

July 2020

Delay of the Home and Community-Based Settings Rule

The Centers for Medicare and Medicaid Services (CMS) issued the Home and Community-Based Services (HCBS) Final Settings Rule in March 2014. The Settings Rule is designed to enhance the quality of Medicaid HCBS programs and ensure individuals with disabilities may live and receive services in the most integrated and least restrictive settings appropriate to their needs as mandated in Title II of the Americans with Disabilities Act and the U.S. Supreme Court's *Olmstead* decision. The Settings Rule outlines a series of quality indicators which Medicaid HCBS Providers, or disability service providers, must adhere to when providing services to individuals with disabilities. These quality indicators highlight the importance of true community integration, competitive integrated employment, choice, privacy, and meaningful person-centered service plans. CMS originally required each state to demonstrate compliance of the Settings Rule by March 2019. However, the original date was pushed to March 2022 to allow for efforts of transformation by states and disability service providers to continue.

On July 14, 2020, CMS issued new guidance again extending the current date for states to demonstrate compliance with the Settings Rule by one year, with a new compliance deadline of **March 17, 2023**. CMS has cited the COVID-19 public health emergency (PHE) as the primary reason for this extension and its impacts on both state implementation and monitoring efforts as the primary motivation for further delaying the final compliance date.

The Center for Persons with Disabilities (CPD) at Utah State University (USU) is concerned about this further delay in implementing the Settings Rule by another year and encourages states and service providers to continue working towards compliance with the Settings Rule as soon as possible. The health crisis has further highlighted the need for the Settings Rule by demonstrating the dangers of congregate settings and highlighting the gaps in true community-based service options. Many people with disabilities have been isolated and left without support, choices, and services during the public health emergency and states have demonstrated that their HCBS support systems are not equipped to genuinely support people in their homes and communities. As COVID-19 continues to

spread, we have seen people move from receiving both day habilitation and residential services to exclusively receiving residential services with no additional supports. Many direct support staff have not been trained to provide meaningful day habilitation or employment supports outside of a residential setting and this has led to further isolation, poverty, and a decline in the health and quality of life for many people with disabilities.

The first extension of the compliance date has highlighted the disconnect between policy and implementation of the Settings Rule, as the extension did not result in greater movement from states towards transforming their systems. This second extension allows states to further delay final implementation. As the CMS guidance suggests, “states should avoid a last-minute build-up of actions and decisions”, however, this is exactly what was demonstrated with the first delay. The USU CPD is concerned that this further delay sends a message to states, service providers, and individuals receiving HCBS, that the human-rights and key protections outlined in the Settings Rule are not a top priority and can be ignored and set aside when other issues arise.

The CPD encourages the State of Utah and disability service providers to continue their transformation efforts to ensure that the rights and needs of people with disabilities remain a priority, even during challenging times. We hope this additional year will not be used as an excuse to slow down efforts, but will rather be used as a time for the State to provide disability service providers with additional training and technical assistance to support their transformation efforts to come into compliance with the Settings Rule. The USU CPD also encourages the State of Utah to continue strengthening their monitoring efforts to ensure the overall implementation of the Settings Rule and the rights of people with disabilities is a top priority.

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