

*Supporting a Better  
Tomorrow...One  
Person at a Time*



**Home and  
Community  
Based Services  
Final Rule  
Requirements**



# Purpose

- Rationale/History of CMS's Final Rule
- Final Rule Requirements for Day and Community Living
- Implications for IDD Services in Mississippi

# Alphabet Soup

- **DMH** – Department of Mental Health
  - BIDD – Bureau of Intellectual and Developmental Disabilities
- **ID/DD Waiver** - (Intellectual Disabilities/ Development Disabilities)
- **IDD CSP** – IDD Community Support Program

# Alphabet Soup

- **CMS** – Medicaid's federal governing authority (Centers for Medicare and Medicaid Services)
- **Final Rule** – CMS's federal regulations governing the settings where ID/DD Waiver and IDD CSP services can be provided
- **PSS** – Plan of Services and Supports
- **SC** – Support Coordinator for ID/DD Waiver
- **TCM** – Targeted Case Manager for IDD CSP
- **HCB** – Home and community based
- **LOC** – Level of Care
- **ICF/IID** – Intermediate Care Facility for Individuals with Intellectual Disabilities

# **Overview of Home and Community Based Services**

# What are Home and Community Based Services?

- **Non-traditional** Medicaid services provided at home and in the community as an **alternative to institutional services**
  - “Waiver” HCBS
  - Medicaid State Plan HCBS

# What are Home and Community Based Services?

- “Waivers” began in 1982
  - Response to parents/advocates claim that services at home/in community are **less expensive** than institutional services
  - Allows states to “waive” certain CMS regulations
    - Statewideness
    - Comparability (allows waiting lists)
    - Certain income requirements

# What are Home and Community Based Services?

- HCB Medicaid State Plan Services
  - NOT a waiver
  - Sections 1915(i), (j) & (k) of the Social Security Act
  - Included in Deficit Reduction Act of 2005/ACA of 2010
  - Final Regulations issued in 3/17/14 for all HCBS
  - Allows states to cover services previously only available through “waivers” via the regular Medicaid State Plan
  - May define the groups covered
  - Cannot limit the number of participants



# Mississippi's Waivers

1. **Elderly and Disabled Waiver**
  - a. Ages 21 and older
  - b. Nursing Home level of care
  - c. Area Agencies on Aging
  - d. Medicaid eligible (adjusted income)
2. **Independent Living waiver**
  - a. Ages 16 and older
  - b. Have a severe neurological or orthopedic impairment
  - c. Nursing Home level of care
  - d. MS Department of Rehabilitation Services
  - e. Medicaid eligible (adjusted income)

# Mississippi's Waivers

3. **Traumatic Brain Injury/Spinal Cord Injury Waiver**
  - a. No age restrictions
  - b. Diagnosis of traumatic brain or spinal cord injury and medically stable.
  - c. Nursing Home level of care
  - d. MS Department of Rehabilitation Services
  - e. Medicaid eligible (adjusted income)
4. **Assisted Living Waiver**
  - a. Ages 21 and older
  - b. Nursing Home level of care
  - c. Division of Medicaid
  - d. Medicaid eligible (adjusted income)

# Mississippi's Waivers

5. Intellectual Disabilities/Developmental Disabilities (ID/DD) Waiver
  - a. No age restrictions
  - b. ICF/IID Level of Care
  - c. Intellectual/developmental disability
  - d. Department of Mental Health
  - e. Medicaid eligible (adjusted income)
  - f. Comprehensive services

# Mississippi's HCB Medicaid State Plan Service

- Intellectual/Developmental Disabilities Community Support Program  
(IDD CSP/1915(i))
- Eligibility
  - 18 years or older and completed services through educational system
  - Must have an intellectual and/or developmental disability
  - Must meet the requirements for a Certificate of Developmental Disability
  - Must demonstrate the need for habilitation

# Mississippi's HCB Medicaid State Plan Services

- Eligibility (cont'd)
  - Must demonstrate need for support in 2 of the 5 following areas on a continuing or intermittent basis
    - Employment
    - Social Support System
    - Instrumental Activities of Daily Living
    - Social Behavior
    - Financial Assistance

