

The logo for the Tennessee Department of Health, featuring the letters "TN" in white serif font on a red square background.

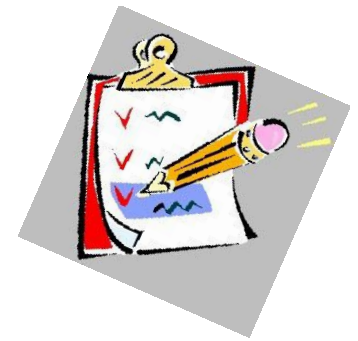
TN

Home and Community Based Services (HCBS) Settings Rule and Heightened Scrutiny

TM

Agenda

- Training Activities
- Overview of HCBS Settings Final Rule
 - Person Centered Planning
 - 5 Qualities of HCBS
 - Additional Requirements for Residential Settings
 - Modifications to the Settings Rule
 - Settings that are NOT HCBS
 - Settings *Presumed* NOT HCBS
- Heightened Scrutiny Review Process
 - Data
 - Documentation
 - On-site Visit
 - Public Input
 - Evidence to CMS



Heightened Scrutiny

Training Activities

Training Activities

Consumer & Family Conference Calls / Webinars

- These sessions will be specific to the impact on Facility Based Day and sheltered workshop services
- February 17th, 24th, 25th and 26th 2016

HCBS Provider Information Sessions

- These sessions will include an overview of the HCBS Settings Rule and a walk through of the heightened scrutiny review process and the heightened scrutiny review tools
 - March 2nd – Knoxville
 - March 3rd – Chattanooga
 - March 9th – Nashville
 - March 10th – Jackson
 - March 11th – Memphis

Heightened Scrutiny

Person-Centered Planning

HCBS Settings Final Rule

- **Codifies** that person-centered service plan for participants in Medicaid HCBS programs must be developed through a person-centered planning (PCP) process—from guidance to rule—and specifies requirements pertaining to PCP;

Person Centered Planning Requirements

- The person must be directly involved with the plan development, including choosing the people that participate:
 - Were family members or friends involved in the planning process/who was responsible for inviting participants?
- The meeting is held at a convenient time:
 - Are any meetings held outside the normal business hours, on weekends, or evenings to accommodate family schedules?

HCBS Settings Final Rule

Person Centered Planning Requirements continued

- The person centered plan is written in plain and understandable language:
 - Can a person understand the plan and identify the goals set in the plan?
- Must reflect the person's strengths and preferences:
 - Is there a section of the plan that identifies what the person is good at doing or does well? Is there a section of the plan that discusses the person's likes and dislikes? Preferences should be supported through goals.
- Offers choice regarding services:
 - Is there a section of the plan that identifies the services and settings offered to the person that supports the person's services and provider choice (were options offered)?
- Risks must be identified and methods for minimizing them:
 - Is there a back-up plan in case staff does not show up for work?
- Has the plan been signed and agreed upon by all individuals and providers responsible for implementing the plan?
 - Are there signatures of all providers (and individuals if applicable) that are identified in the plan as being responsible for supporting the person in meeting stated goals?

HCBS Settings Final Rule

- ***Sets standards*** to ensure Medicaid funded HCBS are provided in settings that are non-institutional in nature;
- Establishes an outcome oriented definition **focused on the nature and quality of the member's experience;**
- Ensures members receiving HCBS have:
 - access to benefits of community living, and
 - full opportunity to be integrated in their communities; and
- ***Enhances protections*** for persons receiving services

Heightened Scrutiny

5 Qualities of HCBS

HCBS Settings Final Rule

Per CMS, any residential or non-residential setting where individuals live and/or receive HCBS must have the following **five qualities** by March 17, 2019:

1) Is integrated in and supports full access of individuals to the greater community

- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and
- Ensures that individuals receive services in the community, to the same degree of access as individuals not receiving HCBS;

2) Is selected by the individual from among setting options including non-disability specific settings and options for a private unit in a residential setting

- Person-centered service plans document the options based on the individual's needs, preferences, and for residential settings, resources available for room and board ;

HCBS Settings Final Rule

Per CMS, any residential or non-residential setting where individuals live and/or receive HCBS must have the following ***five qualities*** by March 17, 2019 (continued):

- 3) Ensures an individual's rights to privacy, dignity and respect, and freedom from coercion and restraint;
- 4) Optimizes individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact; AND
- 5) Facilitates individual choice regarding services and supports, and who provides them.

