

Home and Community Based Service (HCBS)

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Agenda

- Introduction and Background of the Centers for Medicaid and Medicare Services (CMS) HCBS Settings Final Rule
- SFY2018 Ongoing Monitoring Plan
- HCBS Settings
- HCBS Qualities
- Non-CMHC POCO Residential Settings
- HCBS Regulation New Clarification



CMS HCBS Background

- CMS HCBS Final Rule published January 2014, with an effective date of March 17, 2014
- Addressed HCBS setting requirements across:
 - **1915(i) State Plan Amendment programs**
 - **Adult Mental Health Habilitation (AMHH)**
 - **Behavioral and Primary Healthcare Coordination (BPHC)**
 - **Children's Mental Health Wrap-Around(CMHW)**
 - 1915(c) waiver programs
 - 1915(k) Community First Choice programs



HCBS Compliance Timeline

- **Transition Period:** All existing provider owned and controlled settings (established prior to March 17, 2014) must be fully compliant with the CMS HCBS Final Rule no later than **March 17, 2019**
- **NO Transition Period:** Any new provider owned and controlled settings (established after March 17, 2014) must be fully compliant with the HCBS Final Rule before reimbursable services under a program affected by HCBS Final Rule are provided at that setting
- **Three Year Extension:** CMS extended the HCBS Compliance deadline to March 17, 2022 to allow the state to determine if they need additional time to achieve full compliance. The DMHA Adult 1915(i) program area has determined to remain with the original compliance deadline of March 17, 2019.



Current HCBS Status

1. POCO residential settings: 137 of 192 are fully compliant
2. POCO non-residential settings: All 191 settings are fully compliant
3. All 17 Heightened Scrutiny Evidence Packets resubmitted to OMPP
4. SFY 2018 Statewide Transition- Ongoing monitoring plan



Statewide Transition Plan

SFY2018 Ongoing Monitoring Plan

- Ongoing Monitoring site visits will be coordinated with the provider prior to the visit.
- CMHC POCO residential and non-residential settings that required remediation of physical changes in order to receive an HCBS Fully Compliant setting designation will receive an onsite visit.



What is a Home and Community-Based Services (HCBS) Compliant Setting?

Per CMS, an HCBS setting can be any of the following:

- 1) Member owned/leased
- 2) Any HCBS Residential Provider owned/controlled/operated
- 3) Third-party owned/operated/controlled



What is NOT an HCBS Compliant Setting?

- The following settings are identified by CMS as institutional, and are NOT considered home and community-based:
 - 1) Nursing facilities
 - 2) Institutes for Mental Disease (IMD)
 - 3) Intermediate Care Facilities for Individuals with Intellectual Disability (ICF/IID)
 - 4) Hospitals
- Federal requirements apply to **all** settings in which a member may reside and/or receive services



Qualities of an HCBS Compliant Setting: The “Big 5”

**CMS established five qualities (the “Big 5”)
that apply to ALL settings**

- 1) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community,
- 2) The setting is selected by the individual from among setting options,
- 3) The setting ensures an individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint
- 4) The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact
- 5) The setting facilitates individual choice regarding services and supports, and who provides them



POCO Residential Settings

- *POCO (HCBS Provider Owned, Controlled and/or Operated) residential settings*, as defined by CMS, are those settings in which an individual resides that are specific physical places that are owned, co-owned, and/or operated by a provider of HCBS
 - DMHA was asked by CMS to clarify that POCO includes all HCBS providers not just CMHCs.

Indiana has four types of DMHA-certified residential facilities for adults:

- 1) alternative family homes for adults (AFA)
 - 2) transitional residential living facility (TRS)
 - 3) semi-independent living facilities (SILP)
 - 4) supervised group living (SGL)
- Each of these DMHA-certified residential facilities meets the definition of a POCO residential setting



Additional Required Qualities of POCO Residential Settings: The “POCO 5”

POCO residential settings must meet additional conditions in order to be fully HCBS compliant:

- 1) Member signs a lease or resident agreement that provides the same protections from evictions under the landlord/tenant law of the state, county, city
- 2) Each individual has privacy in their sleeping or living unit:
- 3) Individuals have the freedom and support to control their own schedules and activities, and have access to food any time
- 4) Individuals are able to have visitors of their choosing at any time
- 5) The setting is physically accessible to the individual



Modifications to the POCO 5

- Modifications can ONLY be applied to the “POCO 5”

EXCEPTION: The setting requirement for physical accessibility must be implemented and cannot be modified.

