HCBS Settings Rule

Workshop 3: Keys, DOL Posters, Person Centered Planning & Autonomy

SC DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS

MAY 14, 2018

Introduction

In 2014, the CMS issued the HCBS "Settings Rule"
- Code of Federal Regulations (including 42 C.F.R. § 441.301)

All States are required to fully comply by March 17, 2022.
- DHHS and DDSN have worked toward full compliance since 2014.

This presentation provides responses to issues raised by providers and other stakeholders in recent webinars/meetings.

17 Issues To Address Through Workshops

*bold denotes priority issues

- 1. Autonomy
- **2. Co-Location**
- 3. Day Services
- 4. DOL Posters
- **5. Food**
- 6. House Rules
- 7. Keys
- **8. Lease**
- 9. Money

- 10. Person-Centered Planning
- 11. Programmatic Mitigation
- 12. Service Plans
- 13. Setting Selection
- 14. Site-Specific Assessment
- 15. Staff Selection
- **16. Visitors**
- **17. Compliance Action Plan Completion**

Scheduled Workshops

1. May 7, 2018 10:00 AM   Food and Visitors

2. May 9, 2018 10:00 AM   Leases and Money

3. May 14, 10:00   **Keys**
DOL Posters
Person-Centered Planning
Autonomy

4. May 16, 10:00   Day Services
Service Plans
Setting Selection
Staff Selection

5. TBD 10:00   Compliance Action Plan Completion

Training Currently In Development

- Human Rights Committee Training on HCBS Settings Rule

- Training for Parents and Community – Partnering with Able SC and Family Connection

- Individual Rights and Responsibilities Training

- Board of Directors Training on HCBS Settings Rule

- Person-Centered Thinking Training/Materials

Philosophy

HCBS Settings Rule is built on a person-centered/community integration philosophy and aims to improve the life experiences of those receiving waiver services.

- **Person-centered philosophy** promotes the belief that people with disabilities are people first; they have the same rights as people without disabilities. As people, through listening and discovering, each person can help those around him/her learn how they want to live and what supports are needed to help them move toward a life they consider meaningful and productive.

- **Community integration philosophy** promotes the belief that every person deserves an opportunity to live, work and play in a community of his/her choice and in a way that reflects his/her own vision for life. People should be supported to optimize their personal, social, and vocational competency to live successfully in the community.

Health and Safety

The HCBS Settings Rule's general default is to maximize individuals' access to their own home and their community in ways that are meaningful to them.

The HCBS Settings Rule may create challenges for providers as they learn to manage <u>what is important to the person</u>, <u>what is important for the person</u> and the proper balance between the two.

Providers must be aware that HCBS Settings Rule compliance can be obtained without jeopardizing the health and safety (important for) of individuals. Some individuals may require restrictions due to the assessed impact of their disability on their everyday access.

Setting "Qualities"

The HCBS Settings Rule specifies that Home and Community-based Settings are required to have certain "qualities." Examples of those "qualities" **include, but are not limited to**:

- "Facilitates individual choice regarding services and supports, and who provides them."
- "Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors."
- "Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time."

The required "qualities" may only be modified on an individual basis when supported by a specific assessed need and justified in the person's plan.

Modifications should be focused on the health and welfare of the person.

Modification of Required Quality

When a modification of a required "quality" is necessary, the following must be present:

(1) Identification a specific and individualized assessed need.

(2) Documentation of the positive interventions and supports used prior to any modifications to the person-centered service plan.

(3) Documentation of less intrusive methods of meeting the need that have been tried but did not work.

(4) Inclusion of a clear description of the condition that is directly proportionate to the specific assessed need (i.e., the modification is in line with the need).

Modification of Required Quality (Cont.)

(5) Inclusion of regular collection and review of data to measure the ongoing effectiveness of the modification.

(6) Inclusion of established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

(7) Inclusion of the informed consent of the individual.

(8) Inclusion of an assurance that interventions and supports will cause no harm to the individual.

