



# KDADS Plan for Assessing Compliance with the CMS Final Rule for Home and Community Based Settings

Posted for Public Comment until July 15, 2014

Posted on June 13, 2014

## Purpose

On March 17, 2014, the Center for Medicare and Medicaid Services (CMS) issued a final rule for home and community based services that require states to review and evaluate Home and Community-Based Services (HCBS) Settings, including residential and nonresidential settings. States are required to ensure all HCBS Settings comply with the new requirements, and analyze all setting where HCBS participants receive services to determine if current settings comply with the Final Rule. KDADS has created a Transition Plan to assess compliance with the HCBS Settings Rule and identify strategies and timelines for coming into compliance with the new rule. The federal regulation for the new rule in 42 CFR 441.301(c)(4)-(5), and more information on the rules can be found on the CMS website at [www.medicaid.gov/hcbs](http://www.medicaid.gov/hcbs).

This **draft** HCBS Setting Transition Plan is open for public comment. The Public Comment period will be open for 30 days to allow all HCBS consumers and providers an opportunity to provide input to the Transition Plan. The Statewide HCBS Compliance Transition Plan will include results of the provider self-assessment and plans to address residential settings based on the guidance provided by CMS on March 20, 2014. Pending CMS guidance for day settings, the State will revise the Transition Plan to include additional guidance from CMS regarding application of the Final Rule to those settings.

## Overview

The new HCBS Settings Rule from CMS applies to all programs that provide home and community based services. In Kansas, this rule will apply to all settings where home and community based services are provided for these programs:

- Frail Elderly (65+)
- Autism (child who starts services prior to age 6)
- Intellectual and Developmental Disabilities (5+)
- Physical Disability (16-64)
- Serious Emotional Disturbance (0-18)
- Technology Assisted (0 through 21)
- Traumatic Brain Injury (16-64)

Based on current guidance from CMS, KDADS is posting this **draft** HCBS Settings Transition Plan for public comment prior to submitting a Final Transition Plan in renewals and amendments of HCBS Programs. This Transition Plan ensures the TBI and IDD Renewals are in compliance with the new settings requirements and meets the expectations of CMS prior to submission of the Statewide HCBS Settings Compliance Transition Plan. The Final Transition Plan will include:

- An Overall Summary of
  - public comments received
  - inventory and description of all HCBS Settings
  - how setting types meet or does not meet the federal HCBS Settings requirements

- An Assessment Plan
  - To complete assessments for HCBS Settings
  - To identify areas of non-compliance that need to be addressed
  - To identify the number of individuals affected by the HCBS Settings Rule
- A Compliance Plan
  - To ensure the health and safety of participants who reside in locations that need to meet corrective action requirements for the setting to come into compliance during the State's specified transition timeline
  - To move individuals to compliant settings, if necessary
- A Public Engagement Plan
  - To Develop/Revise Transition Plan
  - To provide forums for public comment periods and summarize responses
  - To notify affected individuals about the impact of the HCBS Settings Rule and related changes
  - To assist in developing transition plans elements

## Transition Plan

In April, the Kansas Department for Aging and Disability Services (KDADS), Medicaid operating agency, and the Kansas Department of Health and Environment (KDHE), single State Medicaid agency, identified settings that should be reviewed for compliance with the HCBS Final Rule related to home and community based settings. A Summary of HCBS Setting Assessment Requirements are available on the KDADS website at [www.kdads.ks.gov](http://www.kdads.ks.gov).

Over the first six months of the Transition Plan, KDADS will conduct provider assessments and develop a compliance summary from each provider type and identify areas of non-compliance for further review. This assessment will provide the basis for identifying, settings in compliance with the rule, settings requiring heightened scrutiny, and settings no longer qualifying for HCBS. The provider types and licensing structure are available in the KDADS Provider Assessment of HCBS Settings are available on the KDADS website at [www.kdads.ks.gov](http://www.kdads.ks.gov).

### Assessment Plan

KDADS will assess all provider setting types to identify the scope of compliance and measure the impact on individual HCBS participants within 180 days of approval of the Transition Plan. The assessment will identify non-compliant settings and barriers to achieving compliance that require additional time to address. The assessment will also identify settings which are deemed ineligible by the new rule for which relocation of HCBS beneficiaries will be required. Kansas will use self-assessments, attestations, policy and record review, beneficiary and provider interviews, observations, and other tools to determine compliance with respect to the new rule

- Non-residential settings will be reassessed if additional guidance from CMS warrants more information to determine compliance with the new rule. Non-residential settings will be assessed pending CMS additional guidance and within 90 days of approval of the Transition Plan.
- Quality Management Specialists, Health Facility Surveyors, and managed care coordinators will assist the State in identifying compliance related issues through normally occurring interactions, and targeted reviews when heightened scrutiny is determined appropriate or when settings are determined likely ineligible for HCBS. Additional protocols will be added to existing quality review materials as part of ongoing compliance and quality assurance.

- HCBS settings will be provided the results of the assessment. Non-compliant settings will be asked to participate in Focus Groups following the completion of statewide assessment period. The Focus Groups will identify areas and reasons of non-compliance and additional guidelines and benchmarks for compliance with the Final Rule to ensure compliance of all HCBS settings. HCBS settings will be required to submit a plan of correction to address any identified areas of non-compliance which will be reviewed and accepted or rejected by the state.

During the next 12 months, the State will review existing policies, regulations and statutes to identify barriers to compliance or conflicting information that hinders compliance. State law changes will be initiated to ensure compliance with the HCBS Settings Rule and other elements of the CMS Final Rule, if appropriate.

### *Compliance Plan*

Within 12 months of approval of the Transition Plan, the State will notify all HCBS settings and providers of their compliance with the new Final Rule. All settings that are currently in compliance will be identified and shared publically with MCOs, stakeholders and consumers. HCBS settings that need additional time to come into compliance will be notified of non-compliance areas, timelines for compliance, and benchmarks to achieving compliance within the shortest timeframe possible.

- HCBS participants over 65 who currently reside in a setting that is no longer determined eligible to provide HCBS services under the New Rule will be grandfathered in their current setting as HCBS eligible during the 5 years after the approval of the Transition Plan if their individual conditions indicate moving from the current setting would reasonably pose a risk to their physical or psychosocial well-being, or would otherwise result in unnecessary nursing home admissions. Such settings will be prohibited from accepting new HCBS participants unless compliance with the new rule can be achieved.
- Settings that have regulatory or statutory limitations will be notified of the process, plan and timeline to complete changes to regulation and state law to comply with the new Final Rule. This process may take up to two years to complete. Compliance steps will be required for the parts of the Final Rule that are not affected by regulatory or statutory limitations. Individuals and providers will be notified of the process, plan and timeline for all settings to come into compliance.
- The State will update all provider manuals, consumer handbooks, and guides to incorporate the Final Rule requirements within 90 days of completion of the Assessment and Compliance Review activities. Ongoing updates will be made as settings become compliant with the new rule or regulation and statutes are changed. Non-compliant settings will be monitored by the quality assurance and program integrity group during the transition plan. Failure to comply by the established deadlines could result in a final determination that the setting is non-compliant, and the transition plan for individuals will be implemented.
- For settings that are not compliant with new Final Rule, the State will ensure appropriate transitions by working with stakeholders and community partners. Additional Stakeholder input will be required to develop a comprehensive plan for transition. However, all HCBS participants will be afforded education and information about their rights and responsibilities prior to a transition from a non-compliant setting to a compliant setting. The State will establish a transition policy for relocation or transition to compliant settings after public input and comment that will address the process for transition, ensure choice is provided, and identify timeframes for appropriate transition.

## Public Engagement Plan

### Draft Transition Plan Public Input Process

Public Input Process	Start Date	End Date
Online Provider Self-Assessment Survey	May 20 <sup>th</sup>	June 15 <sup>th</sup>
Public Information Sessions	February	July
HCB Setting Transition Plan Public Comment Period	June 12	July 12

Participants and stakeholders will be provided opportunity for public input and comment at multiple venues. Tribal notice of the renewal was sent on January 31, 2014. Additionally, public notice regarding the final rule will be shared with HCBS participants/ family members, providers and other stakeholders during the months of February through April at the following forums:

