

*Executive Office of Health and Human Services
Department of Developmental Services*

POLICY TITLE: Home and Community Based Settings Policy
DDS POLICY #: 2014-1
DATE ISSUED: 9/2/14
EFFECTIVE DATE: 9/2/14
COMMISSIONER'S SIGNATURE: Elin M. Howe, Commissioner

A. Background of the Policy:

Medicaid Home and Community Based Services (HCBS) represent important opportunities for states to utilize Medicaid funding to provide person-centered services and supports which enable individuals with developmental disability to live fully integrated lives in the community. The Centers for Medicare and Medicaid (CMS) issued new requirements for community service settings, both residential and day, which became effective on March 17, 2014. The CMS requirements are intended to align with both the integration mandate of the American with Disabilities Act (ADA) and the U.S. Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999). Guidance has been issued by CMS specific to 24-hour residential service settings and further direction relative to Day Services is expected in the near future.

B. Policy Statement:

It is the policy of the Department of Developmental Services ("the Department") that individuals with a developmental disability should live and work and enjoy fully integrated lives in the community. Characteristics of these settings include: a) full access to the greater community; b) choice from among available service setting options that are appropriate for the individual; c) protection of the rights of privacy, dignity, and respect, and freedom from coercion and restraint; d) optimization of autonomy and independence in making choices; and e) facilitation of choice regarding services and who provides them.

C. Scope of Policy:

This policy covers residential and day service settings provided by DDS to adults with a developmental disability regardless of the individual's waiver participation status. Further, this policy covers all licensed or certified providers providing supports or services to individuals with a developmental disability.

D. Community Standards:

The Department, in keeping with the CMS Home and Community Based Services Rule ("the Community Rule"), has established a set of desired outcomes for individuals with respect to home and community based service settings that are based on the experiences and

outcomes of individuals receiving HCBS services. These characteristics of service settings designed to achieve the identified outcomes include the following:

- Services are provided in settings that are integrated and support full access to the greater community;
- Individuals may choose a service setting from among available community options;
- Individual rights of privacy, dignity, respect, and freedom from coercion and restraint are protected;
- Autonomy and independence in making life choices are optimized; and
- There is facilitation of choice regarding services and who provides them.

Additionally, the CMS Community Rule requires that an individual living in a provider-owned or controlled home must have:

- A lease or, in settings where landlord tenant law does not apply, a residency agreement which explains the individual's rights regarding housing, when an individual may be required to relocate, rights should they object to a relocation and what an individual must do to request a change in housing;
- Privacy in their unit-including, lockable doors, choice of roommate and freedom to decorate and furnish the unit;
- Control over his/her own schedule including access to food at any time;
- The ability to have visitors; and
- A setting that is physically accessible.

Exceptions to the standards referenced in this section must be discussed and agreed to by the individual's ISP Team.

E. Settings That Isolate Individuals From the Broader Community:

The Department, consistent with the CMS Community Rule, will not license, fund or support new residential development with characteristics that isolate individuals receiving HCBS services from the broader community. These characteristics include, but are not limited, to the following:

- Settings that have limited, if any, interaction with the broader community;
- Settings that use or authorize restrictions that are used in institutional settings;
- Farmsteads or disability-specific farm community;
- Gated or secured communities for people with disabilities;
- Settings that are part of or adjacent to a residential school;
- Multiple settings co-located and operationally-related that congregate a large number of people with disabilities for significant shared programming and staff; and

- Multiple settings on a single site or in close proximity

F. Compliance with the Home and Community Based Settings Rule

In order to comply with the CMS Community Based Settings Rule:

- (a) DDS limits the capacity of new 24-hour residential service settings licensed or funded by the department to five (5) or fewer individuals
- (b) DDS may license or fund new homes in the community that are duplexes, “triple-deckers”, or free standing homes that are either side by side or adjacent or on bordering lots only upon the review and approval of the regional director, the assistant commissioner for field operations and the assistant commissioner for quality management. The capacity in these settings may not exceed four (4) individuals on each side of a duplex, in each unit of a triple decker or in each free standing home located on adjacent lots.
- (c) DDS will provide technical assistance to providers in the development of provider specific transition plans to assist them in making their programs compliant with the Community Rule. This may include the development of plans to reduce capacity by creating new homes in integrated settings.
- (d) DDS will limit the capacity of these sites during the provider specific transition process to no more than their current capacity and, as vacancies occur, may allow vacant capacity to be filled while the provider develops and implements its transition plan to more inclusive options.

G. Non-Compliant Programs:

In the event that there are programs that do not meet the requirements of the Community Rule or providers that cannot accomplish the changes necessary to meet the requirements of the Community Rule in the required timeframes, as determined by the Department and /or reviewed by Centers for Medicare and Medicaid, the following process will apply:

DDS will offer individuals in these programs the opportunity to move to a compliant setting. Choosing to remain in a noncompliant setting may result in disenrollment from the HCBS Waiver program, subject to notice and the opportunity to appeal.

H. Exceptions to Policy:

DDS may grant an exception to this Policy only for good cause after a review and approval by the deputy commissioner, the assistant commissioner for quality management and the general counsel.