Additional requirements are noted in DDSN Directive 532-02-DD: Human Rights Committee

Keys

HCBS Settings Rule

In waiver settings:

"Each individual has privacy in their sleeping or living unit:

(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors as needed."

Keys

DDSN Standards

Each resident must be provided with a key to his/her <u>bedroom</u>. Failure to provide a key must be supported by a specific assessed need, justified in the person-centered plan and reviewed by the Human Rights Committee. (RH2.4)

Each resident must be provided with a key to his/her <u>home</u>. Failure to provide a key must be supported by a specific assessed need, justified in the person-centered plan and reviewed by the Human Rights Committee. (RH2.5)

DDSN Residential Habilitation Standards

Rights and Keys

Regarding the issue of keys, it seems that the right to be recognized is that the person is a renter with a lease/rental agreement and therefore has the right to have access to their home (rented space) and ability to secure their personal space / belongings within their home.

Keys

Considerations

"Providers should install locks and distribute keys/key codes as a default, without waiting to be asked by individuals...Locks should allow people to exit the room/unit without delay. Locks that disengage with the turn of an inside knob or push of an inside lever are recommended."

"Residents can receive skills training on proper management and safekeeping of their keys, as well as the responsibilities of having a key, as part of the residential habilitation service."

Colorado Department of Health Care Policy and Financing

Policy Considerations

Policies and procedures should:

- address individual access to keys;

- require staff to knock and obtain permission before entering bathrooms and bedrooms/units;

- identify staff who have keys; and

- allow staff to enter bathrooms/bedrooms/units only under limited circumstances agreed upon with the individual.

- Address lost keys (if not addressed in lease/agreement).

DDSN Standards

Each resident must be provided with a key to his/her <u>bedroom</u>. **Failure to provide a key must be supported by a specific assessed need, justified in the person-centered plan and reviewed by the Human Rights Committee**. (RH2.4)

Each resident must be provided with a key to his/her <u>home</u>. **Failure to provide a key must be supported by a specific assessed need, justified in the person-centered plan and reviewed by the Human Rights Committee.** (RH2.5)

When is HRC Review Needed?

Scenario 1.

If someone is:

- assessed to be completely <u>able</u> to understand the pros and cons of having a key, and

- assessed to be <u>able</u> to manage a key, and

- considers his/her own circumstances in light of the pros and cons, then

- decides <u>not</u> to have one.

In this case, the person is fully able to exercise his/her right to a key but has made an informed choice not to have one - **no HRC needed**.

The "outcome" of this choice would be that when anyone asks him/her about it, he/she indicates that he/she knows he can have a key but have chosen not to have one but can get one if he/she decides differently, etc.

When is HRC Review Needed?

Scenario 2.

If someone is:

- assessed to completely <u>able</u> to understand the pros and cons of having a key, and

- assessed to be <u>able</u> to manage having one,

- considers his/her own circumstances in light of the pros and cons, then

- decides a key is wanted, but

- is <u>denied</u> one by the provider

The expectation is that a key be provided.

When is HRC Review Needed?

Scenario 3.

If someone is:

- assessed to be <u>unable</u> to fully understand the pros and cons of having a key, but
- assessed to be <u>able</u> to fully manage having one.

The provider has <u>two choices</u>:

1. give the key and train on understanding the pros and cons until he/she can exercise right to possibly decline, **or**

2. not give the key, train, and get HRC approval.

NOTE: If assessed to be <u>unable</u> to understand, it seems the provider would not be able say that the person is fully able to decline. If the declination is not informed and not voluntary, then **HRC is necessary**.

When is HRC Review Needed?

Scenario 4.

If someone is:

- assessed to be <u>able</u> to fully understand, but

- assessed to be <u>unable</u> to fully manage having a key.

Then the provider has <u>two choices</u>:

1. Not give the key and provide training/support until management skills are gained or the person declines, and get **HRC review**; **or**

2. Give the key and train/support.

When is HRC Review Needed?

