to overcome the presumption, the State must show that the setting:
 - Does not have qualities of institution AND
 - Meets the standards for HCBS settings



HCBS Standards

To be an HCBS setting, the setting must meet HCBS community setting standards:

- Standards apply to setting where person receiving HCBS is living, whether or not HCBS is delivered in that setting*
- Standards apply to setting where HCBS is delivered, including non-residential settings

*79 Fed. Reg. 2948, at 2960 and 2968.

Standards that Apply to All HCBS Settings

Setting supports opportunities to seek employment and work in competitive integrated setting

Setting supports engagement in community life

Setting supports control over personal resources

Setting supports option to receive services in the community

Optimizes individual initiative, autonomy and independence, control over activities, physical activities and with whom to interact

Ensures right of privacy, dignity and respect and freedom from coercion and restraint

Option to choose non-disability specific setting and, residential setting, a private unit

Facilitates individual choice regarding services and supports and who provides them



Community Access

All HCBS Settings

Regulatory Requirement	Examples of Acceptable Practice
Opportunities to seek employment and work in competitive integrated settings	Individual works in an integrated setting or, if the individual would like to work, there is activity that ensures the option is pursued.
Engage in community life	<p>Individual regularly accesses community as chooses (shops, attends religious services, schedules appointments, lunch with family and friends)</p> <p>Individual has access to public transportation, accessible transportation for appointments and shopping; training to use public transportation. Where public transportation is limited, other resources are provided.</p> <p>Individual participates regularly in meaningful non-work activities in integrated community settings for the period of time desired by the individual</p>
Control personal resources	Individual has checking or savings account or other means to control own funds; access to own funds.
Receive services in the community	Individual can choose from whom they receive services and supports.

Adapted from CMS, *Exploratory Questions to Assist States in Assessment of Residential Settings* accessible at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Exploratory-questions-re-settings-characteristics.pdf>.



Regulatory Requirement	Examples of Acceptable Practice
Privacy	<p>Individual can make private telephone calls/text/email at the individual's preference and convenience.</p> <p>Health information is kept private.</p> <p>Assistance provided in private, as appropriate, when needed.</p>
Dignity and respect	<p>Individual is assisted with grooming as desired; assisted with dressing in their own clothes appropriate to the time of day, weather and preferences.</p> <p>Staff communicates with individuals in dignified manner.</p> <p>Informal (written and oral) communication conducted in a language that the individual understands.</p>
Freedom from coercion	<p>Individuals are free from coercion: e.g., able to file complaints, discuss concerns; able to make personal decisions such as hairstyle and hair color</p>
Freedom from restraint	<p>Individual has unrestricted access in the setting: no barriers to exit and entrance; physical accessibility.</p>

Adapted from CMS, *Exploratory Questions to Assist States in Assessment of Residential Settings* accessible at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Exploratory-questions-re-settings-characteristics.pdf>.



Autonomy

All HCBS Settings

Regulatory Requirement	Examples of Acceptable Practice
Initiative, autonomy and independence	<p>Individual is free to come and go at will (no curfew or other requirement for a scheduled return to the setting)</p> <p>The setting is an environment that supports individual comfort, independence and preferences (<i>e.g.</i>, kitchen with cooking facilities, dining area, laundry, and comfortable seating in shared areas).</p>
Daily activities	<p>Individual chooses and controls a schedule that meets his/her wishes in accordance with a person-centered plan.</p> <p>Participates in unscheduled and scheduled community activities in the same manner as individuals not receiving Medicaid HCBS services.</p> <p>The individual chooses when and what to eat.</p> <p>The individual chooses and controls a schedule that meets his/her wishes in accordance with a person-centered plan.</p>
Physical environment	<p>The individual has his/her own bedroom or shares a room with a roommate of choice.</p>
With whom to interact	<p>The individual chooses with whom to eat or to eat alone.</p> <p>Visitors are not restricted.</p>

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Choice of Providers

All HCBS Settings

Regulatory Requirement	Examples of Acceptable Practice
Choice of services	Staff ask individual about needs and preferences. Individuals are aware of how to make a service request. Requests for services and supports are accommodated as opposed to ignored or denied. Choice is facilitated in a manner that leaves the individual feeling empowered to make decisions.
Choice of providers	The individual chooses from whom they receive services and supports. Individual knows of other providers who render the services s/he receives. Individual knows how and to whom to make a request for a new provider.

