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REGION 10 PIHP

SUBJECT Home and Community Based Services Final Rule Compliance		**CHAPTER** 05	**SECTION** 03	**SUBJECT** 19
CHAPTER Clinical Practice Guidelines	**SECTION** Care Delivery			
WRITTEN BY Shannon Jackson and Dena Smiley	**REVIEWED BY**		**AUTHORIZED BY** PIHP Board	

I. **APPLICATION:**

☐ PIHP Board ☒ CMHSP Providers ☐ SUD Providers
☒ PIHP Staff ☒ CMHSP Subcontractors

II. **POLICY STATEMENT:**

It shall be the policy of Region 10 PIHP to ensure that its Community Mental Health Service Programs (CMHSPs) and their contractual providers of residential and non-residential home and community-based services (HCBS) are compliant with the Federal HCBS Final Rule.

III. **DEFINITIONS:**

HCBS Final Rule: In January of 2014, Center for Medicaid and Medicare Services (CMS) developed the Final Rule set. The HCBS Final Rule specifies requirements for programs offering HCBS under the 1915(c), 1915(i), 1915(k), some 1915(b)(3) and 1115 authorities of the Social Security Act. The HCBS Final Rule requires that Medicaid funded services and supports be integrated in and support full access to the greater community. It requires that person-centered planning be used to identify and reflect choice of services and supports funded by the mental health system.

Residential Setting Provider: A provider-owned or controlled setting that offers non-institutional level of care to individuals. These settings are within the community and comply with the requirements of the HCBS Final Rule.

Non-Residential Setting Service Provider: A provider that offers HCBS in the home or community setting.

Non-Compliant Settings: Settings that have been identified by CMS as not Home and Community Based due to institutional status. These settings include nursing facilities, institutions for mental disease, intermediate care facilities for individuals with intellectual disabilities, hospitals, or other locations that have characteristics of an institution.

Reverse Integration: When the setting brings providers from the community into the setting instead of taking the individual out to the provider.

Heightened Scrutiny: A setting that is deemed heightened scrutiny has one of the following

characteristics: The setting is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, is located on the grounds of or immediately adjacent to a public institution, or has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

IV. **STANDARDS:**

A. HCBS Setting Guidelines

1. All HCBS settings where people live or receive Medicaid HCBS must have the following characteristics to the same extent as those individuals not receiving Medicaid HCBS:
    a) Be integrated in, and support full access to, the greater community, including opportunities to seek competitive and integrated employment, control of personal resources, and access to community services. While it is acceptable to have providers come into the setting, this must not be the only contact with community providers allowed for individuals receiving services.
    b) Be selected by the individual from among a variety of setting options including non-disability specific settings and an option for a private unit in a residential setting, consistent with the individual's available resources to pay for room and board.
    c) Ensure individuals have the right to privacy, dignity and respect, as well as freedom from coercion and restraint.
    d) Optimize but not regiment the individual's autonomy and independence in making like choices regarding what they participate in and with whom; and
    e) Facilitate the individual's choice of services and supports, as well as who provides them.

2. All Home and Community Based Residential settings must provide residents with the following:
    a) Individuals must have access to food at any time. This food type must be something that the individual likes to eat.
    b) Individuals must be allowed to have visitors of their choosing at any time.
    c) Individuals must have bedroom and bathroom doors that are lockable by the individual. Doors must be uniquely keyed or key coded with only appropriate staff having keys to the doors.
    d) Individuals must have the freedom to furnish and decorate their own room however they choose. In the case of a shared room, the furnishings and décor may be a collaborative effort with roommates.
    e) Individuals must have their choice of roommate, if possible.

f) Individuals must have freedom to control their own schedules, activities, and resources to the extent they desire and, if they decline to participate in any activity, there are no negative repercussions. If they choose to receive assistance, that should be provided as needed and desired by the individual.

g) Individuals must have privacy in their unit. This includes physical privacy as well as keeping any of the individual's confidential information private. Protected health information and other confidential personal information must not be kept in an open, common, unlocked area.

h) Each setting must be physically accessible to the individuals residing there so the individuals may function as independently as they wish. Individuals should have full access to all common areas of the setting and that any modifications are consistent with the HCBS rule requirements.

i) Individuals receiving services must have a lease or other legally enforceable agreement that offers comparable responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city, or other locality. For settings in which landlord tenant laws do not apply, the Provider must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

j) Individuals living in a residential setting and receiving Medicaid services must be provided with the Summary of Residents Rights document set out by MDHHS. This document must be signed by the individual, regardless of guardianship status, and kept onsite. This form must be updated annually.

k) Individuals are able to control their own personal resources.

l) Individuals who live in a residential setting should be offered the opportunity to have meaningful community-based activities that align with their interests no less than twice weekly. This needs to be well documented and reviewed by case holders quarterly, at a minimum, for compliance. Activity Calendars and case holder reviews will be monitored annually in the Contract Monitoring review process by the PIHP.

