

**Centers for Medicare and Medicaid Services (CMS)
Home and Community Based Services (HCBS)
Settings Final Rule**



**Rule Overview, Strategies for Compliance, and Modifications to
the Additional Requirements for Provider Owned, Controlled,
or Operated (POCO) Residential Settings**

**DMHA Adult 1915(i) State Evaluation Team
November 18, 2016**

Topics



- Overview of CMS HCBS Settings Final Rule
- Compliance Requirements for the HCBS Settings Final Rule
- Suggestions and Strategies for Implementing Compliance With the HCBS Settings Final Rule
- Strategies for Documenting Modifications To The Additional Requirements for POCO Residential Settings



Overview of the CMS HCBS Settings Final Rule

Background



- CMS passed the HCBS Settings Final Rule in January 2014, with an effective date of March 17, 2014
- The stated purpose of the rule is to maximize the opportunities for participants receiving Medicaid HCBS to receive services in integrated settings, and realize the benefits of community living, including opportunities to seek employment and work in competitive integrated settings
- The new requirements for HCBS settings, which are applicable to the AMHH and BPHC programs, are spelled out in 42 CFR 441.710 (a)(1)
- The net effect of the rule is that **for most providers, changes are necessary with regard to the operation of provider-run residential settings**

CMS HCBS Settings Requirements - “The Big Picture”



Individuals receiving Medicaid home and community based services must have every opportunity to live with the same rights, freedoms, and degree of self-determination, and have the opportunity to integrate within their community, as anyone not receiving Medicaid home and community based services.

In short, HCBS members must be able to live as free and independent a life as you and me.

State Evaluation Team (SET) Observations



- After conducting many Technical Assistance calls and assessments, the SET has found several common themes:
 - Most compliance issues arise in high acuity settings, particularly SGLs
 - Most of the compliance concerns are related to visiting hours and curfew, specifically, how changing visiting hours and curfew/control of schedule will effect the treatment milieu
 - The overarching concern that the SET has heard is that a change in treatment structure will make treatment less effective, not serve the member's needs, and potentially jeopardize the health, safety and welfare of residents
- The SET understands these concerns, but **the federal regulation published by CMS CANNOT BE CHANGED by the state**
- This presentation is intended to provide clarification and guidance on applying the regulations to various settings, to help minimize disruption

“Hot Button” Areas/Topics for Compliance With HCBS Settings Requirements for POCO Residential Settings



1. Visitation

- Visiting hour restrictions
- Overnight guests
- Visitors in bedrooms

2. Curfew

3. Alcohol

4. Tobacco/smoking in living areas

Compliance Challenges Along a Continuum of Outpatient Residential Care



- The SET's experience so far has indicated that the higher the level of acuity at a setting, the more difficult it will be to apply the regulations
 - SGL's that require 24 hour supervision are the most difficult because of the treatment milieu and close supervision
 - Transitional Residential Facilities where individuals require a time-limited supportive residential environment are also difficult because of close supervision and high acuity
 - Facilities licensed for subacute treatment may or may not be able to be compliant with HCBS settings requirements, based on their individual characteristics
 - Semi-Independent Living Programs that require less than 24 hour supervision have fewer challenges because the treatment milieu has more flexibility and there is less supervision
- CMS permits states to assume that Private/Independent Homes are compliant with HCBS settings requirements
 - Providers of HCBS must still ensure that private/independent homes afford individuals the opportunity for access to the greater community

SET General Recommendations for Implementing and Ensuring Compliance With HCBS Settings Requirements



1. Although not required, a resident handbook is invaluable for communicating important information, including rights, responsibilities, and operating procedures, to members living at Provider Owned, Controlled, or Operated (POCO) residential settings
 - In most cases, compliance with the HCBS settings requirements can be demonstrated clearly and succinctly with a paragraph or two in a resident handbook
 - Avoids having to refer to multiple standalone policies, or trying to dig through a member's clinical record to show that they have received information about certain rights or procedures
 - The SET strongly recommends having a separate resident handbook for each of your agency's POCO residential settings, or at the very least, one version of the handbook for each type of setting (SGL, SILP, TRS, AFA, Subacute, etc.)
 - Recommend that the handbook be written in simple, "to the person" language

SET General Recommendations for Implementing and Ensuring Compliance With HCBS Settings Requirements



2. Develop and use forms which support compliance with HCBS settings requirements, and can be scanned into a member's clinical record for easy retrieval. For example:
 - A "pick list" documenting available housing options at time of enrollment in residential services and member's choice of residential setting

3. If your agency's EMR does not have capacity to document modifications to the "POCO 5" requirements, consider developing addendum documents so that the required information is captured in one place
 - Suggestions for documenting modifications to the "POCO 5" requirements will be discussed later in this presentation