- The CMS HCBS Settings Final Rule states, “Any modification of the additional conditions, ... must be supported by a specific assessed need and justified in the person-centered service plan.”
- Documentation in the person-centered service plan must include the following eight elements of information:
 - Identify a specific and individualized assessed need
 - Document the positive interventions and supports used prior to any modifications to the person-centered service plan
 - Document less intrusive methods of meeting the need that have been tried but did not work
 - Include a clear description of the condition that is directly proportionate to the specific assessed need
 - Include regular collection and review of data to measure the ongoing effectiveness of the modification
 - Include established time limits for periodic reviews to determine if modification is still necessary or can be terminated
 - Include the informed consent of the individual
 - Include as assurance that interventions and supports will cause no harm to the individual



NON-CMHC POCO RESIDENTIAL SETTING

****NON-POCO RESIDENTIAL SETTINGS LANGUAGE HAS BEEN CHANGED TO NON-CMHC POCO RESIDENTIAL SETTING****

A Non-CMHC POCO residential setting is considered to be any setting not owned, controlled and/or operated by a CMHC but is owned, controlled and/or operated by any other provider of HCBS services

Why the Change?

1. Clarifies who is responsible for establishing an HCBS Compliance Designation
 - Division of Aging
 - Division of Disability and Rehabilitative Services
 - DMHA
2. There are different requirements for a Non-POCO setting and a POCO setting
 - Global 5 Requirements vs. POCO 5 Requirements

A member receiving services under 1915(c) waivers also must live in a setting which is HCBS compliant.



Non-CMHC POCO Assessment Worksheet

1. Once a Non-CMHC POCO setting is identified, the top portion of the Assessment Worksheet needs to be completed and submitted to DMHA at DMHAAdultHCBS@fssa.IN.gov.
 - The Non-CMHC POCO residential setting Assessment Worksheet is located at: <http://www.in.gov/fssa/dmha/2883.htm>
 - The website also provides an informational and instructional guide to accurately complete the worksheet.
2. Providers are responsible to identify if the setting is under the authority of DA or DDRS
3. If the setting is not owned, controlled, or operated by an HCBS service provider, then the CMHC provider is responsible for working with Setting Operating Authority (entity who owns, controls, or operates the setting) to complete and if necessary, remediate any non-compliant findings
4. Based on feedback, we are reviewing the process for assessing Non-CMHC POCO settings



“Presumed Institutional”

The HCBS Final Rule states that any setting that has any of the following three qualities of an institution does not meet the federal HCBS requirements:

1. Any setting that is located in a building that is also a **publicly or privately operated facility that provides inpatient institutional care** (that is, a hospital, IMD, ICF/IID, or nursing facility)
2. Any setting in a **building on the grounds of, or immediately adjacent to, a public institution** (defined by CMS as an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control)
3. Any other setting that **has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS**



HEIGHTENED SCRUTINY EVIDENCE PACKET (HSEP)

- Heightened Scrutiny Evidence Packet supports the setting can overcome the presumption of possessing institutional qualities.
- Once the initial setting assessments are completed, the SET will identify if the setting is Potential Presumed Institutional
- The SET will complete onsite visits
- With input from the CMHC, DMHA will develop a report with supporting documentation that shows the setting and its residents are integrated into the community.



HCBS REGULATION CLARIFICATION

Smoking Restriction

Previous Guidance: DMHA was advised that there could be no blanket smoking restrictions.

Current Guidance: New information from Office of Medicaid Policy and Planning, a lease may be used to restrict tobacco use within the building. However, the provider must still provide a designated area on the property for clients to smoke.



Summary of Clarifications

- 1. Clarification that a POCO setting includes settings owned, controlled, or operated by any HCBS provider (not just CMHCs)**
- 2. HCBS new regulation clarification**
 - With clarification from Office of Medicaid Policy and Planning, the lease can restrict smoking within the setting but not restrict offsite use. A designated smoking area must still be provided for residents.



Contact Information and Resources

HCBS email: DMHAAAdultHCBS@fssa.IN.gov

For additional HCBS information:

<http://www.in.gov/fssa/dmha/2876.htm>



Any Questions?

