

# The Home and Community Based Services Settings Rule: An Opportunity to Support Meaningful Community Inclusion

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# What We Will Cover

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- A brief overview of the Final Rule
- The status of the Transition Plans states have had to admit and any potential impact of the new Administration
- How states have used the final rule to improve their systems while insuring ongoing Medicaid financing for services
- Implications for Housing development

# A Little About the Technical Assistance Collaborative

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- TAC is a national, non-profit firm that provides consulting and technical assistance to federal, state, and local government, providers and other stakeholders on human services and affordable housing issues for people with disabilities, the homeless, and Veterans.
- Based in Massachusetts, but have worked in every state in some capacity and have considerable experience working in Pennsylvania.
- TAC's multidisciplinary and nationally recognized staff members have expertise in the areas of PSH, homelessness, affordable housing, behavioral health and other disabilities, and complex care populations, as well as Medicaid programs and authorities.
- Sherry Lerch, Senior Consultant, Human Services
  - Sherry has over 30 years' experience in the mental health and substance use disorder service systems, ranging from direct service provision to system administration. Primary focus is on housing and services assessments, strategic planning, service development, Federal regulatory compliance and financing strategies.

# Overview of the Home and Community Based Service Settings Final Rule

# Final Rule Requirements

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- Intent is to ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs under the 1915(c), 1915(i) and 1915(k) Medicaid authorities have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate.
- CMS is moving away from defining home and community-based settings by “what they are not,” and toward defining them by the nature and quality of participants’ experiences.
- The final rule established:
  - Mandatory requirements for the qualities of home and community-based settings
  - Settings that are not home and community-based
  - A review process for settings that are presumed not to be home and community based

# The Home and Community-Based setting...

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Focus for this discussion is on where people live –

- The setting is integrated in and supports full access to the greater community;
- Is selected by the individual from among setting options;
- Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.

## Requirements for Provider-Owned or Controlled Residential Settings

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- The individual has a lease or other legally enforceable agreement providing similar protections
- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with the individual and appropriate staff having keys to doors as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
- Individuals have freedom and support to control their schedules and activities and have access to food any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual

# Final Rule Provisions

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- Institutions are *not* Home and Community Based settings
- Some settings are *presumed* not to be Home and Community Based
  - Settings in a publicly or privately-owned facility providing inpatient treatment
  - Settings on grounds of, or adjacent to, a public institution
  - Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS
- States have the opportunity to submit evidence that these settings do not have institutional qualities for review by the Secretary of HHS

*The rules focus on the experiences of HCBS participants and require that they have the same degree of access to their communities as their neighbors who are not receiving Medicaid HCBS.*

# Pennsylvania's Transition Plan

# Implications of the Final Rule for Pennsylvania

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- **The affected HCBS programs are:** Adult Autism Waiver; Aging Waiver; Attendant Care Waiver; CommCare Waiver; Consolidated Waiver; Independence Waiver; Infant, Toddlers and Families Waiver; OBRA Waiver; and Person/Family Directed Supports Waiver.
- Approximately half of the funding for waiver services comes from the Federal government – loss of funding would likely result in fewer people served
- PA submitted Statewide Transition Plan and Waiver Specific Plans
  - Received initial approval
- Provider Assessments to occur in 2017/18
- PA has until March 17, 2019 to come into compliance with the CMS rule

# Systemic Review of Regulations, Policies, and Service Definitions

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The five requirements in the HCBS final rule that require objective and measurable standards for enforcement are:

- 1) *Integrated in and supports full access of individuals to the greater community*
- 2) *Selected by the individual from among setting options including non-disability specific settings and options for a private unit in a residential setting*
- 3) *Ensures an individual's rights of 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*
- 5) *Facilitates individual choice regarding services and supports, and who provides them*

\* Excerpt from Pennsylvania's Transition Plan

# OLTL Provider Monitoring Strategies

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- In Pennsylvania's move to Community Health Choices, services must be provided in accordance with 42 CFR §441.301(c) (4) and (5), which outlines allowable settings for home and community-based waiver services.
- OLTL's overall strategy will rely heavily on its existing HCBS quality assurance processes to ensure ongoing provider compliance with the HCBS rule:
  - Provider identification of remediation strategies for each identified issue, and ongoing review of status and compliance.
  - OLTL will also provide guidance and technical assistance to providers to assist providers with ongoing compliance.
  - Providers that do not remain compliant with the HCBS final rule may be subject to sanctions ranging from probation to disenrollment.