B. Person-Centered Planning Process

1. The pre-planning stage is an integral part of planning and creating a meaningful plan for the individual. Through the person-centered process an individual plan must show evidence that:
   a) The individual chose to discuss among topics of interests and needs to build their goals
   b) The individual chose who should be present or involved in their planning meeting including the option to invite staff who support the individual and are a part of the implementation of the Individual Plan of Service (IPOS).

c) The individual chose the location and time that was convenient for the attendees.
d) The individual chose who facilitated the planning process.
e) There was choice in services provided.
f) Provider options were offered to the individual by name for all services and activities, including a detailed discussion of goals and outcomes specific to the opportunity to develop skills that will allow movement to less restrictions in place.
g) The individual's preferences and choices are honored. If those choices cannot be fulfilled, a plan to address health and safety concerns impacting those choices is developed.
h) During the Person-Centered Planning meeting, a discussion is held regarding movement toward a lesser restrictive residential living arrangement and that the full array of setting options is explored including non-disability specific settings, and that these settings will be documented by name in the IPOS.
i) The IPOS was finalized and agreed to with the informed consent of the individual and /or guardian in writing. A copy will be provided to all individuals involved in the plan.
j) All Providers responsible for service implementation within the individual's IPOS are trained/in-services prior to the start date of the IPOS.
k) There was compliance with CMS/MDHHS conflict-free access and planning implementation requirements and timelines.

C. Restrictive Measures Documentation

1. Any use of restrictive and/or intrusive techniques or a modification to the rights stated above, must be supported by a specific assessed need and justified in the Individual Plan of Service as outlined in the HCBS Final Rule. Should a PIHP/CMHSP believe that there is sufficient evidence that warrants restricting a person's rights based upon an identified health or safety need for the person or the greater community, the below process must be followed in order to access Medicaid funding for services rendered under authority of the HCBS Final Rule. Additionally, if a court order is in place as the basis of the restriction this must be identified in the IPOS and the documentation from the order must be present in the individual's record and available for review upon request. These components include:
    a) The specific assessed need(s) must be identified by an individual who has expertise in the area impacted, such as a medical professional if this is a health matter.
    b) Documentation of the positive interventions and supports used previously. The IPOS must cite evidence that less restrictive interventions have been tried and were not effective. Detailed evidence must be available in the record for review upon request.
    c) Documentation of less intrusive methods that were tried and did not work, including how the methods were implemented and why they did not work. Previously tried interventions must be elaborated upon, when and for how long. It must be

documented why the intervention chosen is the least restrictive option for this person at this time.

d) A clear description of the condition that is directly proportionate to the assessed need and how this looks for this individual, a base line clarification should be provided.
e) Regular collection and review of data to measure the effectiveness of the modification.
f) A titration plan. Establish time limits to the modification, regular intervention and reviews with information regarding how the restriction can be phased out over time, so the beneficiary is aware of how restrictions can be lessened to increase freedoms.
g) All language within the IPOS in person-first language and be understandable to the individual with minimal use of clinical language.
h) The plan should be completed and reviewed with the individual and informed consent of the individual should be present. If consent cannot be provided, a note should be present in the IPOS stating that consent was attempted and guardian signature should be provided.
i) Assurances that the modification will cause no harm to the individual.

2. If restrictions are placed in a setting that are for the benefit of another individual, case record documentation must:
    a) Identify in the individual's IPOS that a restriction is present in the setting.
    b) Identify agreements around how the person will be able to access whatever item or activity that is restricted in the setting.
    c) Provide details on how the individual should be able to access the item or activity seamlessly despite the restriction.

D. Restrictions due to Behavioral Needs

1. If interventions and supports are documented as unsuccessful and restrictions are necessary for the safety of the individual or others, a behavioral treatment plan should be developed through the person-centered planning process.
2. Restrictive or intrusive techniques, the necessity of these techniques, and the recommendations must be reviewed and approved by the Behavior Treatment Plan Review Committee (BTPRC). The purpose of the BTPRC is to review and approve or disapprove any plans that propose to use restrictive or intrusive techniques, with individuals served by the public mental health system who exhibit seriously aggressive, self-injurious, or other challenging behaviors that place them or others in imminent risk of physical harm.
3. The BTPRC provider qualifications and standards defined in the Medicaid Provider Manual should be adhered to by the CMHSPs.

4. Behavior treatment plans should be reviewed by the committee minimally on a quarterly basis and analyzed for effectiveness.
5. Details and interventions from the behavioral treatment plan should be addressed in the IPOS in language that the individual can understand.
6. Only when an HCBS compliant modification is in the individual's IPOS will a restriction upon a person be implemented.
7. The BTPRC will review cases for HCBS Final Rule compliance and ensure that the Behavioral Treatment Plans are consistent with the IPOS and regulate the use of modifications or restrictions upon Medicaid recipients.
8. The CMHSP BTPRC will submit a summary to the PIHP HCBS Leads quarterly and provide follow-up if requested.

