

Preliminary Analysis of HCBS Final Rule

January 13, 2014

Executive Summary

- ✓ Flexibility to combine populations and align waiver authorization periods likely will
 - Further foster development of managed care arrangements
 - Eliminate administrative barriers to further HCBS expansion
- ✓ Availability of a final Section 1915(i) rule with budgetary control clarifications may increase state interest
- ✓ For Assisted Living delivered under 1915(c), (i), or (k), the HCBS setting definition is improved notably
- ✓ New public notice and input requirements will provide new opportunities to provide input and require state responses to such input including on changes considered “Substantive”

Overview

- ✓ HCBS Setting Transition and Compliance Process
- ✓ Section 1915(c) HCBS Program Changes
 - Flexibility to Combine Target Groups
 - Person Centered Planning
 - Duration, Extension, and Amendment of Waivers
- ✓ Section 1915(i) Major Provisions

Transition to Compliance Scenarios

Amendments to Existing SPO or Waiver	New SPO or Waiver	Waiver Renewals	Currently Operating but Not Yet Renewing	New Based on a Waiver Allowed to Expire
<p>State Assessment of Current Policy and Programs</p> <p>Public Notice and Input Process</p> <p>Within 120 days of submission must submit a written transition plan</p> <p>One year to finalize transition plan</p> <p>One-five years for compliance</p>	<p>State Assessment of Current Policy and Programs</p> <p>Public Notice and Input Process</p> <p>Must be submitted with all elements in compliance</p>	<p>State Assessment of Current Policy and Programs</p> <p>Public Notice and Input Process</p> <p>Within 120 days of submission must submit a written transition plan</p> <p>One year to finalize transition plan</p> <p>One-five years for compliance</p>	<p>State Assessment of Current Policy and Programs</p> <p>Public Notice and Input Process</p> <p>One year to finalize transition plan</p> <p>One-five years for compliance</p>	<p>Rule does not specifically address</p> <p>Would appear to follow New SPO or Waiver process</p>

Transition Public Notice Process As Defined To-Date

- ✓ 30-day public notice and comment period
- ✓ Must share entire transition plan
- ✓ Must consider and modify the transition plan as deemed appropriate by state and to account for public comment
- ✓ Final submitted plan must
 - Include evidence of public notice
 - Summary of comments received and reasons why comments were not adopted and any modifications made based on comments

Potentially Significant Opportunity to Advocate on Pace and Nature of Change

Major HCBS Policy Changes

- ✓ Section HCBS Program Changes
 - Waiver Renewals
 - Flexibility to Combine Target Groups
 - Person Centered Planning
 - Duration, Extension, and Amendment of Waivers
- ✓ Section 1915(i) Impacts on HCBS Program Design

Waiver Approvals for Longer Periods of Time

- ✓ Section 1915(c)
 - An initial approval of three years and subsequent approval for five years but ...
 - For waivers serving persons who are Medicare-Medicaid eligible, an initial five year approval may be granted

- ✓ Section 1915(b) and (c)
 - For Section 1915(b) two year initial and two year subsequent approvals but ...
 - For Section 1915(b) waivers serving persons who are Medicare-Medicaid eligible, an initial five year approval may be granted

- ✓ Section 1916
 - Two year initial and two year subsequent approvals

New Authority to Combine all Populations in One Waiver or 1915(i)

	Combine	Not Combine
Pros	Single budget could make advocacy for sufficient rates easier for ALF	Slows managed care
Cons	<p>Disability policy could be pushed into aging programs</p> <p>Potential NF loss of market share</p> <p>Managed care expansion</p>	Silo resource competition (e.g., ID/DD waiver versus aging programs, etc.)

Could impact advocacy strategies as roles of state Medicaid agency, aging and disability agencies and intellectual and development disability agencies change in a consolidated waiver environment

New Eligibility Group: Section 1915(i) & Existing Programs

- ✓ Two eligibility groups
 - Group 1
 - People previously not eligible for Medicaid
 - Income <150 FPL
 - Meets needs-based criteria for Section 1915(i)
 - Group 2
 - Current eligible under and existing program
 - Income <300 SSI
 - Will receive services under other programs

Changes in Level of Care to address implementation of Section 1915(i) must result in standards at least as stringent as those before the modifications

Person-Centered Planning and Services

- ✓ Requires person-centered planning in Section 1915(c) and (i)
 - May include elements new to Older Adult-only waivers
 - Offers a framework for mitigating challenges for supporting persons with dementia in a person-centered plan
- ✓ Services list remains same but with modifications to exclusions
 - FFP now is available for temporary costs of room and board, meals in adult day health licensed settings, portion of rent and food costs for nonrelated caregivers residing a beneficiaries' homes (e.g., not available in residences owned or leased by caregiver)

Substantive Change

- ✓ States must follow a new process for providing public notice and input on “substantive waiver changes”
 - Reduction or elimination of services
 - Reduction scope, amount or benefit of services
 - Change in qualification of service provider,
 - Changes in rate methodologies
 - Constriction in eligible populations
- ✓ Effectively only on date of CMS approval

Bolsters Our Argument for a Parallel Process for State Plan Amendments

Federal Assumptions for Lower Costs Because of HCBS Changes

- ✓ Because of Section 1915(i) will have more control over services than under other state plan benefits (e.g., not subject to comparability)
- ✓ May limit services and target to specific populations
- ✓ May adjust needs-based criteria without prior CMS approval
- ✓ Person-Centered Planning to allow for support plans that will reduce use of inappropriate or unnecessary services

HCBS Cost Effectiveness and Beneficiary Outcomes

“More and Better Research is Needed to Draw Robust Conclusions about How the Setting of Care Influences the Outcomes and Costs of LTC for Older Adults”

Agency for Healthcare Research and Quality. Long-Term Care for Older Adults: A Review of Home and Community-Based Services Versus Institutional Care. November 2012; Grabowski, D. C. (2006). “The cost-effectiveness of noninstitutional long-term care services: Review and synthesis of the most recent evidence.” *Medical Care Research and Review*, 61(1), 3-28.

