

Status: HCBS Implementation

May 2015



Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services

2014 HCBS Final Rule

- Published January 2014 – Effective March 17, 2014
- Addressed HCBS requirements across:
 - 1915(c) waivers
 - 1915(i) state plan
 - 1915(k) Community First Choice
- Requirements apply whether delivered under a fee for service or managed care delivery system
- States have until March 17, 2019 to achieve compliance with requirements for home and community based settings

Key Themes of the Rule

- The regulation is intended to be a catalyst for widespread stakeholder engagement on ways to improve how individuals experience daily life
- There is no HHS initiative to shut down particular industries or provider types
- FFP is available for the duration of the transition period
- The rule provides support for states and stakeholders making transitions to more inclusive operations
- The rule is designed to enhance choice among settings that meet a level playing field

Current Implementation Resources

- HCBS Website – <http://www.medicaid.gov/HCBS>
- Final HCBS regulation
 - Fact Sheets
 - Tool Kit: transition plan content; public input; sample assessment questions
 - FAQs
 - TA available to states from CMCS staff; contractor
- Mailbox to send additional questions: hcbs@cms.hhs.gov

Transition Plan Review Process



Federal Partnership

- Contributing to the review process:
 - Administration on Community Living (ACL)
 - Office of Civil Rights (OCR)
 - Department of Justice (DOJ)
- Primary roles:
 - Bring knowledge of *Olmstead* or other investigations pertaining to specific settings
 - Provide additional input on overall Plan strategy
 - Identify external stakeholder concerns

Summary Status of CMS Statewide Transition Plan Review

- Statewide Transition Plans (STPs) were due March 17, 2015
- 46 STPs submitted; 5 states to submit
 - 3 states needing to submit are working to incorporate their Plan as part of the state's 1115 demo.
 - 23 plans still in the initial review process
 - 3 returned to the state as incomplete
 - 20 substantive reviews underway
 - 4 states invoked Heightened Scrutiny Reviews

Statewide Transition Plans – Review Process

1. Basic Element Review

- ✓ Verify that the full public notice process as found at 42 CFR 441.301(6)(B)(iii)-(iv) was followed
- ✓ Identify that all components are included:
 - Evidence of the public notice process and results
 - Systemic state-level regulation and policy assessment
 - Identification of site-specific assessments, if the state has conducted them
 - Remediation (systemic and setting specific)
 - Monitoring to assure ongoing compliance

Statewide Transition Plans – Review Process

2. Content Review – Substantive CMS and Federal Partner analysis of Plans for:
 - ✓ Systemic assessment processes
 - States should complete assessment no later than 6 months from Plan submission
 - Should include a listing of regulations, guidelines, policies and procedures (with URL) to be, or already reviewed, with timelines or summary of results if completed

Assessments - What CMS is looking for?

- ✓ Home and community-based settings assessments, including settings presumed institutional in nature
 - Provides a summary of results by type of setting.
 - If not complete, the plan for completing the settings assessment is sufficiently detailed to identify each major component of the assessment process and provides a reasonable timeline for completion and time to remediate all the issues
 - If provider self-assessments are part of the plan, describes how and by whom they are or will be validated (representative sampling, etc.)

Assessments - What is CMS looking for ?

- ✓ Proposed remedial strategies and timelines/milestones
 - Systemic Remediation Strategies –The remediation plan must be detailed and specific to issues identified.
 - If the systemic assessment is not complete, the remediation plan should include projected tasks and timelines based on state experience (i.e., What is the process and likely time to change a regulation, policy or procedure ?)
 - The plan should include a date by which the state will submit a modified transition plan to include the assessment findings and more specific remedial action

Example of STP Chart for completed systemic assessment

Type of Setting	Issue	# of sites	Remedial Strategy	Lead Agency	Target Date	Ongoing Monitoring
I/DD Group Home	Lacks Food Access 24/7	15	Provider Education	I/DD Division	May 30, 2015	Case management visits (annual)
I/DD Group Home	Lacks Food Access 24/7	15	Change in licensure to require food availability	I/DD Licensure Division	April 30, 2018	Licensure Visits (bi-annual)

Example of STP Chart for systemic assessment not yet completed

Type of Setting	Regulation Standard	Assessment Complete	Lead Agency	Remedial Action	Target Date
I/DD Group Home	State Admin. Code #	9/17/2015	I/DD Division	Amend current regulation	10/17/2016
Assisted Living	Certification Standard	9/17/2015	Senior Service Certification Unit	Amend certification if necessary	8/1/2016

Settings Presumed to be Institutional in Nature

From the HCBS regulation:

- Settings that are located in a building on the grounds of or immediately adjacent to a public institution
- Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or
- Settings that have the effect of isolating individuals from the broader community

Heightened Scrutiny: To be considered HCBS, the state must submit sufficient evidence on each of these settings so that CMS may determine whether the setting is compliant.

Settings Presumed to be Institutional - What States are Identifying?