V. **PROCEDURES:**

HCBS Responsibilities shall include:

A. PIHP Responsibilities:
   1. Act as a liaison with MDHHS on HCBS issues/concerns.
   2. Carry out the HCBS PIHP program responsibilities as required by MDHHS, including:
      a) Review submitted Provisional Approval Applications for individuals in HCBS settings.
      b) Track providers within the CMHSP Provider network.
      c) Provide education and guidance on understanding and complying with the HCBS Final Rule.
      d) Develop and maintain policies to outline the state and federal standards outlined in the Final Rule and the Michigan Medicaid Provider Manual.
   3. Monitor and audit HCBS case records to ensure HCBS Final Rule compliance through annual 1915(c) Waiver certification reviews.
   4. Through annual Clinical Case Record Reviews during annual Contract Monitoring, PIHP staff will conduct case record reviews utilizing an audit tool designed to evaluate elements outlined in a beneficiary's IPOS to ensure compliance with the HCBS Final Rule.
   5. Request quarterly updates from the Improving Practices Leadership Team (IPLT) Committee members regarding their CMHSP and contracted providers HCBS related progress.

B. CMHSP Responsibilities:
   1. Provide monitoring and oversight to ensure their process and subcontracted provider process are compliant with the HCBS Final Rule.
   2. Assist all providers who deliver HCBS services with understanding the compliance standards set by MDHHS and CMS.

3. Develop and maintain policies that outline state and federal standards detailed in the Final Rule and in the Michigan Medicaid Provider Manual.
4. Ensure all staff responsible for writing Individual Plans of Service fully understand the HCBS Final Rule through initial training within 90 days of hire and annually thereafter.
5. Ensure necessary and critical elements outlined in the HCBS Final Rule are adequately documented and summarized in the Individual Plan of Services.
6. Ensure that all providers who are responsible for implementing an individual's IPOS are trained in the IPOS prior to implementation/start date of the IPOS.
7. CMHSP must be prepared to conduct site visits and/or review plans of service to bring cases into HCBS compliance.
    a) CMHSP staff will review plans of service of individuals identified with HCBS services by established timeframes to meet the CMS MDHHS CAP work.
        a) Detailed review tools will be completed for each individual. These tools are designed to evaluate the individual's IPOS and ensure that they are compliant with the HCBS Final Rule. These tools will be submitted to the PIHP for approval. If an IPOS is found to be non-compliant an amended IPOS will be written through the Person-Centered Planning process within two (2) weeks of notification in a manner that meet HCBS Final Rule standards. Any remediation necessary must be reported to the PIHP HCBS team.
    b) CMHSP staff will conduct an Annual Physical Setting Assessment, through Provider site visits. This assessment will ensure the setting is providing services to waiver participants properly and identify any setting-wide restrictions or other compliance issues with the HCBS Final Rule. They must ensure restrictions are consistent with identified health and safety needs and documented in the individual's IPOS and are HCBS Final Rule compliant. Site visit documentation will be submitted to the PIHP annually.
8. Ensure that all individuals residing in residential settings have completed and signed documents on record.
    a) CMHSP staff will monitor and track the provider Residents Rights document which is to be updated annually by each provider with each resident and kept on the premises.
    b) CMHSP staff will ensure that providers use a monthly activity calendar for all individuals in residential settings, with activities listed and a space for the individual's signature. CMHSP staff will review monthly activity calendars quarterly, at a minimum, to ensure consumers are provided with opportunities at least two (2) times per week to participate in an activity of their choice.

VI. **EXHIBITS:**

SUBJECT Home and Community Based Service (HCBS) Final Rule Compliance		**CHAPTER** 05	**SECTION** 03	**SUBJECT** 19
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None.

VII. **REFERENCES:**

A. Michigan Medicaid Provider Manual, Home and Community Based Services Chapter, October 1, 2025.
B. Michigan Department of Health and Human Services Home and Community Based Services Individualized Plan of Service Requirements Guidance, February 2024.
C. Michigan Department of Health and Human Services Bureau of Specialty Behavioral Health Services, Person-Centered Planning Policy, March 31, 2024.
D. Michigan Department of Health and Human Services Behavioral and Physical Health and Aging Services Administration, Technical Requirement for Behavior Treatment Plans, July 28, 2023.
E. Michigan Legislature, Adult Foster Care Licensing Act, March 4, 2025
F. 42 CFR §441.301(c)(1)
G. Michigan Department of Health and Human Services HCBS Restriction/Modification Compliance Plan Guidance, June 2025.