Michigan Home and Community Based Services Transition

Home and Community Based Services Rule Guide for Individuals and Family Members

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Home and Community Based Services (HCBS) Rule

Frequently Asked Questions – Individuals and Family Members

Question: Why is the HCBS Rule important?
Answer:
The HCBS Rule makes sure individuals have the opportunity to make decisions about their lives, support their participation in their community, and have their rights respected.

Question: What are the remaining steps on the timeline?
Answer:
The Michigan Department of Health and Human Services (MDHHS)/ Behavioral Health and Developmental Disabilities Administration (BHDDA) is working with individuals and providers to meet the HCBS Rule. Below are the steps in the timeline:

- Survey individuals and providers.
    - An Individual is a Medicaid beneficiary who receives supports and services through their local Community Mental Health Services Programs (CMHSP)/ Prepaid Inpatient Health Plan (PIHP).
    - A Provider is a person, organization, and/or business who provides Medicaid-paid-for supports and services.

- Providers will receive a letter, if needed, stating the provider is on Heightened Scrutiny (HS) which is a strict review of the provider's supports and services to see if they are able to meet the HCBS Rule.

- Providers will receive a letter, if needed, stating the provider is out of compliance which has the requirement of a Corrective Action Plan, called a CAP. This is a plan for stating how the provider changes to better meet the HCBS Rule.

- Providers will work with their local Community Mental Health Services Programs (CMHSP)/ Prepaid Inpatient Health Plan (PIHP) to have services and supports meet the HCBS Rule.

Question: Who is surveyed for the HCBS Rule?
Answer:
Adults receiving at least one of these waiver services and their providers may be surveyed:

- Community Living Services – only individuals living in a provider owned or operated setting
- Skill Building
- Supported Employment

The HCBS surveys tell me the different opinions between the provider and individual about how services are delivered.
(https://ddi.wayne.edu/hcbssurvey)

Question: What will happen to my provider?
Answer:

- The Centers for Medicare and Medicaid Services (CMS) has told all States that all services must be able to meet the HCBS Rule. HCBS funds cannot used be used to pay for services that do not meet the HCBS Rule.

- An individual with the help of their supports coordinator/case manager and other chosen support people can make changes (to their plan of services) through the Person-Centered Planning process.

- Providers who meet the HCBS Rule will have ongoing reviews to make sure they continue to meet the HCBS Rule.

- Providers may need to make changes to meet the HCBS Rule. If a provider needs to make changes, the provider will develop a Corrective Action Plan (CAP) to meet the HCBS Rule.

- Services that do not meet the HCBS Rule will be in a Heightened Scrutiny (HS) review.

Question: What happens after my supports and services have been assessed for the HCBS Rule?
Answer:

- Next steps for individuals are to determine to stay with their current provider(s) of services and supports or change to a new provider. The provider's survey results will indicate their current HCBS status.

- Providers' HCBS statuses are in **Heightened Scrutiny**, **Out of Compliance**, or **Compliant** (meet the HCBS Rule):
    -  **Heightened Scrutiny** – Known as HS, is a strict review of the provider's services and supports to see if they are able to meet the HCBS Rule by making certain changes. Michigan State University has been contracted by MDHHS/BHDDA to meet with the individuals and talk about their services and supports. The Centers for Medicare and Medicaid Services (CMS) may be involved in the final decision regarding the provider's status.
    -  **Out of Compliance** – (requires CAP) Providers are required to develop plans to make changes needed to meet the Rule. The local Community Mental Health Services Programs (CMHSP) or Prepaid Inpatient Health Plan (PIHP) will help providers with CAPs.
    -  **Compliant** (meet requirements of the rule) – Providers who support individuals who receive services to:
        - Make decisions about one's life
        - Support participation in one's community
        - Receive services and supports their wants and needs
        - Make sure individuals rights are respected

- Should a person choose to stay with a current provider and the provider meets the HCBS Rule, no changes are needed.

- If a person wants to stay with the current provider, and the provider is NOT meeting the HCBS Rule:
    - Ask the supports coordinator/case manager if the provider is working with a CMHSP or PIHP on a Corrective Action Plan (CAP) or is going through the Heightened Scrutiny (HS) process.

Question: What happens if the provider meets the requirements of the Corrective Action Plan?
Answer:

- The provider will be moved from **Out of Compliance** to **Compliant** status

- The provider can receive Medicaid funding for services and supports.

- Community Mental Health Services Programs (CMHSP) and Prepaid Inpatient Health Plan (PIHP) will monitor the providers to make sure they continue to meet the HCBS Rule.

