New HCBS Regulations: Transition Plan Requirements

Presentation by:

Background – Final HCBS Regulations

• Regulations published in the Federal Register on January 16, 2014
• The Final Rule combined responses to public comments on two proposed rules published on April 15, 2011 and May 3, 2012
  – Rule became effective on March 17, 2014
  – States are now required to develop a Transition Plan to comply with new regulations by March 17, 2015
Key Points of the new HCBS Rules

• Defines, describes and aligns the home and community-based (HCBS) settings requirements across several of the waivers including all of Illinois’ nine (9) 1915c waivers and is anticipated to apply to an 1115 waiver once approved
• Further defines person-centered planning requirements in HCBS settings
• Defines what is a home and community-based setting and applies this definition to:
  – Residential setting
  – Non-residential setting
  – An individual’s private home or apartment is presumed to be an integrated setting

Federal Requirements

• Defines Medicaid HCBS settings as they apply to where waiver participants live and where they receive services.
• Ensures that individuals receive Medicaid HCBS in settings that are integrated in and support full access to the greater community.
• Includes opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree as individuals who do not receive HCBS.
• Includes person-centered requirements which identify the strengths, preferences and needs both clinical and support, as well as the desired outcomes of the individual.
• The Statewide Transition Plan is to demonstrate our strategy to be in compliance with the rules as they relate to the setting where a person may live and where he/she may receive the services
Transition Plan Requirements

• Illinois’ Statewide Transition Plan must include the strategies to bring Illinois in full compliance with Federal regulations.

• States must be in full compliance with the federal requirements by the time frame approved in the Statewide Transition Plan but no later than March 17, 2019.

Main Components of the Statewide Transition Plan

• Assessment Process: Include Illinois’ activities to assess our settings AND our regulations, standards, policies, licensing requirements and other provider requirements to ensure settings comport with the Rules.

• Remedial Strategy: Describes Illinois’ actions to assure initial and on-going compliance with the HCBS regulations, with specific timeframes for identified actions and deliverables.
Status Updates on Illinois’ Transition Plan Development

• Public forums and focus groups will be held – a schedule will be posted on the website of the Illinois Department of Healthcare and Family Service (HFS) with links from all of our state agencies’ websites that are affected by the new rules
• Once the draft of the Statewide Transition Plan is written, it will be posted on the same website to obtain feedback
• All actions in regards to the Transition Plan will posted to keep the public well informed

Informing the Statewide Transition Plan – Survey of Residential Settings

• State agencies developed a tool to survey residential settings. The tool was sent by U.S. mail and e-mail to providers of residential waiver services throughout the state
• Survey questions were drawn from other states’ surveys and a review of the CMS rules, and finalized by state staff and researchers from the University of IL at Springfield
• Initial survey is in two parts:
  – Questions for the agencies/management of the sites
  – Questions for each site
Survey of Non-Residential Settings

• State is currently in process of modifying the residential survey for use in assessing non-residential settings where waiver participants receive services
  – These settings must meet the same “integration” criteria as settings that are residential in nature
  – The state prioritized the residential settings survey first as federal CMS is expected to issue further guidance regarding the non-residential settings.

Highlights of the New Rules

• The individual is able to select from setting options, including non-disability specific settings and an option for a private unit in a residential setting
  – Person-centered service plans document the options based on the individual’s needs, preferences; and for residential settings, the individual’s resources

• CHOICE
Highlights of the New Rules - 2

• Individuals have rights of privacy, dignity, respect and freedom from coercion and restraint
• Settings should optimize individual’s initiative, autonomy, and independence in making life choices
• Settings should facilitate individual choice regarding services, supports and who provides them

Highlights of the New Rules - 3

• The specific unit/dwelling is either owned, rented or occupied under a legally enforceable agreement
• The participant should have the same responsibilities/protections from eviction as all tenants under landlord tenant law applicable in the state, county, city or other designated jurisdiction
• If tenant laws do not apply, the state must ensure lease, residency agreement or other written agreement that address eviction protections and appeals processes comparable to the area’s landlord tenant law
Highlights of the New Rules - 4

• Individuals have rights to privacy in their sleeping or living unit
• Units have lockable entrance doors with appropriate staff having keys to doors as needed
• Individuals who share a unit, have a choice of roommates
• Individuals have the freedom to furnish and decorate their sleeping or living units with the lease or other agreement
• Individuals have freedom and support to control their schedules and activities and have access to food at any time
• Individuals may have visitors at anytime
• Setting is physically accessible to the individual

Modifications in relationship to the individual must be:

