

Person-Centered Service Planning Provisions and Modifications to HCBS Settings Criteria

Q1: In the provision of Medicaid-funded home and community-based services, do states and providers have the transition period leading up to March 2019 to comply with all aspects of the person-centered service planning regulatory provisions?

A1: The HCBS regulation requires that Medicaid beneficiaries receiving HCBS services through 1915(c) waivers, 1915 (i) or (k) state plans, must have a person-centered service plan, and outlines specific requirements of the plan document and planning process. These requirements took effect on March 17, 2014 for the 1915(c) waivers and 1915(i) HCBS state plan options, and on July 6, 2012 for the 1915(k) Community First Choice programs. The March 2019 transition period for states and providers applies to only the home and community-based settings requirements for HCBS programs in existence on March 17, 2014.

Q2. Do states and providers have the transition period leading up to March 2019 to comply with the section of the HCBS rule that allows certain settings requirements to be modified in a provider-owned or controlled residential setting through the person-centered service planning process?

A2. Yes, there is a section of the settings provisions in the regulation at 42 CFR 441.301(c)(2)(xiii), 42 CFR 441.710(a)(1)(vi)(F), and 42CFR 441.530(a)(1)(vi)(F) for the 1915(c), 1915(i) and 1915(k) authorities that allows for limitations to be implemented on the qualities of a home and community-based setting that is provider owned or controlled, for health and safety issues of residents. These modifications must meet the criteria set forth in the regulation and be documented in the Person-Centered Service Plan. Due to the fact that this is a modification to the required qualities in home and community-based settings states have the transition period to address the modification requirements in provider-owned or controlled settings. The remainder of the person-centered planning requirements were effective with the effective dates of the regulations.

(For convenience, CMS will provide regulatory cites for the 1915(c) HCBS waivers throughout the remainder of this document. Similar person-centered service planning requirements apply to services authorized under 1915(i) and (k) programs.)

Practically, this means that during the transition timeframe, the state may include in its Statewide Transition Plan a process for adding these specific requirements into the person-centered service plan for individuals experiencing modifications to required characteristics in a provider owned or controlled setting.

Q3: How can modifications to the home and community-based settings requirements be appropriately used in the person-centered service planning process?

A3: The modifications section of the rule is a tool allowing providers to serve individuals with the most complex needs in integrated community settings to ensure that the setting supports the health and well-being of the individual beneficiary and those of people around them. For example, providers in

many states serve individuals with severe pica behavior (compulsive eating of non-food items), for whom the physical environment may need to be tightly controlled to prevent the occurrence of individual behavior that can cause severe injury or death. In addition, some community providers support individuals with a history of sexual predation where line-of-sight supervision and limits on interaction with certain members of the community may need to be imposed. Other community providers serve individuals with dementia for whom measures must be taken to account for safety needs in a person-centered manner, including concerns related to wandering. With the HCBS rule's emphasis on full community integration and control of personal resources and activities, the restrictions needed to provide individuals with these kinds of behaviors or other complex needs, alternatives to institutional placement could otherwise violate the HCBS requirements.

However, CMS emphasizes that it is essential that the modifications process be used with strict adherence to its very specific requirements. The modifications process must:

- be highly individualized
- document that positive interventions had been used prior to the modifications
- document that less-intrusive methods did not successfully meet the individual's assessed needs.
- describe how the modification is directly proportionate to the specific assessed need
- include regular data collection
- have established time limits for periodic reviews
- include informed consent, and
- be assured to not cause harm.

Controls on personal freedoms and access to the community cannot be imposed on a class or group of individuals. Restrictions or modifications that would not be permitted under the HCBS settings regulations cannot be implemented as "house rules" in any setting, regardless of the population served and must not be used for the convenience of staff. In the case of individuals for whom modifications are included in the person-centered plan in accordance with the requirements described above, it is equally important to ensure robustness in the person-centered planning process by honoring other preferences the individual has outside of the specific risk targeted by the modification, and to review such restrictions frequently to ensure they are administered consistent with current health and safety needs and are still necessary.

Q4: How can states assure that modifications to home and community-based settings criteria meet the requirements of the rule?

A4: States can use a variety of strategies to assure the efficacy of the modifications process, such as:

- Require providers to ensure that their own policy documents comply with the modifications provisions of federal Medicaid HCBS regulations
- Establish a frequency for providers' periodic reviews of modifications to determine whether or not the modification continues to be necessary or whether it can be removed or an alternative modification that is less restrictive can be created

- Use the state's quality assurance process (e.g. licensing reviews, case management visits, etc.) to sample individual person-centered service plans that include modifications and check them against the criteria in the federal rule
- Create a statewide training system for case managers and provider representatives who are involved in writing plans that include modifications (especially targeting providers who serve larger numbers of individuals with the kinds of behaviors that may require modifications)
- Set a policy of external human rights review of plans or samples of plans that contain modifications, and
- Establish data collection protocols to ensure ongoing monitoring and awareness related to modifications and periodic review of modifications.