
CMCS Informational Bulletin

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FROM: Cindy Mann
Director

SUBJECT: Home and Community-Based Service (HCBS) 1915(c) Waiver and 1915(i) State Plan Amendment (SPA) Settings' Requirements Compliance Toolkit

The Centers for Medicare & Medicaid Services (CMS) is pleased to share with State Medicaid Agencies, Operating Agencies, and other stakeholders a Home and Community-Based (HCB) Settings Toolkit to assist states develop Home and Community-Based Services (HCBS) 1915(c) waiver and section 1915(i) state plan amendment (SPA) or renewal application(s) to comply with new requirements in the recently published HCBS regulations.

The toolkit includes:

- a summary of the regulatory requirements of fully compliant HCB settings and those settings that are excluded;
- schematic drawings of the “heightened scrutiny process” as a part of the regular waiver life cycle and the HCBS 1915(c) compliance flowchart;
- additional technical guidance on regulatory language regarding “settings that isolate”; and
- exploratory questions that may assist states in the assessment of residential settings.

Upon receipt of a state’s HCBS 1915(c) waiver and 1915(i) SPA amendment or renewal application(s) including compliance information with the new requirements in the recently published HCBS regulations, CMS will review the document and reach an agreement with the state about its determination of compliant HCB settings and its actions to bring other settings into compliance. We expect this process to be a dialogue with states in much the same way CMS currently reviews and negotiates with states on the approval of their HCBS 1915(c) waiver actions. If necessary, CMS staff may conduct on-site reviews to facilitate confirmation of a state’s determination of whether certain types of settings or specific settings are compliant.

Upon completion of the federal review, CMS will communicate its decision to states, including whether the state must take additional steps to complete the HCBS 1915(c) waiver or SPA compliance plan. If the state must make substantive changes to that plan, the waiver or SPA must be re-posted for public comment.

CMS is currently developing additional information for states with regard to non-residential settings for HCBS participants. Recognizing the importance of this technical guidance to state planning activities, we are providing additional flexibility in timeframes for states to address non-residential settings. While all provisions of the regulations apply, the list of potential traits of settings that exhibit HCB characteristics included in the toolkit, provides examples of traits states should consider when assessing both residential and non-residential settings. With regard to non-residential settings, states should, at a minimum provide an assurance in the initial SPA or waiver plan for compliance that they will submit a more fully developed timeframe for bringing non-residential settings into compliance, after receipt of the technical guidance from CMS.

Once CMS has communicated its decision on the SPA or waiver plan for compliance embedded in the HCBS 1915(c) waiver or 1915(i) SPA amendment or renewal application, the state Medicaid agency is expected to implement the plan for compliance. The plan for compliance in the HCBS 1915(c) application should be submitted in Attachment #2: HCB Settings Waiver Transition Plan which applies to the assessment of settings and the plan for settings not in compliance with 42 CFR 441.301(c)(4)-(5) at the time an amendment or renewal is submitted; and Appendix C-5: HCB Settings which applies to settings that comply with 42 CFR 441.301(c)(4)-(5)

CMS will continue to monitor the state's implementation of the plan for compliance. If a state fails to submit an approvable plan for compliance and/or comply with the terms of the approved plan for compliance, CMS may take compliance actions including, but not limited to, deferral/disallowance of Federal Financial Participation (FFP).

CMS staff stand ready to assist states in the development and implementation of this critical regulation. We believe that our mutual success in implementation of these new requirements about HCB settings will accelerate Medicaid beneficiaries' access to and enjoyment of those aspects of community inclusion and integration that we all value.

You will find the toolkit at <http://www.medicaid.gov/HCBS>, along with a link to the hcbs@cms.hhs.gov email address to contact CMS directly.