Adapted from CMS, *Exploratory Questions to Assist States in Assessment of Residential Settings* accessible at <http://www.medicare.gov/Medicare-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Downloads/Exploratory-questions-re-settings-characteristics.pdf>.



Provider-owned or controlled residential settings must also comply with some **additional requirements**.

Additional Requirements

Provider-Owned or Controlled Residential Settings

Standards that Apply to Provider-Owned or Controlled Residential Settings

Responsibilities and rights of tenant, Legally enforceable agreement

Privacy in sleeping or living unit

Lockable doors, staff have keys only as needed

Freedom to furnish and decorate

Choice of roommates for shared rooms

Control own schedule and activities and access to food at any time

Able to have visitors at any time

Physically accessible



Under Certain Conditions a Residential Provider can Modify Some of These Additional Requirements*

- Additional requirements may be changed only when a member's Person Centered Plan describes:
 - The member's specific individualized assessed need that the modification is addressing
 - Prior interventions and less intrusive methods tried
 - How the modification is directly proportionate to the member's specific assessed need
 - Ongoing data measuring effectiveness of modification
 - Established time limits for periodic review of modification
 - Individual's informed consent
 - Assurance that intervention will not cause harm.

*The requirement that a setting is physically accessible may not be modified.



We Need a **Transition Plan**

- By **March 17, 2015** Maine must:
 - Determine whether our HCBS programs are in compliance
 - Decide what changes will need to be made
 - Draft a transition plan
 - Share the transition plan with the general public and ask for comments
 - Respond to the comments and revise the transition plan as necessary
 - Submit the transition plan to CMS for its approval



What Goes in the Transition Plan?

- A best estimate of the number of settings:
 - Currently in full compliance
 - To be brought into compliance
 - That cannot comply
 - Presumed to be institutional
- Documentation, where we think we are already in compliance
- A description of the steps we will take to come into compliance
- When we need to, evidence to overcome the presumption that the setting is institutional



How are We Determining Compliance?

- Is current policy consistent, silent or in conflict?
- Where consistent, do we have systems in place to verify compliance?
 - Participant's experience of services (e.g., service monitoring by case manager)
 - Provider operation (e.g., legally enforceable agreement, resident control over personal resources)
 - Characteristics of settings (e.g., physical accessibility, lock on doors, institutional qualities)



What Kind of Changes Might be Needed?

- Policy changes, *e.g.*, statutes, regulations and operational standards
- Practice changes, *e.g.*, facility and program operations, training programs
- Settings modifications, *e.g.*, privacy, lockable doors
- Relocation of individuals from any setting that does not qualify as an HCBS setting
- Improvements to our systems for verifying compliance



How will Changes be Implemented?

- If our transition plan requires major changes, we will ask CMS for extra time to make those changes
 - When justified, CMS can allow up to four additional years (until March 17, 2019) to complete all steps under their transition plan
 - Our transition plan will describe a process for engaging stakeholders in any major change
- If our transition plan requires relocating any members, we will comply with CMS requirements for fair notice and appeal



Public Comment on Transition Plan

- Prior to submission, we must:
 - Allow a minimum of a 30-day public comment period on the Draft Transition Plan
 - Consider public comments and modify the Draft Transition Plan accordingly
 - Submit evidence of public comment and our response to comments
- We will be announcing a plan for conducting public forums soon. The forums will take place in December.



Timeline

Activity	Date
Review current policy and what we know about current practice and settings to identify what we need to change	June – September 2014
Conduct outreach to stakeholders	October 2014
Draft Transition Plan	November 2014
Invite public input on draft Transition Plan	December 2014
Respond to comments and finalize Transition Plan	January – February 2015
Submit Transition Plan to CMS for their approval	March 2015



Visit These Sites for More Information about the New HCBS Rules

CMS Home & Community-Based Services

Provides Guidance and Tools for Complying with the New Rules

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>

HCBS Advocacy

Provides information about How Other States are Responding to the New Rules

<http://hcbsadvocacy.org/>



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Questions?

If you have questions please submit them to OADS@maine.gov



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