



Minnesota Department of **Human Services**

Medicaid Home and Community- Based Services (HCBS) Final Rule

Setting the Stage

Minnesota is building upon other initiatives to come into compliance with the new federal rule, including:

- Minnesota's Olmstead Plan
- The existing state statute defining home and community based settings for people with disabilities
- Other activities over the past six years that have focused on this topic

Final Rule Implementation

- Published in the Federal Register on January 16, 2014
- Effective March 17, 2014
- States are required to submit a transition plan to CMS for all existing programs
- All states must come into compliance within five years of the effective date of the rule

Intent of the Final Rule

- Ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate
- Enhance the quality of HCBS and provide protections to participants

Highlights of the Final Rule

- Defines, describes, and aligns home and community-based setting requirements across HCBS programs
- Defines person-centered planning requirements for persons in HCBS settings

Home and Community-Based Setting Requirements

- Establish an outcome-oriented definition that focuses on the nature and quality of individuals' experiences
- Maximize opportunities for individuals to have access to the benefits of community living and to receive services in the most integrated setting

Home and Community-Based Setting Requirements

- Mandatory requirements for the qualities of home and community-based settings
- Settings that are not home and community-based
- Settings presumed not to be home and community-based
- State compliance and transition requirements

Mandatory Qualities of HCBS Settings

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services

- Selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting
- Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices
- Facilitate individual choice regarding services and supports, and who provides them

Additional Requirements for Provider-owned or Controlled Residential Settings

- Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement
- Same responsibilities/protections from eviction as all tenants under landlord tenant law or state, county, city or other designated entity
- If tenant laws do not apply, state ensures written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under landlord tenant law
- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with the individual and appropriate staff having keys to doors, as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
- Individuals have freedom and support to control their schedules and activities and have access to food at any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual
- Modification of the additional qualities must be: Supported by specific assessed need
 - Justified in the person-centered service plan
 - Documented in the person-centered service plan
- Documentation in the person-centered service plan of modifications of the additional qualities includes:
 - Specific individualized assessed need
 - Prior interventions and supports including less intrusive methods
 - Ongoing data measuring effectiveness of modification
 - Established time limits for periodic review of modifications
 - Individual's informed consent
 - Assurance that interventions and supports will not cause harm

Settings that are NOT home and community-based

- Nursing facilities
- Institutions for mental disease (IMD)
- Intermediate care facilities for individuals with developmental disabilities (ICF/DD)
- Hospital
- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on the 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

Heightened Scrutiny

- Settings PRESUMED NOT to be home and community based may not be included in the state's HCBS programs unless:
 - A state submits evidence (including public input) demonstrating that the setting does have the qualities of a home and community-based setting and not the qualities of an institution; AND
 - CMS finds, based on a heightened scrutiny review of the evidence, that the setting meets the requirements for home and community-based settings and does not have the qualities of an institution

Non-residential Services

- Non-residential services includes adult day services, day habilitation, supported employment and pre-vocational
- HCBS provides opportunities to seek employment and to work in competitive integrated settings to the same degree of access as individuals not receiving HCBS
- The person-centered plan must document the non-residential, as well as the residential, options
- A person needs to understand their options, and make choices based on those options
- Settings that have institutional characteristics will be subject to higher scrutiny by CMS, if the state chooses to make a request to consider the settings home and community based

Transition

- States must submit a plan detailing how the state will comply with the settings requirements
- States must provide a 30-day public notice and comment period, with a minimum of two statements of public notice and public input procedures
- Implementation of the plan begins upon approval by CMS and must be completed within five years of the effective date of the rule

Person-centered Plans and Planning Process

- Driven by the individual
- Includes people chosen by the individual
- Provides necessary information and support to the individual to ensure that the individual directs the process to the maximum extent possible
- Is timely and occurs at times/locations of convenience to the individual
- Reflects cultural considerations and uses plain language
- Includes strategies for solving disagreements
- Offers choices to the individual regarding services and supports the individual receives and from whom
- Provides method to request updates
- Conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare
- Identifies the strengths, preferences, needs (clinical and support), and desired outcomes of the individual
- May include whether and what services are self-directed
- Includes individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education, and others
- Includes risk factors and plans to minimize them
- Is signed by all individuals and providers responsible for its implementation and a copy of the plan must be provided to the individual and his/her representative

Written Person-centered Plan Documentation

- Reflects setting is chosen by the individual and is integrated in, and supports full access to the greater community
- Reflects opportunities to seek employment and work in competitive integrated settings
- Reflects opportunities to engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS
- Reflects individual's strengths and preferences
- Reflects clinical and support needs
- Includes goals and desired outcomes
- Includes providers of services/supports, including unpaid supports provided voluntarily in lieu of waiver or state plan HCBS
- Includes risk factors and measures in place to minimize risk

- Includes individualized backup plans and strategies when needed
- Includes individuals important in supporting individual
- Includes individuals responsible for monitoring the plan
- Is written in plain language and understandable to the individual
- Includes informed consent of the individual in writing
- Includes signatures of all responsible individuals and providers
- Is distributed to the individual and others involved in the plan
- Includes purchase/control of self-directed services
- Excludes unnecessary or inappropriate services and supports
- Must be reviewed, and revised upon reassessment of the functional need every 12 month, when the individual's circumstances or needs change significantly, and at the request of the individual
- Includes any modifications of the additional conditions for the home and community-based setting requirements:
 - Specific individualized assessed need
 - Prior interventions and supports including less intrusive methods
 - Description of condition proportionate to assessed need
 - Ongoing data measuring effectiveness of modification
 - Established time limits for periodic review of modifications
 - Individual's informed consent
 - Assurance that interventions and supports will not cause harm

Minnesota's Process to Develop a Transition Plan

- July – August:
 - Complete preliminary draft transition plan
 - Solicit additional feedback
- September – December
 - Complete final draft transition plan
 - Solicit additional feedback, public comment
 - Make changes based on comments
 - Submit to CMS for approval

Resources

- Centers for Medicare & Medicaid Services – <http://www.medicaid.gov/hcbs>
- Minnesota's Olmstead Plan – <http://www.dhs.state.mn.us/Olmstead>
- Current state definition of home and community-based settings for people with disabilities – <https://www.revisor.mn.gov/statutes/?id=256B.492>
- Email for questions/comments – HCBS.Settings@state.mn.us

MN Waiver Factsheet

MN - Elderly (0025.R07.00)

Provides adult day, case management, homemaker, respite, extended state plan home health care, extended state plan personal care assistant, extended state plan private duty nursing, adult companion, adult day service bath, adult foster care, chore, consumer-directed community supports-environmental mods and provisions, consumer-directed community supports-personal assistance, consumer-directed community supports-self-direction support activities, consumer-directed community supports-treatment and training, customized living services, environmental accessibility adaptations, family caregiver training and education, home delivered meals, managed care premiums, residential care services, specialized equipment and supplies, transitional services, transportation for aged individuals ages 65 - no max age

MN - Traumatic Brain Injury (TBI) (4169.R04.00)

Provides adult day care, caregiver living expenses, case management, homemaker, prevocational services, respite, supported employment, extended home health care, extended personal care assistance, extended private duty nursing, 24 hr emergency assistance, adult companion, adult day care bath, adult foster care, behavioral support, child foster care, chore, consumer directed community supports-self direction support activities, consumer directed community supports-environmental mods and provisions, consumer directed community supports-personal assistance, consumer directed community supports-treatment and training, customized living-24-hr, customized living, environmental accessibility adaptations, family training and counseling, home delivered meals, housing access coordination, independent living skills therapies, /independent living skills training, night supervision, residential care, specialized supplies and equipment, structured day program, transitional, transportation for individuals with BI ages 0-64

MN Community Alternative Care (4128.R06.00)

