



## COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING

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### Home and Community Based Services Settings

#### 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. Stakeholders are being asked to provide public input and comment in order to allow Colorado to develop a comprehensive transition plan.

#### Overview:

#### 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.

### **Colorado’s Approach to Transition**

Colorado’s approach in creating the Statewide Transition Plan and to engage stakeholders in the process, is based on Colorado’s core values to help individuals access care at the right time and right place and improve Colorado’s ability to work effectively within and across systems to ensure person-centered care and full community engagement. Colorado developed a Statewide Transition Plan pursuant to 42 CFR 441.301(c)(6) that contains the actions that Colorado will take to bring all waivers into compliance with requirements set forth in 42 CFR 441.301(c)(4-5).

The following waivers currently have services and settings subject to the new rule:

- Supportive Living Services (SLS)
- Developmental Disability (DD)
- Children’s Habilitation Residential Program (CHRP)
- Elderly Blind and Disabled (EBD)
- Community Mental Health Services (CMHS)
- Brain Injury (BI)
- Spinal Cord Injury (SCI)

The following waivers currently do not have services and settings subject to the new rule:

- Children’s Extensive Support (CES)
- Children’s Home and Community Based Services (CHCBS)
- Children With Autism (CWA)
- Children with Life Limiting Illness (CLLI)

Colorado intends to work with the providers, members, guardians and stakeholders to implement Colorado’s proposed state-wide transition plan.

### **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 July 30, 2014 through August 29, 2014. The plan will be posted on the Department’s website and will be distributed to provider groups, advocacy groups, case management agencies, and other potentially interested stakeholders. All comments will be maintained and responses provided in a listening log kept on the Department’s website. The Department will incorporate suggestions into the transition plan when possible.