

# STATE OF MARYLAND

## Department of Health and Mental Hygiene

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### HOME AND COMMUNITY-BASED SETTING RULE

Change Inc. Family and Caregiver Meeting  
Presented by: Rhonda Workman and Patricia Sastoque  
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# Background and Introduction

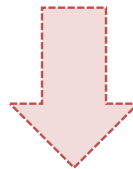
- Home and Community- Based Setting Rule
  - CMS issued this final rule on January 16, 2014
  - It became effective on March 17, 2014
    - ✦ The rule lists many items HCBS providers must comply with to receive Medicaid payment under federal HCBS waivers.
      - These are requirements imposed by the federal government, not the State of Maryland, Medicaid or DDA.
    - ✦ The rule affects all individuals currently receiving services, including those self-directing under Community Pathways.

# What is a wavier?

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- The 1915 (c) Home and Community-Based Services (HCBS) Waivers are one of many options available to states, from the federal government, to allow the provision of long-term services for people to live in the community
- The Community Pathways Wavier is under the 1915(c) authority

# Medicaid Budget Flow



# Background and Introduction

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- Intent of the Community Rule
  - Ensure individuals receiving services through home and community- based service programs full access to the benefits of community living
  - Enhance the quality of home and community-based service programs and provide protections to participants

# Background and Introduction

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- Prior to finalizing the Community Rule, CMS took multiple actions to seek public input so that the final regulation reflected heavy stakeholder input.
- This is the first time CMS has put specific requirements in regulation.
  - Previously they provided guidance not “rules”.
- The “Community Rule” defines, describes, and aligns home and community- based setting requirements across three Medicaid authorities.

# Background and Introduction

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- The Community Rule establishes:
  - Qualities of HCBS settings
  - Settings that are not HCBS
  - Settings that are presumed not to be HCBS
  - State compliance and transition requirements

# ADA and Olmstead Requirements

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- Requires states to offer services in “the most integrated setting”
  - “A setting that enables individuals with disabilities to interact with nondisabled person to the fullest extent possible.”
  - Department of Justice (DOJ) describes integrated settings as “those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities.”
- Settings must be integrated into the community



# ADA and Olmstead Requirements

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- Segregated settings have “qualities of an institutional nature.”
  - Congregate settings populated primarily with individuals with disabilities
  - Settings provide daytime activities primarily with other individuals with disabilities
- DOJ and numerous courts have found that the ADA creates an obligation for states to provide services in the most integrated settings; it does not create a requirement to offer a choice of services in segregated services.

# Home and Community-Based Settings

- All HCBS settings:
  - Are integrated in and support full access to the community
  - Support seeking employment in integrated settings
  - Are picked by the individual from among different options
  - Protect individual rights of privacy, respect, and freedom from bullying and restraint
  - Increase freedom and independence in making life choices
  - Support choice in picking services and providers

# Facility-Based Day Programs

- These settings must also meet the requirements of the Community Rule
- They must demonstrate:
  - The qualities of HCB settings
  - Ensure the individual's experience is HCB and not institutional in nature
  - Does not isolate the individual from the broader community

# Tiered Standards

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- Establishment of Tiered Standards
  - States may establish that certain settings currently in use may continue within the waiver, as long as they will be able to meet the minimum standard set in the rule by March 2019
  - States may also establish or promote new models of service with higher standards
  - All providers must meet the basic CMS community standards by March 2019

# Provider-Owned or Controlled Residential Settings

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- Have additional requirements such as:
  - Setting is physically accessible to the individual
  - Individuals may have visitors at any time
  - Homes have lockable entrance doors, with the individual and appropriate staff having keys to the doors as needed
  - Each individual has privacy in their own room
  - Individuals sharing rooms have the choice of their roommate
  - They control their schedules and have access to food any time

# What is not considered HCBS?

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## Not HCBS

- Nursing facility
- Institution for mental diseases
- Intermediate care facility for individuals with intellectual disabilities
- Hospitals

## Presumed Not HCBS

- Settings in a publicly or privately owned facility providing inpatient treatment
- Settings on grounds of, adjacent to, a public institution
- Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS

# Settings with the effect of isolating individuals

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- Some disability-specific, provider-owned, or congregate settings may have characteristics of “settings that isolate”
- These characteristics are:
  - Designed specifically for people with disabilities
  - Individuals in the setting are primarily or exclusively people with disabilities and the staff that provides services to them

# Isolating characteristics continued

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- Designed to provide people with disabilities multiple types of services and activities on-site
  - ✦ Housing
  - ✦ Day services
  - ✦ Medical
  - ✦ Social/ recreational activities
- People in the setting have limited, if any, interaction with the broader community
- Settings that use practices that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings



# CMS and Isolating settings

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- States may only include such a setting in its HCBS program if CMS determines through a “heightened scrutiny” process that the state has proven that the setting meets the qualities for being home and community-based and does not have the qualities of an institution.
  - Heightened scrutiny process can be initiated or requested by a state and advocates can also independently request for CMS to investigate
    - ✦ This is based on evidence presented by the state with input from the public

# CMS and Isolating settings

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- To assist states in evaluating residential and non-residential settings for compliance with the rules, CMS has created a set of “Exploratory Questions”
- Examples:
  - Does the setting reflect the individual’s needs and preferences?
  - Does the individual work in an integrated community setting?
  - Does the individual’s schedule vary from others in the same setting?

# Federal Requirements

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The new rule was designed to promote

- Integration- Access to the community
- Individual Rights- Privacy, dignity, and respect
- Autonomy- Independence and choice

# Integration

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- Community engagement
- Proximity to community amenities
- Availability of transportation
- Interaction between participants and wider community

# Individual Rights

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- Integral part of the community not isolated
- Same life as people without a disability
- Right to locked bedroom and bathroom doors
- Tenant Rights
- Personal information kept in secure location

# Autonomy

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- Choice of community activities
- Choice of services and providers
- Choice of roommates
- Freedom to decorate living space
- Receive visitors at all times
- Access to food at all times
- Physical access to public spaces

# How is the rule going to be implemented?

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- Assess current service delivery and people's experiences
- Technical assistance for providers for transformation of business models to meet new federal and State requirements by March 2019

# Participant and Provider Surveys

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- To assess current services, Maryland will implement system-wide surveys for participants and providers with advice from program transition teams.



# On-Site Specific Assessments

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- Maryland will identify specific provider sites that will need further review based on the results of the preliminary assessment and CMS guidance such as:
  - Settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community

# Ongoing Compliance and Monitoring

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- Quality reviews and verification of ongoing provider compliance with the Community Rule will be assessed by the program administering agency and its agents, such as the Office of Health Care Quality.

# Technical Assistance for Providers

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- DDA Quality Conference
- Pilot surveys to identify needs
- Provider Association (MACS) technical assistance to help service providers transform their program's business model
- Employment grants to help service providers transform their day program business model

# Upcoming Timeline

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March 31

- Submit provider survey results to CMS

July 31

- Complete site-specific assessments

Sept 30

- Submit assessment results to CMS

# Remember ...

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- States need to have full compliance with the final rule by March 17, 2019
- We expect most settings do not currently comply
  - There's no penalty

# Questions and Comments

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HCBS rule website:

<https://mmcp.dhmf.maryland.gov/waiverprograms/SitePages/Community%20Settings%20Final%20Rule.aspx>

DDA website:

<http://dda.dhmf.maryland.gov/SitePages/Home.aspx>

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