Scenario 5

If someone is assessed:

- to be <u>unable</u> to understand fully understand the pros and cons of having a key; and

- to be <u>unable</u> to manage having a key; then

HRC review is required.

Department of Labor (DOL) Posters

Federal Law

"Some of the statutes and regulations enforced by the U.S. Department of Labor (DOL) require that notices be provided to employees and/or posted in the workplace."

DOL requires the posting of "all required federal posters" in individual settings when employees <u>do not</u> regularly report to the main office of the provider. If employees <u>do</u> regularly report to the provider's main office, then the <u>only</u> federal required workplace poster in individual settings is the Executive Order 13496 poster.

United States Department of Labor

DOL Posters

DDSN Standards

The setting is free from postings of employee information (such as labor standards and minimum wage posters) in common areas and visible to residents. (2.18)

DDSN Residential Licensing Standards

DOL Posters

Helpful Questions

- Would I choose to have this poster hanging in this location if it were my home?

- Does the placement of this poster help make this residence look more like a home?

- What locations would allow employees, but not residents, to see this poster?

- Have I asked the residents for their ideas and opinions about where this poster belongs?

Person-Centered Planning

HCBS Setting Rule is built on a **person-centered philosophy** promotes the belief that people with disabilities are people first; they have the same rights as people without disabilities. As people, through listening and discovering, each person can help those around him/her learn how they want to live and what supports are needed to help them move toward a life they consider meaningful and productive.

Person-Centered Planning

HCBS Settings Rule

"Service planning for participants in Medicaid HCBS programs under section 1915(c) and 1915(i) of the Social Security Act must be developed through a person-centered planning process that addresses health and long-term services and support needs in a manner that reflects individual preferences and goals."

The person-centered planning process "may include a representative that the individual has freely chosen and others chosen by the individual to contribute to the process."

Department of Health and Human Services, CMS (January 10, 2014)

Person-Centered Planning

Person-Centered Planning is a process (not a form) which begins with understanding:

- What is <u>important to</u> the person, and
- What is <u>important for</u> the person.

Then, finding the balance between so that health and long-term service and support needs can be addressed in ways that are fitting with the preferences of the person.

DDSN

Person-Centered Planning

Important to is about what really matters to the person, from their perspective (their own definition of quality). It includes:

- People

- Stuff

- Rituals/routines

- Places to go/things to do

Includes only what the person "says"(with word or actions).

When words and actions conflict, you must ask why.

Person-Centered Planning

<u>Important for</u> is about the help or support that they need to stay healthy, safe and well. It includes:

- Issues of health (prevention of illness, treatment of illness/conditions, promotion of wellness),

- Issues of safety (environment, physical/emotional well being, freedom from fear),

- What others deem necessary.

Person-Centered Planning

Important to and important for influence each other.

No one does anything that is important for them (willingly) unless a piece of it is important to them.

Person-Centered Planning

"Balance Between the Two"

Balance is dynamic (changing) and always involves **tradeoffs**:

- among things that are <u>important to</u> (e.g., prefer living in city, on the lake, short commute preferred but current job liked; longer commute is the trade off).

- between <u>important to</u> and <u>important for</u> (e.g., important to me to not have back pain, important for me to stretch to prevent back pain. I hate to stretch but also really hate back pain. The trade off is stretching (more desirable) for the lack of pain (less desirable).

Autonomy

HCBS Settings Rule

A waiver setting "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."

A waiver setting also "facilitates individual choice regarding services and supports, and who provides them."

Department of Health and Human Services, CMS (2014)

Autonomy

Risk

"A life of dignity and choice generally involves taking risks and even making bad decisions; in other words, there is a dignity of risk.

Hence, the provider should support the individual in working toward minimizing or eliminating any rights modifications, including by helping the individual learn self-monitoring, decision making, and boundary-setting, and by reinforcing positive decisions and behaviors."

