



*2016 Autism Society of San Francisco Bay Area Conference  
Stanford University*

ADDRESSING THE NEEDS OF ADULTS WITH AUTISM

# **CMS Final Rule Implementation & Person-Centered Planning**



Prepared and presented by Desiree Kameka

*Madison House Autism Foundation  
National Coordinator, Coalition for Community Choice*

# Presentation Overview

- ✓ The HCBS Final Rule
- ✓ Guidance from CMS and its Challenges for Housing Choices
- ✓ What does the Final Rule say about Person-Centered Planning?
- ✓ Q&A



# What is the History of the Final Rule?

2008: Notice of Proposed Rule Making for 1915(i) - not finalized

2009: NPRM for 1915(c)

2011: NPRM for 1915(c)

2011: NPRM for 1915(k)

2012: NPRM for 1915(i) and 1915(k)

2013: NPRM for 1915(c), (i), and (k)

2014: [CMS-2249-F/CMS-2296-F published](#)

***“In this Final Rule, CMS is moving away from defining home and community settings by “what they are not” and toward defining them by the nature and quality of individuals experiences. The home and community-based setting provisions in this final rule establish a more outcome-oriented definition of home and community-based settings, rather than one based solely on a setting’s location, geography, or physical characteristics.” –[CMS Final Rule Q&A](#)***



# What's in the Final Rule?

- New regulations and criteria for residential and non-residential settings that use HCBS funding
- Settings eligibility based on individual outcomes and experiences
- Emphasis on integration in, and full access to, community same as those who are not receiving waiver services
- No setting size, physical characteristics, prohibition of disability-specific person limits
- Emphasized authority of and mandates Person Centered Plans to be created and reviewed in order to access HCBS funds
- Ensuring transparency and accountability via public comment periods
- Set a baseline, but gave states the flexibility to implement more restrictive regulations

# HCBS Final Rule Setting Requirements

## Summary of regulatory requirements on fully compliant HCBS settings:

### Regulatory Requirements for Home and Community-Based Settings:

For 1915(c) home and community-based waivers and, for 1915(i) State plan home and community-based services, home and community-based settings must have all of the following qualities defined at §441.301(c)(4) and §441.710 respectively, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

- The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, 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.
- The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
- Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- Facilitates individual choice regarding services and supports, and who provides them.
- In a provider-owned or controlled residential setting, in addition to the qualities specified above, the following additional conditions must be met:

1. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other

6. Any modification of the additional conditions specified in items 1 through 4 above, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan.

- Identify a specific and individualized assessed need.
- Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
- Document less intrusive methods of meeting the need that have been tried but did not work.
- Include a clear description of the condition that is directly proportionate to the specific assessed need.
- Include regular collection and review of data to measure the ongoing effectiveness of the modification.
- Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- Include the informed consent of the individual.
- Include an assurance that interventions and supports will cause no harm to the individual.

HCBS FINAL RULE

# HCBS Final Rule Setting Requirements

## Settings That are Not Home and Community-Based:

For 1915(c) home and community-based waivers, settings that are not home and community-based are defined at §441.301(c)(5) as follows:

- A nursing facility;
- An institution for mental diseases;
- An intermediate care facility for individuals with intellectual disabilities;
- A hospital; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary.

HCBS FINAL RULE

For 1915(i) State plan home and community-based services, settings that are not home and community-based are defined at §441.710(a)(2) as follows:

- A nursing facility;
- An institution for mental diseases;
- An intermediate care facility for individuals with intellectual disabilities;
- A hospital; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary.



Coalition for Community Choice



# HCBS Final Rule Setting Requirements

## Settings that are Presumed to have the Qualities of an Institution:

For 1915(c) home and community-based waivers, section 441.301(c)(5)(v) specifies that the following settings are presumed to have the qualities of an institution:

- any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,
- any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or
- any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

For 1915(i) State plan home and community-based services, section 441.710(a)(2)(v) specifies that the following settings are presumed to have the qualities of an institution:

- any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,
- any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or
- any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

\*These are PRESUMED to be institutional thus MAY need to undergo the heightened scrutiny process as determined by the State.