# How to apply for ID/DD Waiver and IDD CSP Services

Contact the DMH Regional Program in your area to access their Diagnostic Services Department

## DMH IDD Regional Programs

Hudspeth Regional Center  
Whitfield

South MS Regional Center  
Long Beach

Boswell Regional Center  
Magee

North MS Regional Center  
Oxford

Ellisville State School  
Ellisville

# ID/DD Waiver Services

IDD CSP Services		
Behavior Support	Therapies	Supervised Living
Day Services – Adult	Host Homes	Community Respite
In-Home Respite	Supported Living	Crisis Support
Shared Supported Living	In-Home Nursing Respite	Supported Employment
Transition Assistance	Crisis Intervention	Support Coordination
Home and Community Supports	Prevocational Services	Specialized Medical Supplies
Job Discovery		

# IDD CSP Services

IDD CSP Services	
Day Habilitation	Prevocational Services
Supported Employment	

- Targeted Case Management
  - Must be used by all IDD CSP participants



# Conflict Free Case Management

- Support Coordination (SC) – ID/DD Waiver
- Targeted Case Management (TCM) – IDD CSP
- Provided through the IDD Regional Programs
- ID/DD Waiver services provided by the DMH IDD Regional Programs are being transitioned to private providers

# **Rationale & Overview of CMS's Final Rule**

# CMS Final Rule Rationale

- History of the HCB Settings Final Rule
  - Result of multiple rulemaking efforts over the last **5 years** and consideration by CMS of input from thousands of **stakeholders**
  - The intent of the rule is to:
    - Enhance the **quality** of HCB services
    - Provide **additional protections** to HCBS program participants
    - Ensure that people receiving services through HCB programs have **full access** to the benefits of community living
    - Ensure people have the opportunity to receive these services in a manner that protects **individual choice** and promotes **community** integration

# CMS Final Rule Overview

- Establishes requirements for **Person Centered Planning**
- Establishes requirements for the following settings:
  1. Supervised Living (ID/DD Waiver)
  2. Shared Supported Living (ID/DD Waiver)
  3. Day Services – Adult (ID/DD Waiver)
  4. Day Habilitation (IDD CSP)
  5. Prevocational Services (ID/DD Waiver and IDD CSP)

# Goal of Final Rule

- To “ensure people receiving services through HCB programs have **full access to the benefits of community living**”
- To “further expand the opportunities for meaningful **community integration...**”
- To ensure people have **CHOICES** about all aspect of their lives

# Let's Change How We Think

Michael Smull video  
“Person Centered Thinking”

[Click Here for Video](#)

[https://www.youtube.com/watch?  
v=2rmLtU6FYBE](https://www.youtube.com/watch?v=2rmLtU6FYBE)

# People have Rights to Choose

- Who **supports** them
- Where they **live**
- **Who** they live with
- How they spend **their time**
- How they spend **their resources**



**About the overview of HCB  
Services and Rationale  
for the Final Rule**



# Requirements for All Settings

# Timelines

- Regulations became effective **3/17/14**
- States have **8 years** to come into full compliance with requirements **(3/17/22)**
  - Evaluation of rules and regulations
  - Site assessments
  - Participant interviews

# Settings that are NOT Home & Community Based

- Nursing Homes
- Hospitals
- Institutions for Mental Disease
- Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)

## Settings that are Presumed NOT to be Home & Community Based

- Settings that are publicly or privately owned providing **inpatient treatment**
- Settings that are on the grounds of or adjacent to a **public institution**
- Settings with the effect of **isolating people** from the broader community

# Characteristics of Home and Community Based Settings

- **ALL HCB settings characteristics are met for EVERY person**
- Services:
  - Allow people the freedom and support to **control** their own **schedules and activities**
  - Are integrated in and support **access to the greater community**
  - Allow opportunities for **engaging in community life**