Requirements of Residential Settings

HCBS Settings Final Rule

Additional Requirements for Provider-owned or Controlled Residential Settings:

This includes ACLFs and Residential Habilitation

- Each individual has privacy in their sleeping or living unit
- Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
- Individuals sharing units have a choice of roommates in that setting.
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
- Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
- Individuals are able to have visitors of their choosing at any time.
- The setting is physically accessible to the individual.

Modifications to the Settings Rule

HCBS Settings Final Rule

Any **modification** of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

1. 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.

HCBS Settings Final Rule

Modification Requirements continued

2. Include regular collection and review of data to measure the ongoing effectiveness of the modification.
3. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
4. Include the informed consent of the individual.
5. Include an assurance that interventions and supports will cause no harm to the individual.

Heightened Scrutiny

Settings that are NOT HCBS

HCBS Settings Final Rule

*What is **not** HCBS?*

- Settings that are not home and community-based are:
 - Nursing Facility
 - Institution for Mental Disease
 - Intermediate Care Facility for Individuals with Intellectual Disabilities
 - Hospital
 - Other locations that have qualities of an institutional setting

Heightened Scrutiny

Settings that are *presumed*
not HCBS

HCBS Settings Final Rule

What is presumed not HCBS?

- Settings that have the qualities of an institution (applies to residential and non-residential services):
 - Located in a public or privately operated building that provides inpatient institutional treatment
 - Located on the grounds of, or immediately adjacent to a public institution
 - Has the effect of isolating members who receive Medicaid funded HCBS from the broader community of people who do not receive Medicaid funded HCBS

HCBS Settings Final Rule

Settings that Isolate:

- “Importantly, any setting regardless of location that has the effect of isolating individuals receiving Medicaid home and community-based services (HCBS) from the broader community of individuals not receiving HCBS is also presumed to be institutional, and therefore requires information from the state to overcome that presumption and describe how the HCBS settings requirements are met.”*

HCBS Settings Final Rule

What are Settings that isolate and are presumed not HCBS?

- CMS' Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community:
 - The setting is designed specifically for people with disabilities, or for people with a certain type of disability;
 - Individuals in the setting are primarily or exclusively people with disabilities and the on-site staff that provides services to them

HCBS Settings Final Rule

*What are Settings that **isolate** and are **presumed** not HCBS?*

- CMS' Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community:
 - The setting is designed to provide people with disabilities multiple types of services/activities on-site such as housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities;
 - People in the setting have limited, if any, interaction with the broader community;
 - The setting uses/authorizes interventions/restrictions used in institutional settings or deemed unacceptable in Medicaid institutional settings (e.g., seclusion)

HCBS Settings Final Rule

*What are Settings that **isolate** and are **presumed** not HCBS?*

- CMS' Examples on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community:
 - A farmstead or disability-specific farm community
 - A gated/secured “community”
 - Residential schools
 - Multiple settings co-located and operationally related

HCBS Settings Final Rule

What about facility based day and sheltered employment?

- The regulation requires that all settings, including facility- or site-based settings, must demonstrate the qualities of HCBS settings, ensure the individual's experience is home and community based and not institutional in nature, and does not isolate the individual from the broader community.
- If the setting is designed specifically for people with disabilities, and/or individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them, the setting may be isolating unless the setting facilitates people going out into the broader community.

HCBS Settings Final Rule

What about sheltered employment?

