
January 10, 2014

Fact Sheet: Summary of Key Provisions of the 1915(c) Home and Community-Based Services (HCBS) Waivers Final Rule
(CMS 2249-F/2296-F)

Background

Section 1915(c) of the Social Security Act (the Act) authorizes the Secretary of Health and Human Services to waive certain requirements in Medicaid law in order for states to provide home and community-based services (HCBS) to meet the needs of individuals who choose to receive their long-term care services and supports in their home or community, rather than in institutional settings. Final rules were published to implement this law on July 25, 1994.

On June 22, 2009, CMS published an advance notice of proposed rulemaking (ANPRM) that indicated CMS' intention to initiate rulemaking on a number of areas within the section 1915(c) program. On April 15, 2011, CMS published the Notice of Proposed Rule Making (NPRM) that addressed many of the same issues raised in the ANPRM. The final rule published today reflects the significant public comment received over the extensive rulemaking process related to these issues.

This final rule makes several important changes to the 1915(c) HCBS waiver program. It provides states the option to combine existing waiver targeting groups. The rule also establishes requirements for home and community-based settings under the 1915(c), 1915(i) and 1915(k) Medicaid authorities, and person-centered planning requirements for Medicaid HCBS participants under 1915(c) and 1915(i). In addition, it clarifies the timing of amendments and public input requirements when states propose modifications to HCBS waiver programs and service rates. Finally, it describes the additional strategies available to CMS to ensure state compliance with the statutory provisions of section 1915(c) of the Act. Below is a summary of each of these provisions.

Flexibility to Combine Target Groups Under One Waiver

The final rule permits, but does not require, states to combine target groups within one HCBS waiver. Prior to that change, a single section 1915(c) HCBS waiver could only serve one of the following three target groups: older adults, individuals with disabilities, or both; individuals with intellectual disabilities, developmental disabilities, or both; or individuals with mental illness. This change will remove a barrier for states that wish to design a waiver that meets the needs of more than one target population. The rule includes a provision specifying that if a state chooses the option of more than one target group under a single waiver, the state must assure CMS that it is able to meet the unique service needs of individuals in each target group, and that each individual in the waiver has equal access to all needed services.

Home and Community-Based Settings

CMS' definition of home and community-based settings has evolved over the past five years, based on experience throughout the country and extensive public feedback about the best way to differentiate between institutional and home and community-based settings. Based on the comments received on the ANPRM and the proposed 1915(c) rules, and the comments received on the 1915(i) and 1915(k) proposed rules, CMS is moving away from defining home and community-based settings by "what they are not," and toward defining them by the nature and quality of participants' experiences. The home and community-based setting provisions in this final rule establish a more outcome-oriented definition of home and community-based settings, rather than one based solely on a setting's location, geography, or physical characteristics. The changes related to clarification of home and community-based settings will effectuate 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. For more detail, please refer to the HCBS Settings Fact Sheet, available at <http://www.medicaid.gov/HCBS>.

The final rule includes a transition period for states to ensure that their waivers and Medicaid state plans meet the HCBS settings definition. New 1915(c) waivers or 1915(i) state plans must meet the new requirements to be approved. For currently approved 1915(c) waivers and 1915(i) state plans, states will need to evaluate the settings currently in their 1915(c) waivers and 1915(i) state plan programs and, if there are settings that do not fully meet the final rule home and community-based settings definition, work with CMS to develop a plan to bring their program into compliance. The public will have an opportunity to provide input on states' transition plans. CMS expects states to transition to the new settings requirements in as brief a period as possible and to demonstrate substantial progress during any transition period. CMS will afford states a maximum of a one year period to submit a transition plan for compliance with the home and community-based settings requirements of the final rule, and CMS may approve transition plans for a period of up to five years, as supported by individual state's circumstances, to effectuate full compliance.

States submitting a 1915(c) waiver renewal or waiver amendment within the first year of the effective date of the rule may need to develop a transition plan to ensure that specific waiver or state plans meet the settings requirements. Within 120 days of the submission of that 1915(c) waiver renewal or waiver amendment the state needs to submit a plan that lays out timeframes and benchmarks for developing a transition plan for the state's approved 1915(c) waiver and 1915(i) HCBS state plan programs. CMS will work closely with states as they consider how to best implement these provisions and will be issuing future guidance regarding transition plans.

Person-Centered Planning

The final rule specifies that service planning for participants in Medicaid HCBS programs under section 1915(c) and 1915(i) of the Act must be developed through a person-centered planning process that addresses health and long-term services and support needs in a manner that reflects individual preferences and goals. The rules require that the person-centered planning process is directed by the individual with long-term support needs, and may include a representative that the individual has freely chosen and others chosen by the individual to contribute to the process. The rule describes the minimum requirements for person-centered plans developed through this process, including that the process results in a person-centered plan with individually identified goals and preferences, including those related community participation, employment, income and savings, health care and wellness, education and others. The plan should reflect the services and supports (paid and unpaid), who provides them and whether an individual chooses to self-direct services. This planning process, and

the resulting person-centered service plan, 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. CMS will provide future guidance regarding the process for operationalizing person-centered planning in order for states to bring their programs into compliance.

Duration, Extension and Amendment of Waivers

In this final rule, CMS added a new provision to clarify guidance regarding the effective dates of HCBS waiver amendments with substantive changes. Substantive changes include, but are not limited to, changes in eligible populations; constriction of service, amount, duration, or scope; and other modifications as determined by the Secretary. The rule also adds regulatory language that waiver amendments with substantive changes may only take effect on or after the date when the amendment is approved by CMS. Substantive changes also must be accompanied by information on how the state has assured smooth transitions and minimal adverse impact on individuals impacted by the change.

In addition, the final rule includes a new provision to ensure that states provide public notice when they propose substantive changes to their methods and standards for setting payment rates for services. The final rule also includes a provision directing that states establish public input processes specifically for waiver changes.

Strategies to Ensure Compliance with Statutory Assurances

A primary concern in the oversight of 1915(c) HCBS waivers is the health and welfare of the individuals served within the programs. Section 1915(f) of the Act requires the Secretary to monitor implementation of waivers to assure compliance with all requirements and provides for termination of waivers where the Secretary has found noncompliance. This authority and the process for termination of waivers are addressed in this final rule. CMS has included provisions that describe additional strategies that CMS may employ to ensure state compliance with the requirements for a waiver.