

## FREQUENTLY ASKED QUESTIONS

### Home and Community-Based Services Rules

#### **General**

Q. What are the federal home and community-based services rules?

A. In January 2014, the federal Centers for Medicare & Medicaid Services issued final rules, or regulations, as part of the Affordable Care Act. The rules ensure that home and community-based services programs funded through Medicaid – called Medi-Cal in California – provide eligible persons with disabilities full access to the benefits of community living and offer them long-term services and supports in the most integrated settings of their choosing.

Q. What do the rules say?

A. Individuals must receive services in the most integrated settings of their choosing and also have full access to the benefits of community living. Settings where individuals live and receive services must be about the nature and quality of individuals' experiences, rather than the type of buildings where the services are delivered.

Q. What is the federal intent of these rules?

A. The intent is to ensure that states receiving federal Medicaid funds meet the needs of consumers who choose to get their long-term services and supports in their home or community, rather than in institutions.

- For individuals, these new rules are intended to ensure the quality of services.
- For service providers, the rules set new standards that services and the settings where they are provided must meet to be eligible for reimbursement under Medicaid.

Q. What is the Department's timeframe for coming into compliance with the home and community-based settings requirements?

A. All settings must be in full compliance with the federal requirements by March 17, 2019. In order to meet this timeline, the Department is taking steps now to ensure it can meet this date.

Q. The Lanterman Act requires that individuals can receive community services if they want, so why does the State need to comply with these federal rules?

A. A significant portion of the services authorized by regional centers are currently paid for with Medi-Cal funds. Without this funding the State would pay more for the wide array of services now available to individuals with developmental disabilities. If services are provided in unallowable settings, the State will eventually lose federal funding for them.

Q. How is the Department coming into compliance with the new federal rules?

A. For starters the Department convened an advisory group of stakeholders. One of its first tasks was to review state statutes, regulations, standards and policies to assess whether they meet, partially meet, conflict, or are silent on the new federal

requirements. The stakeholder advisory group will help the Department work through the steps required to comply with the federal rules.

Q. What is the Statewide Transition Plan?

A. Every state must develop a Statewide Transition Plan to describe how it will determine whether home and community-based programs are compliant with the federal rules. California's Statewide Transition Plan describes all of the home and community-based programs affected by these rules. The Plan describes programs administered by each of the State departments, and lists the types of providers that provide services. The Plan also identifies sections within current state laws and regulations that conform to the federal requirements.

Q. Will the Department develop transition plans specific to its home and community-based services programs?

A. Yes. Each home and community-based services program must develop its own transition plan.

### **Consumer-related**

Q. I am a regional center consumer. How do these federal rules affect me?

A. The rules ensure you are provided full access to the benefits of community living including receiving regional center services and supports in integrated settings that meet your needs and choices.

Q. Does the home and community-based setting requirement apply to a consumer's family home where he or she resides?

A. The federal Centers for Medicare & Medicaid Services has assured states that they can presume an individual's or a relative's private home meets the requirements of a home and community-based setting.

Q. I live in a community care facility with three other residents. I like it here. Will I have to move because of the new rules?

A. If the facility doesn't meet all the requirements of the federal rules, time is allowed, until March 2019, to make any needed changes.

Q. What is the meaning of a "private unit in a residential setting?" Does this mean that an individual must have the option of a private bedroom regardless of the individual's financial resources?

A. The federal rules acknowledge that an individual may need to share a room due to limited financial means, or may choose to share a room for other reasons. However, when a room is shared, the individual should have a choice of roommate.

Q. In terms of some of the settings requirements that relate to residential situations, what about situations in which following the requirements put someone at risk? Specifically, the requirements that consumers have access to food any time they want, or the freedom to leave the facility or to have visitors any time.

A. The federal rules allow for some of the requirements to be modified if:

1. There is an assessed need for the modification.
2. The modification is documented and included in the Individual Program Plan.
3. The modification is reviewed regularly and that review period is consistent and documented.

### **Provider-related**

Q. I provide services to regional center consumers. Are there any guidelines on what is not a home and community-based setting?

A. According to the federal rules, settings that are presumed not to be home and community-based include those that fall into the categories below.

1. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
2. Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution;
3. Any other setting that has the effect of isolating individuals receiving HCBS from the broader community of individuals not receiving HCBS.

