



**The Hilltop Institute**

*analysis to advance the health of vulnerable populations*

# **HCBS Settings Final Rule**

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MMAC

October 2014

**UMBC**  
AN HONORS UNIVERSITY IN MARYLAND

# Agenda

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- Provide a background of Home and Community-Based Services (HCBS) waivers
- Discuss the final rule
  - Specifically how it changes regulations relating to HCBS settings
- Discuss Maryland's approach to adopting these changes to its programs

# HCBS Waivers

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- Purpose of HCBS waivers
  - Services and supports for people with disabilities and/or older persons to enable them to live in their homes and communities
- To receive federal funding, states must follow rules set up by the Centers for Medicare and Medicaid Services (CMS)
  - Final rule published January 2014, defines what an HCBS setting is
- States must review HCBS settings and develop a transition plan with public comment

# HCBS Settings Final Rule

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- CMS issued this final rule on January 16, 2014
  - The final rule lists many items HCBS providers must comply with to receive Medicaid payment under federal HCBS waivers
- The new items relate more to outcomes, making sure individuals are getting the most out of community living and are getting services in integrated settings

# The New HCBS Rule Impacts

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- Participants receiving HCBS
- Medicaid providers providing HCBS
- People involved in developing HCBS service plans
- Residential settings where participants receiving HCBS live
- Non-residential settings where HCBS are provided
- How HCBS service plans are developed
- The documentation HCBS service plans must contain

# HCBS Waiver Changes under 1915(c)

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- Traits of HCBS settings are outlined
- Rules for person-centered plans of care
- Public input requirements for changes in services or rates

# HCBS Setting Requirements

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The final rule establishes:

- Qualities of HCBS settings
- Settings that are *not* HCBS
- Settings that are *presumed not to be* HCBS
- State compliance and transition requirements

# The Final Rule Excludes the Following Settings

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- Nursing facilities
- Institutions for mental disease
- Intermediate care facilities for individuals with intellectual disabilities
- Hospitals (CMS, 2014)



# Settings Presumed to Have Institutional Qualities

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- Settings in a publicly or privately owned facility providing inpatient treatment
- Settings on the grounds of, or very close to, a public institution
- Settings that separate individuals receiving HCBS from the community

Note: States that use these settings will be subject to an in-depth review process (CMS, 2014).

# **HCBS Final Rule Applies to Residential and Non-Residential Settings**

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## **All HCBS settings:**

- Are integrated in and support full access to the community
- Support seeking employment in integrated settings
- Are picked by the individual from among different options
- Protect individual rights of privacy, respect, and freedom from bullying and restraint
- Increase freedom and independence in making life choices
- Support choice in picking services and providers

# Items Specific to Provider-Owned or Controlled Residential HCBS settings

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- Individuals must have all of the following:
  1. A lease or other similar legal document
  2. The ability to lock their doors, choose their roommates, and decorate their unit
  3. Control of their own schedule, including meal times and when they have visitors
  
- In addition:
  - The setting must be physically accessible
  - Any exceptions to above rules must be due to a specific need and explained in the person-centered service plan (CMS, 2014).

# **The Person-Centered Plan**

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- Led by the individual
- Reflects cultural needs and uses language that is easy to understand
- Discusses the individual's eligibility for services

# Maryland's Work Plan

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- Public information sessions
  - October 2014
- Assessment of current programs
  - Review state regulations (COMAR), waiver applications, and program policies
  - Surveys: to be completed by 10/31/14
    - Participants/caregivers
    - Providers
    - Case managers
    - Will help guide next steps

# Maryland's Work Plan continued

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- Draft transition plan: early January 2015
  - Transition plan town hall meetings: early January 2015
  - Required 30-day public comment period: January 2015
    - February 2015
  
- Revisions to plan: February 2015
  - Incorporating and responding to public feedback gathered
  
- Final plan posted and submitted to CMS: March 17, 2015

# For questions and comments contact:

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<https://mmcp.dhmh.maryland.gov/waiverprograms/SitePages/Community%20Settings%20Final%20Rule.aspx>