

## COMMUNITY HEALTHCHOICES (CHC)

### OPERATIONS MEMORANDUM #2023-06

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**SUBJECT:** **REVISED-** Home and Community-Based Settings Final Rule

**TO:** CHC Managed Care Organizations (MCOs)

**FROM:** Bureau of Policy Development and Communications Management

**DATE:** ~~October 13, 2023~~

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#### **PURPOSE**

CHC Agreement, Section V.A.18., states that CHC-MCOs must provide Long-Term Services and Supports (LTSS) in the least restrictive, most integrated setting. Home and Community Based Services (HCBS) must only be provided in settings that comply with 42 CFR 441.301(c)(4).

The purpose of this Operations Memorandum is to provide clarity on CHC-MCO responsibilities regarding the HCBS Final Rule and the oversight process on the HCBS Final Rule.

#### **PROCEDURES**

The home and community-based setting provisions in the HCBS Final Rule establish an outcome-oriented definition of home and community-based settings, rather than one based solely on a setting's location, geography, or physical characteristics. The HCBS Final Rule supports home and community-based settings that serve as an alternative to institutional care and that take into account the quality of participants' experiences. They require that all home and community-based settings meet certain qualifications in accordance with 42 CFR 441.301(c)(4)(i)-(v), including, at a minimum:

- 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 HCBS;

- 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 (PCSP) and are based on the participant's needs, preferences, and, for residential settings, resources available for room and board;
- Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- 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;
- Facilitates choice regarding services and who provides them.

The regulation at 42 CFR 441.301(c)(4)(vi)(A)-(E) also includes additional requirements for provider-owned or controlled home and community-based residential settings. A provider-owned or controlled setting is a setting that is owned, co-owned, operated and/or controlled by a provider of HCBS. A setting is provider-owned or controlled if the selection of a setting limits the participant's selection of a waiver service provider in that setting or if the waiver service provider plays a role in the participant's ability to select a particular setting in which to receive services. A setting is provider-controlled when the provider has influence over whether a participant is accepted for residency as well as when the landlord has influence over which service providers the participant uses.

When services are provided in provider-owned or controlled settings, any modification to the conditions set forth in 42 CFR 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the PCSP. The CHC-MCO will document the following in the participant's PCSP:

- A specific and individualized assessed need.
- The positive interventions and supports used prior to any modifications to the PCSP.
- Less intrusive methods of meeting the need that have been tried but did not work.
- A clear description of the condition that is directly proportionate to the specific assessed need.
- Regular collection and review of data to measure the ongoing effectiveness of the modification.
- Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- Informed consent of the individual.
- An assurance that interventions and supports will cause no harm to the individual.

The CHC- MCOs will ensure that Service Coordinators are trained and demonstrate competency in the requirements for the HCBS settings criteria and the development of the PCSP.

The regulations at 42 CFR 441.301(c)(5) excludes certain settings as permissible settings for the provision of Medicaid HCBS. Other Medicaid funding authorities support services provided in these institutional settings. The regulations at 42 CFR 441.301(c)(5)(v) also identify other settings that are presumed to have institutional qualities, and do not meet the threshold for Medicaid HCBS.

The CHC-MCOs will collaborate with the Office of Long-Term Living (OLTL) and the OLTL Final Rule Panel to ensure that their enrolled network providers are providing HCBS in allowable settings in accordance with the HCBS Final Rule. OLTL will lead and coordinate the assessment process for provider compliance with the HCBS Final Rule. The CHC Agreement outlines the requirement for CHC-MCOs to be an active partner in the process. This includes identifying point person(s) from each CHC-MCO to take part in the activities described below.

OLTL will assess Residential Habilitation, Structured Day, Adult Daily Living, Prevocational Employment Skills Development (ESD), and other identified congregate provider-owned and operated sites or controlled settings, for compliance. The assessment includes a desk review of provider policies and procedures and an onsite or virtual review via the HCBS Settings Final Rule Assessment Tool, which is an internal OLTL instrument.

OLTL will convene a panel comprised of OLTL staff, CHC-MCO point persons and, as needed, representatives from the Pennsylvania Department of Aging and the Department of Human Services (DHS) Office of Developmental Programs. The panel will meet as required to review assessment results and make a recommendation on each site as to whether the site is compliant or not compliant. For sites not in compliance, the panel will make a recommendation as to whether the site 1) can become compliant with a corrective action plan, 2) should be submitted to the federal Department of Health and Human Services for heightened scrutiny, or 3) should be disenrolled as a provider. Each CHC-MCO is required to participate in the panel meetings on an ongoing basis.

OLTL will issue letters of decision to each provider. If a corrective action plan is recommended for a provider to come into compliance, OLTL will approve and monitor the corrective action plan. Any provider that is unable or unwilling to comply with their corrective action plan will be disenrolled from providing HCBS at that setting. If provider disenrollment is recommended, the CHC-MCO will proceed with the provider termination in compliance with CHC Agreement Exhibit V, CHC-MCO Requirements for Provider Terminations.

While in the course of regular provider monitoring, should the CHC-MCO identify areas where a provider appears to be out of compliance with the HCBS Final rule, the CHC-MCO must notify the CHC-MCO Monitoring Team Lead **via email and cc the \*Redacted due to internal information\* resource account** within 10 business days, so that OLTL can assess the site. OLTL executive staff will review and approve the panel's recommendations.

**NEXT STEPS**

1. Review this information with appropriate staff.
2. Contact the Quality Management Efficiency Team if you have any questions.