



**Indiana
Department
of
Health**



Eric J. Holcomb
Governor

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DATE: January 11, 2023

TO: Executive Board
Indiana Department of Health

FROM: Amy Kent, Chief Strategy Officer
& Interim Assistant Commissioner
Consumer Services & Health Care Regulation

RE: Amendments to residential care facilities rules (410 IAC 16.2-5)
LSA Document # 22-

The Indiana Department of Health (Department) is presenting the residential care facilities rule to the Executive Board for discussion. The rule amends 410 IAC 16.2-5 to comply with mandates of the federal Home and Community Based Services (HCBS) Settings Final Rule. These rule changes are required under IC 16-28-2-11 and Indiana's approved Statewide Transition Plan.

The Indiana Department of Health (IDOH) licenses two types of long-term care facilities, residential care facilities and comprehensive care facilities. Residential care facilities, which are licensed, provide residential nursing care or administer medications prescribed by a physician. Comprehensive care facilities are licensed to provide more complicated nursing and medical services than residential care facilities but may have separate parts of the facility that operate as residential care facilities. Comprehensive care facilities are not required to be licensed as a residential care facility, but Indiana does do separate surveys for any residential sections. These rule updates pertain to the residential care facilities or residential care portions of comprehensive care facilities.

On March 17, 2014, the Centers for Medicare & Medicaid Services issued regulations, known as the HCBS Settings Final Rule, that define the settings in which it is permissible for states to pay for Medicaid HCBS. The purpose of these regulations is to ensure that individuals receive Medicaid HCBS in settings that are integrated and that support full access to the greater community. Community integration includes opportunities for residents who receive HCBS waiver funds to seek employment and work in competitive and integrated settings, engage in

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community life, control personal resources, and receive services in the community to the same degree as individuals who do not receive HCBS. These changes will maximize the opportunities for participants in HCBS programs to have access to the benefits of community living and to receive services in the most integrated setting.

Indiana offers eight Medicaid Home and Community Based Services (HCBS) programs that target specific groups. To be eligible for any HCBS program, you must meet Medicaid guidelines and HCBS program-specific eligibility guidelines. HCBS programs allow members to live in a community setting and avoid institutional placement. Indiana's HCBS programs are administered through the Family and Social Services Administration (FSSA). IC 16-28-2-11 provides "The state department shall amend rules concerning the licensure of a residential care facility to comply with federal law and regulation concerning the provision of home and community based services in the Medicaid program in order for a residential care facility to qualify as a home and community based services provider."

States must ensure all HCBS settings comply with the new requirements by completing an assessment of existing state standards including rules, regulations, standards, policies, licensing requirements, and other provider requirements to ensure settings comport with the HCBS settings requirements. States must submit a transition plan to CMS that includes timelines and deliverables for compliance with 42 CFR 441.301(c) (4) (5), and Section 441.710(a) (1) (2). States must be in full compliance with the federal requirements by the time frame approved in the transition plan but no later than March 17, 2023.

FSSA created a Statewide Transition Plan to assess compliance with the Final Rule and identify strategies and timelines for complying with the Plan as it relates to all FSSA HCBS programs.

The HCBS Final Rule requires that all home and community-based settings meet certain criteria. These include:

- The setting is integrated in and supports full access to the greater community;
- The setting is selected by the individual from among setting options;
- Each individual has a right to privacy, is treated with dignity and respect, and is free from coercion and restraint;
- Provides individuals independence in making life choices; and
- The individual is given choice regarding services and who provides them.



In residential settings owned or controlled by a service provider, additional requirements must be met:

- The individual has a lease or other legally enforceable agreement providing similar protections;
- Each individual must have privacy in their living unit including lockable doors;
- Individuals sharing a living unit must have choice of roommates;
- Individuals must be allowed to furnish or decorate their own sleeping and living areas;
- The individual controls his/her own schedule including access to food at any time;
- The individual can have visitors at any time; and
- The setting is physically accessible.

Any modification to these additional requirements for provider-owned home and community-based residential settings must be supported by a specific assessed need and justified in the person-centered service plan.

The HCBS Final Rule clarifies settings in which HCBS cannot be provided. These settings include: comprehensive care facilities that do not have separate residential sections, institutions for mental disease, intermediate care facilities for individuals with intellectual disabilities, and hospitals.

410 IAC 16.2-5 must be modified to conform to the Federal rule, as the rule requires states to ensure all HCBS settings comply with the new requirements by completing an assessment of existing state standards including rules, regulations, standards, policies, and licensing requirements.

This is necessary to keep federal funding, but more importantly it provides Indiana's vulnerable populations with opportunities to work, play, learn, and volunteer in the community. It also gives them rights to privacy and autonomy in their home, and protections from being evicted without a hearing before an administrative law judge with experience and understanding of the issues specific to the type of facility involved.

Additional Changes

In addition, the Division of Aging requested that a more complete definition of a provided "meal" because many individuals do not have monetary means to purchase food above and



beyond what is provided at their facility. The Division of Aging has received complaints that certain meals (primarily breakfast) provided have lacked substance (i.e. a granola bar and a piece of fruit). Therefore, ensuring that balanced meals with an appropriate caloric distribution is necessary.

IDOH is also clarifying staffing expectations. The current rule requires a minimum of one (1) awake staff member with CPR and First Aid training be present 24 hours a day. IDOH is changing the rule to a "nursing" staff member. This would permit a nurse aide or qualified medication assistant be present but requires more medical training and experience than a security guard or maintenance person to ensure that resident health emergencies can be met. The necessity for this rule change became apparent after a resident in a facility was found deceased when only a security guard was in the facility.

IDOH has also updated the tuberculosis section in the rule to mirror the most recent guidance. This update will be easier for providers and residents alike as it is less restrictive than the previous requirements.