# Characteristics of Home and Community Based Settings

- Must allow for **control of personal resources**
- The setting is selected by the person from among **setting options**, including non-disability specific settings
- Must provide opportunities to seek **employment** and work in competitive, integrated settings

# Characteristics of Home and Community Based Settings

- Must ensure the person receives services **in the community** to the same degree of access as someone not receiving services
- Must **ensure the person's rights** of privacy, dignity, respect, and freedom from coercion and restraint

# Characteristics of Home and Community Based Settings

- Must optimize **individual initiative, autonomy and independence** in making life choices
- Must facilitate individual **choice** regarding services and supports and who provides them
- Focus on more **integrated** models
- Activities must be **person-centered** based on individual outcomes identified in the PSS



# **Requirements Specific to Supervised and Shared Supported Living**

# Requirements for All Residential Settings

- People must be given an option of a **non-disability specific setting** and of a **private unit** (if they have the resources)
- People have the freedom to **furnish and decorate their sleeping or living units** within the lease or other agreement
- People must be given a **key to the unit**, with only appropriate staff having keys to doors

# Requirements for Residential Settings

- People sharing units have a **choice of roommate** in that setting
- People must have **access to food** at all times
- People choose **when, where and with whom they eat**

# Requirements for Residential Settings

- People cannot be made to attend a **day program** if they desire to stay home, are sick, or have appointments during the day
- People can have **visitors** when they choose
- The setting is physically **accessible** (ADA compliant)

# Requirements for Residential Settings

- CMS does not set a limit on the number of people living in each setting, but States can set their own restrictions
  - Mississippi – newly certified sites – **no more than 4 people**
  - Existing larger sites will be examined to determine compliance with requirements of Final Rule

# Requirements for Provider/Owned Controlled Residential Settings

- In addition to the qualities listed above, the following additional conditions must be met:
  - The unit or dwelling is a specific physical place that can be owned, rented or occupied under a **legally enforceable agreement** by the person receiving services

# Requirements for Provider/Owned Controlled Residential Settings

- The person has, at a minimum, the **same responsibilities and protections** from evictions that tenants have under the landlord/tenant laws of the State, county, city or other designated entity

# Requirements for Provider/Owned Controlled Residential Settings

- For settings in which landlord/tenant laws **do not apply**:
  - The State must ensure that a **lease, residency agreement, or other form of written agreement**, will be in place for each person receiving services (Rule 30.1.E)
  - The agency must provide protections that address **eviction processes and appeals** (discharge procedures) comparable to those provided under the landlord/tenant laws of the State



# **Requirements for Day Services- Adult, Prevocational and Day Habilitation Services**

# Requirements for Day Settings

- People must be given **choices** about **activities and participation** in them
- **Food choices** are available
- Facility-based day settings must be closely examined and **may be presumed institutional**

## Requirements for Day Settings

- People must be given an option of a **non-disability-specific setting** (employment in the community)
- States can require all day services be **community-based** (no physical location)

# Requirements for Day Settings

- **Reverse integration alone** is not a sufficient way to comply with settings requirements of the Final rule
- Some day settings will need to be closely examined as **potentially isolating** including:
  - Sheltered workshops/Prevocational
  - Facility based Day Habilitation and/or Day Services-Adult
- Focus on **community employment**



**About the settings requirements**

# **Person Centered Planning Requirements and Processes**

# How is Person-Centered Planning Changing?



# Don't Dis My Ability

Say It To My Face Video

[Click Here for Video](#)

<https://www.youtube.com/watch?v=mdOWCQEyUJs>



# **Wolf Wolfensberger Theory of Social Role Valorization**

If people with disabilities can gain valued social roles within our communities, the chances of living a good life go way up.

