

Understanding the Home and Community Based Services Final Rule Refresher

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What is the Home and Community Based Services (HCBS) Final Rule?

- In 2014, the Center for Medicare and Medicaid Services (CMS) published a new set of rules for the delivery of Home and Community Based Services (HCBS) through Medicaid Waiver programs
- Through these rules, CMS's goal is to improve the experience of individuals receiving these services by:
 - Enhancing and ensuring access and integration in the community
 - Promoting the delivery of services in a more integrated setting, ensuring individuals have the same access to the community as those without disabilities
 - Expanding the use of the person-centered planning process and provide individuals the opportunity to choose where and how they desire to receive services
 - Protecting individuals' rights to exercise autonomy and independence.

HCBS Areas of Concern



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- No Residency agreement and state landlord tenant law
 - No Choice of provider
 - No Choice of roommate/housemates
 - No Freedom to furnish/decorate room
 - Lack of Privacy
 - No locks on doors (bedroom and/or bathroom)
 - Restricted visiting hours
 - Restricted Freedom of movement inside and outside of home
 - Restricted Access to food and choice of foods
 - Restricted Freedom to control schedule and activities
 - Restricted Access to earned income
 - Use of Cameras/video monitors, door alarms



Who is required to comply with the HCBS Final Rule?

Residential and Non- Residential settings who serve waiver participants and provide:

- Community Living Support Services
- Skill Building Services
- Supported Employment



Compliance Timeline

As of March 17, 2023, **ALL** residential and non-residential providers are **expected** to be in **FULL** compliance with the HCBS Final Rule and are **required to maintain compliance**.

HCBS Compliance is a coordinated effort!

Providers

Case
managers/Supports
Coordinators

Behavior Treatment
Review Committee

CMHSP

PHIP

MDHHS

Consequences of Non-Compliance

- Settings who are not in full compliance with the HCBS Final Rule and fail to complete the ongoing compliance assessments will be excluded from participating in Medicaid or Healthy Michigan Plan funded HCBS services
 - If funding suspended, providers may reapply through the provisional approval process after 90 days
- Transition options of individual in non-compliant settings:
 - Individual can choose to suspend their HCB funded service
 - Use of alternative funding to pay for the services until setting can demonstrate compliance
 - Individual will need to transition to a HCBS compliant setting

Provider Network Evaluation

- Michigan Department of Health and Human Services (MDHHS) required the LRE to survey Providers and Participants receiving HCBS funded services in residential and non-residential settings using the Qualtrics Online Survey System.
- HCBS surveys were completed in 2016, 2020 and Q1 2023
- These results were used to identify changes needed to meet the HCBS guidelines
- Using the data from the surveys, providers were placed into categories of compliance:
 - Home and Community Based compliant
 - Presumed not Home and Community Based or out of compliance, with potential to become HCBS compliant
 - Heightened Scrutiny- provider setting appears to be unable to meet the HCBS rule



HCBS Survey and Ongoing Follow up

- LRE is responsible to ensure our Provider Network is compliant with the HCBS Final Rule
- Through the collection of proof documentation to:
 1. Validate Survey Responses or issues identified during Ongoing Compliance monitoring
 2. Remediate Survey Responses or Workplans for issues identified during Ongoing Compliance monitoring
 - Issue remediation/corrective action workplans to ensure that settings correct identified HCBS compliance issues
 - Submitted to the LRE within 30 days
 - Must be implemented within 90 days of approval
 - LRE verifies that the CAP is initiated and/or completed



Proof Documentation Examples:

- Copy of HCBS or other policies and procedures
- Copy Individual Plans of Service (IPOS)
- Copy of Behavior Support Plans
- Copy of daily activity logs/community integration logs
- Copy of Progress Notes
- Copy of activity, outings, group schedules
- Copy of Resident Care Agreements/Summary of Rights
- Copy of Resident Handbooks/Orientation procedures
- Photos of locks installed on bedroom doors
- Review of satisfaction survey data
- Copy of employee handbook/HIPAA training
- On site review/interviews with waiver participants
- Other as deemed necessary

Provisional Approval Process

- CMHSP's in coordination with the LRE, are to ensure a provisional approval review PRIOR to securing services for a HCBS recipient
 - Instituted October 1, 2017
 - Provisional approval process is to ensure setting is not isolative or institutional and in compliance with the Final Rule
 - Recently amended to allow PIHP's to provisionally approve, after consultation with MDHHS HCBS Team, a setting that previously would have been denied based on potential Heighten Scrutiny status
- Process allows a new provider or an existing provider with a new setting or service to provide services to HCBS participants pending the full HCBS review process
- Provisional approval is required for:
 - New providers to the CMHSP/Region
 - Existing providers who have changed physical locations
 - Existing provider settings that have new owners, licensees
 - Existing providers who have added new services

