

A Summary of Key Provisions of the Home and Community-Based Services (HCBS) Settings Final Rule (CMS 2249-F/2296-F)

Overview of the Settings Provision

The final rule requires that all home and community-based settings (HCBS) meet certain qualifications. These include:

- The setting is integrated in and supports full access to the greater community;
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources;
- Is selected by the individual from among setting options;
- Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.

The final rule also includes additional requirements for **provider-owned** or **controlled** HCBS. These requirements include:

- The individual has a lease or other legally enforceable agreement providing similar protections;
- 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 any time;
- Individuals may have visitors at any time;

- Setting is physically accessible to the individual; and
- The individual controls his/her own schedule including access to food at any time.

Any modification to these requirements for provider-owned home and community-based residential settings must be supported by a specific assessed need and justified in the person-centered service plan.

Documentation 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; and
- Assurance that interventions and supports will not cause harm.

Excluded Settings

The final rule excludes certain settings as permissible settings for the provision of Medicaid home and community-based services. These excluded settings include:

- Nursing facilities,
- Institutions for mental disease,
- Intermediate care facilities for individuals with intellectual disabilities, and
- Hospitals.

Presumed to Not Be HCBS

The final rule identifies other settings that are presumed to have institutional qualities, and do not meet the threshold for Medicaid HCBS. These settings include those:

- In a publicly or privately-owned facility that provides inpatient treatment;

- On the grounds of, or immediately adjacent to, a public institution;
- That have the effect of isolating individuals receiving Medicaid-funded HCBS from the broader community of individuals not receiving Medicaid-funded HCBS.

Inclusion of Settings Presumed Not to be HCBS

If states seek to include such settings in Medicaid HCBS programs, a determination will be made through heightened scrutiny, based on information presented by the state demonstrating that the setting is home and community-based and does not have the qualities of an institution.

- This process is intended to be transparent and includes input and information from the public.
- CMS will be issuing future guidance describing the process for the review of settings subject to heightened scrutiny.

Additional Information

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>