# What does Society Value?

- Relationships
- Wealth
- Health and Beauty
- Youth and Newness
- Independence
- Productivity
- Pleasurable Life

# Hurtful Consequences of Feeling Devalued

- Rejection
- Low Self-Esteem
- Hopelessness
- Loneliness
- Distrust
- Withdrawn
- Anger

# Supporting People to Gain Valued Social Roles in:

- Relationships
- Employment
- Hobbies
- Religion
- Civic activities

# Person-Centered Plan Requirements

- Plan of Services and Supports (PSS)
  - Must be conducted at least annually with the person's TEAM (family, providers, friends, others the focus person wants at the meeting)
    - At a minimum:
      - Person and legal guardian (if applicable)
      - Provider(s)

# Person-Centered Plan Requirements

- Heightened role for Support Coordinator/Targeted Case Manager in **monitoring PSS implementation**
- Offers **informed choices** to the person regarding the services and supports they receive and their providers
- Includes a method for the person to **request updates** to the PSS at any time

# Person-Centered Plan Requirements

- The PSS must reflect:
  - Services and supports **important TO and FOR** the person
  - The person's **strengths and preferences**

# Person-Centered Plan Requirements

- The PSS must reflect:
  - **Alternative HCB settings** that were considered by/offered to the person (everyone ages 18↑)
  - The **setting** in which the person resides is **chosen by the person** (everyone ages 18↑)
  - **Clinical and support needs** as identified through an assessment of functional need (ICAP and Risk Assessment)



# Person-Centered Plan Requirements

- The PSS must document:
  - **Risk factors** and the measures in place to minimize them (Risk Assessment Tool)
  - Individualized **back up plans** and strategies when needed

# Person-Centered Plan Requirements

- The PSS must be **understandable** to the person receiving services and supports and individuals important in supporting him or her
- **Plain language** and a manner accessible to people with disabilities and those who have limited English proficiency

# Person-Centered Plan Requirements

- Must identify the individual and/or entity responsible for **monitoring the plan**  
(Support Coordinator/Targeted Case Manager)
- Must be finalized and agreed to
  - Informed consent of the person/guardian **in writing**
  - **Signed** by all individuals and providers responsible for implementation

# Person-Centered Plan Requirements

- Must be **sent in writing** to the person and others involved in the plan
- Must document any **modifications** to a person's HCB setting are supported by a specific assessed need and justified in the PSS

# Requirements for Modifications to any Requirements of the Final Rule

- The following must be documented if a person's HCB setting is modified:
  - A specific and individualized **assessed need**
  - The **positive interventions and supports** used prior to any modifications to the PSS
  - **Less intrusive methods** of meeting the need that were **tried but did not work**
  - A **clear description of the condition** that is directly proportionate to the specific assessed need

# Documentation Requirements for Modifications

- The following must be documented if a person's HCB setting is modified:
  - Regular **collection and review of data** to measure the ongoing effectiveness of the intervention
  - Established **time limits for periodic reviews** to determine if the modification is still necessary or can be terminated
  - An assurance that interventions and supports **will cause no harm** to the person
  - **Informed consent of the person in writing**



## About Person Centered Planning

# Implementation of the Final Rule



# Statewide Transition Plan (STP)

- The vehicle through which states **determine their compliance** with the requirements for the home and community-based settings Final Rule and describe to CMS **how they will comply with the new requirements**
- Must include the **state's assessment** of the extent to which its regulations, standards, policies, licensing requirements, and other provider requirements ensure settings will comply with the requirements of the Final Rule

## Statewide Transition Plan (STP)

- Must describe actions the state proposes to assure **full and on-going compliance** with the HCBS settings requirements, with specific timeframes for identified actions and deliverables
- Must provide opportunity for **public input**

# Statewide Transition Plan

- Mississippi's "Initial" STP was approved **5/25/17** (started work in 2015)
  - The state completed its **systemic assessment** and included the outcomes in the STP
- The state clearly outlined remediation strategies to rectify issues that the systemic assessment uncovered and is actively **working on those remediation strategies**
  - Changes to DMH Operational Standards, Medicaid Administrative Code, ID/DD Waiver renewal, and IDD CSP Renewal

# Statewide Transition Plan

- What has been done to date?
  - Provider **self assessments** were sent out in 2015
    - Yielded very little meaningful data
    - New providers were not surveyed
  - **Systemic assessment** of regulations, etc.
  - DMH **Site Visits** for physical location assessment
  - Development of **Survey Tool** (based on CMS Exploratory Questions) to gather information from people receiving services and staff
    - Results to determine compliance must focus on **experiences of the person**

# Examples of Exploratory Questions for Participants

Are you allowed to do activities with the people of your choice?