Compliance Requirements for the CMS HCBS Settings Final Rule Requirements



Two “Sets” of Requirements Specified by CMS

- The CMS regulation contains two sets of requirements:
 - Global requirements that pertain to all settings (the “Big 5”)
 - Additional requirements that pertain to only those residential settings owned or controlled by the provider (the “POCO 5”)
- This presentation will focus on **residential** settings
 - Majority of POCO non-residential settings are already, or will very soon be, fully compliant with HCBS settings requirements
 - POCO non-residential settings only have to be compliant with the “Big 5” global requirements

Compliance Timeframes



- Settings which were established as POCO residential settings prior to March 17, 2014 may take advantage of the CMS-granted five year transition period to achieve full compliance and become an eligible setting for delivery of home and community based services
 - ***March 17, 2019 is the compliance deadline for these settings***
- Settings which were established on or after March 17, 2014 must be fully compliant with HCBS settings requirements **BEFORE** being eligible sites for delivery of home and community-based services
- An “eligible setting” is one which is:
 - Fully compliant with HCBS settings requirements, OR
 - If able to take advantage of the transition period, is actively working a Setting Action Plan and is expected to be fully compliant by the CMS-imposed deadline, OR
 - If designated “Presumed Institutional”, is referred to CMS for Heightened Scrutiny

“Presumed Institutional” Settings



- Settings designated as “Presumed Institutional” which **WILL** be referred to CMS for Heightened Scrutiny will continue to be eligible settings, assuming:
 - The setting is, or will be, fully compliant with HCBS settings requirements, AND
 - The setting was established as a POCO residential setting prior to March 17, 2014
- Settings designated as “Presumed Institutional” which **WILL NOT** be referred to CMS for Heightened Scrutiny will continue to be eligible settings ***until the completion or expiration of affected residents’ Member Transition Plans***
 - Member Transition Plans will document the member’s decision and transition plan to either move to a compliant setting, or disenroll from AMHH/BPHC

Final Compliance Designations for POCO Residential Settings



- **“Fully Compliant”** - The setting meets all of the HCBS settings requirements (the “Big 5” and the “POCO 5”)
- **“Not Compliant”** - The setting:
 - Is unable to meet all of the HCBS settings requirements by the applicable deadline, OR
 - Is unwilling to make necessary changes in order for the setting to become fully compliant, OR
 - Is designated “Presumed Institutional” and will not be referred to CMS for Heightened Scrutiny, OR
 - Has not yet been assessed by the DMHA SET, via provider self-assessment and resident surveys



Impact of Non-Compliance with HCBS Settings Requirements

- Two types of action plans will be used by DMHA and provider agencies to identify, monitor, and document completion of required remediation for HCBS settings: an HCBS Setting Action Plan and a Member Transition Plan
- These transition plans allow 6 months to 1 year to implement
- Once the transition plan(s) end, the member will no longer be eligible for HCBS if they do not live in an HCBS compliant setting
- Please refer to the Indiana HCBS Statewide Transition Plan (STP) for details ([Indiana HCBS Statewide Transition Plan](#))

CMS HCBS Settings Requirements - Effect of “Not Compliant” Settings for AMHH and BPHC Eligibility



- DMHA will use the compliance designation of a POCO residential setting to make eligibility decisions for individuals applying for AMHH and BPHC who live in that setting
- Once a living setting has been designated “Not Compliant”:
 - Provider must complete and submit a Member Transition Plan for each AMHH/BPHC member living at that setting
 - Individuals may continue to receive AMHH/BPHC services, but only through the end of their Member Transition Plan
 - Any new applications for AMHH/BPHC services for member(s) living at that setting will be denied by the SET



Assessing and Implementing Compliance With The “Big 5” Global CMS HCBS Settings Final Rule Requirements

CMS Global Requirements (the “Big 5”)



Per the CMS HCBS Settings Final Rule, *“Home and community-based settings **must** have all of the following qualities...”*

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
2. The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
4. Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
5. Facilitates individual choice regarding services and supports, and who provides them.

Assessing Compliance with the “Big 5” CMS HCBS Settings Requirements for Residential Settings



- The “Big 5” are referred to in the Final Rule as “qualities”, not “conditions”
 - As such, there is not a “check-off list” of features that, if present at a residential setting, definitively determines compliance with the “Big 5”
- The DMHA SET evaluates a number of characteristics to determine whether a “Big 5” quality is present at a residential setting
 - A number of these characteristics are moderately subjective, but the SET has made every effort to base their decisions on real, documentable features of the setting
- The characteristics that are evaluated are derived from the CMS-published “Exploratory Questions to Assist States in Assessing Residential Settings”

CMS Global Requirement #1 - Integration In and Access To The Greater Community



The CMS HCBS Settings Final Rule states:

“The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.”

