

## 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 federal government. An initial time line of five years for implementation has been increased to eight years with a March 17, 2022 deadline.

MDHHS intends to keep the original March 17, 2019 compliance date for most home and community-based settings. Certain conditions may affect 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 will be allotted additional time to comply with the HCBS rule.
- MDHHS recognizes that Heightened Scrutiny (HS) work will continue beyond March 17, 2019.
- HCBS providers should have a corrective action plan (CAP) underway before March 17, 2019. MDHHS will honor the 90-day CAP remediation period as needed for those providers who initiate the CAP after December 17, 2018.
- 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. MI Choice waiver agencies and the PIHPs represent MDHHS and are responsible for approving the provider's CAP.

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

The Children's Waiver Program and the Children with Serious Emotional Disturbance Waiver (SEDW) program are not affected by the rule because the children live in private family homes.

Individuals and providers (residential and non-residential) on the Habilitation Support Waiver are being surveyed.

People receiving certain B waiver services are being surveyed. The services are: CLS (Community Living Services), Skill Building and Supported Employment

## **HCBS SURVEY PROCESS**

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

- HSW participants and providers have received and completed surveys. Notification letters for both compliant and non-compliant providers have been sent. The PIHP HCBS leads are working with providers in their region to develop Corrective Action Plans (CAPs) related to areas of non-compliance.
- MSS&S (b(3)) waiver surveys have been completed by the participants and providers of specific Medicaid billable services, as identified above.
- Providers who responded to the HSW survey have received notification of their status. Those who receive a notification that they are non-compliant with the rule will also receive a corrective action plan (CAP) template and information regarding how to become compliant with the rule. These providers will work with their PIHP HCBS lead to submit and carry out their CAPs.
- HSW Providers have also received notification regarding their Heightened Scrutiny status as requiring Heightened Scrutiny (HS). These providers will receive further information about the HS process. The process requires the state to look further into the setting to determine if it can meet the definition of HCBS as identified by the Centers for Medicare and Medicaid. Participants have been notified of the status of their provider and asked if they wish to continue to receive services from their provider if they are able to come into full compliance. Both participant and provider must agree to submit to the HS process in order for MDHHS to commence the review.
- 804 HSW providers have received HS notification letters.

## **HEIGHTENED SCRUTINY INCLUSION**

The Centers for Medicaid and Medicare (CMS) identified specific areas of concern related to home and community based services. Specific questions were suggested by CMS to determine whether settings were institutional or isolating in nature. The response to these questions are what resulted in providers being on the Heightened Scrutiny list.

*Only the surveys completed by providers* were used to place a provider on the HS list. The responses of the waiver participants were not factored into identifying who would be on HS.

## **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 (MSS&S waiver);
- 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; and
- 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 will review any settings that may not be in compliance with the rule to determine whether the services and supports an individual receives are based on the individual's needs and desires and are not limited by the provider.
- 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 and 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.
- The federal government 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>