



State Of Hawai'i Department of Human Services
Med-QUEST Division Health Care Services Branch
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Home and Community-Based Services Settings

Summary of the Final Rule

In January 2014, the Centers for Medicare and Medicaid Services (CMS) issued new regulations that require home and community-based waiver services to be provided in community like settings. (See www.medicaid.gov and search for home and community based services for a copy of the regulations.) The new rules define settings that are not community-like and after a transition period, those settings that do not meet the new rule cannot be used to provide federally-funded home and community based services. The purpose of these rules is to ensure that people live in the community and who receive home and community-based waiver services have opportunities to access to the benefits community living and receive services in the most integrated settings. States will be allowed a maximum of five years from when the law went into effect in March, 2014 to make the transition. Hawaii's state wide transition plan must be submitted to CMS by March 2015.

What is a home and community-based setting?

The final rule creates a single definition of a home and community-based setting. The rule describes home and community-based setting as having the following qualities:

- The setting is integrated in and supports full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services
- The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting
- The setting ensures and individuals right of privacy, dignity, respect, and freedom from coercion and restraint
- The setting optimizes individual initiative, autonomy, and independence in making life choices
- The setting facilitates individual choice regarding services and supports, and who provides them

What are the additional requirements for provider-owned or operated residential settings?

In provider-owned or controlled residential settings, the following additional requirements must be met:

- The individual has a lease or other legally enforceable agreement providing the same responsibilities and protections from eviction that tenants have under state or local landlord/tenant laws
- Individuals have privacy in their unit including lockable doors, choice of roommates, and have the freedom to furnish or decorate unit
- Individuals have the freedom and support to control their schedules and activities, and have access to food anytime
- Individuals can have visitors of their choosing at any time
- The setting is physically accessible to the individual
- Individuals have unrestricted access in the setting to roam in common areas

Can the requirements be modified in provider-owned or residential controlled settings?

Yes. Any modifications to the additional requirements for provider-owned home and community-based residential settings must be supported by specific assessed need and justified in the person-centered service plan. The plan must document:

- The individuals informed consent
- The specific and individualized assessed need for the modification
- The positive interventions and supports used prior to any modification, including the less intrusive methods that have tried but failed
- A clear description of the condition that is directly proportionate to the specific assessed need
- Regular collection and reviewing of data to measure the effectiveness of the modification
- Established time limits for periodic reviews to determine if the modification is necessary or can be terminated
- Assurances that interventions and supports will not cause harm to the individual

What are settings that are *not* home and community-based?

- Nursing facilities
- Institutions for mental diseases (IMD)
- Intermediate care facilities for individuals with intellectual disabilities (ICF/ID)
- Hospitals
- Other locations that have qualities of an institutional setting

What are settings *presumed* to have the qualities of an institution?

- Those in a publicly or privately-owned facility that provides inpatient institutional treatment
- Are on the grounds of, or immediately adjacent to, a public institution
- Have the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS services

Through a “*heightened scrutiny*” process, CMS will consider the state’s evidence that a setting, which CMS has presumed to have the qualities of an institution, has in fact, the qualities of a home and community-based setting.

Hawaii’s Transition Plan

The Department of Human Services (DHS) is required to submit a transition plan to CMS by March 17, 2015. Hawaii’s transition plan will address the areas of assessment, remediation, and public input. DHS will partner with Medicaid waiver participants, provider associations, advocates, other State agencies, and other stakeholders throughout this process to provide input and to assure that providers have access to needed information to assist with transition activities. There will be a 30-day public comment period before the statewide transition plan is submitted to CMS. The final outcome will be that Medicaid waiver participants will be served in a way that will enable them to live and thrive in truly integrated community settings.

For more information

State of Hawaii, Department of Human Services, Med-QUEST Division www.med-quest.us

State of Hawaii, Department of Health, Developmental Disabilities Division <http://health.hawaii.gov/ddd/>

Centers for Medicare & Medicaid Services (CMS)

<http://www.medicare.gov/Medicare-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>

HCBS Advocacy <http://hcsadvocacy.org/>