

## MDHHS BHDDA HCBS TRANSITION UPDATE

The purpose of the HCBS final rule\* is to ensure that individuals receiving long-term services and supports through home and community-based service (HCBS) programs have full access to the benefits of community living and the opportunity to receive services in the most integrated setting appropriate.

Any state who wishes to access Medicaid funding for HCBS services must ensure that providers meet the requirements of the rule.

Implementation of the HCBS rule is required by the Centers for Medicare and Medicaid Services (CMS). An initial time line of five years for implementation has been increased to eight years with a March 17, 2022 deadline.

MDHHS developed an implementation timeline using the original March 17, 2019 compliance date for most home and community-based settings. Certain conditions affected the ability of MDHHS to complete the compliance work by March 17, 2019:

- The Behavioral Health b (3) services surveys were delayed pending CMS clarification that these services fall under the rule. Providers of b (3) services have been allotted additional time to comply with the HCBS rule.
- MDHHS recognizes that Heightened Scrutiny (HS) work will continue beyond March 17, 2019.
- MDHHS will allow providers the time they need to remediate identified issues as specified in their CAP when the provider is making progress and provides regular updates to the waiver agency or PIHP HCBS contact person.

### **WHO IS IMPACTED BY THE HCBS RULE?**

The Children's Waiver Program and the Children with Serious Emotional Disturbance Waiver (SEDW) are deemed compliant in that children live in private family homes.

Specialized residential and provider controlled/owned settings and non-residential settings funded by the Habilitation Support Waiver benefit have been surveyed.

Settings that are providing 1915 (b)(3) services of CLS (Community Living Services), Skill Building and/or Supported Employment have been surveyed.

## **HCBS SURVEY PROCESS**

All actions related to the survey process are based on the *provider's* responses to the questions.

- HSW and B waiver participants and providers have received and completed surveys. Notification letters for both compliant and non-compliant providers have been sent.
- Providers who received a notification that they are non-compliant with the rule have been sent corrective action plan (CAP) template and a provider readiness tool. These providers will continue to work with their PIHP HCBS lead to submit and carry out their CAPs.
- The PIHP HCBS leads are working with providers in their region to develop Corrective Action Plans (CAPs) related to areas of non-compliance.
- The CAP process is in the final stages for the HSW.
- PIHP leads are beginning the CAP work with the MSS&S providers . This effort is expected to be completed by July of 2020.
- Providers who received a notification that they are on Heightened Scrutiny status (HS) have been sent detailed information about the HS process. The process requires that the state conduct a site visit of the HS setting to collect evidence that supports the definition of HCBS as defined by the HCBS rule. MDHHS has a contract with MSU to conduct the HS review process. We anticipate the review will begin in the fall of 2019.

## **CURRENT EFFORTS RELATED TO PROVIDER COMPLIANCE**

- Ongoing assessments of residential and non-residential settings for compliance
- Implementation of remedial strategies for non-compliant settings
- Identifying settings that will require Heightened Scrutiny
- Collecting evidence from settings that require Heightened Scrutiny
- Posting of potentially complaint HS settings for public comment
- MDHHS determination of settings HCB status
- Submitting evidence for Heightened Scrutiny to CMS for review
- Notifying settings of the CMS Heightened Scrutiny decision
- Transitioning individuals from settings that cannot meet the federal home and community-based settings requirement to compliant settings
- Conducting ongoing monitoring of residential and non-residential settings for compliance.

## **IMPACT OF THE TRANSITION PROCESS ON PARTICIPANTS AND PROVIDERS**

- Many providers across the state are beginning to restructure their programs to ensure they will be able to continue to provide HCB services.
- MDHHS is not mandating the programs, services or supports that individuals receive. MDHHS and its representatives are required to review any settings that may not follow the rule to determine whether the services and supports an individual receives are based on the individual's needs and desires.
- **The rule requires that individuals receive services in settings that are integrated with people who are not receiving Medicaid HCBS.** Settings must allow for individuals to come and go as they choose (with or without support as needed) and must be in the community rather than isolated from the community.
- Individuals must have choice in the services they receive and the settings they receive those service in. Those services and settings must allow for integration into the community to the extent the individual desires.
- Individuals must have the opportunity to participate in community based non-work activities.
- CMS (HCBS rule) requires that all settings, including facility- or site-based settings, must demonstrate the qualities of HCB settings, ensure the individual's experience is HCB and not institutional in nature, and does not isolate the individual from the broader community. Programs are working now to develop programs that will be compliant with this requirement. Each provider will be required to develop the type of service that best meets the needs of the individual and that is documented in the individual's person-centered plan.
- MDHHS's goal is to support providers in their efforts to become HCBS compliant so that they can continue to provide services and supports to individuals who receive HCB services.

\*The full text of the rule may be found at

<https://www.federalregister.gov/documents/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider>