



# 2014 HCBS Final Rule

**HCBS Conference**  
**September 2015**

# 2014 HCBS Final Rule

- Published January 2014 – Effective March 17, 2014
- Addressed HCBS requirements across:
  - 1915(c) waivers
  - 1915(i) state plan
  - 1915(k) Community First Choice
- Requirements apply whether delivered under a fee for service or managed care delivery system
- States have until March 17, 2019 to achieve compliance with requirements for home and community-based settings in transition plans for existing programs.

# Key Themes of the Rule

- The regulation is intended to serve as a catalyst for widespread stakeholder engagement on ways to improve how individuals experience daily life
- There is no HHS initiative to shut down particular industries or provider types
- FFP is available for the duration of the transition period
- The rule provides support for states and stakeholders making transitions to more inclusive operations
- The rule is designed to enhance choice among settings that meet a level playing field

# 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

# Home and Community-Based Setting Requirements

## The Home and Community-Based setting:

- 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
  - Person-centered service plans document the options based on the individual's needs, preferences; and for residential settings, the individual's resources

# Home and Community-Based Setting Requirements

- 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

# Home and Community-Based Setting Requirements

## Provider Owned and Controlled 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

## Provider Owned and Controlled Settings – Additional Requirements

- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with 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

## Provider Owned and Controlled Settings – Additional Requirements

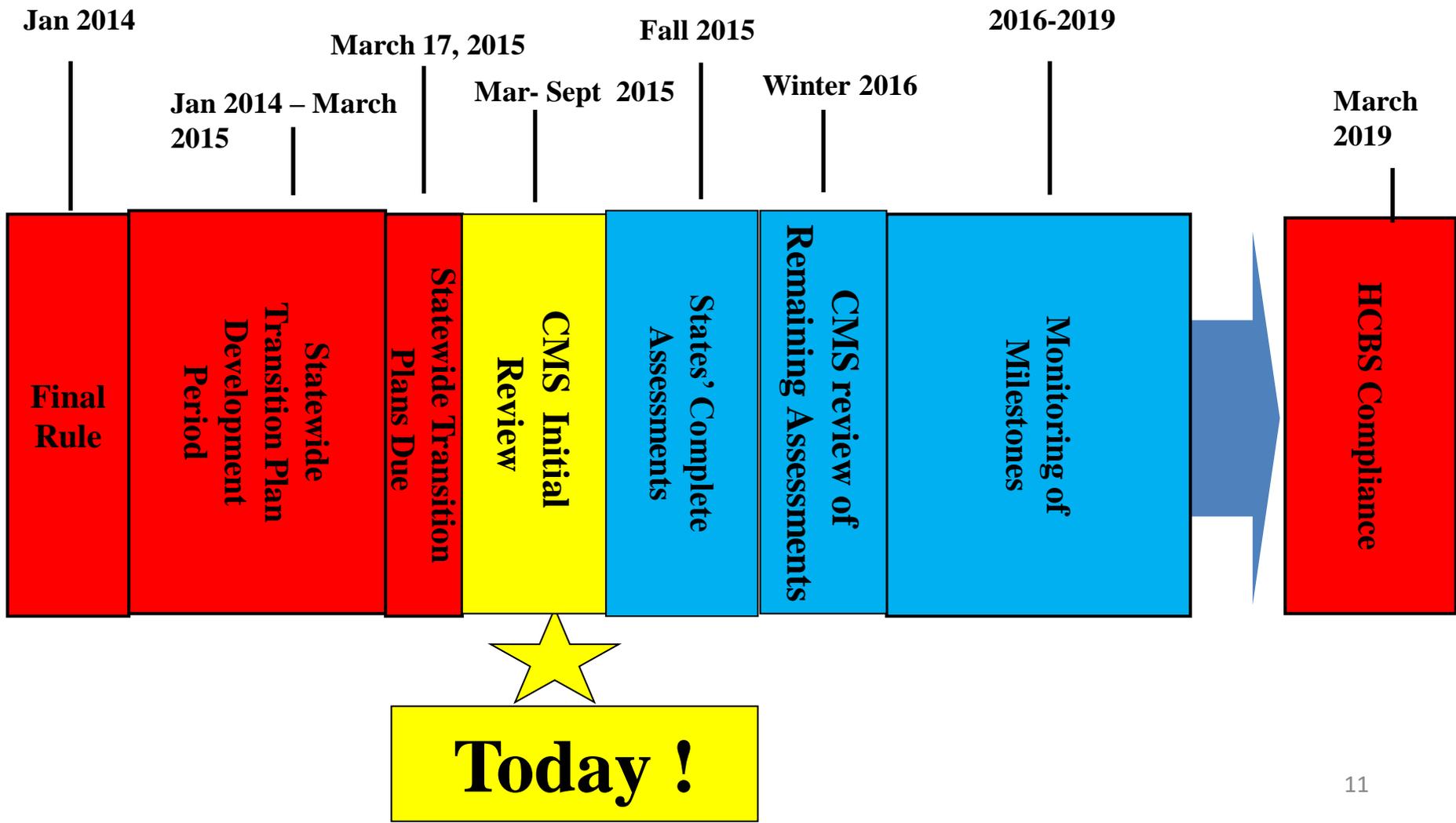
- Modifications of the additional requirements must be:
  - Supported by specific assessed need
  - Justified in the person-centered service plan
  - Documented in the person-centered service plan