Question: What happens if the current provider does not meet the HCBS Rule?
Answer:

- Medicaid HCBS dollars/money cannot be used to pay for services and supports that do not meet the HCBS Rule.

- The HCBS Rule applies to all residential (supports at home) and non-residential (supports outside of the home) services including services in one's home, day programs, employment supports, and transportation.

- For these supports and services to be paid for through Medicaid, the providers must meet the HCBS Rule.

Question: Why does there need to be a change in provider?
Answer:

- The goal of the HCBS Rule is to make sure that the supports and services individuals receive, give individuals the opportunity for

independent decision-making, to fully participate in community life, and to make sure their rights are respected.

- Medicaid-funded HCBS cannot be used for services and supports that do not meet the requirements of the HCBS Rule as these services and supports are considered institutional or isolating.

Question: What makes a setting considered institutional?
Answer:

- In a building that is also a treatment facility.

- Separates individuals who receive Medicaid HCBS from others who do not receive Medicaid HCBS.

- This would include settings that have the effect of isolating and separating individuals with disabilities.

Question: How can individuals use the Person-Centered Planning process to transition to a provider that meets HCBS Rule?
Answer:

- Person-Centered Planning (PCP) is a process for planning and supporting the individual.

- Person-Centered Planning is required by the Michigan Mental Health Code. It means the individual directs the planning process for their own services and supports.

- Person-centered plans are updated at least annually or when an individual wants to make changes or when a goal or want is achieved.

- An individual can request to make changes to their Person-Centered Plan at any time. They do not need to wait until their scheduled annual PCP. The individual can contact one's supports coordinator or case manager.

- If a provider is unable to meet the needs of the HCBS Rule or the individual wants to change to another provider, a supports

coordinator or case manager can help make this change through the Person-Centered Planning process at any time.

Question: Who can help individuals with the HCBS Rule process?
Answer:

- An individual's supports coordinator or case manager can help in a number of ways:
  - Making sure you have the opportunity to make decisions, to get the services you want to fully participate in community life, and that your rights are respected.
  - Acting as the connection between the individual, CMHSP, PIHP, and the provider and help individuals learn about the Heightened Scrutiny (HS) process and a Corrective Action Plan (CAP), and
  - Supporting individuals to make sure a transition plan through the Person-Centered Planning process is developed for an individual.

- An individual's family members, friends, peers, and self-advocates can provide support for individuals to live and fully participate in the community. They also can make sure the individual's rights are respected, advocate, educate and connect, and help individuals make the changes to have the life individuals want.

- A guardian's role does not change. The HCBS Rule requires that Medicaid funded services and supports meet the HCBS Rule. A guardian cannot weaken or prevent meeting of HCBS Rule as it would result in Medicaid not paying for the HCBS services and supports.

Question: What are modifications and when would they be used?
Answer:

- A modification is a restriction on the freedoms required by the HCBS rule. Modifications must be written into an individual's Person-Centered Plan and meet all requirements identified by CMS.

- A modification can only be used to maintain health or safety.

- A modification in an individual's IPOS must follow the steps outlined by CMS these include:
  - Based on known health or safety concern
  - Evidence that other interventions have been tried and were not successful
  - Identified way to know if the modification is working and when will it be reviewed
  - What steps will be taken to try to develop skills that make the modification unnecessary in the future
  - The individual agrees to the modification
  - Assurance that the modification will cause no harm to the individual or others.

Question: Can a provider use the modification for one individual to restrict the freedoms of all the individuals?
Answer:

- If more than one individual is receiving services or supports from a provider the provider may not restrict all individuals based upon the health or safety needs of one of the individuals.

References

Centers for Medicare & Medicaid Services:
https://www.medicaid.gov/medicaid/hcbs/guidance/index.html

Michigan Department of Health and Human Services Home and Community-Based Services Program Transition:
https://www.michigan.gov/mdhhs/0,5885,7-339-71547_2943-334724--,00.html

Michigan Department of Health and Human Services How Person-Centered Planning Works for You:
https://www.michigan.gov/documents/mdch/How_Person-Centered_Planning_Works_for_You_367101_7.pdf or call Customer Service 844-275-6324

Michigan Developmental Disabilities Institute
Wayne State University
Home and Community Based Services Transition
https://ddi.wayne.edu/hcbs

HCBS Advocacy Coalition: http://hcbsadvocacy.org/

Self-Advocates Becoming Empowered (SABE):
http://www.sabeusa.org/

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