

### **Kansas Proposed Transition Plan In Response to Home and Community Based Setting Final Rule.**

The Centers for Medicare and Medicaid Services (CMS) issued a final rule for home and community-based setting (HCBS) effective March 17, 2014. All HCBS provider owned and controlled residential and non-residential settings offering services and supports receiving Medicaid reimbursement from HCBS programs must meet CMS requirements. This rule affects all HCBS programs administered by KDADS.

- a. In response to CMS HCBS Final Setting Rule requirement, KDADS proposed a Transition Plan, which was posted for public comments in May 2014, followed by a series of in-person public meetings and listening sessions held in June 2014 and repeated in October 2014. KDADS developed a state transition plan for HCBS settings to comply with the CMS HCBS Final Setting Rule.
  - i. The draft Transition Plans were posted for the following renewals:
    - Frail Elderly
    - Intellectual/Development Disability
    - Physical Disability
    - Traumatic Brain Injury
  - ii. The draft Transition Plans were amended from the original posting with additional dates and deadlines for compliance with the federal rule.
- b. Additionally, KDADS posted a statewide transition plan describing the State's process to ensure HCBS comply with new HCBS settings by March 17, 2019.

### **Summary of Public Comment and KDADS Action in Response to Public Input**

Kansas offered various opportunities for securing public comments regarding the proposed work plan in response to the HCBS Settings Final Rule. The draft transition plans were posted online and a 30 day comment period was open between June 14, 2014 and July 15, 2014. Opportunities were provided through statewide conference calls and in-person public information session held in (Lawrence, Topeka, Wichita) during the week of June 16-23, 2014. Additionally, the public was invited to submit comments through the HCBS general email address ([HCBS-KS@kdads.ks.gov](mailto:HCBS-KS@kdads.ks.gov)), by phone, by fax, or by mail. The purpose of the sessions was to meet two primary objectives:

1. To meet requirements for public comment period on the HCBS transition plan
2. To listen to comments from the public, record the comments, and submit a summary with the transition plan to CMS.

**Format for each session:** Wichita State University Center for Community Support and Research (CCSR) staff opened the meeting, logistics. KDADS state staff presented background information and draft transition work plan, including information regarding providers self-assessment surveys (due June 30). KDADS staff provided handouts on the statewide transition plan, HCBS Final Rule and FAQs relating to the final rule. The facilitator, CCSR ask the following questions in each public sessions and conference call and provided opportunities for attendees to dialogue with each other in small groups, while KDADS listened to the discussions.

### **Questions asked during the Public Comments period**

- What questions or understanding or clarification do you have related to the rule you just heard about?
- What is already working in Kansas?
- Where are we already complying?
- What do you like about home and community based settings?

## Summary of Proposed Changes to Transition Plan

Public Comment Period:

Posted: November 10, 2014

Ends: December 20, 2014

KDADS 503 S. Kansas Ave, Topeka, KS 66603 \* [www.kdads.ks.gov](http://www.kdads.ks.gov) \* P: 785-296-4986 \* E: [HCBS-KS@kdads.ks.gov](mailto:HCBS-KS@kdads.ks.gov)

- Based on what you heard today, what concerns do you have?
- What might need to be changed or improved to come into compliance with the rule?
- What do you think our biggest compliance issues will be?
- What other types of settings should the state consider?
- What other questions should the state be thinking about?

Comments are grouped by date and session type. CCSR collected general comments and confirmed attendees understanding of information being presented. Comments from a single person that covered multiple issues may have been divided into categories of facilitated questions as noted above; however, written comments are included verbatim. Comments received in-person has been paraphrased by the facilitator and by confirming with the person making comments the information was captured correctly.

The conferencing and in-person sessions attendance was well represented by providers from various settings such as long-term care facilities, group homes, private ICF-ID, other interested stakeholders and advocates.

Kansas hosted an additional week long public information session statewide during the week of August 18-22, 2014 to recap the HCBS Setting Final Rule. This additional public comment session also requested consumer and stakeholder feedback on the Department of Labor Rule, and proposed waiver amendments (Autism and Technology Assisted) programs and renewals (Frail Elderly, Intellectual Developmental Disability, Physical Disability and Traumatic Brain Injury) programs to be submitted 9/30/14. In these sessions, Kansas provided a short summary of the HCBS Final Rule, the transition plan and what it means to consumers. The session was well attended by many HCBS consumers and family members, the overall message regarding the HCBS final rule and the transition plan was well received by the majority.

