

State Implementation of HCBS: Opportunities for System Change

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What Is the Vision of a System For People with Disabilities?

- Support people with disabilities to have **lives like people without disabilities**
- Provide opportunities for **true integration, independence, choice, and self-determination in all aspects of life** – where people live, spend their days, and community membership
- Ensure **quality services and supports** that meet people's needs and help them achieve goals they have identified through real person-centered planning

The HCBS settings rule can move your system toward this vision.

Goal of HCBS 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*”

Moving State Systems Towards More Individualized and Integrated Services

- Requirement for a choice of a “non-disability specific setting”
- Tiered standards that allow states to “close the front door” to legacy programs and focus new capacity on more individualized and integrated services
- Aligning HCBS settings rule compliance with the ADA and *Olmstead*
- States setting standards higher than the rule’s “floor” to further state goals and initiatives

Choice of Non-Disability Specific Setting

- Rule requires states to offer individuals a choice of a “non-disability specific setting”
 - This requirement applies to both residential and non-residential settings
 - Examples include choice to live in one’s own home (residential) or to work in competitive, integrated employment (non-residential)
- States should assess their current capacity of non-disability specific settings and develop a plan to increase capacity so all individuals have a real and meaningful choice

Tiered Standards

- States have flexibility to set different standards for existing and new settings through their statewide transition plan
 - Existing settings must meet the minimum standards set forth in the HCBS rules but the state “may suspend admission to the setting or suspend new provider approval/authorizations for those settings”
 - State may set standards for “models of service that more fully meet the state’s standards” for HCBS and require all new service development to meeting the higher standards
 - The tiered standard can extend beyond the transition plan timeframe
 - This allows states to “close the front door” to settings/services

Aligning Implementation of HCBS Rules with *Olmstead* Compliance

- **Integrated settings** under the ADA provide the **opportunity to live, work and receive services in the greater community**
 - Located in mainstream society and offer access to community activities when & with whom a person chooses
 - Choice in daily life activities
 - Ability to interact with people w/o disabilities to the fullest extent possible
- **Segregated settings** under the ADA have **institutional qualities**, including:
 - Congregate settings with primarily or exclusively people with disabilities
 - Regimentation in daily activities, lack of privacy/autonomy, limits on ability to freely engage in community activities
 - Settings that provide for daytime activities primarily with other PWD

Aligning HCBS Rules & *Olmstead* Compliance

- States should closely examine settings that have been found to be “segregated settings” under the ADA, such as board and care homes, sheltered workshops and large facility-based day habilitation.
 - These may also be presumptively institutional “settings that isolate” under the HCBS rules
- States can use the HCBS settings rules to further *Olmstead* compliance by rebalancing away from providing services in “segregated settings” and ensuring system capacity to provide all HCBS participants a choice of receiving services in “the most integrated setting.”
 - Expanding the capacity of “integrated settings” aligns with the HCBS settings rule’s requirement to provide a choice of a “non-disability specific setting”

Aligning HCBS Rules & *Olmstead* Compliance

- BUT states' obligations under Medicaid (including the HCBS settings rules) and the ADA are separate and independent.
 - A determination that a setting complies with the HCBS rules does not necessarily mean that it is an “integrated setting” under the ADA
 - CMS' approval of a state's transition plan does not necessarily mean that the state is in compliance with the ADA and *Olmstead*.

Setting Standards that Align with the State's Goals, Priorities and Vision

- HCBS rules set the floor for compliance
- CMS has made clear that states can set higher standards
- State should align their HCBS transition activities with their own state initiatives and other federal obligations:
 - State “Employment First” initiatives
 - State’s Workforce Innovation Opportunity Act plans
 - Activities to increase integrated, affordable housing (Section 811)
 - State’s *Olmstead* plans or settlement agreements

State Examples

- Some states are moving towards more individualized and integrated services through the HCBS transition process:
 - Moving from facility-based to all community-based day services
 - Transforming models for facility-based day habilitation (to a “hub-and-spoke” model)
 - Phasing out sheltered workshops
 - Setting size limits on residential settings
 - Requiring housing subsidies to be used in scattered site apartments
 - Expanding the capacity of competitive, integrated employment
 - Funding help bring providers into compliance through model changes
 - Aligning with *Olmstead* activities



Participant Perspectives:

Steps for HCBS Transition Plan Advocacy

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Defining Community

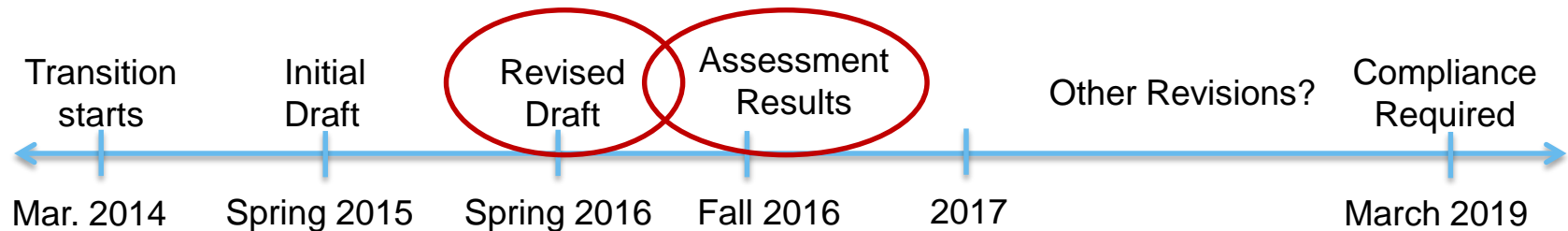
- HCB setting definition “based on **individual experience and outcomes**, rather than...solely on a setting’s location, geography or physical characteristics.”
- But that means building an accessible public process
- Participants involved from the ground floor up!



