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**Purpose:** To implement and comply with the Centers for Medicare and Medicaid Services' Home and Community-Based Setting Final Rule site assessment requirement (see paragraph 6 below).

**To:** Division of Developmental Disabilities Certified Providers

**From:** Courtney Tarver, J.D., DD Division Associate Commissioner

**Re:** CMS HCB Setting Rule Informational Bulletin

**Date:** September 12, 2014

**1. Background:** On March 17, 2014, Centers for Medicare and Medicaid Services (CMS) issued its Home and Community-Based Setting Final Rule. CMS had previously published two proposed rules (April 15, 2011 and May 3, 2012) and gathered public comment as it worked to establish basic guidelines that defined "community-based setting." More than 2000 comments were received from states, providers, advocates, employers, insurers, associations, and other stakeholders.

**2. Intent of Final Rule:** To ensure that individuals receiving long-term services and supports through home and community-based services (HCBS) programs under the 1915 (c), 1915 (i), and 1915 (k), Medicaid authorities have required full access to benefits of community living and the opportunity to receive services in the most integrated setting that is appropriate.

Among many things the Final Rule does, some of the most important are: 1) establishes an outcome oriented definition that focuses on the nature and quality of individual's experiences; 2) maximizes opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting; and 3) establishes requirements for the qualities of home and community-based settings.

**3. The Home and Community-Based Requirements:** The Home and Community-Based setting:

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid Home and Community-Based Services
- 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 (with consideration being given to financial resources)
- Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices

- Facilitates individual choice regarding services and supports, and who provides them
- Provides for, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the State, county, city, or other designated entity.

Additionally, For Provider-Owned or Controlled Residential Settings, modifications to the requirements 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 must include:

- Specific individualized assessed need
- Prior interventions and supports including less intrusive methods
- Description of condition proportionate to assessed need
- Ongoing data measure effectiveness of modification
- Established time limits form periodic review of modifications
- Individual informed consent
- Assurance that interventions and supports will not cause harm

**4. Transition Planning:** For new waivers, states must ensure that HCBS are only delivered in settings that meet the new requirements. For renewal and amendments to existing waivers submitted within a year of the effective date of the final rule (March 17, 2014):

- The state submits a plan in the renewal or amendment request detailing any actions necessary to achieve or document compliance with setting requirements for the specific waiver renewal or amendment
- Renewal or amendment approval will be contingent upon inclusion of an approved transition plan

**5. AL Division of Developmental Disabilities (DDD) Progress:** The DDD completed the comprehensive ID Waiver renewal and submitted it to AL Medicaid Agency at the beginning of June 2014. The proposed waiver renewal was posted to the Department's website for the 30 day public comment period. The posting of the waiver was discussed during the June 10<sup>th</sup> 2014 DD Sub-Committee (stakeholder advisory body) meeting and stakeholders were encouraged to review the waiver and submit comments. Public comments that met the 30 day close date were responded to promptly. During this time that the DDD began working on the Waiver Transition Plan. The Transition Plan outlined how the state was going to: develop a cross walk of HCBS regulations to the division's current regulations, conduct site assessments, ensure that a person-centered planning process is in place, de-conflict case management, ensure public comment, and remediate all sites that did not meet the new HCB Setting Final Rule. The Division's Waiver Transition Plan was posted on the Department's website and submitted along with the ID Waiver to CMS on July 2, 2014.

On August 12, 2014, the Associate Commissioner and AL Medicaid Agency participated in a CMS conference call that had both representatives from the regional CMS office as well as the Central Office CMS representatives. During this call CMS made it clear that the Waiver Transition Plan was not fully developed, as the division had not completed the site assessment for all certified providers, the plan did not provide results from the site assessment, and the plan did not specify target end dates for a number of items listed. Additionally, CMS asked that the sections regarding person-centered planning and de-conflicting case management be removed. Finally, CMS asked that the division “un-submit” the ID Waiver renewal until it could meet the Waiver Transition Plan requirements. CMS offered to extend the current ID Waiver while the division worked on completing the new Transition Plan.

On August 28, 2014, the division held a stakeholder workgroup meeting to review the Waiver Transition Plan, to make recommendations and to set timelines. Comments were collected and suggested start and end dates were discussed during the regular monthly DD Sub-Committee meeting held the following Tuesday, September 2, 2014.

It is these timelines, agreed upon during the DD Sub-Committee meeting that are now part of the revised Waiver Transition Plan that will be submitted to CMS.

**6. AL Division of Developmental Disabilities Next Steps:** One of the most critical steps in the Waiver Transition Plan is the identification of sites that are not in compliance with the CMS Final Rule. In order to accomplish this task, in a short period of time, the DDD developed a HCBS Checklist self-assessment tool which will be used by all certified providers of day and residential services. This checklist targets each of the elements in the CMS Regulation and provides probing questions to assist the provider in determining whether the regulation is currently being met or not. Provider assessments that fail to a particular regulatory requirement will require the provider to develop a Plan of Correction to come into compliance. Additionally, each DMH/DDD regional office will form a peer review committee which has the responsibility of conducting a sample of on-site reviews in each region.

Technical assistance will be offered through each regional office to assist providers that reveal failure to meet a portion or portions of the CMS Final Rule. Additionally, technical assistance will be provided to assist in Plan of Correction development if needed. Each site is expected to be in full compliance by January 1, 2018. If after this time any sites that do not meet full compliance will be provided targeted technical support by the DMH/DDD to bring the site into full compliance. No later than March 1, 2019, if the site remains out of compliance after targeted technical support, the DMH/DDD will discontinue funding the site per requirement of the CMS Final Rule.

- 9/12/14: Information Sent to Providers from DMH/DD
- 9/15/14: Technical Assistance Webinar for HCB Setting Checklist
- 9/15/14 : Provider Self-Assessment
- 10/15/14: Provider Self-Assessment Complete
- 10/30/14: RO Review of Provider Self-Assessment and Response

- 11/21/14: Site Assessment Analysis Complete
- 3/1/15: Site Plan of Correction Due and Individual Site Remediation Begins
- 1/18/18: State Remediation Complete
- 1/18/18: Certification Assumes Responsibilities for Ensuring Compliance
- 3/1/19: No Later Than Date for DMH/DDD to Discontinue Funding for Sites out of Compliance

The HCBS Checklist self-assessment tool is developed and will be available for providers to use on September 15, 2014. The assessment tool itself has been added to the ADIDIS system as a provider assessment. There will be a user guide and video instructions that give a step-by-step tutorial of how to enter the data into the system. This information will be posted on the Department's website; Division of Developmental Disabilities webpage.

**7. Communication:** As the Division of Developmental Disabilities moves forward with the implementation of the Waiver Transition Plan please look for communication to come in various forms. Webinars, webpage postings ([http://www.mh.alabama.gov/IDCP/?sm=c\\_b](http://www.mh.alabama.gov/IDCP/?sm=c_b)), meetings, and memos will all be used to keep everyone informed.

**An information webinar will be conducted on September 15, 2014 at 10:00 a.m. This informational webinar will go into detail how the provider will use the HCBS Checklist self-assessment tool to determine compliance or not. The webinar will allow for questions to be asked virtually so it is recommended that a computer is accessible.**

If there are any questions or concerns regarding this memo or the timeline of events please contact your regional community services office.