Are you required to stay in one room/space? For example, can you go outside for a break when you choose? Or change to another activity?

Tell me about the things you do in the community. Where do you go? What do you do? Do staff ask you where you would like to go?

Do you have access to your money when you need it or want to buy something?

# Examples of Exploratory Questions for Staff

Do people decide where they go and what they want to do each day? Can someone choose to go with their friends or does staff keep group/housemates together?

Do people decide what they eat, when they eat, where they eat, and with whom they eat?

Do people have access to their money when they want it and can they spend it on what they want?

Can people choose how to cut and fix their hair? Do they decide when to get their hair cut/fix?

Does you call people things like “honey” or “baby” or do you use the person’s preferred name?

# Examples of Observation Survey

Are people actively engaged in an activity or sitting idle?  
Describe.

Are staff actively engaged with the people? Describe. If  
staff is not actively engaged, what are they doing?

Does staff speak appropriately to people, for example,  
baby talk or stern tone? Describe/give example.

Do people move about freely? Or are they kept with a  
group? Are there gates, locked doors, or other barriers to  
prevent people from entering or exiting certain areas of the  
setting?

## Statewide Transition Plan

- What is **left to be done** according to CMS?
  - Complete comprehensive **site-specific assessments** of **ALL** home and community-based settings
    - Independent contractor
  - Draft **remediation strategies** and a corresponding **timeline** that will resolve issues that the site-specific settings assessment process and subsequent validation strategies identified
    - Independent contractor and State
  - Remediation can be staggered



# Statewide Transition Plan

- What is left to be done according to CMS?
- Outline a detailed plan for identifying **settings that are presumed to have institutional characteristics**, including qualities that isolate HCBS beneficiaries, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under Heightened Scrutiny
- DMH reviewed physical settings last calendar year

# Statewide Transition Plan

- What is left to be done according to CMS?
  - Develop a **process for communicating** with people receiving services in settings that the state has determined cannot or will not come into compliance with the home and community-based settings criteria
  - Establish **ongoing monitoring and quality assurance processes** that will ensure all settings providing HCBS continue to remain fully compliant with the rule in the future
    - DMH Certification Team

# Statewide Transition Plan

- Service sites must be assigned to 1 of the following 4 categories:
  1. Fully align with the Federal requirements
  2. Do not comply with the Federal requirements, but can with modifications
  3. Cannot meet the Federal requirements and will no longer be allowed to claim reimbursement from Medicaid for waiver/1915i services and/or must relocate people receiving services
  4. Are presumptively non-home and community-based but for which the state will provide justification/evidence to show that those settings do not have the characteristics of an institution and do have the qualities of home and community-based settings (to be evaluated by CMS through the heightened scrutiny process)

# Meaningful Opportunities Supports

# Rationale for Meaningful Opportunities Supports

- Service developed in response to **need to reduce reliance on Prevocational Services provided in sheltered work settings**
- CMS states:  
“...services that teach job task specific skills...for the primary purpose of completing those tasks for a specific **facility-based job** and are not delivered in an integrated work setting” are **not covered Waiver services**...Prevocational Services must be **time limited.**”  
(CMS Informational Bulletin 9/16/2011)

# Rationale for Meaningful Opportunities Supports

- Mississippi is **not the only state** with over-reliance on sheltered –vs – integrated work
  - Some states are **struggling**
  - Some states have **closed workshops**
  - Some states are in process of **closing workshops**
- Prevocational Services in sheltered workshops **isolate** people from community, according to CMS
- Final Rule examines **access to the community** under a very bright light
- Final Rule emphasizes the **importance of work**

# Meaningful Opportunities Supports Development

- Response to a need to **break down “silos”** of services and meet **individual** desires for life goals and outcomes
- Developed by an **Employment Workgroup**

