

Home and Community-Based Settings Rule (CMS 2296-F)

Presumptively Institutional Settings



Terminology

- **AHCA** – Agency for Health Care Administration
- **APD** – Agency for Persons with Disabilities
- **CMS** – Centers for Medicare and Medicaid Services.
- **FHA** – Federal Housing Administration
- **HCB** – Home and Community-Based
- **HCBS** – Home and Community-Based Services
- **PI** – Presumptively Institutional
- **STP** – Statewide Transition Plan



Presumptively Institutional Settings Presentation Overview

- HCB Settings Rule background
- Presumptively institutional settings
- Next steps for providers identified as a presumptively institutional setting
- The State's next steps
- CMS' role
- Resources

HCB Settings Rule Background

The HCB Settings Rule is a federal initiative:

- Published: January, 16 2014
- Effective: March 17, 2014
- Purpose:
 - *“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*
 - *To enhance the quality of HCBS and provide protections to participants”*

CMS Presentation, Final Rule Medicaid HCBS

<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/final-rule-slides-01292014.pdf>



HCB Settings Rule Background

The State is required to ensure all residential and non-residential settings comply with the HCB Settings Rule by March 2019:

- The STP details the State's assessment activities, including provider self-assessments and State-conducted on-site surveys.
- The State must validate that settings do not have the qualities of an institution as prescribed by CMS, and continue to monitor for compliance thereafter.



HCB Settings Rule Background

The State is required to publish its STP for public comment:

- Previous STP's published in June, 2014 and February, 2015.
- Latest STP published on August 26, 2016.
- STP submitted to CMS on September 30, 2016.



Presumptively Institutional Settings

The State is required to determine whether a setting meets the federal presumptively institutional criteria:

- *“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”*

<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/requirements-for-home-and-community-settings.pdf>



Presumptively Institutional Settings

CMS further defined what it means for a setting to *“have the effect of isolating individuals”*:

- Farmstead or disability-specific farm community
- Gated/secured “community” for people with disabilities
- Residential schools
- Multiple settings co-located and operationally related

<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf>

What Being Presumptively Institutional Means

Settings identified as meeting one or more of the presumptively institutional criteria have the opportunity to remediate the findings, and to submit evidence to CMS, via the State, demonstrating the setting does not possess the qualities of an institution.

Note: The State's STP specifies it will use the entire remainder of the implementation time period, through March 2019, to help providers come into compliance with the HCB Settings Rule.

What Being Presumptively Institutional Means

Identified settings may choose to submit evidence to the State that despite meeting the PI criteria, the setting does not have the effect of isolating individuals:

- Submit an evidence package to the State
- State may conduct additional on-site validation visits
- Remediate assessment findings

What Being Presumptively Institutional Means

For settings the State agrees do not have the effect of isolating individuals, the State will submit all evidence to CMS to conduct its heightened scrutiny process.

“A state may only include such a setting in its Medicaid HCBS programs if CMS determines through a heightened scrutiny process, based on information presented by the state and input from the public that the state has demonstrated that the setting meets the qualities for being home and community-based and does not have the qualities of an institution.”

CMS Circular, Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS From the Broader Community
<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/settings-that-isolate.pdf>

Next Steps for Providers with Presumptively Institutional Settings

Providers should ask one fundamental question:

Despite meeting a PI characteristic, does the setting genuinely have the effect of isolating individuals receiving HCBS from the broader community?



Next Steps for Providers with Presumptively Institutional Settings

- Institutional-like characteristics or practices cannot be justified based the population served.
- The HCB Settings Rule requires any and all modifications to the requirements of the rule to be justified on an individual basis in the person-centered plan.



Next Steps for Providers with Presumptively Institutional Settings

- Compile evidence packages detailing how the setting overcomes its PI characteristic(s)
- Request technical assistance from the State to develop evidence package, if needed
- Submit complete evidence packages to the State for review
- Respond to requests for additional information



What Should the Evidence Package Include?

Evidence packages must include all pertinent information demonstrating the setting does not have the qualities of an institution, for example:

- Remediation plan and any supporting implementation documentation/evidence
- Description of how/why the setting does not have the qualities of an institution
- Policies and procedures demonstrating support for activities in the greater community
- Description of the proximity to available public transportation, training materials to teach recipients how to access public transportation services, and an explanation of how transportation is provided where public transportation is limited

What Should the Evidence Package Include?

- Description of the proximity to, and scope of, recipient interactions with community settings used by individuals not receiving Medicaid funded HCBS
- Documentation the setting complies with the requirements for provider-owned or controlled settings at §441.301(c)(4)(vi)A through D, and if any modifications to these requirements have been made, such modifications are documented in the person-centered plan(s)
- Public comments/testimonials
- Recipient experience surveys/testimonials
- Pictures of the setting and the greater community
- Self-assessment and on-site validation visit findings

What Should the Evidence Package Include?