Colorado Department of Health Care Policy and Financing

DDSN Standards

Residential Habilitation Standards: Standard 2.1

People are supported to make decisions and exercise choices regarding their daily activities, to include:

- Meal times;

- Menu items;

- Snack choices;

- Bedtime;

- Community activities;

- Doctor appointments.

DDSN Standards

Residential Habilitation Standards: Standards 2.1 - Guidance:

People's activities are developed in consultation with them and according to their preferences, including but not limited to mealtime, bedtime, menu items, snack choices, restaurant choices, and community activities.

Changes that affect the person are not made without consultation with them.

DDSN Standards

Residential Habilitation Standards: Standard 3.0

People are supported and encouraged to participate and be involved in the life of the community by:

- Receiving information about opportunities for community participation;

- Participating in the development of activity schedules;

- Active involvement in community activities.

DDSN Standards

Residential Habilitation Standards: Standard 3.0 - Guidance

- People are supported to form and maintain a variety of connections, ties and involvements in the community, such as volunteering, joining clubs, shopping, dining, going to parks, ballgames, church of their choice, etc.

- People are given information about opportunities for community participation, (i.e., people are made aware of community activities such as ballgames, concerts, benefits, etc.,) and are encouraged to participate in activities that interest them.

- People are not forced to participate in activities; however, training to participate is provided if needed.

- Documentation must exist to show evidence of participation in community activities.

- Training to participate is provided if needed.

DDSN Standards

Standards for Licensing Day Facilities – Standard 44

Each program will have a current activity schedule posted. The schedule will reflect the hours the facility is open and the hours the program offers supervised services. The schedule must reflect the scheduled activities of the day.*

Guidance:

The schedule should reflect the hours the facility is open. If supervised services (e.g., second shift enclave) are offered, the schedule may reflect those times specifically, or may reflect that supervised services may be available as needed. A specific schedule for activities is not required, but instead the activity choices available should be listed.

* Required by the SC Code of Regulations

Considerations

In most cases, it is possible to satisfy the federal criteria relating to access to the community, optimizing initiative and autonomy, and providing a non-regimented schedule by:

- eliminating unnecessarily restrictive and controlled daily schedules,

- by supporting individuals to act independently and to access community resources on their own,

- by helping people develop and be more involved with natural supports,

- by adjusting staff responsibilities, and

- by training and supporting staff in person-centered principles.

Positive Practices

- Participants can go inside, outside, and to all common areas of the home at their choosing.

- Participants do not have to go to their rooms or bed at a specific time each evening and they have reasonable flexibility for wake up times.

- Participants make decisions on how they spend their free time and the activities that they are involved in reflects their individual interests and choices.

- Participants are included in the development of a financial plan and help determine how their money is spent.

- Individuals are afforded privacy in receipt and sending of mail and phone calls.

Positive Practices (Cont'd)

- Participants are involved in the interview process for staff.

- Staff are given a trial run in the home where they spend a couple of days working there.

- Individuals actively participate in choosing who they want to work with/deciding their staff person.

- Participants can decorate their bedrooms in the manner of their choosing.

Next HCBS Workshop

May 16, 10:00   Day Services

Service Plans

Setting Selection

Staff Selection

TBD 10:00   Compliance Action Plan Completion

Workshop Slides and
Q and A Response Postings

http://www.ddsn.sc.gov/QualityManagement/Pages/HomeandCommunityBased ServicesSettingsRule.aspx

Relocation Stress Syndrome

South Carolina HCBS Summary of Findings

AUTONOMY, EMPOWERMENT & SUPPORTED DECISION-MAKING

FAIR TREATMENT: HOW CAN WE SUPPORT THIS OUTCOME?

HCBS IMPLEMENTATION RESOURCES:

- HCBS ANSWERS TO PROVIDER QUESTIONS
- HCBS ANSWERS TO PROVIDER QUESTIONS HR Food Visitors

THE END

Questions? Comments? Concerns?

Please contact:

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