



CMS HCBS FINAL RULE

Presented by the Developmental Disabilities
Supports Division and the Human Services

Department

March 2016



Learning Objectives

1. Attain an understanding of what the Final Rule is
2. Learn how the Final Rule will impact settings in the DDW, MFW and MVW
3. Understand relevant timelines
4. Understand what compliance looks like
5. Know where to obtain further information/resources

What is the Centers for Medicare & Medicaid Services (CMS) Final Rule?

January 16, 2014, CMS published a Final Rule addressing several sections of the Social Security Act and making changes to the 1915(c) Home and Community-Based Services (HCBS) programs.

What is the Centers for Medicare & Medicaid Services (CMS) Final Rule?

Highlights:

- *Defines and describes HCBS setting requirements*
- *Defines PCP requirements for persons in HCBS settings*

What is the Centers for Medicare & Medicaid Services (CMS) Final Rule?

Requirements are designed to improve available HCBS programs by:

- ensuring the quality of HCBS
- *providing protections to participants*
- *enabling participants the opportunity to receive services in the most integrated setting appropriate*
- maximizing opportunities for individuals to have full access to the benefits of community living

The Big Picture- Human Rights

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Equality between men and women;



DDSD Mission

To effectively administer a system of person-centered community supports and services that promotes positive outcomes for all stakeholders with a primary focus on assisting individuals with developmental disabilities and their families to exercise their right to make choices, grow, and contribute to their community.

Settings Qualifications: Residential and Non-Residential

- All HCBS settings must meet certain qualifications including:
 - Integration in, and supports access to, the greater community, including
 - *opportunities to seek employment and work in competitive integrated settings*
 - *engage in community life*
 - *control personal resources*
 - *receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS*

Settings Qualifications: Residential and Non-Residential

- Defining HCBS by the nature and quality of participants' experiences.
- Setting provisions establish a more outcome-oriented definition of HCBS
- The changes are intended to achieve the law's intention for Medicaid HCBS to provide alternatives to services provided in institutions and maximize the opportunities for waiver participants to have access to the benefits of community living, including receiving services in the most integrated setting.

Provider-Owned or Controlled Residential Settings Qualifications

- The participant has the same responsibilities/protections from eviction as all tenants under landlord tenant laws of state, county, city, or other designated entity.
- If tenant laws do not apply, state ensures lease, residency agreement or other written agreement in place providing protections to address eviction processes and peals comparable to those provided under the jurisdiction's landlord tenant law.

Provider-Owned or Controlled Residential Settings Continued Qualifications

- Individuals have the right to:
 - *Privacy in their sleeping or living unit*
 - *Lockable entrance doors, the individual and appropriate staff shall have keys to doors as needed*
 - *A choice of roommates*
 - *Furnish and decorate their sleeping or living units within the lease or other agreement*

Provider-Owned or Controlled Residential Settings Continued Qualifications

- Individuals have the right to:
 - *Have freedom and support to control their schedules and activities and have access to food at any time*
 - *Have visitors at any time*
 - *A setting that is physically accessible to the individual*

Provider-Owned or Controlled Residential Settings Continued Qualifications

- Modifications of the additional requirements must be:
 - *Supported by specific assessed need*
 - *Justified in the person-centered service plan*
 - *Documented in the person-centered service plan*
 - *And meet the additional specific criteria outline in the regulations*

Implications

- The final rule is an enhancement and expansion of human rights
- It includes requirements for demonstrated and evidence-based individualized and person-directed service delivery
- Eligible individuals must be supported to have maximum control over their lives and day-to-day decision making.

Implications

- All settings, residential and non-residential must meet the settings qualifications previously outlined

- Upon review, if settings do not meet qualifications outlined in the Final Rule, the following actions will be taken
 - *Corrective changes to regulations & standards*
 - *State will provide feedback to the providers, monitor compliance and execute remediation strategies*

Person-Centered Planning

- Person-centered planning process
- directed by the individual
- person-centered plan with individually identified goals and preferences, including those related to community participation, employment, income and savings, health care and wellness, education and others

Person-Centered Planning

- This planning process
 - *will assist the individual in achieving personally defined outcomes in the most integrated community setting,*
 - *ensure delivery of services in a manner that reflects personal preferences and choices, and*
 - *contribute to the assurance of health and welfare.*

**EVERYONE
MUST BE
IN COMPLIANCE
BY
MARCH 17,
2019!**

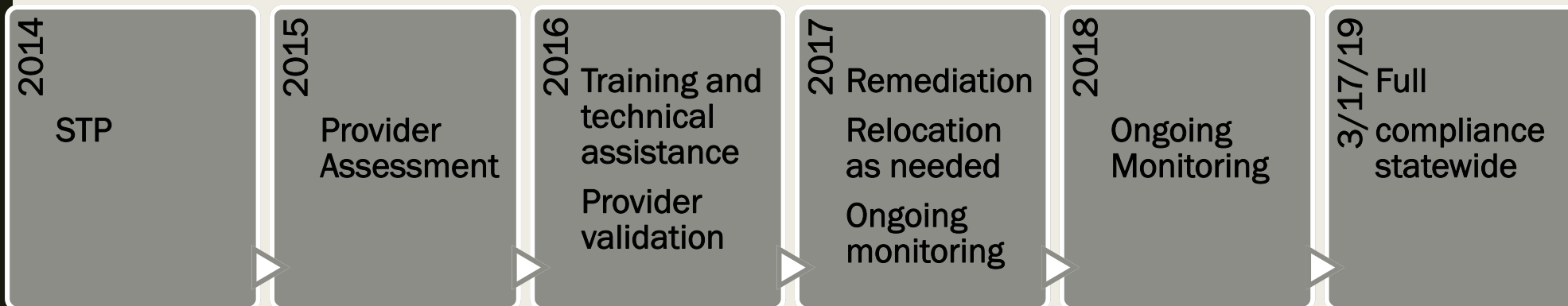
Statewide Transition Plan

- Required by all states operating HCBS waivers
- CMS approval required
- Must include state's assessment of its system and ongoing strategies to assure compliance

Statewide Transition Plan (SWTP)

- Systemic crosswalk
- Provider self-assessment
- training
- On-site validity audits
- Participant surveys
- Transitions
- Ongoing monitoring
- compliance

The Statewide Transition Plan Timeline



Systemic Review

- Crosswalk of Regulations, Standards and approved Waiver Application against CMS Final Rule
- Revisions to the Standards and Regulations for both Waivers to become compliant with the new rule.
 - *DDW Standards were updated June 2015, revised NMAC to be effective March 2016*
 - *Mi Via Standards and NMAC were updated and will be effective March 2016*

Provider Self-Assessment

Thank you all for
your participation!

Provider Self-Assessment

MI Via Settings:

- ❖ Employment Supports (non-residential service)
- ❖ Community Membership Supports (non-residential service) – includes customized community group supports and/or community direct supports and navigation
- ❖ Living and Other Supports

DD Waiver settings:

- ❖ Community Integrated Employment (non-residential service)
- ❖ Customized Community Supports (non-residential service)
- ❖ Living services (residential service) – includes family living, intensive medical living, and supported living services

Survey Questions

■ Categories of review

1. *Choice of Setting and Choice of Residence*
2. *Community Access and Integration*
3. *Living Space or Physical Space*
4. *Staff Interactions and Privacy and Choice*
5. *Services*

Results: Employment

Mi Via

- Choice of Setting
95.7%
- Community Access & Integration
91.7%
- Physical Space
97.6%
- Staff Interactions, Privacy & Choice
91.8%

DDW

- Choice of Setting
95.4%
- Community Access & Integration
91.0%
- Physical Space
96.9%
- Staff Interactions, Privacy & Choice
93.4%

Results: Community Supports

Mi Via

- Choice of Setting
95.4%
- Community Access & Integration
91.9%
- Physical Space
97.7%
- Staff Interactions, Privacy & Choice
93.9%

DDW

- Choice of Setting
93.8%
- Community Access & Integration
90.9%
- Physical Space
97.3%
- Staff Interactions, Privacy & Choice
93.8%

Results: Living Services

Mi Via

- Choice of Residence
94.6%
- Community Access & Integration
84.3%
- Living Space
92.9%
- Staff Interactions and Privacy
96.0%
- Services
93.2%

DDW

- Choice of Residence
84.2%
- Community Access & Integration
82.5%
- Living Space
90.2%
- Staff Interactions and Privacy
96.5%
- Services
90.0%

Results: Areas to Improve

Mi Via

- Community access and integration

DD Waiver

- Community access and integration

NEXT STEPS

1. DDSD TO PERFORM ONSITE VALIDITY CHECKS
2. PARTICIPANT SURVEY-VALIDATION
3. IDENTIFY ALL SETTING CLASSIFICATIONS
4. EXECUTE REMEDIATION STRATEGIES
5. TRANSITION PARTICIPANTS IF NECESSARY
6. MONITOR ONGOING COMPLIANCE-DHI

Resources

- <https://www.cms.gov/>
- http://www.hsd.state.nm.us/uploads/FileLinks/f2f07ac7becd43f3a0fcefae255c1793/NM_amended_SWTP_6_1_15.pdf
- <http://actnewmexico.org/>
- <http://archive.mivianm.org/>
- www.hcbsadvocacy.org