- Provider qualifications for staff employed in the setting that indicate training or certification in HCBS, and that demonstrate the staff is trained in a manner consistent with the HCB settings rule
- Licensure requirements or other State regulations
- Residential housing or zoning requirements
- Service definitions that explicitly support the HCB setting requirements
- Documentation demonstrating individuals served selected the setting from among setting options, including non-disability-specific settings

CMS Circular, Home and Community-based Settings Requirements

<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/home-and-community-based-setting-requirements.pdf>

The State's Next Steps

The State will assist providers, review evidence submissions, and submit substantiated evidence packages to CMS:

- Provide technical assistance to providers
- Conduct additional site visits, if necessary
- Request additional information

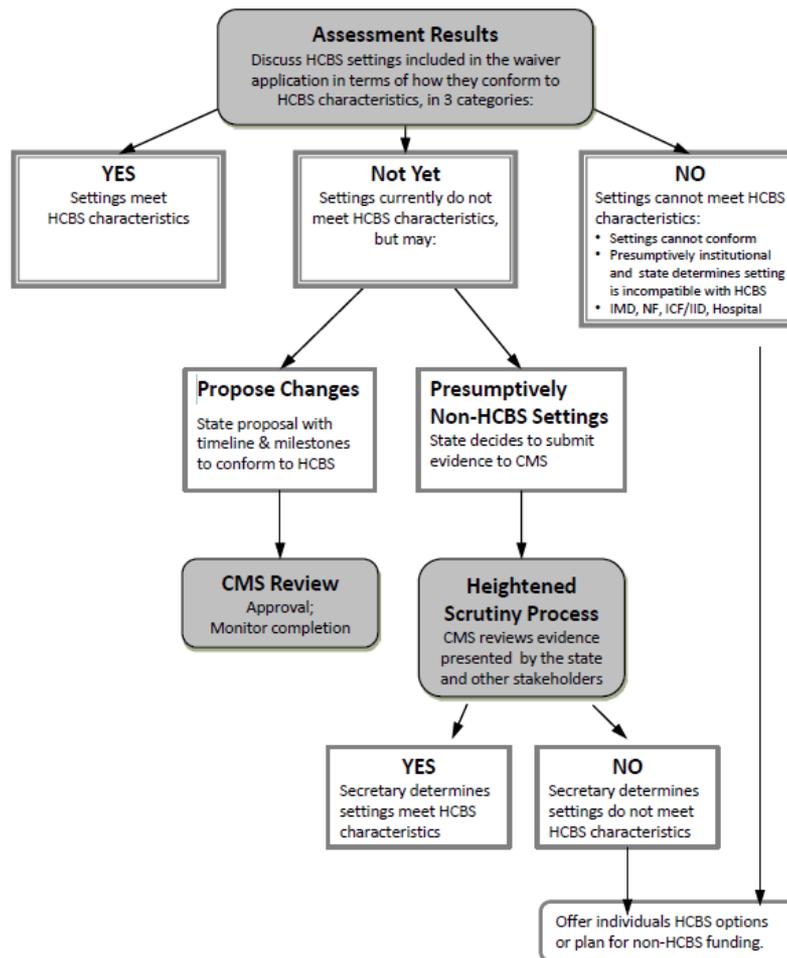


CMS' Role

CMS is the only entity that can determine whether a PI setting does not have the characteristics of an institution, or effectively isolate individuals.

- CMS will conduct its heightened scrutiny process using submitted evidence packages
- CMS may submit requests for additional information or conduct a site visit if further questions exist
- CMA will determine if a PI setting meets the qualities for being HCB and does not have the qualities of an institution

STEPS TO COMPLIANCE FOR HCBS SETTINGS REQUIREMENTS IN A 1915(c) WAIVER and 1915(i) SPA



NOTE: Substantive changes in a 1915(c) HCBS Waiver Transition Plan will require public comment.

<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/hcbs-1915c-waiver-compliance-flowchart.pdf>

Timeframes for Next Steps

- Technical assistance conference calls begin 11/1/2016 (every two weeks)
- Evidence packet submission deadline 1/15/17
- CMS heightened scrutiny process - unknown



Resources

- CMS Website

<https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>

- HCB Settings Rule
- Compliance toolkit
- CMS circulars, presentations, and additional information

- AHCA Website

http://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/rule.shtml

- STP (when available for public comment)
- Assessment Tools
- Remediation Plan Template

- FHA Website

<https://www.federalregister.gov/documents/2012/05/03/2012-10690/federal-housing-administration-fha-section-232-healthcare-facility-insurance-program-strengthening>

- FHA Section 232 loan program information



APD Contacts

Group home and adult day training providers must submit evidentiary packages to APD.

Region	Contact Person	Phone Number	Email Address
Central	Joyce Leonard	407.697.4980	Joyce.Leonard@apdcares.org
Northeast	Robin Keller	386.323.2237	Robin.Keller@apdcares.org
Northwest	Nilda Barreto	850.922.9188	Nilda.Barreto@apdcares.org
Southwest	Ashley Cole	561.822.4596	Ashley.Cole@apdcares.org
Southern	Kirk Ryan	305.377.7436	Kirk.Ryan@apdcares.org
Suncoast	Tracy Carver-Brickley	239.338.1327	Tracy.CarverBrickley@apdcares.org



AHCA Contact

Assisted living facility, adult family care home, and adult day care center providers must submit evidentiary packages and technical assistance questions to:

Agency for Health Care Administration

Bureau of Medicaid Policy

Attn: Kaleema Muhammad

2727 Mahan Drive, MS 20

Tallahassee, FL 32308

850-412-4077

Kaleema.Muhammad@ahca.myflorida.com



Presentation Summary

- The State has five years to implement the HCB Settings Rule ending in March 2019.
- Being identified as presumptively institutional does not mean providers cannot remediate findings or demonstrate the setting does not have the qualities of an institution.
- The State is invested in assisting providers through the federal heightened scrutiny process.
- Providers may request technical assistance from the State in developing robust evidence packages for submission to the State by January 15, 2017.
- Providers may participate in the technical assistance calls with the State beginning November 1, 2016.



Questions

