

The Arc Wisconsin Policy Insiders: August Recess and Your Homework

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The Arc Wisconsin

POLICY INSIDERS



Our Experts



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HCBS Rule

- Released in March of 2014
- 5 year transition period
- Person Centered Planning aspects of the rule took IMMEDIATE effect
- Community dollars spent in the community
- Basic rights

Evolution of HCBS definition

- 2008 - NPRM 1915(i)
- 2009 - ANPRM 1915(c)
- 2011 - NPRM 1915(k)
- 2011 - NPRM 1915(c)
- 2012 - NPRM 1915(i) and 1915(k)
- 2014 - Final Rule

Goal and Scope of the Rule

- To “ensure that individuals receiving services through HCBS programs have full access to the benefits of community living”
- To “further expand the opportunities for meaningful community integration in support of the goals of the ADA and the Supreme Court decision in *Olmstead*”
- Applies to all HCBS authorities (1915(c), 1915(i), 1915(k)) as well as 1115 demo’s and 1915(b)(3) managed care

Where Things Stand?

- 45 other states have received initial approval
- All states that got a letter describing the additional steps it must take to get final approval
- This is an important document for stakeholders to use for comment and input
- 18 states have also received final approval:
 - AK, AR, CT, DE, DC, ID, KY, MN, ND, OH, OK, OR, SD, TN, UT, VA, WA, & WY

* As of September 2019

2017 Guidance

- Released May 9, 2017
- Extends timeline for bringing settings into compliance to March 2022
- Timeline for transition plans remains 2019

New FAQ

Released Friday, March 22, 2019

CMS removed specific examples of settings that would automatically be identified as institutional due to isolation, and will now take the following factors into account when determining whether a setting isolates HCBS beneficiaries from the broader community:

- Due to the design or model of service provision in the setting, individuals have limited, if any, opportunities for interaction in and with the broader community, including with individuals not receiving Medicaid-funded HCBS;
- The setting restricts beneficiary choice to receive services or to engage in activities outside of the setting; or
- The setting is physically located separate and apart from the broader community and does not facilitate beneficiary opportunity to access the broader community and participate in community services, consistent with a beneficiary's person-centered service plan.

Process

- Final STPs will include the plan for assessing and validating all settings, the results from evaluations so far, plan for remediating non-compliant settings, how the state will build capacity to ensure “choice of non-disability specific settings” (including community employment and living in own apartment/home)
- Full compliance with the Rule by March 17, 2022
 - Any settings not in compliance must have been remediated by then or those receiving services within them transitioned to other settings.

Action Steps

- Review the CMS feedback to your state on what the STP needs to get final approval if not yet approved.
 - Stay involved in the process, including public comment.
- Keep learning about the HCBS Settings Rule; help educate people with disabilities and families
- Use existing resources to support successful implementation

What Does It Mean?

All HCBS Settings must:

- Be integrated in and facilitate access to the greater community;
- Allow individuals optimized autonomy and independence in making life choices;
- Be chosen by the individual from among residential and day options, including non-disability specific settings;
- Ensure right to privacy, dignity and respect, including no coercion or restraint;

What Does It Mean? (cont.)

All HCBS Settings must:

- Provide opportunity to seek competitive employment;
 - Provide for choice of roommate in a residential setting; and
 - Encourage choice of services and choice of who provides them.
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- **Additional Requirements for Provider-Owned Residential Settings**

The rule provides an opportunity to:



- Expand the capacity of more integrated and individualized services
- Move state systems away from outdated, segregated service models
- Ensure basic rights in all HCBS settings
- Help states improve alignment with the Americans with Disabilities Act and *Olmstead*

The Rule focuses on people's individual experiences

- It does turn on the type or name of a setting
- It does not set specific size limitations

Questions?