## Employment Workgroup Members

CMHCs	Private Providers	BIDD Staff
Medicaid	Advocates	DMH Regional Program Staff

- Combed through **other states** and their definitions and activities
  - Tried to take the **best** of all of them

# Meaningful Opportunities Supports

- Combines **best parts** of Day Services – Adult/Day Habilitation/Prevocational Services
- Meets the requirements of the **Final Rule**



# Meaningful Opportunities

## Supports

- Meaningful Opportunities Supports must be designed to enable a person to **enrich his or her life** and **enjoy a full range of meaningful activities including:**
  - Opportunities to **seek employment** and work in competitive integrated settings. Activities can include:
    - **Career exploration**, including assessment of interests through **volunteer** experiences
    - Job tours
    - Job shadowing
    - Situational assessments
    - Internships
    - Access to WIN Job Centers or other job finding resources, etc.

# Meaningful Opportunities

## Supports

- Referral to the **Mississippi Department of Rehabilitation Services** for any person interested in actively seeking competitive integrated **employment** so that information gathered can be used to expedite eligibility
- **Full participation** in community life to the same degree of access as people not receiving ID/DD Waiver services
- Control of personal resources (e.g., the provider cannot limit the use of someone's personal resources as a means of coercion or punishment).
  - Providers cannot restrict access to personal resources in any way
  - Providers must offer informed choice of the consequences/risks of unrestricted access to personal resources.

# Meaningful Opportunities

## Supports

- Optimize, not regiment, a person's initiative, autonomy, and independence in making life choices related to:
  - Developing, enhancing, and maintaining abilities in personal, social, and community activities
  - Independent living skills
  - Pursuit of personal interests and hobbies
- The services are intended for people who:
  - Are on a pathway to employment
  - Are employed part-time and would like go to a place that offers both structured & unstructured activities, choices, and community participation when not working
  - Have declined employment opportunities
  - Are of retirement age

# Meaningful Opportunities

## Supports

- People receiving Meaningful Opportunities Supports **may also receive Supported Employment or Job Discovery** services as long as Meaningful Opportunities Supports services **do not duplicate** activities being provided by other services.
- The provider is required to allow **at least one staff person, invited by the person**, who works with him/her on a **daily basis** and who knows him/her best, to attend the person's **PSS meeting**
  - **Supervisory staff** who do not have at least daily contact with a person **do not meet the staff attendance requirement**, but may attend if invited by the person in order to assist in writing the Activity Support Plan at a later time

# Meaningful Opportunities

## Supports

- People are to be afforded **respectful treatment** by staff. Providers must also ensure that people are **free from coercion and restraint**
- People must have **access to food at any time**, unless the person's diet is prescribed by an **M.D., Nurse Practitioner or Licensed Dietician/Nutritionist**. If a diet is prescribed, it must be documented in the PSS and Activity Support Plan and be attached to both. The program must assist the person in adhering to the prescribed diet.
- The provider is **not responsible for snacks and meals** unless a person **did not bring** his/hers. In that case the **provider must provide** a nutritious meal and snacks for the day for that person.

# Meaningful Opportunities Supports

- The provider must provide opportunities for people to **learn cooking skills**, even if not providing meals for everyone in the program
- People must have **choices** about the food they eat, if provided by the program
- People must have choices of **when and with whom they eat**. These choices cannot be regimented

# Meaningful Opportunities Supports

- Also include usual requirements regarding **health and safety** (square footage, etc.)
- Level of staffing determined by ICAP
- **Reimbursement rate equal to Day Services – Adult**

# Do We Comply with HCBS Final Rule?

- Do people **choose** who supports them?
- Do they choose **where** they live?
- Do they choose **with whom** they live?
- Do they choose how they **spend their time**?
- Do they choose **how** they spend their resources?



# How Do We Change?

- Move from superficial compliance to **real change**
- Change our mindset
  - **Support people in having choices** and attaining what they **value** most
- Support them in engaging in their **community**



## Contact Information

# Mississippi Department of Mental Health

dmh.ms.gov

Bureau of Intellectual and  
Developmental Disabilities

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