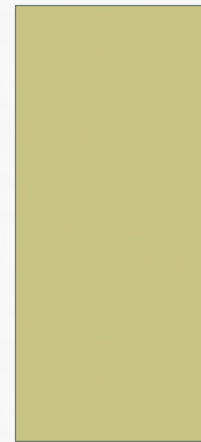


# OVERVIEW OF THE NEW HCBS RULES

WHAT WE KNOW SO FAR....

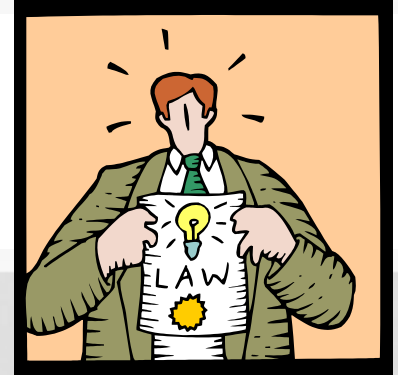


# BEFORE WE GET STARTED



- We are going to cover a lot of new ground
- We do not know a lot about the CMS expectations nor system implications of these rules as yet
- The slides have a lot of information—not all of which I will read—in service of getting through the basics
- The slides will be available to you electronically to review at your leisure <http://dodd.ohio.gov/newsroom>

# CMS 2249-F AND CMS 2296-F KNOWN AS THE HCBS\* RULES...



- Published January 16, 2014
- Effective March 17, 2014
- Official title published in the Federal Register:
  - *Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice (Section 1915(k) of the Act) and Home and Community-Based Services (HCBS) Waivers (Section 1915(c) of the Act)*
- Found at:  
<https://www.federalregister.gov/articles/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider>

\* HCBS: Home and community-based services

# BEFORE WE DIVE IN....



- This is the CMS site to go to for any and all information:
  - <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Support/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>
- Has everything and anything CMS has available on the new regulations including fact sheets and Webinars
- Will be where regulatory guidance is posted

# AND A SUGGESTION...



- When CMS published the proposed rules, they received over 2000 comments
- CMS responded to many concerns in the "Comments" section of the new rules
- These comments are well worth reviewing to get a sense of coming CMS policy guidance



# SO....

- Wherever you see this on a slide, this means I am using language directly taken from CMS's presentations on the new rules



- This is because the only information we have today is the actual rule and CMS's fact sheets and webinar presentations
- I do NOT want to make interpretations ahead of CMS guidance, the first of which will come out on March 17 (more on this later)



# CMS SAYS THE INTENT OF THIS RULE IS:

- To ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs under the **1915(c)\*, 1915(i) and 1915(k)** Medicaid authorities have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate
- To enhance the quality of HCBS and provide protections to participants

*\* We will mainly focus on the 1915(c) HCBS waivers*



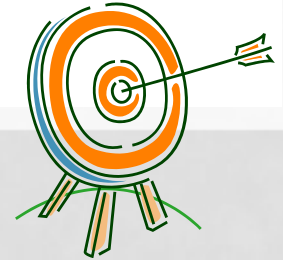


# WHY NOW??

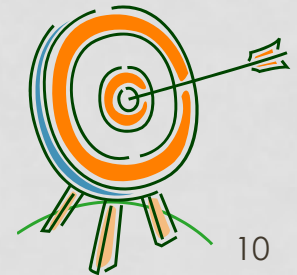


- This rule aligns Medicaid funding for HCBS with the intent of the Olmsted Decision and is in line with many recent Department of Justice enforcement actions.
- The CMS regulations complement the “integration mandate” of the Americans with Disabilities Act:
  - The Title II regulations require public entities to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”<sup>5</sup> The preamble discussion of the “integration regulation” explains that “the most integrated setting” is one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible .
- CMS, in the “Comments” section notes, “We believe the final regulation language supports these principles. Within future guidance, we will reinforce the importance of complying with other federal requirements such as ADA and Olmstead.”

# LET'S START WITH THE LESS DRAMATIC ASPECTS OF THE RULE



- States can now combine multiple target populations within one 1915(c) waiver
  - Previously the HCBS waiver only allowed one target group per waiver (typically one level of care or one group such as individuals with brain injury)
  - Example: Now can have waivers that include multiple target groups such as children with DD, MH and physical disabilities who meet different levels of care all in one waiver program
  - Levels of care: Nursing facility, ICF-IID, hospital



# ASPECTS OF THE RULE

- Gives CMS with new compliance options for 1915(c) waiver programs, not just approve/deny
  - New options may include the, "imposition of a moratorium on waiver enrollments, or the withholding of a portion of Federal payment for waiver services until such time that compliance is achieved" (CFR§441.304(g)(3)(i))
- Establishes five-year renewal cycle to align concurrent authorities for certain demonstration projects or waivers for individuals who are dual eligible

