



Children with Autism Waiver Transition Plan

February 6, 2015

Summary:

In January 2014, the Centers for Medicare & Medicaid Services promulgated a final federal rule (CMS-2249-F and CMS 2296-F) to ensure that individuals receiving long term services and supports (LTSS) through home and community based services (HCBS) programs under 1915(c) and 1915(i) have full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal finances and receive services in the community to the same degree as individuals not receiving Medicaid HCBS.

Each state which operates a Section 1915 (c) waiver or a Section 1915 (i) state plan benefit that was in effect on or before March 17, 2014 is required to file a Statewide Transition Plan to describe how the state will bring all pre-existing 1915(c) or 1915(i) programs into full compliance with the home and community based services (HCBS) settings requirements in 42 CFR Section 441.301(4)(5) and Section 441.710(a)(1)(2). The Statewide Transition Plan must delineate how the state will bring all 1915(c) and 1915(i) programs in that state into alignment with the regulation requirements. States are allowed a maximum of five years to make the transition. In addition states must complete individual waiver transition plans to address the transition of HCBS settings within each individual waiver. Stakeholders are being asked to provide public input and comment in order to allow Colorado to develop a comprehensive transition plan.

Home and Community-Based Settings

The final rule creates a single definition of home and community based settings for 1915(c), 1915 (i) and 1915(k) HCBS. The rule describes home and community-based settings as having the following qualities:

- The setting is integrated in the greater community, including opportunities to seek employment in competitive integrated settings and engage in the community
- The setting is selected by the individual
- The setting ensures individual rights of privacy, dignity and respect and freedom from coercion and restraint
- The setting optimizes individual initiative, autonomy, and independence in life choices



- The setting facilitates individual choice regarding services and supports, including who provides them

For provider owned or controlled residential settings, the following additional requirements must be met:

- Individuals control their own schedules, including access to food at anytime
- The setting is physically accessible to the individual
- Individuals can have visitors at anytime
- Individuals have privacy in their living or sleeping units
- Units have lockable doors and entrances (with only appropriate staff having keys)
- Individuals who share rooms are allowed a choice of roommate
- Individuals have the freedom to furnish and decorate their living space
- At minimum, the individual has the same responsibilities and protections from eviction that tenants have under state or local landlord/tenant laws; or where such laws do not apply, a lease or written residency agreement must be in place for each resident to provide protections that address eviction processes and appeals comparable to the applicable landlord/tenant laws.

These requirements may only be modified when an individual has a specific assessed need that justifies deviation from a requirement. The need must be supported in the person-centered service plan. The plan must document the following:

- Informed consent of the individual or legal authorized representative who has the authority to restrict that right
- Assurance that the interventions and supports will not cause harm to the individual
- The specific individualized assessed need
- Positive interventions and supports used prior to modification
- Less intrusive methods tried and failed
- A description of the condition that is directly related to the need
- Regular collection of data to measure effectiveness of modification
- Established time limits for review of the modification

The rule also specifies the following settings are not considered home and community based:

- Nursing facilities
- Institutions for mental diseases (IMD)
- Hospitals
- Intermediate care facilities for people with intellectual disabilities (ICF/IDs)

The rule also specifies settings are presumed to have qualities of an institution. 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; or that have the effect of isolating individuals receiving Medicaid-funded HCBS from the



broader community. CMS will presume these settings to not be home and community based unless CMS determines through a process of “heightened scrutiny” that the setting does not have the qualities of an institution and in fact has the qualities of home and community based setting.

The Children with Autism (CWA) waiver Transition Plan

All CWA waiver participants live in their family home. This waiver does not have active participants residing in group homes or facilities.

The Colorado Department of Health Care Policy & Financing oversees the provider certification processes and ongoing oversight of provider compliance with all state standards. The Department assesses providers for ongoing compliance with the HCB Settings through two processes. First, provider certification visits and surveys, delegated to the Colorado Department of Public Health and Environment through an interagency agreement, document the interaction between providers and participants to monitor potential changes in provider-specific policies and service delivery processes. Secondly, the ongoing incident and complaint management systems described in Appendix G of the approved waiver ensure that the Department is notified of any potential changes to participants’ reception of services through waiver benefits.

The CWA waiver does not have any community settings and therefore does not need to implement any changes or transitions.

Public Input

- Colorado intends to seek public input on the draft transition plan. The Department will have the draft transition plan available for public comment from February 6, 2015 through March 8, 2015.
- Individuals may request draft transition plan materials via email at HCBS_Rules_Submission@state.co.us
- Comments regarding the draft transition plan can be emailed directly to HCBS_Rules_Submission@state.co.us
- Comments can also be addressed to the following:
ATTN: HCBS Transition
1570 Grant Street
Denver, CO 80203
- The Department will create a “Listening Log” to record the comments and the Department’s responses. This **Listening Log will be distributed** after the public comment period ends.

The Department commits to incorporating comments, concerns, and suggestions into the proposed transition plan when possible.