Month	Description	Date
February	<ul style="list-style-type: none"> <li>• Lunch and Learn IDD Provider Calls</li> <li>• Lunch and Learn IDD Consumer Calls</li> <li>• HCBS Provider Forum</li> </ul>	Mon/Fri - 11-12 pm Wed - 12 to 1 pm 3 <sup>rd</sup> Tuesday of month
March	<ul style="list-style-type: none"> <li>• Lunch and Learn IDD Provider Calls</li> <li>• Lunch and Learn IDD Consumer Calls</li> <li>• HCBS Provider Forum</li> </ul>	Mon/Fri - 11-12 pm Wed - 12 to 1 pm 3 <sup>rd</sup> Tuesday of month
April	<ul style="list-style-type: none"> <li>• Lunch and Learn IDD Provider Calls</li> <li>• Lunch and Learn IDD Consumer Calls</li> <li>• HCBS Provider Forum</li> <li>• Regional Public HCBS Information Sessions (450+ attendees)</li> <li>• LTC Round Table Forum (200 + attendees)</li> </ul>	Mon/Fri - 11-12 pm Wed - 12 to 1 pm 3 <sup>rd</sup> Tuesday of month April 23 <sup>rd</sup> April 24 - 30 <sup>th</sup>
May	<ul style="list-style-type: none"> <li>• Lunch and Learn HCBS Provider Calls</li> <li>• Lunch and Learn HCBS Consumer Calls (every other week)</li> <li>• HCBS Provider Forum</li> <li>• Public Notice of HCB Setting Transition Plans</li> </ul>	Mon - 11-12 pm Wed - 12 to 1 pm 3 <sup>rd</sup> Tuesday of month May 1, 2014
June	<ul style="list-style-type: none"> <li>• Lunch and Learn HCBS Provider Calls</li> <li>• Lunch and Learn HCBS Consumer Calls (every other week)</li> <li>• HCBS Provider Forum</li> <li>• Final Rule Information posted online – PowerPoint/Audio</li> <li>• Public Comment Public Comment sessions (dates on <a href="http://www.kdads.ks.gov">www.kdads.ks.gov</a>)</li> </ul>	Mon - 11-12 pm Wed - 12 to 1 pm 3 <sup>rd</sup> Tuesday of month June 5 <sup>th</sup> June 16 - 19 <sup>th</sup>
July	<ul style="list-style-type: none"> <li>• Lunch and Learn HCBS Provider Calls</li> <li>• Lunch and Learn HCBS Consumer Calls (every other week)</li> <li>• HCBS Provider Forum</li> <li>• Summary of Public Comments posted online</li> <li>• Transition Plan submitted to CMS for review and approval</li> </ul>	Mon - 11-12 pm Wed - 12 to 1 pm 3 <sup>rd</sup> Tuesday of month July 15 <sup>th</sup> July 31 <sup>st</sup>

The draft Transition Plan is available online on the KDADS website for individuals, providers and stakeholders to review. It can be found on the KDADS website at [www.kdads.ks.gov](http://www.kdads.ks.gov)

A summary of public comments and frequently asked questions will be available online and upon request.

### *Transition Plan Public Input Process*

The State will provide opportunities for public comment and input during the entire time the Transition Plan is in effect after CMS approval of the Transition Plan. The Transition Plan will be available online and upon request. During the first 6 months after the approval of the Transition Plan, the State will hold Focus Groups of consumers, stakeholders, and providers to identify compliance areas, concerns, and alternative settings that can meet the needs of HCBS participants. After the State has identified areas of compliance from provider self-assessments, quality review, and consumer input, the State will modify the Transition Plan and identify stakeholder and consumer education opportunities during the Transition Period and make it available to the public.

The State will provide notice to individuals and providers of compliance and non-compliance, timelines, and benchmarks. Ongoing public input will be sought through existing steering committees, summits, training, educational forums, public information sessions, stakeholder forums, community outreach, webinars and teleconferences. During the Transition Period, public comments and frequently asked questions as well as changes to policy, regulation and statute will be made available publically.

## **Questions and Comments**

Questions and Answers are made available online and will be shared through appropriate public sessions, conference calls, listservs and bulletins during the comment period. A summary of responses are available on the website after the public comment period has ended for the draft Transition Plan or any changes to it, and the summary of responses will be provided to CMS as part of the Transition Plan submission.

Comments and Public Input on this Transition Plan can be submitted to KDADS during the comment period the following ways:

- **In Person:** HCBS Setting Final Rule Public Comment Sessions in June and as scheduled
- **By Phone:** Designated Provider and Consumer Lunch and Learn Calls, Provider Forums
- **By Email:** [HCBS-KS@kdads.ks.gov](mailto:HCBS-KS@kdads.ks.gov)
- **By Mail:** KDADS, Attn: HCBS Programs, 503 S. Kansas Ave, Topeka, KS 66603.
- **By Fax:** 785-296-0256

Additional Questions can be submitted to KDADS at any time the following ways:

- **By Phone:** 785-296-4986 or during provider or consumer calls
- **By Email:** [HCBS-KS@kdads.ks.gov](mailto:HCBS-KS@kdads.ks.gov)
- **By Mail:** KDADS, Attn: HCBS Programs, 503 S. Kansas Ave, Topeka, KS 66603.
- **By Fax:** 785-296-0256

KDADS will continue to be available for presentations and question and answer sessions to various state agencies, contracted entities, and community activities related to the HCBS Final Rule.

The Transition Plan coordinator is **Aquila Jordan** who can be contacted at [HCBS-KS@kdads.ks.gov](mailto:HCBS-KS@kdads.ks.gov).