# ASPECTS OF THE RULE

- Includes a provider payment reassignment provision to facilitate certain state initiatives (payment of health premiums or training costs for example)
  - Also implements the final rule for 1915(i) State plan HCBS—same requirements on HCB settings\* character, person-centered planning
  - Makes clear HCB settings character also applies to 1915(k) Community First Choice option
- \* HCB settings?: wherever services are provided—at home and in the community

# LET'S MOVE ON THE BIG DEAL STUFF

- HCB Settings Character
  - What is NOT community
  - What is likely not community
  - What is community



- Person-centered planning
  - Codifies requirements
- Conflict-free case management
  - Was just in guidance, now it is in rule



# BEFORE WE DEFINE HCB SETTINGS CHARACTER..

- Settings that are NOT Home and Community-based:
  - Nursing facility
  - Institution for mental diseases (IMD)
  - Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
  - Hospital



# Settings PRESUMED NOT to Be Home And Community-based

- Settings in a publicly or privately-owned facility providing inpatient treatment
- Settings on grounds of, or adjacent to, a public institution
- Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS





# BUT....



- The rules give the Secretary of HHS the discretion to ascertain if certain settings meet the HCB settings character
- That means that with regard to the settings described on the previous slide, states may make the case that the setting(s) *does* meet HCB settings character

## THE SETTINGS (SLIDE 14) MAY NOT BE INCLUDED IN UNLESS:

- A state submits evidence (including public input) demonstrating that the setting does have the qualities of a home and community-based setting and NOT the qualities of an institution; AND
- The Secretary finds, based on a heightened scrutiny review of the evidence, that the setting meets the requirements for home and community-based settings and does NOT have the qualities of an institution



# WHICH BRINGS US TO HCB SETTINGS CHARACTER



- The home and community-based setting requirements establish an outcome oriented definition that focuses on the nature and quality of individuals' experiences
- The requirements maximize opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting



- Remember that Olmstead/DOJ mandate?
- The new standards are “experiential” and about “qualities” of the setting

# HCBS SETTING REQUIREMENTS



42CFR441.310(C)(4)

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services





# HCB SETTING REQUIREMENTS

- 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 options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board

# PRIVATE ROOMS?



- What we have heard so far:
  - States must have options available for individuals to potentially choose a private room
  - Does NOT mean all providers must now offer or provide private rooms
  - Note on the previous slide, planning can take into effect the, “resources available for room and board”

# HCB SETTING REQUIREMENTS

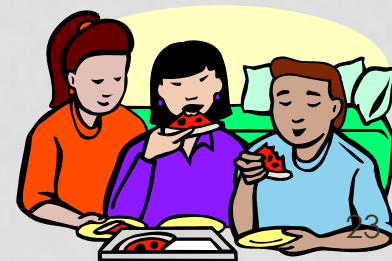
- Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices
- Facilitates individual choice regarding services and supports, and who provides them





# CONGREGATE SETTINGS AND THE HCB SETTINGS REQUIREMENTS

- In the “Comments” preceding the new rule, in response to questions CMS wrote:
  - *“It is not the intent of this rule to prohibit congregate settings from being considered home and community-based settings. State plan HCBS must be delivered in a setting that meets the HCB setting requirements as set forth in this rule”*
  - So the test is whether congregate or not, does the setting have the qualities and experiences of a permissible HCB setting?



# CONGREGATE SETTINGS AND THE HCB SETTINGS REQUIREMENTS

- **Be aware this is not just residential...the HCBS settings requirements apply to ALL HCB settings including day programs....**
- CMS noted in the comments...:
  - “To the extent that the services described are provided under 1915(i) or 1915(k) (for example, residential, day, or other), they must be delivered in settings that meet the HCB setting requirements as set forth in this rule. We will provide further guidance regarding applying the regulations to non-residential HCB settings.”

# AND WENT ON TO SAY IN THEIR WEBINAR

- *Application of setting requirements to non-residential settings – Rule applies to all settings where HCBS are delivered, **not just to residential settings** and CMS will provide additional information about how states should apply the standards to non-residential settings*



# PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS



- CMS has laid out some specific guidance for settings where the services and living arrangement are combined, that is housing and supports are “bundled” together by one provider
- These additional requirements are that the:
  - Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement
  - Same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity



# PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS



- If tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law



# PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS: ADDITIONAL CHARACTERISTICS



- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with the individual and appropriate staff having keys to doors as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement



# PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS: ADDITIONAL CHARACTERISTICS

- Individuals have freedom and support to control their schedules and activities and have access to food any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual





# PROVIDER-OWNED OR CONTROLLED RESIDENTIAL SETTINGS

- CMS has developed a set of criteria that must be met when there are “modifications” to the settings requirements for an individual
- Basically this is about any restrictions such as limiting access to food or concerns about furnishings for example

# IF MODIFICATIONS ARE IN PLACE...

- Modifications of the additional requirements must be:
  - Supported by specific assessed need
  - Justified in the person-centered service plan
  - Documented in the person-centered service plan



# WHEW...SO WHAT ABOUT COMING INTO COMPLIANCE????



- CMS has termed coming into compliance with the HCB settings requirements, “Transition”
- States will have to provide a transition plan, *“detailing any actions necessary to achieve or document compliance with setting requirements”*
- What states have to do—and how quickly—depends on the timing of new waivers, amendments and renewals
- Don’t worry about the timing details—just know that a transition plan is likely due in sooner rather than later!

# RENEWALS AND AMENDMENTS TO EXISTING HCBS WAIVERS

- If submitted within one year of the effective date of final rule:
  - The state submits a plan in the renewal or amendment request detailing any actions necessary to achieve or document compliance with setting requirements for the specific waiver or amendment
  - Renewal or amendment approval will be contingent upon inclusion of an approved transition plan



# TRANSITION: NEW WAIVERS (OR 1915(I))

- For any new waiver, the new waiver submission must fully comply with the HCB settings requirements as of March 17, 2014 when the rule goes into effect
- CMS says, “...to be approved, states must ensure that HCBS are only delivered in settings that meet the new requirements”



# RENEWALS AND AMENDMENTS SUBMITTED WITHIN 1 YEAR OF NEW RULES

- The state submits a plan in renewal or amendment request detailing any actions necessary to achieve or document compliance with setting requirements for the specific waiver or amendment
- Renewal or amendment approval will be contingent upon inclusion of an approved transition plan



# FOR ALL EXISTING WAIVERS (AND 1915(i)) IN THE STATE



- The state must submit a plan:
  - Within 120 days of first renewal or amendment request detailing how the state **will comply with the settings requirements in ALL 1915(c) HCBS waivers and 1915(i) HCBS State Plan benefits**
  - The level and detail of the plan will be determined by the types and characteristics of settings used in the individual state



# LET'S MAKE SURE WE HAVE THAT...

- If anyone amends anything the requirement for a transition plan for ALL programs kicks in and the 120 timeframe for submitting a plan kicks in too
- This means coordinating with **all** the agencies that operate any waivers (or 1915(i) State plan HCBS)
- And again, this plan is not just about residential services but includes day services—and services to people in their own homes as well

# IF YOU HAVE NO RENEWALS, NEW WAIVERS OR AMENDMENTS

- State has one year from the effective date of the new rule to, document or achieve compliance with the new rule
- The plan must “Include all elements, timelines, and deliverables as required”
- What “elements, timelines and deliverables” will likely be more clear once we have the March 17 and any subsequent guidance



# TRANSITION PLAN: PUBLIC COMMENT REQUIREMENT

- The state must provide a 30-day public notice and comment period on the plan the state intends to submit to CMS
- Provide minimum of two statements of public notice and public input procedures
- Ensure the full transition plan is available for public comment
- Consider public comments
- Modify the plan based on public comment, as appropriate
- Submit evidence of public notice and summary of disposition of the comments



# TRANSITION PLAN IMPLEMENTATION



- Implementation of the plan begins upon approval by CMS
- Failure to submit an approvable plan may result in compliance actions
- Failure to comply with the terms of an approved plan may result in compliance actions



# PERSON-CENTERED PLANNING

- The person-centered planning process is driven by the individual
- Includes people chosen by the individual
- Provides necessary information and support to the individual to ensure that the individual directs the process to the maximum extent possible
- Is timely and occurs at times/locations of convenience to the individual
- Reflects cultural considerations/uses plain language
- Includes strategies for solving disagreement
- Offers choices to the individual regarding services and supports the individual receives and from whom
- Provides method to request updates



# PERSON-CENTERED PLANNING



- Conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare
- Identifies the strengths, preferences, needs (clinical and support), and desired outcomes of the individual
- May include whether and what services are self-directed

# PERSON-CENTERED PLANNING

- Written plan reflects –
  - Setting is chosen by the individual and is integrated in, and supports full access to the greater community
  - Opportunities to seek employment and work in competitive integrated settings
  - Opportunity to engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS





# PERSON-CENTERED PLANNING

- Includes individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education and others
- Includes risk factors and plans to minimize them
- Is signed by all individuals and providers responsible for its implementation and a copy of the plan must be provided to the individual and his/her representative



# PERSON-CENTERED PLANNING

- Distributed to the individual and others involved in plan
- Includes purchase/control of self-directed services
- Exclude unnecessary or inappropriate services and supports



# CONFLICT OF INTEREST

- 42CFR441.301(c)(1)(v) and (vi)
  - Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants
  - Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS.