Provides adult day care, caregiver living expenses, case management, homemaker, respite, supported employment, extended home health care, extended personal care assistance, extended private duty nursing, 24-hr emergency assistance, adult foster care, behavioral support, child foster care, chore, consumer directed community supports-environmental mods and provisions, consumer directed community supports-personal assistance, consumer directed community supports-self-directed support activities, consumer directed community supports-treatment and training, environmental accessibility

adaptations, family training and counseling, home delivered meals, housing access coordination, independent living skills training, specialized equipment and supplies, transitional services, transportation for individual with other disabilities ages 0-64

MN Community Alternatives for Disabled Individuals (0166.R05.00)

Provides adult day care, caregiver living expenses, case management, homemaker, prevocational, respite, supported employment, extended home health care, extended personal care assistance, extended state plan private duty nursing, 24-hr emergency assistance, adult companion, adult day care bath, adult foster care, behavioral support, child foster care, chore, consumer-directed community supports (CDCS)-personal assistance, CDCS-self-direction support activities, CDCS-environmental mods/provisions, CDCS-treatment/training, customized living-24 hr, customized living, environmental accessibility adaptations, family training/counseling, home delivered meals, housing access coordination, independent living skills training, managed care premiums, residential care, specialized equipment/supplies, transitional services, transportation for physical and other disabilities ages 0-64

MN DD (0061.R06.00)

Provides adult day care, caregiver living expenses, case management, day training and hab, homemaker, prevocational, residential hab, respite, supported employment, extended personal care assistance, 24-hr emergency assistance, adult day care bath, assistive technology, chore, consumer directed community supports-environmental mods and provisions, consumer directed community supports-personal assistance, consumer directed community supports-self-direction support activities, consumer directed community supports-treatment and training, crisis respite, environmental accessibility adaptations, family training and counseling, home delivered meals, housing access coordination, personal support, specialist services, transitional services, transportation for individual with IID/DD ages 0 - no max age

CORE SERVICE DEFINITIONS – EMPLOYMENT: The following definitions of employment are based on the descriptions of employment services available under the Centers for Medicare and Medicaid Services (CMS)¹ and the U.S. Department of Health and Human Services (HHS) Substance Abuse Mental Health Services Administration (SAMHSA).

- *COMPETITIVE EMPLOYMENT:* Sustained paid employment in the community at prevailing wages and independent of support services.
- *SUPPORTED EMPLOYMENT- INDIVIDUALIZED EMPLOYMENT AND SUPPORT:* Sustained paid employment at or above minimum wage in an integrated setting with ongoing support. The intended outcome of this service is sustained paid employment and work experience which leads to further career development and independent community-based employment.
- *SUPPORTED EMPLOYMENT- SMALL GROUP EMPLOYMENT SUPPORT:* Services and training activities provided in groups of 2-8 workers in businesses and community settings which promote integration into the workplace and interaction with non-disabled co-workers. The intended outcome of this service is sustained paid employment and work experience which leads to further career development and independent, integrated community-based employment paid at or above minimum wage. Note: while CMS defines small-group employment support services including groups as large as 8 individuals, DHS allows as many as 10.
- *CENTER-BASED EMPLOYMENT:* Pre-vocational services provided in facility-based work settings, such as “sheltered workshops.” Work may be paid by piece-rate or productivity rate below minimum wage according to Section 14(C) of the Fair Labor Standards Act. The intended outcome of this service is paid employment and work experience which leads to further career development and independent, integrated community-based employment paid at or above minimum wage.
- *INDIVIDUAL PLACEMENT AND SUPPORT – SUPPORTED EMPLOYMENT (IPS-SE):* Individual Placement and Support-Supported Employment (IPS-SE) helps people with severe mental illness work at regular jobs of their choosing. Although variations of supported employment exist, IPS-SE refers to the evidence-based practice of supported employment. Refer to the Resources section at the end of this document for more information regarding IPS-SE.

¹ CMCS Informational Bulletin, *Updates to the §1915 (c) Waiver Instructions and Technical Guide regarding employment and employment related services*, September 16, 2011