

# Public Notice Requirements in the Final Regulation

Division of Long Term Services and Supports  
Disabled and Elderly Health Programs Group  
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# Background and Overview

Final Regulation became effective on March 17, 2014

- Covers 1915(c) waivers and 1915(i) state plan programs, including regulations on:
  - Home and community-based (HCB) settings
    - Allows Transition Plans on programs approved prior to March 17, 2014 to bring HCB Settings into compliance with the regulation by March 16, 2019
  - Person-centered planning
  - Conflict of interest

# Background and Overview (cont'd)

- The final regulation also includes Home and community-based settings requirements for the 1915(k) State Plan authority (SPA).
- All 1915(k) programs approved after March 17, 2014 must fully comply with the rule.



# Background and Overview (cont'd)

- Public Notice Requirements for 1915(k) SPAs:
  - States must follow the standard public notice requirements described in § 447.205, which requires states to provide public notice of any significant proposed change in its methods and standards for setting payment rates for services.
  - The final rule did not change the public notice requirements for 1915(k) SPA submissions.

# Key Points

- Transition Plans are only allowed on existing programs as of the effective date of the regulation (March 17, 2014)
  - All new proposals must have HCB settings fully compliant with the regulation at time of approval
- Transition plans are only allowed for HCB Settings compliance
  - All other regulation provisions are expected to be met immediately

# Public Notice Requirements

- Public Notice is required for the following:
  1. 1915(c) waiver and 1915(i) state plan specific transition plans
  2. A statewide transition plan, and
  3. A new or renewal 1915(c) waiver, and any amendment that includes a substantive change including, but not limited to:
    - I. Change in rate methodology
    - II. Change in provider qualifications,
    - III. Elimination or reduction in the scope, amount or duration of services
    - IV. Constriction in the eligible population



# 1915(c) Waiver Specific, 1915(i) State Plan Specific and Statewide Transition Plans

- The public notice requirements are the same:
  - There must be at least a 30 day public notice and comment period
    - The state must at minimum provide 2 statements of public notice and public input procedures
    - The state must assure that the full transition plan(s) is available to the public for comment
  - The state must consider and modify the transition plan, as the state deems appropriate, to account for public comment

# 1915(c) Waiver Specific, 1915(i) State Plan Specific and Statewide Transition Plans

- The submission of the proposed transition plan to CMS must include:
  - Evidence of the public notice required,
  - A summary of the comments received during the public notice period,
  - Reasons why comments were not adopted,
  - Any modifications made to the transition plan based upon those comments



# 1915(c) Waiver Specific, 1915(i) State Plan Specific and Statewide Transition Plans

- Upon approval by CMS, the State will begin implementation of the transition plans.
- The State's failure to submit an approvable transition plan as required by this section and/or to comply with the terms of the approved transition plan may result in compliance actions, including but not limited to deferral/disallowance of Federal Financial Participation

# 1915(c) Waiver Modifications

- Waiver modifications may be made effective retroactive to the first day of a waiver year, or another date after the first day of a waiver year, in which the amendment is submitted, **unless** the amendment has substantive changes as determined by CMS
- Substantive changes include, but are not limited to:
  - Elimination or reduction of services
  - Reduced scope, amount and duration of any service
  - Change in provider qualifications
  - Change in rate methodology, and
  - Constriction in the eligible population



# 1915(c) Waiver Modifications with Substantive Change(s)

- A request for an amendment that involves a substantive change, may only take effect on or after the date when the amendment is approved by CMS.
- The amendment must be accompanied by information on how the State has assured smooth transitions and minimal effect on individuals adversely impacted by the change.



# New 1915(c) Waivers, Renewals or Amendments with Substantive Change

- The public notice process must be used for existing waivers that have substantive changes proposed, either through the renewal or the amendment process, and new waivers.
- This process must be completed at a minimum of 30 days prior to submission of the proposed change to CMS,
- This process must include consultation with Federally-recognized Tribes, and in accordance with section 5006(e) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), Indian health programs and Urban Indian Organizations

# New 1915(c) Waivers, Renewals or Amendments with Substantive Change

- The public notice and input process must be sufficient to reach the individuals receiving services, those who could be eligible and other stakeholders.

# Summary

- The public notice process has been substantially strengthened with the new HCBS Regulation
- States may want to combine the transition plan and waiver public notices when both are needed at the same time
  - However, must call out in the public notice that both are present, and where each is located for review



# For Further Information

**For Questions contact:**  
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