\* Excerpt from Pennsylvania's Transition Plan

# How states have used the final rule to improve their systems while insuring ongoing Medicaid financing for services

# State Responses

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# Transition Plan Status

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- Tennessee remains the only state that has received final approval of its transition plan. Twenty-six additional states have received initial approval of their plans, meaning that they have met public comment, input and summary requirements but systemic or site-specific assessments have not yet been completed.
- In March, CMS Administrator Seema Verma and HHS Secretary Tom Price issued a joint letter to U.S. governors saying they support extending the time frame for compliance.
- Concerns
  - Further limiting residential settings and adult day and employment services in rural, frontier and medically underserved areas
  - Closing or limiting co-located residential settings and adult day services because of their *location*
  - Costs associated with implementing heightened scrutiny and remediation policies and strategies
- However...the Final Rule is Regulation

# Tennessee's HCBS strategy

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- Clearly identified remediation strategies for fixing the issues uncovered during completed systemic and site-specific assessments.
- Created comprehensive heightened scrutiny procedure, allowing the state to review whether settings that have been identified as institutional or isolating in nature have overcome those characteristics and comport with the rule, or a plan for relocating beneficiaries if a setting cannot come into compliance.
- Aligned all waiver incentives and systems of reimbursement toward supporting integrated employment at a competitive wage and community living as the preferred outcome for all those receiving HCBS.
- DIDD submitted its provider manuals to TennCare for review. They now include both compliance with HCBS-specific rules and exploration of supported employment and community volunteer options as requirements for service providers
- Individual Experience Assessments are now an important component of the evaluation of a setting's effectiveness.

## Pennsylvania Office of Developmental Programs

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*ODP will develop new regulations that not only incorporate the changes needed to comply with the CMS rule, but will increase access to high-quality services and improve outcomes for consumers. Through this process, the CMS rule will not be seen as a separate area of compliance, but will be ingrained in the practice of HCBS providers.*

*\* Excerpt from Pennsylvania's Transition Plan*

# Most Common Responses to Meeting the Final Rule

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- Eliminating segregated housing units/complexes
- Reducing the number of individuals with disabilities living in a certain building/complex
  - Affordable housing as a Human Resource benefit
- Offering choices that include at least one independent setting
- Ensuring rights of tenancy/lease agreements
- Using Technology to facilitate greater independence
- Increased privacy thru ability to lock bedrooms, staff permission required to access apartment, ability to have visitors without staff permission
- Person-centered approach thru personal furnishings/decorations, greater choice in activities

# Implications for Housing Development

# In Addition to HBCS Compliance...

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## Olmstead

- Least restrictive settings able to meet individuals' needs
- AZ, CT, GA, Ill, DE, MO, MN, MS, NJ, NC, NY, NH, OR are in some stage of litigation or settlement agreement implementation.

## State Budgets

- Medicaid is one of the top line items in state budgets
- Institutional care, Inpatient and Emergency Rooms

# Affordable Housing Capacity is a Solution!

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- New Jersey has now satisfied its Olmstead Settlement Agreement
  - Over the last eight years, the state has produced 1,436 more supervised apartments for people with mental illnesses -- exceeding the number of newly created homes (1,065) the settlement required.
  - Discharging individuals directly from state hospital into PSH
- Persons experiencing housing instability also...
  - Face barriers to accessing primary or preventive care
  - Lack health insurance coverage
  - Have challenges in meeting basic life necessities...Resulting in increased healthcare costs
- Supportive Housing can help improve access to, and the appropriate use of, health and behavioral health care which contributes to better health.
  - Populations include people with mental illness or substance use disorders, other chronic physical health issues like HIV/AIDS and more recently transition age youth, seniors and families.

# Questions From Developers Regarding HCBS Compliance

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*What if an affordable housing (independent living tax credit ) property is built as part of a campus type setting or a CCRC? Is that now totally out for certain populations that are receiving Medicaid services?*

*We also have projects that set-aside units for special populations...such as MH, veterans, nursing home transitioning folks, etc. Will there be a limit on how many referrals can come from Medicaid recipients?*

*Do the same rules that apply in Pennsylvania also apply in other states?*

*Does the HCBS Final Rule benefit Housing developers/providers?*

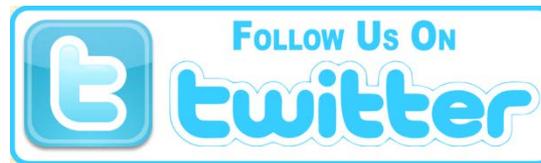
# Audience Questions/Discussion

# Contact Us

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