Considerable Guidance Still Forthcoming with Opportunities to Advocate for Industry Interests

- ✓ Dedicated website – www.medicaid.gov/HCBS
- ✓ Informational webinars
- ✓ Email box – HCBS@cms.hhs.gov
- ✓ CMCS Informational Bulletins
- ✓ Updates to Section 1915(c) Waiver Technical Guide
- ✓ Details on Requirements for Transitions Plans (e.g., milestones, timelines, benchmarks, process for addressing settings that do not meet the new criteria)

Key Provisions of the Final CMS Rule Defining HCBS Settings

HCBS Settings Must:

- ✓ Be integrated in and support full access to the greater community
- ✓ Be selected by individual from among setting options
- ✓ Ensure right to privacy dignity and respect and freedom from coercion and restraint
- ✓ Optimize autonomy and independence in making life choices
- ✓ Facilitate choice regarding services and who provides them

Additional Requirements for Provider Owned & Controlled Settings

- ✓ Individual has a lease or other legally enforceable agreement providing similar protections
- ✓ Right to privacy in the unit (apartment) including lockable doors
- ✓ Freedom to furnish and decorate unit
- ✓ Control over his/her own schedule including access to food 24/7
- ✓ Individual can have visitors at any time
- ✓ Setting is physically accessible

Settings that are not considered HCBS

- ✓ A nursing facility
- ✓ An institution for mental diseases
- ✓ An intermediate care facility for individuals with intellectual disabilities
- ✓ A hospital
- ✓ Any other locations that have qualities of an institution

Disability Specific Complexes

- ✓ No longer presumed to automatically be determined “institutional”
- ✓ New standard: “any other setting that has the effect of discouraging integration of individuals from the broader community”
- ✓ CMS plans to issue further guidance to provide examples that will be subject to higher scrutiny
- ✓ Broad in nature – not just dementia care

Lockable Doors

- ✓ Resident units (apartments) must have lockable doors and residents must have keys
- ✓ Appropriate staff may have keys as approved by the resident (or rep.) and described in service plan
- ✓ Staff members who have access to keys do not need to be listed by name in the service plan
- ✓ Residents do not need to be given building keys – only keys to their individual units
- ✓ Any need to restrict access/movement must be considered on an individual basis in accordance with the individual service planning process, not solely based on a diagnosis

Rebuttable Presumption Provisions Have Been Deleted

- ✓ Settings presumed to have institutional characteristics will have “heightened scrutiny” if states seek to include these settings in HCBS programs
- ✓ New Language: “Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment or in a building on the grounds of or immediately adjacent to a public institution or any other setting that has the effect of isolating individuals receiving Medicaid HCBS...”

Co-Located Buildings

- ✓ When asked, CMS officials confirmed that privately owned (non government) campuses that have an ALF and NF are not considered institutional unless the HCBS setting has the qualities of an institution
- ✓ NFs/ALFs under the same roof likely will have heightened scrutiny and challenges demonstrating that they are not institutional (However, CMS acknowledges “re-purposed buildings” may be acceptable)

Choice of Provider

- ✓ Clarifies that when residential care providers (ALFs/RCFs) provide a bundle of services under a single rate the individual is presumed to be choosing that provider of services
- ✓ For services outside the bundle regardless of whether offered by the provider, the individual may chose any qualified provider

Private Rooms/Individual Occupancy

- ✓ Final language shifts responsibility from the provider to the state HCBS program to ensure that individuals have options for both private and shared occupancy units
- ✓ Individual income/resources, needs and preferences can be recognized as factors in determining shared versus private units
- ✓ Provider owned settings are responsible for facilitating choice of roommates

Person-Centered Care Planning will be Key in the Future

- ✓ Based on the individual needs of the beneficiary, not on solely on diagnosis
- ✓ Updated at least annually and upon change in condition
- ✓ Driven by the resident (resident directed)
- ✓ Resident will dictate who all is involved
- ✓ CMS to issue further guidance on resident directed care planning
- ✓ December 2012 OIG report found that improvements were needed in HCBS care planning

ID/DD Provider Implications

- ✓ Disability specific complex – Rather than citing disability specific complex in the list of settings presumed to be an HCB setting, the CMS final rule includes language that reads “any other setting that has the effect of discouraging integration of individuals in the broader community.”
- ✓ The final rule excludes certain settings as permissible settings for the provision of Medicaid home and community-based services. These excluded settings include, among others, intermediate care facilities for individuals with intellectual disabilities (ICF/IID).
- ✓ Disability policy could be pushed into aging programs.
- ✓ Advocacy strategies could be impacted in a consolidated waiver environment.

Key Dates

- ✓ Published in the Federal Register on January 16, 2014
- ✓ Effective March 17, 2014
- ✓ States will have one year to submit written plans for bringing existing HCBS programs into compliance
- ✓ CMS may approve transition plans for a period of up to five years as supported by individual state circumstances
- ✓ New plans must meet the new requirements

CMS Resources

- ✓ Website: www.medicaid.gov/HCBS
- ✓ Four Fact Sheets & the Rule are located on the Web site
- ✓ Mailbox for Questions: HCBS@cms.hhs.gov
- ✓ Webinars:
 - January 23 at 1 p.m. EST
 - January 30 at 1 p.m. EST

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