- Waiver funding is not available for the provision of vocational services delivered in facility based or sheltered work settings, where individuals are supervised for the primary purpose of producing goods or performing services. The distinction between vocational and pre-vocational services is that prevocational services, regardless of setting, are delivered for the purpose of furthering habilitation goals such as **attendance, task completion, problem solving, interpersonal relations and safety.**
- Please see the CMS Informational Bulletin on Employment Services found at: <https://www.medicaid.gov/federal-policy-guidance/downloads/CIB-09-16-2011.pdf>

HCBS Settings Final Rule

Settings presumed as not HCBS:

- May **not** be included in states' HCBS programs unless:
 - State submits evidence (including public input) demonstrating that the setting does have the qualities of an HCBS setting and not the qualities of an institution; AND
 - The Secretary finds, based on a ***heightened scrutiny*** review of the evidence, that the setting meets the requirements of HCBS settings and does not have the qualities of an institution

HCBS Settings Final Rule

- CMS guidance identifies **types of evidence** that should be submitted to CMS to demonstrate that a setting does not isolate individuals receiving HCBS from the broader community of individuals not receiving HCBS:
 - *The setting is integrated in the community to the extent that persons without disabilities in the same community would consider it a part of their community and not associate the setting with the provision of services to persons with disabilities.*
 - *The individual participates regularly in typical community life activities outside of the setting to the extent the individual desires and these activities:*
 - *Do not include only those organized by the provider agency specifically for a group of individuals with disabilities and/or involving only paid staff*
 - *Do foster relationships with community members unaffiliated with the setting*
 - *Services to the individual, and activities in which the individual participates, are engaged with the broader community*

Heightened Scrutiny

Heightened Scrutiny Review Process

Heightened Scrutiny Review Process

- April 1, 2016 – March 31, 2017
- TennCare, DIDD and MCOs will conduct the heightened scrutiny review process
- Reviews will consist of an in depth assessment of individual service settings, with particular focus on the experiences of persons served in those settings.
- Remember, per CMS, evidence of how a setting overcomes its presumed institutional qualities should focus on the **qualities of the setting** and **how it is integrated** in and **supports full access** of individuals receiving HCBS into the greater community, **not** on the aspects and/or severity of the disabilities of the individuals served in the setting.

Heightened Scrutiny Review Process

Services/settings impacted by heightened scrutiny review:

- Adult Day Care (CHOICES): 30
- Assisted Care Living Facilities (CHOICES): 84
- Facility Based Day (ID Waiver): 51
- Residential Habilitation settings with more than 4 persons (ID Waiver): 49
- Intensive Behavioral Residential Services (ID Waiver): 2
- Supported Living and Residential Habilitation settings in close proximity: 37
- Total: 253
 - 114 CHOICES sites
 - 139 DIDD sites

Heightened Scrutiny Review Process

Elements of the Heightened Scrutiny Review Process:

1. Collection of Data
 - Data on setting and individual experience of service in that setting collected from providers via WuFoo
2. Documentation Review
 - Secondary review of provider self-assessment documentation and transition plan
 - Individual experience documentation
3. On-Site Visit
 - Tour
 - Interviews
4. Public Input
5. Evidence Packet to CMS

Heightened Scrutiny Review Process

The Heightened Scrutiny review team will be comprised of TennCare representative(s) and reviewing entity (MCO/DIDD) representative(s).

- Prior to the Heightened Scrutiny Review the provider will complete the Heightened Scrutiny Data Request Tool in WuFoo (HS Element #1 Data)

Heightened Scrutiny Review Process

Prior to On-site Review: MCOs/DIDD will obtain the following documents from the provider (HS element #2):

**Note: many of these items may have been provided during the provider self-assessment; resubmission will not be required.*

- Written mission/vision statement and core values of the organization,
- Promotional information about the organization such as pamphlets or fundraising materials that describes services offered,
- Agency Policies and Procedures including:
 - Participant rights and due process,
 - Grievances and Complaints policies and procedures,
 - Participant dignity and respect guidelines,
 - Modifications to the HCBS Settings Rule;
 - Staff training related to the P&P listed above
- Agency Transition Plan and supporting documentation of ongoing activities to meet stated deliverables and timelines

Heightened Scrutiny Review Process

Prior to On-site Review: MCO/DIDD will obtain the following documents from the provider (HS element #2):

- Data supporting utilization of services as identified in the person centered plan (i.e. daily notes) for the people to be interviewed (**most recent month only**), and
- Staff satisfaction surveys or exit surveys (**most recent 6 months only**).