Transition Planning: Participant Engagement Opportunities

- Formal public process
- Public outreach and education initiatives
- Settings assessments
 - Participant surveys & on-site interviews
- Compliance & Monitoring

Public Notice & Comment Process



- 30-days comment for each significant change
- Public notice for hearings and comment period
- Response to comments for each CMS submission
- Common issues
 - Disorganized websites, poor notice, general lack of transparency
 - Vague draft plans
 - Participation drop-off after initial comment period

Stakeholder Advisory Groups

- Adequate representation
- Diverse voices, everyone heard
- Early involvement, long duration
- Clearly defined roles and subgroups
- Meaningful advice

Public Outreach & Education

- Plenty of provider education and training
- Less attention given to participants
- Best practices
 - Consumer-friendly resources explaining the changes and protections
 - Include explanations of requirements in participant surveys (for both provider & participant surveys)
 - Use response to comments to explain intent of rules

Settings Assessment Process

- Primarily provider self-assessments
- Participant surveys in some states
 - Validation and sampling
 - Little piloting, input on question design
- Assistance:
Helping speak or speaking for?
- On-site visits and interview process

Next Steps for Participants & Advocates

- Get informed
 - www.hcbsadvocacy.org
- Comments work!
 - State assessment results next on tap (including heightened scrutiny)
- Upcoming opportunities
 - Reviewing Corrective Action Plans
 - Developing robust protections to ensure smooth transition for any individual who moves to a more integrated setting
 - Converting participant surveys to ongoing monitoring tools



THANK YOU

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THE HEIGHTENED SCRUTINY PROCESS AND STAKEHOLDER ADVOCACY

**2016 Disability Policy Seminar – State
Implementation of HCBS Rule**

States must categorize every setting where HCBS are Delivered:

- HCBS Settings must meet all requirements of Rule (or can with modifications)
 - be integrated in and support full access to the greater community
 - optimize autonomy and independence in choices;
 - selected by individual from among setting options;
 - ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
 - facilitate choice regarding services and who provides them
- Provider owned or controlled settings have additional obligations

• Institutional and Presumptively Institutional

Institutional and cannot qualify for HCBS

- Nursing Facility
- Institution for Mental Disease (IMD)
- Intermediate Care Facility (ICF-IID)
- Hospitals

Settings Presumed to have Institutional qualities and Not qualify for HCBS:

- In a building that also provides inpatient treatment
- On the grounds of, or immediately adjacent to, a public institution;
- has the effect of isolating individuals receiving HCBS from broader community of individuals not receiving HCBS

Settings that have the effect of isolating individuals receiving HCBS

- Designed specifically for PWD or with specific types of disabilities
- Comprised primarily of PWD and staff providing services
- Providing multiple types of services onsite
- PWD in the setting have limited interaction with the broader community not receiving HCBS
- Uses restrictive interventions

CMS examples of settings that may isolate:

- * Disability-specific congregate settings;
- * Farmsteads in rural areas;
- * Residential schools;
- * Gated or secured communities for PWD's; and
- * Clustered settings that are operationally interrelated

States may submit a presumptively institutional setting for heightened scrutiny review by CMS

H.S. requires states to provide public comment on settings prior to submission. Info provided for comment must include:

- Setting name, location, and # of individuals served
- Any and all justifications from the state as to why the setting is HCBS, including reviewer reports, interview summaries
- Sufficient detail such that public can support or rebut the state's information
 - info that could potentially identify the individual or release inappropriate information should be protected.
- State must issue revised STP with the responses to comments identifying changes made or reasonable explanations as to why changes were not made.



• States must submit evidence to CMS:

- Summary & proof of wide, targeted public comment
- Each HCBS characteristics is met, for each participant (not just %)
- Residents are not isolated from the greater community
 - Proximity to resources, enough providers and transportation to facilitate individual choice
 - Varied schedules, not all provider organized, meaningful interactions in community
- Strong evidence that the setting does not have institutional qualities (not operationally connected or associated with institution) e.g. has different licensing, HCBS provider specifications, setting zoned residential.
- Documentation that policies affirm rule, PCP's requirements met, and individuals have choice of non-disability specific setting



• Evidence to CMS Continued

- Observational Site Visit Recommended – visit with individuals/agencies who have experience with setting, familiar with community resources, provided comments
- Evidence showing the general community considers the setting as part of the community and is not associated just as setting for services to people with disabilities.
- Evidence that participants are involved in meaningful and typical community activities outside of the setting.
- Evidence should not focus on the type or severity of disability of the participants in the setting, but should be about the community nature of the setting itself.

• Advocacy Steps

- Identify institution-like settings and those you think state may submit for H.S.
- Don't wait for comment period– gather evidence now - use CMS exploratory questions
- Compare your results to state list of settings-
 - are any HCBS settings missing?
 - Is H.S. evidence state submitted correct, complete?
- Prepare comments- include:
 - Specific details on how the setting violates the rule
 - Focus on the experience of the individual – use stories
- Encourage Comments from Stakeholders and advocates (offer model comments, short summary of changes)
- Prepare for multiple comment periods



• Stakeholder Input is Working

- Comments work!
- CMS needs stakeholders to comment
- CMS guidance reflects advocates' input
 - Reverse integration only is not sufficient
 - H.S. requires strong evidence
- Advocates must engage in ongoing monitoring and oversight
- CMS approval of a setting may change if material changes are made to the setting

Forum on State Implementation of HCBS

- Importance of systemic review prior to site review
- Stakeholder input will determine the direction of each state's system
- The HCBS Rule is a federal floor with aspirational language

NASDDDS

National Association of State Directors of Developmental Disabilities Services