*Further CMS guidance was then released on 'settings that tend to isolate'*

# CMS Guidance: Settings that tend to isolate

Settings that isolate people receiving HCBS from the broader community may have *any* of the following characteristics:

- The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities:
- People in the setting have limited, if any, interaction with the broader community
- Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion)

Non-exhaustive list of examples of residential settings that *typically* have the effect of isolating people receiving HCBS from the broader community:

- Farmstead or disability-specific farm community
- Gated/secured “community” for people with disabilities
- Residential schools
- Multiple settings co-located and operationally related (i.e. operated and controlled by the same provider)
  - Excluded CCRCs (Continuing Care Retirement Communities)



# Overall Concerns

- Lack of waiver recipient participation and access to information about the Final Rule to offer meaningful public comment
- States creating restrictive criteria that would automatically exclude settings from being evaluated or put through the higher scrutiny process
- States or other organizations telling advocates and providers that CMS prohibits people with I/DD from using waiver funding to live or work in campus settings, farmsteads, intentional communities, etc.
- States and CMS guidance reverting back to physical characteristics instead of outcome oriented criteria
- Planned projects being halted by CMS guidance
- Consumer-controlled, affordable housing settings at risk
- Paid, non-state resident advocates sharing incorrect information about specific settings with the state Medicaid authority and CMS

# CMS Guidance and Challenges

**SOTA Call, Nov. 4, 2015** – [\[Download\]](#) The content stayed consistent with the Final Rule and Guidance, but for the first time specifically addressed private homes as settings:

- A state may presume that an individual's private home or relative's home where the individual resides meets the HCBS requirements. However, it is still the state's responsibility to ensure that individuals living in a private home or a relative's home have opportunities for full access to the greater community.
- If the state presumes that private homes meet the settings requirements, the state needs to confirm that the homes were not purchased or established in a manner that isolates the individual from the community of individuals not receiving Medicaid-funded home and community-based services. For example, did a group of families purchase an isolated property solely for their family members with disabilities using waiver services?

\*Two consumer-controlled housing communities in CA were identified in a CMS CMIA letter as isolating without CMS ever having had any contact with waiver recipients or their landlord, one of the settings identified has not broken ground nor is a service provider.

# CMS Guidance and Challenges

**From CMS Guidance on [Planned Construction of Presumed Institutional Settings](#):** “... a setting presumed to have the qualities of an institution cannot be determined to be compliant with the home and community-based setting regulatory requirements until it is operational and occupied by beneficiaries receiving services there. To comply with the HCBS settings regulations, requirements beyond the physical structure of the setting itself must be met. These requirements ensure that the individuals residing or receiving services in the setting actually experience the setting in a manner that promotes independence and community integration.... It was CMS’ expectation that after the publication of the final regulation, stakeholders would not invest in the construction of settings that are presumed to have institutional qualities, but would instead create options that promote full community integration, per the regulatory requirements... CMS strongly encourages states to limit the growth of these settings. ”

- This was the first time CMS has put in writing that regulations were developed to shape future options for individuals with I/DD regardless of what the market demands.
- This guidance is literally halting the development of desperately needed housing options across the country.