Consistently, Kansas heard consumer, family and provider concerns/ comments relating to the following examples summarized below:

- Will every setting receiving HCBS funding be assessed?
- Is the state expecting further guidance on person-centered planning and conflict-free case management?
- Do other settings where people go have to come under the HCBS final rule guidelines? Like the YMCA, or a cruise ship.
- Do those settings have to come into compliance?
- In a group home, does the “able to lock their own door” part apply to the whole house, or each individual?
- It might not be safe for every individual to be able to lock themselves behind a closed door. Will provision be made for those exceptions?
- Where it says that individuals should be able to access communication through text message and email, is it expected that providers would provide those tools, or that the individuals would?
- Where do we see this final ruling affecting individuals who live in group homes?
- They’ve lived there for 15-20 years; this is a family for them.
- They have a few hours of independent time during the day.
- Is this something where we’re going to have to encourage them to move?
- How vulnerable is too vulnerable to live alone in the community?
- Do all waivers have a full 5 years to get in compliance?
- Some appear to have only 12 months. Kansas will assess settings and may request 5 years for transitions.

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The public feedback sessions provided Kansas with valuable information as we move into the next phase of the transition plan. A summary of the comments and responses are available on the KDADS website for review. Following the additional public comments sessions, Kansas will continue to explore possible options to allow exceptions for individuals where the HCBS setting may be assessed out of compliance with the final rule and moving to an alternative setting may threaten the health and welfare of the person.

The facilitator (CCSR) collected and summarized the comments and information from in-person meetings, teleconferencing, and by email and provided a themed summary. The feedbacks have been reviewed and are ready to be incorporated into the waivers for submission by September 30th.

Per CMS directive, KDADS will be hosting an additional in-person and teleconferencing information and input sessions in November 2014. This is an additional opportunity for the public to provide comments and feedback to KDADS regarding the HCBS Settings Final Rule. The public may provide comments and feedback in person at the public sessions or by teleconference option offered below; or by submitting their comments through the feedback portal that will be available to the public on the KDADS website following the close of the public information sessions at [www.kdads.ks.gov](http://www.kdads.ks.gov)

### **Proposed changes to the Transition Plan – Identified in Red**

**By July 1, 2014**, KDADS will produce 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

**By April 1, 2015**, KDADS will provide a detailed assessment plan

- To complete assessments for HCBS Settings
- To identify areas of non-compliance that needs to be addressed
- To identify the number of individuals affected by the HCBS Settings Rule

**By January 1, 2016**, KDADS will publish a compliance plan

- To ensure the health and safety of participants who reside in locations that need to meet corrective action requirements for setting to come into compliance during the State's specified transition timeline
- To move individuals to compliant settings, if necessary

**From January 2015 through August 2015**, KDADS will begin conducting HCBS provider assessments for all residential and non-residential settings 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.

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, **but no later than August 30, 2014**. 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 participants will be required. Kansas will use self-assessments, attestations,

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policy and record review, participant and provider interviews, observations, and other tools to determine compliance with respect to the new rule.

**In calendar year 2015**, 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 HCBS Settings Rule and other elements of the CMS Final Rule, if appropriate.

**By January 2016**, KDADS 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.

**By January of 2016**, for settings that are not compliant with the new Final Rule, the State will ensure appropriate transitions by working with stakeholders and community partners. **Between July 2015 and December 2015**, 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. **By July 1, 2016**, 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.

**By March 17, 2019**, the Kansas Department for Aging and Disability Services (KDADS) will ensure that all residential and non-residential locations where a person receives home and Community-based services (HCBS) through Medicaid allows individuals to be integrated in and have support for full access to services in the greater community, including opportunities to seek employment and work in competitive integrated settings, to control personal resources, and to engage in community life in the same way as individuals not receiving Medicaid HCBS.

### Summary

During 2015, KDADS will assess all HCBS Settings by **August 30, 2015** to identify settings that comply with the HCBS Setting Rule and review state law and program policies that may need to be changed. KDADS will make changes to the Transition Plan in 2015 to set more specific timelines and benchmarks for compliance. By December 31, 2015, KDADS will identify all providers and individuals who may be affected by the changing rules and seek public input on timeframes and benchmarks. During 2016, KDADS will notify all HCBS providers of non-compliance areas, timelines for compliance and benchmarks for achieving compliance in the shortest period possible. KDADS may change the Transition Plan to ensure compliance with the HCBS Setting Rules based on the State's Transition Plan for Access, Compliance and Public Engagement.