Additional documents not supplied by the provider

- Person-centered Plans, Behavior Support Plans and restrictive interventions (if applicable) for the people to be interviewed will be obtained from the MCO/ISC/CM
- Individual Experience Assessment for all service recipients

Heightened Scrutiny Review Process

Prior to the Heightened Scrutiny Review the MCO/DIDD will coordinate and schedule on-site interviews with the following (HS element #3):

1. Sample of HCBS Waiver participants:
 - Agencies serving 30 or less – 3 people
 - Agencies serving 31 to 60 – 4 people
 - Agencies serving 61 to 100 – 5 people
 - Agencies serving 101+ – 5% up to a maximum of 15 people
 - Note the sample must include people that leave the site as well as people that do not leave the site
2. Direct Support Staff
3. Agency Directors and Managerial personnel

Heightened Scrutiny Review Process

While On-Site, the Heightened Scrutiny Review Team will meet with the Executive and Managerial staff (as appropriate) for a tour of the site (**HS element #3**). Additionally, the Heightened Scrutiny Review Team will assess the setting's physical location to ensure it is not:

1. Skilled Nursing Facility,
2. An institution for mental diseases,
3. An intermediate care facility for individuals with intellectual disabilities,
4. A hospital, or
5. Any other locations that have qualities of an institutional setting, as determined by the Secretary (Health and Human Services):
 - settings located in a public or privately operated building that provides inpatient institutional treatment,
 - settings located on the grounds or, or immediately adjacent to a public institution, and
 - settings that have the effect of isolating members who receive Medicaid funded HCBS from the broader community of people who do not receive Medicaid funded HCBS;

Heightened Scrutiny Review Process

During the tour given by the Executive Staff the Heightened Scrutiny Review team will look for and note **(HS element #3)**:

- Physical accessibility
- Access to common areas
- Access to food
- Lockable doors on living units
- Individualized decor
- Security cameras
- Intercom systems
- Posted PHI

Heightened Scrutiny Review Process

While On-Site, the Heightened Scrutiny Review Team will use a standard set of questions to have a conversation with **(HS element #3)**:

- the Executive and managerial staff,
- Direct support staff, and
- the sample of waiver participants ; and

Heightened Scrutiny Review Process

After the On-Site Visit, the team will review the information received from the waiver participants and compare the responses to the person centered plan, service utilization documentation, HS data request tool and IEA. Following their review the team will:

- Prepare a written summary indicating the results of the assessment and submit to the Advocacy Review Committee. This summary will include:
 - Results of data collection
 - Summary of documentation review
 - Summary of interview responses
 - If necessary, transition plan revisions based on the HS review

Heightened Scrutiny Review Process

The CMS heightened scrutiny process requires public input and as such will be incorporated into the State's assessment process.

- TennCare has met most of the public input requirements through the already completed public comment periods
- TennCare will engage an Advocacy Review Committee comprised of executives and staff from advocacy organizations in the review of evidence gathered through the process
 - This Advocacy Review Committee will fulfill another component of the public input requirement
- List of providers the State will submit to CMS for Heightened Scrutiny must be posted, by name, for public comment

Heightened Scrutiny Review Process

Evidence to CMS

To be provided per setting (site) assessed

- Description of setting type
- Summary of data and review process results demonstrating the site is in fact HCBS and not institutional in nature
- Statement of public input (Review committee attestation of review and concurrence that the setting is HCBS)

Heightened Scrutiny Review Process

Recap:

1. *At least 30 days prior to onsite visit, providers will be asked to submit information:*
 1. *Data on persons served and types of services/community integration*
 2. *Any updated documents providers want reviewers to see*
2. *Reviewers will collect service plans from care coordinator/ISC/case manager*
3. *Review team will review the submitted information*
4. *Review team will conduct onsite visit*
 1. *Tour of the setting*
 2. *Interviews with consumers and staff*
5. *Review team will summarize results of heightened scrutiny review*
6. *Advocacy Review Committee will review results and necessary documentation*
7. *TennCare will submit evidence of HCBS to CMS*

Heightened Scrutiny Review Process

Ongoing Compliance:

- The reviewing entity (MCO/DIDD) will:
 - Monitor all transition plan implementations,
 - Provide transition plan implementation status updates to TennCare on specified deliverables and timelines, and
 - Ensure ongoing compliance through utilization of TennCare Essential Elements Guidance
 - MCO standard Re-credentialing Tool
 - DIDD QM Tool

Heightened Scrutiny Review Process

QUESTIONS?