# CMS Guidance and Challenges

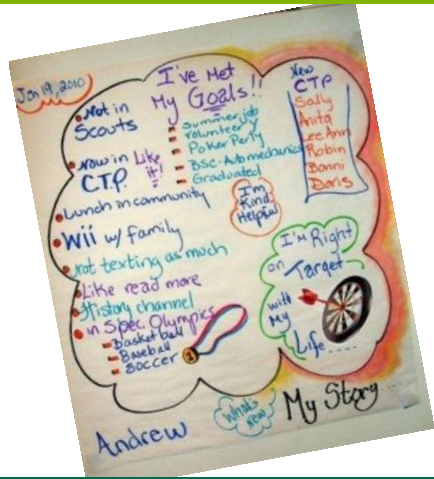
**From CMS Guidance on [Heightened Scrutiny](#):** *“Q6. How can a state demonstrate that a setting does not have the effect of isolating individuals receiving home and community-based services (HCBS) from the broader community of individuals not receiving HCBS?”*

A6. The state has several options for the type of evidence it can submit to overcome the presumption that a setting is isolating. The evidence should support the following qualities:

- The setting is integrated in the community to the extent that a person or persons without disabilities in the same community would consider it a part of their community and would not associate the setting with the provision of services to persons with disabilities.
- The individual participates regularly in typical community life activities outside of the setting to the extent the individual desires. Such activities do not include only those organized by the provider agency specifically for a group of individuals with disabilities and/or involving only paid staff; community activities should foster relationships with community members unaffiliated with the setting.
- Services to the individual, and activities in which the individual participates, are engaged with the broader community.”

This guidance again sways from outcome-oriented characteristics to physical characteristics: How do any of these relate to one’s experience of isolation (EX: due to lack of transportation or support staff)? Of not feeling as if they belong to a community (lack of access to meaningful, voluntary, reciprocal relationships)? Why hold superiority of neurotypical friendship over the value of neurodiverse friendships when discussing if a setting “isolates”?

# Start Next Steps: Person-Centered Plans



## PERSON CENTERED PLANNING

Person-centered planning is the key to building a future based on the aspirations of and supports needed by a specific individual. It is also now required to be completed and reviewed annually if someone uses a Home and Community-Based waiver. Person-centered planning should be led as much as possible by the individual, and their communication and affirmation should be at the center of the process. The Person-Centered Plan must be documented and signed by the individual and/or their legal representative as well as all individuals and providers responsible for its implementation.

The following are the elements of one's Person-Centered Plan now required by federal regulations, called the Final Rule, to access publicly-funded waiver supports:

- The person-centered planning process is driven by the individual
- Includes people chosen by the individual to the maximum extent possible
- Provides necessary information and support to the individual to ensure that the individual directs the process to the maximum extent possible
- Reflects cultural considerations/uses plain language
- Includes strategies for solving disagreement
- Offers the individual choices regarding the services and supports received and providers of those services
- 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 which, services are self-directed
- Includes individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education and more
- 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 or her representative.

MODIFICATIONS TO THE FINAL RULE REQUIREMENTS OF AN INDIVIDUAL'S HOME SETTING MUST BE:

- Supported by specific assessed need
- Justified in the person-centered service plan
- Documented in the person-centered service plan

Do all the waiver recipients you serve have Final Rule compliant Person Centered Plans?

- Look at the [CCC resource for the Final Rule Requirements](#) for PCP's- what's missing?
- Use the PCP tools from the [Autism Housing Network](#)
- Increase self-advocacy skills of HCBS recipients so they can lead the process as much as possible

**Expect for PCP plans of those you support to be examined during on-site assessment!**

**RESOURCES**

Spanning topics from housing design to staff development, use these...

[SUBMIT A RESOURCE](#)

20 of 27 Results Shown

**Person-Centered Thinking and Planning**  
University of Minnesota, Institute on Community Integration  
This manual is intended to be used as a resource in training programs on Person-Centered Planning. This manual was prepared as part of a two-year...

**9 Important Questions to Ask When Choosing a Home**  
Rainbow Acres  
This link enables the user to download a free ebook with information and questions one should ask when choosing a home and residential supports. It was...