# Home and Community-Based Setting Requirements

## Provider Owned and Controlled Settings – Additional Requirements

- 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

# Looking Forward: HCBS Transition Plan Implementation Timeline



# Statewide Transition Plans

- Statewide Transition Plans (STPs) were due March 17, 2015
- 49 STPs submitted; 2 states still need to submit (AZ & VT)
- Letters sent to 24 states requesting additional information (AL, AK, CO, DC, FL, GA, HI, IN, IL, KY, MI, MS, MO, MT, OR, NC, ND, NV, OH, SC, TN, VA, WV & WY)
- CMS will be issuing 4-5 letters per week for the remainder of the summer

# Statewide Transition Plans

- CMS is in the process of sending letters to states requesting additional information based on the content of their STPs
- Letters are customized to articulate the next steps for each state and the timeframes by which the additional information is to be submitted.
- As states complete their systemic and setting specific assessments, states should ensure continued public input on assessment results and implications.

# Statewide Transition Plans – What Are We Seeing

- Several STPs did not provide enough information to facilitate meaningful public input
- States are very early in the process of conducting assessments of their current systems
  - Many states have not completed initial systemic assessments
  - Some states have indicated that specific information on the scope of providers needing to revise operations, and the scope of information to be submitted for heightened scrutiny review, won't be known until very late into the transition period
  - Many states have not identified the specific policies, rules, licensure or certification process to be reviewed, the settings they apply to and/or the qualities of home and community-based settings that they address
  - Many states have not completely identified the specific settings to be included in the assessment, the number of such settings, or the number of individuals served

# Statewide Transition Plans – Issues & Concerns

- Without a complete settings assessment, states cannot:
  - Identify which settings are/are not in compliance or could transition to compliance
  - Identify settings *Presumed Institutional* in nature
  - Submit evidence for *Heightened Scrutiny*
  - Provide specific remedial actions
  - Provide more than general milestones/timeframes
- Concerns with the amount of time some states are projecting to complete the assessment phase and leaving adequate time for the actual transformation
- States need to develop plans for ongoing monitoring which should ensure settings currently in compliance remain in compliance during and after the transition period

# Statewide Transition Plans – CMS Actions and Assistance for States

- State-by-state communication to discuss statewide transition plans (calls with RO/CO, letters, etc.)
- Continued issuance of implementation guidance
- Maintenance of Home and Community-Based Services website and Implementation Toolkit on Medicaid.gov
- All-state SOTA calls on STPs and other major home and community-based settings implementation challenges identified by states
- Technical assistance training series of all-state webinars on a variety of HCBS topics

# Heightened Scrutiny (Frequently Asked Questions)

- Published June 26, 2015 on [medicaid.gov](http://medicaid.gov) website
- Instructs states when to consider submitting information to CMS on a setting presumed to have institutional qualities for which the state wishes to overcome the presumption and have the setting be considered home and community-based

# Settings Presumed Institutional

- The HCBS regulation describes three types of settings that are presumed institutional for which the state may request heightened scrutiny to overcome the presumption. They are settings in a privately or publically owned facility that also provides inpatient treatment; settings on the grounds of or adjacent to a public institution; and other settings that could have the effect of isolating individuals from the community

# Criteria CMS Will Use To Determine If A Setting is Home and Community-Based

- Information submitted by the state that demonstrates how each of the qualities of a home and community-based setting described in the rule are met
- Information submitted by other parties to the state and to CMS
- Potential consultation with other federal partners

# Types of Information States May Use to Document a Setting is Home and Community-Based

- Evidence the setting overcomes its presumed institutional qualities and how individuals served in that setting are fully integrated in and have full access to the community at large
- Use of the exploratory questions in the Toolkit
- Information obtained from public input

# Types of Information (continued)

- The FAQ gives additional examples of information the state may submit to overcome the institutional presumption in each of the types of settings mentioned in the regulation. For example, in a setting that includes an inpatient unit, CMS would consider evidence demonstrating that the Home and Community-Based portion of the facility has clear administrative, financial, programmatic and environmental distinctions from the institution.

# Public Notice In State Requests for Heightened Scrutiny should include:

- Inclusion in the initial or an amended statewide transition plan,
- Listing the affected sites by name, location, number of individuals served and sufficient detail for the public to support or rebut the state's information, and
- An adequate public comment period as defined by the regulation.

# CMS's Response to State Requests for Heightened Scrutiny

- If CMS determines that not all the regulatory requirements are met in the state's request, the state can take the remaining transition period (until March 2019) to either: bring the setting into compliance, relocate the individuals to a compliant setting, or fund the setting with a different funding source
- For all new 1915(c), (i) or (k) applications, there is no transition period and settings included must be compliant upon approval.

# FAQ: State Flexibility

- States may set up a tiered system using current settings that are compliant with the floor set by the federal regulation and require a higher set of qualifications/standards for future settings.
- These arrangements may extend beyond 2019 thereby creating a system that will host settings at minimal requirements while moving the system toward newer and more innovative models.

# Additional FAQ Items

- Clarification on provider controlled settings
- Residency agreements in lieu of leases
- Settings requirements for home and community-based services under a 1915(b)(3) authority

# Resources

- HCBS Website – <http://www.medicaid.gov/hcbs>
  - Final HCBS regulation
  - Guidance
  - Fact Sheets
  - FAQ
  - Compliance Toolkit
  - State Transition Plan Information
- State Technical Assistance
- Mailbox to send questions: [hcbs@cms.hhs.gov](mailto:hcbs@cms.hhs.gov)