Provisional Consultation Process



- Required PRIOR to placement of an individual in any secure or restrictive setting, these settings are deemed not HCB, so LRE cannot provisionally approve the setting
- Process is for MDHHS HCBS Team to review and approve, approve with conditions or deny a specific individual's placements in secure/restrictive settings, they are not the approving the setting itself
- Review of the IPOS, BTP and supporting documentation to ensure compliance (esp. IPOS)
- Opportunity for the CMH to present the rationale that justifies the health and/or safety need for the individual to be placed in a secure/restrictive setting
- Annual review- review the individuals progress or lack thereof and seek approval for continued stay or need to transition to less restrictive setting

Ongoing Compliance Monitoring

Physical Assessment

- To ensure provider physical setting remains compliant
- LRE is including this in the Annual LRE Facility Review Process
 - Remediation for deficiencies due within 30 days of receipt of workplan

Comprehensive Assessment

- NO MORE QUALTRICS SURVEYS
- MDHHS still working to define this process and develop a standardized assessment tool
- Required every 2 or 3 years
- LRE will conduct a comprehensive review of each HCBS funded individual in residential and non-residential settings, reviewing each IPOS, BSP, community integration logs, progress notes to ensure individual documentation is meeting the HCBS Final Rule requirements.
 - Remediation of deficiencies will be due within 30 days of the review



Status of Settings on Heighten Scrutiny from original 2016 surveys

- MDHHS conducted reviews of settings placed on Heighten Scrutiny (HS) from the original 2016 survey and has deemed the settings listed on the **“HS list submitted to CMS”** to be compliant.
- The list was submitted to CMS in January 2023.
- CMS will review these settings, provide feedback regarding MDHHS’s decision and make the final determination of HCBS status.
- During CMS’s review process, CMHSP’s can continue to refer to, admit to and fund placements in these settings
 - If CMS deems a setting NOT Home and Community Based, the CMHSP will have 12 months to transition individuals to a compliant setting
 - Funding will continue during this 12-month transition process.

Subsequent settings on Heighten Scrutiny

There may be settings deemed Heighten Scrutiny from the Qualtrics 2020 and 2023 surveys and the HCBS Ongoing Compliance Monitoring Process

- MDHHS will follow the same process used with the original 2016 surveys to review and make determination- working with CMH and MSU to gather evidence, submit all collected data to the HSRC, 30-day public comment and then if MDHHS deems setting to be compliant will submit to CMS for final determination
- LRE will be asked to collect remediation and validation documentation as requested by MDHHS



How to be compliant for each person served receiving HCB Services

- Assess each individual to determine if there is a health and safety need that requires a modification to any of the areas of HCB concern
- Correct the issues that restrict or deter choice, privacy, access, and/or freedom of movement
- Document the health and safety reason for modification in each resident's Individual's Plan of Service (IPOS) and Behavior Treatment Plan (if applicable)
- Document in the IPOS, how those without the modification will overcome or work around the modification
 - The expectation is that the modification for one person should not impact other participants. If there is a situation where other individuals are impacted by the needs of another because there is no other possibility, there must be clear information in the IPOS related to how this is overcome as stated. However, the need for this should be the exception and not the rule.



How settings can be HCBS compliant

- Increase choices for persons served
- Install privacy, keyed locks on bedroom and bathroom doors (non-locking against egress)
- Include the Summary of Resident Rights with the Resident Care Agreement
- Remove House Rules
- Open the kitchen and access to food, allow individuals served to choose what, where and when they desire to eat, cook meals, unlock cupboards and refrigerator
- Allow individuals to have visitors at any time they choose

- Allow individuals the freedom to move about inside and outside of the home without barriers
- Provide all necessary assistance and support with care and medications in a private setting
- Do not talk about individuals outside of a private office/room
- Encourage and allow individuals to furnish and decorate their room
- Encourage and allow individuals access to the laundry room
- Encourage and allow individuals to choose their own clothing





- Allow individuals access to their own money and personal items
- Encourage and allow individuals to develop and control their own daily schedule including personal care times, medical appointments, activities, outings, etc.
- Encourage and allow individuals to participate in legal activities in which they meet the legal requirements
- Encourage and assist individuals to engage and interact with their broad community as they desired
- Ensure provider has the most recent copy of the IPOS and BSP available and have been trained on each of the plans
- Ensure all modifications (restrictions) are clearly assessed and documented in the Individual Plan of Service

Life Choice Form



- Cannot be used as a standalone document of HCBS compliance
- May be used as supplemental documentation to support choices and acknowledgement of HCBS Final Rule
- Providers can complete and send to SC/CM for inclusion of the information in the IPOS
- Can be embedded into the IPOS document
- Providers and SC/CM need to establish relationships to be able to creatively develop strategies for HCB compliance and ensure proper documentation

Questions



References

- Medicaid Provider Manual: Home and Community Based Services
- MDHHS Statewide Transition Plan version 5.3
- MDHHS- LARA Joint Guidance Document
- Home and Community Based Services Final Rule
- MDHHS Heighten Scrutiny

[Home and Community Based Service HCBS Transitions Website](#)