# CONFLICT OF INTEREST



- Where there is conflict of interest,
  - ..., the State must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process.
- From the rule comments:
  - “We agree that complete independence of the person(s) facilitating the planning process is important to promote the statutory objectives...”



# SO, WHAT MIGHT THIS ALL MEAN FOR US?



- Reviewing our own practices in how we
- deliver supports, services and case management...
- It may mean re-thinking and re-defining **what integration means?**
- *The regulations say:*
  - Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, **daily activities**, physical environment, and **with whom to interact, and,**
  - Daily Activities and with whom to interact [at] **the same frequency, duration** of community participation as non-disabled people
- *What does this look like?*

# WHAT STANDARDS MIGHT WE USE TO ASSESS SETTINGS THAT “OPTIMIZE” INTEGRATION?

- Physical environment allows unplanned interaction with non-disabled peers throughout the day.
- Physical environment allows occasional unplanned interaction with non-disabled individuals
- Physical environment offers no opportunity for unplanned interaction with non-disabled individuals; requires planned interaction



# WHAT DOES INTEGRATION LOOK LIKE?

- **The same planned activities** in the home community within all of life's activity domains:
  - Work
  - Volunteer- work on a political campaign, volunteering at soup kitchen; kennel volunteer
  - Learning experiences and activities; books on tape; adult classes; self-help classes
  - Recreation –having fun/a social life – getting together with friends, going out; peers get together; movies; gambling; shows;
  - Shopping
  - Maintain health and wellness – walking; gym membership; diet groups
  - Personal care – hairstyling, having nails done,
  - Maintaining home; maintenance and improvement; cleaning; laundry
  - Caring for others; relatives or others
  - Spirituality: worship; meditation; yoga classes; meeting groups; sodalities
  - Hobbies: Pet care – walking the dog;



# WHAT DOES INTEGRATION LOOK LIKE?

- ***The same unplanned interactions***
  - *run to the store to pick something up,*
  - *borrow something from a neighbor,*
  - *walk to the bus stop,*
  - *shovel snow for the woman next door,*
  - *walking the dog around the block and running into strangers and saying hello,*
  - *hanging out at the pizza parlor,*
  - *picking up the newspaper that was just delivered and saying hi to the delivery man,*
  - *answering the door when the boy scouts collecting for the food drive, etc.*

# AND WHERE DO WE START?

- Assuring HCB settings optimize integration is about:
- **Program Policies**
  - Regulations governing providers and practices
  - Service definitions and standards
  - Provider qualifications
  - Training requirements



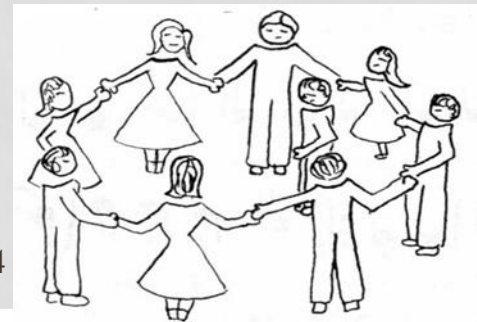
# ASSESSING INTEGRATION IS ABOUT...

- **Payment and Billing Policies**

- Rate methodology
  - Incentives and disincentives for compliance
  - Definition of a service unit
    - Adequacy of rates to achieve desired outcomes
    - Paying for specific activities and the delivery of outcome

- **Planning Processes**

- Person-centered planning, including assessment and planning requirements – does it support compliance with the standard?



# ASSESSING INTEGRATION IS ABOUT

- **Quality Management**
  - Quality Oversight
    - Individual plan monitoring requirements
    - Provider monitoring
    - Provider reporting requirements
  - Performance outcome measurement

# AND THEN...



- **Waiver and state plans**
  - Based on results of the review, waiver application and state plan options may need to be modified.
- **Information Systems**
  - Modifications needed to implement changes to state policies and practices as well as reporting requirements
- **Assess current services**
  - To determine the extent to which the state's standards are being met and in order to develop a transition plan to change services—but set the standards first!

# THE NEW RULES...

- Give us a LOT to think about
- Probably a LOT to do
- But the rules can potentially represent an incredible opportunity to bring our supports and services closer to what we aspire to in our system values and vision statements.....



# ACRONYMS

- CMS: Centers for Medicare and Medicaid
- CFR: Code of Federal Regulations
- HCBS: Home and community-based services
- HHS: Health and Human Services
- ICF-IID: Intermediate care facility for individuals with intellectual disabilities
- PCP: Person-centered planning