- Fewer states than expected are identifying *Presumed Institutional* types of settings. May be due to the fact that most states are still conducting the assessments.
- Four states have identified *Presumed Institutional* types of settings based on location
- No state currently has identified *Presumed Institutional* settings based on isolating qualities
- Two of the states have identified settings in which the presumption will stand and the settings will be removed from the HCBS network

Heightened Scrutiny Evidence

- The two states that have identified settings *Presumed Institutional* in nature have submitted evidence for *Heightened Scrutiny*
 - One state has included only ID/DD settings
 - One state has included only settings for elderly populations
 - Both states included site visits as part of the state evaluation
 - The evidence is currently under review by CMS and the federal partners

Statewide Transition Plans – What Are We Seeing

- States continue to be challenged by adequacy of the public input process
 - The Plan didn't provide enough information to facilitate meaningful public input
 - Both electronic and non-electronic mechanisms to solicit input were not utilized
- Most states are working to complete systemic assessment but have not completed settings assessment
 - Many states are targeting completion of this assessment within six (6) months of the Plan's submission

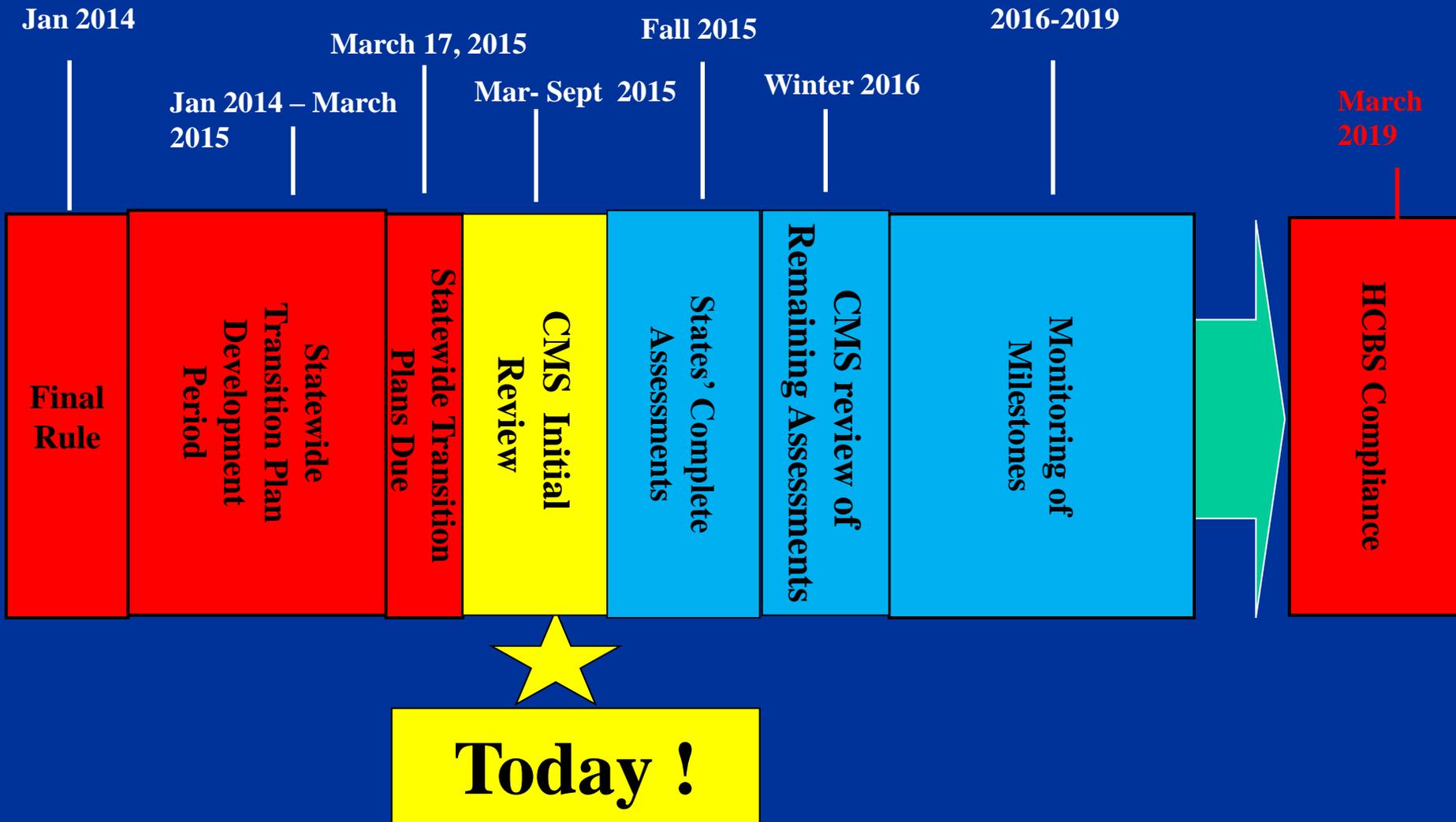
Statewide Transition Plans – What Are We Seeing

- Many states have not completely identified the specific settings to be included in the assessment, the number of such settings, or the number of individuals served
- Without a complete settings assessment, states cannot:
 - Identify which settings are/are not in compliance
 - Identify which settings are *Presumed Institutional* in nature
 - Submit evidence for *Heightened Scrutiny*
 - Provide remedial actions
 - Provide milestones/timeframes

Statewide Transition Plans

- Beginning in June, CMS will communicate with states based on two forms of Plan reviews:
 - ***State has not completed an Assessment*** -- CMS will review milestones for reasonableness, and will review again once assessment is complete. Public input will be required again after states have completed assessment of current settings. CMS will review assessments as well as public input on those assessments.
 - ***State has completed an Assessment*** -- CMS' final approval is contingent upon completion of the assessment process, identification of setting types, identification of a specific remediation strategy, inclusion of adequate benchmarks/milestone progress and public input on a final revised plan that incorporates assessment findings.

Projected Implementation Timeline



Considerations for Additional Guidance and Technical Assistance

- Intersection with IAP initiative
- Future webinar topics
 - Examples of good and changing models of care and best practices.
 - Heightened Scrutiny process
 - Non-residential programs that are potentially scalable
 - What a good day program looks like for individuals who are not able to work

Others?

Questions and Answers

Thank you