

HCBS Final Rule FAQ: Non-Residential Settings and Community Integration

March 20, 2014

Does the rule apply to non-residential settings? Will CMS provide more guidance on this issue?

Yes. CMS confirms that “. . . the rule applies to all settings where HCBS are delivered, not just to residential settings . . . [N]on-residential community settings where services may be provided, such as adult day settings or day habilitation settings . . . must be delivered in a setting that meets the HCB setting requirements as set forth in this rule.”

In January, CMS issued the Medicaid Home and Community-Based Services (HCBS) settings final rule (CMS-2249-F). Under development for the past several years, the final regulation addresses several sections of Medicaid law authorizing states to draw down federal Medicaid funds to pay for HCBS. In particular, the rule defines the requisite characteristics of HCBS settings eligible for federal Medicaid match (FFP) under sections 1915(c), 1915(i), and 1915(k).

CMS promises that it “will provide further guidance regarding applying the regulations to non-residential HCBS settings,” such as day program and pre-vocational training settings.

How will CMS determine whether or not a setting is home and community-based?

CMS states “. . . for a setting to be home and community-based, it may not discourage an individual’s integration with the broader community. The determination [is] based on whether the setting . . . has the qualities of home and community-based settings as specified in this rule.” Settings must possess the ‘characteristics’ outlined in the new rule in order to qualify for Medicaid HCBS reimbursement.

What, then, are the qualities that a setting must exhibit to qualify as home and community-based?

In part, to qualify as home and community-based, a setting must be one that “is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated

settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.”

In addition, CMS states that, “. . . any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.”

What does CMS mean by community integration?

CMS does not explicitly define the term “community integration” in the text of the final rule. However, CMS does seem to be signaling that “the term community refers to the greater community and not solely a community of one’s peers and, that integration also means more than integration in a community of peers.”

Further, language in the rule indicates that programs will not be eligible for Medicaid HCBS funding “if such settings have the effect of isolating or segregating those receiving Medicaid HCBS from the broader community.” Though it is not yet known how CMS might apply this language to non-residential settings, comments from federal officials have identified programs such as adult day and senior centers as examples of programs that congregate and segregate a particular population – seniors or individuals diagnosed with dementia -- from the larger community.