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What States Need to Know about the Home and Community-Based Services Final Rule

After a period of delays, the Centers for Medicare & Medicaid Services (CMS) has confirmed its intent to move forward with implementation of the final Home and Community-Based Services (HCBS) regulations. States must be prepared ahead of the March 2023 transition period deadline to implement full-state compliance, or risk further strain on HCBS provider network adequacy and/or federal non-payment for services rendered.

Noncompliance Risks and Impact

It is important for states to be cognizant of their need for quality measure-driven implementation planning to reform HCBS services. Without adequate implementation of new standards and quality monitoring for compliance to meet those standards, people could be subject to a reduction in services and lack of access to care. Additionally, states will be at-risk for reduced federal funding for these services and may be required to begin corrective action plans to ensure federal matching. To ensure success, states must examine current policies and processes to identify and revise areas that do not meet the rule's requirements.

6 Strategies for Successful Transition Planning

- Bolster Medicaid final rule planning and implementation strategies to include continuous monitoring of provider-owned/controlled residential setting requirements and non-residential service setting reconfiguration.
  - Examples of non-residential settings include day programs, supported employment, and pre-vocational training settings. These services need to be structured to ensure beneficiaries can choose meaningful activities and socialization opportunities in the broader community to reduce isolation.
- Structure Appendix K unwinding plans from the COVID-19 PHE and evaluate how standing down Appendix K allowances intersect with the final rule's compliance standards.
- Modernize quality management using the HCBS Quality Measure Set. In July 2022, CMS released the measures that assess quality across a broad range of domains identified as measurement priorities for HCBS.
- Initiate rate study and modeling to promote reimbursement structures that adequately fund community-based providers and are tailored to address costs related to community inclusion (including transportation and recreation costs, etc.).
- Design value-based payment (VBP) models. For many states, a critical component of Medicaid delivery system reform is payment reform, specifically implementing VBP approaches. VBP is relatively new to HCBS but can be used as a lever to incentivize the use of services that are community-inclusive and promote high performance.
- Leverage American Rescue Plan Act of 2021 Section 9817 and other funding sources to make capital investments and promote other innovations within HCBS systems. This will aid in developing the right infrastructure to support final-rule compliance.

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Opportunities to Address Systemic Barriers

As part of their compliance efforts, there are also several opportunities for states to rebalance access to HCBS, as well as long-term services and supports (LTSS) for beneficiaries.

Shift to a five-year renewal cycle. Through a five-year renewal process, states can align waiver renewals and state plan amendments to bolster service alignment and reduce administrative burden of constant renewal planning and implementation. It is important for states to design and implement quality assurances to drive processes through the collection and use of data to also drive rebalancing of LTSS.

Refine settings where HCBS programs are offered with a focus on location. Settings are to be integrated and support full access to the greater community, including opportunities to seek competitive integrated employment, engage in community life, and control personal resources. As LTSS systems, social determinants of health need to be considered as integral parts of the care system and setting requirements. The alignment of certifications and recertifications, including monitoring and safeguarding development, are essential to setting rule refinement.

Comprehensively overhaul individual care/service plans to be grounded in clearly defined person-centered planning requirements. This includes:

- Plain language writing that is understandable by all parties, including the beneficiary.
- Achievable, culturally sensitive goals that have meaning to the beneficiary.
- Offering a choice of programs and demonstrating which programs and providers the beneficiary has chosen from available offerings.
- Building in the philosophy of the dignity of risk with defined and agreed-upon measures to minimize risk to the beneficiary.
- Using evidence-based, functional needs assessments to determine the clinically assessed need tied to the beneficiary's disability.

Reassess access to LTSS for managed care enrollees. Comply with the identification of managed care enrollees with LTSS needs and develop plans through comprehensive assessments that include CMS's person-centered planning and HCBS regulations.

HCBS Regulations are Here to Stay

CMS will be looking to ensure states are providing services that include real choice, improved access, and person-centered philosophies to meet the desires, needs, and health goals of people across populations. Guidehouse helps states not only comply with the HCBS final rule, but improve the lives of HCBS and LTSS patients and providers.

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