



Issue Brief:
CMS Proposed Rule on the Settings of Home and Community-Based Services
November 25, 2013

Background

On May 3, 2012 the Centers for Medicare and Medicaid Services (CMS) posted a notice of proposed rulemaking (NPRM) in the Federal Register regarding home and community-based services (HCBS).¹ The proposal would update the regulations to reflect changes made in the Deficit Reduction Act of 2005 and the Patient Protection and Affordable Care Act of 2010 and align the definition of a home or community-based setting for services delivered under 1915(c) waiver, 1915(i) State Plan Option, and 1915(k) Community First Choice Option, among other requirements.

Anticipation of a final rule by the end of 2013 has renewed interest in the proposed rule. This brief summarizes and explains the section of the proposed rule regarding the settings of home and community-based services.

Home and Community-Based Settings

The proposed rule proposes a single definition of a home or community-based setting for 1915(c), 1915(i), and 1915(k) HCBS. The rule describes home or community-based settings as having the following qualities:

- Integration in the greater community, including opportunities to seek employment in competitive integrated settings
- Individual choice regarding services and supports, including who provides them and the setting in which they are provided
- Individual rights to privacy, dignity, and respect and protection of individual initiative, autonomy and independence

For provider owned or controlled residential settings, the NPRM proposes the following additional requirements:

- Units or rooms must be a specific physical place, the kind that could be rented in a typical landlord-tenant agreement
- Privacy in each individual living or sleeping unit, which means that
 - Units have lockable doors and entrances
 - Individuals only share units at their own discretion
 - Individuals can furnish and decorate their own units
- Individuals control their own schedules, including access to food
- Individuals can have visitors at any time
- The setting is physically accessible to the individual(s) living there

¹ For the full rule, visit <https://federalregister.gov/a/2012-10385>

The proposed rule would allow for modifications to these conditions to meet health and safety needs of an individual, supported by a specific assessment and documented in his or her person-centered plan.

The NRPM specifically notes that the following are never home or community-based settings:

- Nursing facilities
- Institutions for mental diseases
- Intermediate care facilities for people with intellectual disabilities
- Hospitals providing long-term care services

The proposed rule states that CMS will assume that a setting is not home or community-based if it is located in a building that also provides inpatient treatment or is located on the grounds of, or immediately adjacent to, a public institution or other disability-specific housing complex. CMS will engage in “heightened scrutiny” of such settings receiving HCBS funding.

Other Requirements and Implications

There has been some discussion about whether the requirements would impact employment and prevocational services funded under a 1915(c) waiver. While few in the disability community commented on or considered employment when reviewing the NPRM, it is possible that the rule would affect employment services that are funded through the HCBS. The rule spends significant time discussing details of residential services and only once mentions employment – that HCBS should “facilitate opportunities to seek employment and work in competitive integrated settings.”

The NPRM would also require an independent assessment of needs and a person-centered plan for each individual receiving HCBS.

Next Steps

AUCD believes that concerns should not delay release of a rule that implements Affordable Care Act provisions and streamlines the definition of home and community based residential services across the three authorities.

The final rule is expected to be released by the end of 2013. AUCD will provide an analysis of the final rule following its release.