Q. If I operate a setting presumed not to be home and community-based, what recourse do I have?

A. The federal rules allow for a “heightened scrutiny process” to allow states to present evidence and public input to demonstrate that these settings do, in fact, comply with the new requirements. All providers, regardless of how the State assesses the setting, must meet all elements of the federal rules.

Q. If I operate a setting generally considered to be home and community-based, how do I know if I meet the regulatory requirements?

A. Soon you will be asked to complete a survey which will contain questions related to the new rules. This survey will help you and the Department gauge whether or not your setting complies with the requirements or modifications are needed.

Q. How long will I be given to make changes if necessary?

A. You will be required to comply with the rules no later than March 2019.

Q. Will the State grant exceptions to providers if it is determined that a setting does not meet the federal home and community-based settings rules?

A. No. The federal regulations do not provide for any exceptions to or waivers of the home and community-based settings requirements.

Q. Is the state shutting down settings based solely on their location?

A. No. Federal guidance states that the location alone does not make the setting or the type of service unallowable.

Q. I work for a company that specializes in providing services and supports in residential communities for adults with intellectual/developmental disabilities. The company also develops housing and provides services for the communities' residents to

ensure they can remain safely in their own units. Will the federal home and community-based settings regulations change the way we conduct business?

A. It depends. The residents must be allowed to access services and supports outside of their residential settings and engage in community activities of their choosing. These individuals must be allowed to seek competitive employment, control their own resources, and be free to come and go as they want. All settings must meet all elements of the federal rules.

Q. Do the home and community-based setting requirements address the number of individuals living in a residential home or other community-based setting?

A. No. While size may impact the setting's ability to meet, or likelihood of meeting, the home and community-based setting requirements, the rules do not specify size restrictions.

Q. I own and operate a 6-bed adult residential facility and am considering modifying another home to serve four individuals with developmental disabilities. Other than those modifications to pass licensing requirements, what else do I need to consider to ensure the home meets the federal home and community-based settings rules?

A. All settings must meet all elements of the federal rules. The Centers for Medicare & Medicaid Services published a [Fact Sheet](#) that summarizes the new rules. More information is also available through the Department's [Home and Community-Based Services Regulations](#) website.

Q. What about individuals that live in rural settings? Does this automatically mean that rural facilities are isolating?

A. Not automatically. Individuals with disabilities who receive services in a rural area must have the same opportunity for community integration as people without disabilities in that community.

Q. Is there a minimum number of residential settings that must be offered to an individual?

A. No. However, the individual must be given the choice of all settings that meet their needs, preferences, and resources available for room and board.

Q. What is the meaning of "non-disability-specific settings"? Does this requirement mean that the options must include settings in which other individuals with similar disabilities do not reside or receive services and supports?

A. "Non-disability-specific" means that among the options available, the individual must have the option to select a setting that is not limited to people with the same or similar types of disabilities. However, the "non-disability-specific setting" must be able to meet the needs of the individual as documented in the person-centered plan.

Q. Must the individual be given a key to his or her bedroom door and be permitted to carry it outside the residence?

A. Individuals should have access to their homes and their bedrooms at all times unless appropriate limitations have been determined and justified in the person-centered plan.

There may be conditions under which the requirements of the rule could be modified depending on the individual's assessed need for something different.

Q. Do the rules prohibit facility-based or site-based settings?

A. No. Federal guidance states that the location alone does not make the setting or the type of service unallowable. However, the setting must still comply with the federal rules.

Q. Do the rules prohibit individuals from receiving pre-vocational services in a facility-based setting such as a sheltered workshop?

A. No. Federal guidance states that the type of service or location alone does not make the setting or the type of service unallowable. However, the setting must still comply with the federal rules.

Q. If a setting is not currently compliant with the new rules, does the provider have to stop providing services immediately?

A. No. The state has until March 2019 to bring services and participating settings into compliance with the rule, consistent with the State Transition Plan.

The Department welcomes comments or questions via email to [HCBSregs@dds.ca.gov](mailto:HCBSregs@dds.ca.gov), or via by mail to Department of Developmental Services, Community Services Division, 1600 9<sup>th</sup> Street, Sacramento, CA 95814.