**Accessibility Checklist**

Objectives

Topics

- Assistance with Living Expenses
- Assistive / Smart Home Technology
- Employment & Entrepreneurship
- Financing Housing Development
- Fundraising & Awareness Raising
- Legal & Financial Planning
- Person-Centered Planning Tools
- Postsecondary Education / Collegiate Life
- Project Formation
- Sensory-Friendly Design & Architecture
- Staff Development
- Surveys & Assessment Tools
- Tiny Homes / Accessory Dwellings
- Tools for Life Skills

Advocacy



# Next Steps: What does Final Rule required for PCP?

The following are the elements of one's Person-Centered Plan now required by federal regulations, called the Final Rule, to access publicly-funded waiver supports:

- The person-centered planning process is 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/uses plain language
- Includes strategies for solving disagreement
- Offers the individual choices regarding the services and supports received and providers of those services
- 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 which, services are self-directed
- Includes individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education and more
- 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 or her representative.





# Next Steps: What does Final Rule required for PCP?

## THE WRITTEN PERSON-CENTERED PLAN MUST REFLECT THE FOLLOWING:

- States the individual's preferred settings as chosen by the individual and is integrated in, and supports full access to, the greater community to the extent the individual desires
- States the opportunities to seek employment and work in competitive integrated settings
- States the opportunity 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
- Lists providers of services and supports, including unpaid supports provided voluntarily in lieu of waiver or state plan HCBS
- Lists risk factors and puts measures in place to minimize risk
- Includes individualized backup plans and strategies when needed
- Includes a list of individuals important in supporting the individual
- Confirms individuals responsible for monitoring the plan
- Is written or presented in plain language and is understandable to the individual
- Includes the informed consent of the individual in writing
- Includes signatures of all responsible individuals and providers
- Distributed to the individual and others involved in the plan
- Includes any details of the purchase or control of self-directed services
- Lists unnecessary or inappropriate services and supports
- Offers any necessary modification of the home and community-based setting requirements
- Must be reviewed and revised upon reassessment of functional need as required every 12 months, when the individual's circumstances or needs change significantly, and at the request of the individual

# Next Steps: What does Final Rule required for PCP?

MODIFICATIONS TO THE FINAL RULE REQUIREMENTS OF AN INDIVIDUAL'S HOME SETTING 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 REQUIREMENTS INCLUDES:

- 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

# Next Steps: Be Ready for Public Comment

[www.CoalitionForCommunityChoice.org](http://www.CoalitionForCommunityChoice.org)



## Contents [hide]

- 1 CCC Principles
- 2 CCC Policy Brief: New HCBS Regulations
- 3 Frequently Asked Questions About the New HCBS Regulations
- 4 CCC Guidance to State Leaders for Implementing Their State Transition Plan
- 5 "What Intentional Communities Are and Are Not"

### CCC Principles

This handout provides list the CCC Principles and can be shared with individual advocates and organizations who may want to join the CCC. It also contains CCC contact information.

[CLICK HERE TO VIEW PDF](#)

### CCC Policy Brief: New HCBS Regulations

In January 2014, new regulations were released that influence waiver funding, generally called Home and Community Based Service (HCBS) waivers. These waivers are different in every state, but are the main source of funding for long term support services for individuals with disabilities. This two-page CCC Policy Brief explains the implications these new regulations may have on housing and employment choices.

[CLICK HERE TO VIEW PDF](#)

### Frequently Asked Questions About the New HCBS Regulations

## Additional resources for members only:

- Monthly newsletters
- Conference Calls
- Calls to Action
- Technical Assistance from National Coordinator



# For More Information:

[www.MadisonHouseAutism.org](http://www.MadisonHouseAutism.org)

[www.CoalitionForCommunityChoice.org](http://www.CoalitionForCommunityChoice.org)

[www.AutismHousingNetwork.org](http://www.AutismHousingNetwork.org)

Desiree Kameka

[dkameka@madisonhouseautism.org](mailto:dkameka@madisonhouseautism.org)



*\*Presentation Copywrited. For private use, not to be duplicated or circulated without permission. Info@MadisonHouseAutism.org*