• Supported by specific assessed need
• Justified in the person-centered service plan
• Documented in the person-centered service plan
  – Documentation must include:
    • Specific individualized assessed need
    • Prior interventions and supports including less intrusive methods
    • Description of conditions proportionate to assessed need
    • Ongoing data measuring effectiveness of the modifications
    • Individual’s informed consent
    • Assurance that interventions and supports will not cause harm
Settings that are NOT HCBS

- Nursing facility
- Nursing facility - Institutions for mental disease (IMD) including Specialized Mental Health Rehabilitation Facilities (SMHRF)
- Intermediate Care Facilities for individuals with Intellectual Disabilities
- Hospital
- Settings in a publicly or privately owned facility providing inpatient treatment
- Settings on the grounds of, or adjacent to a public institution
- Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS
- The last three (3) above have particular relevance to the types of settings where a person may receive services

What might we expect is needed?

- We are first taking an inventory which will help us make these determinations
  - Inventory of settings
  - Inventory of current state rules, regulations, and laws
- Specific sites may need to make site or program operational changes to ensure such things as:
  - Access to meals; adjustment to visiting hours; issues related to privacy
  - Engagement of family, friends
  - Choices of roommates
  - Access and awareness of the greater community including opportunities to seek and maintain competitive employment
Settings Presumed Not to be HCBS

• If the state determines a setting to not be in compliance, it will need to submit evidence to federal CMS of a heightened scrutiny for these settings
• The Statewide Transition Plan should include evidence sufficient to:
  – Demonstrate the setting does not have the characteristics of an institution and
  – Does meet the HCBS setting requirements
• Illinois must have settings that are in compliance.

Settings Presumed Not to be HCBS - 2

• For settings where a heightened scrutiny is required/desired
  – Illinois must show evidence of site visits by the state or an entity engaged by the state
  – CMS will consider input from the state and information collected during public input processes and including an array of stakeholders
  – CMS retains the right to make its own site visits
If a site is ultimately not determined to be a HCBS Setting

- Relocation of the participants must be part of the remediation section of the state plan
- Illinois will need to provide adequate assurances that participants are given due process and notice
- Timelines for relocation are clearly defined
- The number of participants impacted and a description of the process to ensure person centered planning, informed choice and critical supports and services are in place in advance of any transition – *Choice and Planning*

Where are we now?

- Residential and non-residential surveys are being administered in September and October to inform the state’s future direction
- Analysis is planned by December
- Inventory of rules and regulations and provide a direction of what changes will be needed
- Plan to post results of the surveys as they are ready and a draft of the Statewide Transition Plan by early January 2015
- Public forums, listening sessions and focus groups – Early indication is that education is needed
- Statewide Transition Plan is needed no later than March 16, 2015
Illinois applies for an 1115 Waiver

Section 1115 of the Social Security Act gives the Secretary of Health and Human Services authority to approve experimental, pilot, or demonstration projects that promote the objectives of the Medicaid and CHIP programs. The purpose of these demonstrations, which give States additional flexibility to design and improve their programs.

- As of June 4, 2014, application was submitted to the federal government
- Illinois is having on-going conversation with the federal government discussing our application
- Five workgroups are in process of operationalizing the objectives and paths articulated in the Illinois Alliance for Health Innovation Plan and the 1115 Waiver application
- Up-dates may be found at: http://www2.illinois.gov/gov/healthcarereform/Pages/1115Waiver.aspx

Illinois BIP Initiatives

- The BIP was authorized under the Affordable Care Act (Section 10202) to: assist states with improving access to Medicaid-funded home and community-based long-term services and supports (LTSS) and to streamline program eligibility and service delivery to consumers between state agency programs.

- Participating states receive enhanced federal match through September 2015 to further rebalance long-term care delivery towards home- and community-based services. In exchange for the enhanced FMAP, states must implement 3 structural changes:
  - No Wrong Door;
  - Uniform Assessment Process;
  - Conflict-Free Case Management.

- Illinois began drawing down enhanced FMAP (2%) beginning July 1, 2013. Illinois is projected to receive $90.3M in enhanced match.
BIP Updates

- The vendor for the Uniform Assessment Tool (UAT) has been selected. Contract negotiations are underway. The identified provider is FEi Systems.

- HFS recently released an RFP for BIP Communications/Advertising. The review process is underway. The selection committee includes representatives from DHS, IDoA, and HFS. HFS hopes to have the vendor selected in December. The RFP requests the assistance of a vendor in the development of the Illinois BIP brand, logo, advertising, marketing, as well as an LTSS website.

- The BIP requires a 1-800 number. The Department on Aging’s Senior Helpline is being expanded to accommodate the BIP 1-800#. Work is underway to upgrade and expand the Senior Helpline call center.