Assessing Compliance With CMS Global Requirement #1 - Integration In and Access To The Greater Community



The SET evaluates the following characteristics:

- Proximity of the setting to other private residences, retail businesses, and community services
- Availability of and proximity to buses, taxis, and other means of public transportation
- Availability of other transportation resources (for example, agency vehicles) to facilitate access to the broader community
- Ability of members to shop, attend religious services, schedule appointments, have lunch with family and friends, and otherwise participate regularly in meaningful non-work activities in integrated community settings for the period of time desired by the individual
- Supports in place that ensure members have the option to pursue employment

Suggested Strategies to Implement and Ensure Compliance With CMS Global Requirement #1 - Integration In and Access To The Greater Community



- Post bus routes and schedules in common areas
- Provide “travel training” for residents who do not know how to use the bus
- Post numbers for taxis, “call-a-ride” programs, Uber, or other available transportation resources in your community
- Ensure resident handbook (or similar document) has language that specifically states:
 - Residents are able to go into the community when and for the period of time desired by the individual, to participate in meaningful non-work activities of the resident’s choice in integrated community settings
 - That there are no provider restrictions on residents working, and describes the supports and services available to members who choose to seek out competitive employment

Suggested Strategies to Implement and Ensure Compliance With CMS Global Requirement #1 - Integration In and Access To The Greater Community



Example language from providers for a residency agreement:

- “(Setting) creates a comfortable and homelike environment where you are free to come and go as you would in your own home.”
- “You are free to come and go as you please. If you are gone overnight, please inform staff so we are aware of who is in the building in the event of an emergency.”
- “Each resident will be encouraged to use Vocational Services Program when applicable. **We do not restrict clients from choosing to work.** In our guidelines it states that for residents that choose to work, that staff will assist clients in maintaining or improving appropriate job skills. We will also assist with referrals to supportive employment or vocational rehab.”

CMS Global Requirement #2 - Choice of Setting



The CMS HCBS Settings Final Rule states:

“The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.”

Assessing Compliance With CMS Global Requirement #2 - Choice of Setting



The SET evaluates the following characteristics:

- Choice of available options regarding where to live/receive services
- Who made the choice for the resident to live at the setting
- Residents are informed how to relocate and request new housing
- Residents are given choice of roommate, and informed how to request a roommate change

Strategies to Implement and Ensure Compliance With CMS Global Requirement #2 - Choice of Setting



- Document in the clinical record the options available to the member regarding where to live, during the referral and assessment process for their enrollment in residential services
 - A “pick list” of available residence options, describing the features of each available setting, may be useful. This way, the member can initial/sign by the setting of their choice.
 - Non-disability specific settings must be included in the pool of available residential choices

Strategies to Implement and Ensure Compliance With CMS Global Requirement #2

- Choice of Setting



- Document in the clinical record who made the choice for the resident to live at this setting
 - This is especially critical when the resident did not choose to live at the setting
 - ❖ The legal guardian, court order, treatment team/attending psychiatrist, or other entity/person making the decision MUST be identified
 - ❖ Rationale, justification, and/or legal authority for the choice MUST be explicitly documented
- Members who are court-ordered to treatment at a particular setting may still be eligible for AMMH/BPHC services if the setting is HCBS compliant and the member is able to fully integrate into the community just as an individual in similar circumstances who is not receiving Medicaid HCBS funds/services would be able to integrate into the community
 - The member still has the choice to comply with or disregard the court order

Strategies to Implement and Ensure Compliance With CMS Global Requirement #2 - Choice to Move



Example language for a resident handbook can be:

If You Wish to Move From This Setting: You may decide that you no longer want to live in (agency) housing and want to live on your own, or you may want to live in a different (agency) residential setting. If you decide you no longer want to live at (setting name), you may tell your case manager, any staff where you live, or (agency residential services head or similar person) that you want to move. (Agency) will assist you in identifying other housing options, and help you transition to the living arrangement of your choice.

Strategies to Implement and Ensure Compliance With CMS Global Requirement #2 - Choice of Roommate



Example language for a resident handbook can be:

Choice of Roommate: If you share a bedroom or living space with another resident, you have the right to choose your roommate. Tell your case manager, any staff where you live, or (agency residential services head or similar person) that you would like to live with a particular person, and request a roommate change.

- This is a good place to include language as to why a private room may not be available when the person moves in, due to space availability or other reasons
- This language should also state that the resident may make a choice of a specific roommate known at any time, and that the request will be facilitated (if possible) at first opportunity

Strategies to Implement and Ensure Compliance With CMS Global Requirement #2 - Choice of Roommate



Example language from providers:

- “For any housing facilities in which residents are sharing an apartment, if a resident wishes to request a different apartment-mate, that request would be made to either their case manager or to the housing manager of that facility.”
- “You have the right to request a different roommate. Please note that the setting may not have the option available at the time of this request, however, staff will work with you with what options are available at the setting or at another independent living facility.”

CMS Global Requirement #3 - Privacy, Dignity, and Respect



The CMS HCBS Settings Final Rule states:

“[The setting] Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.”

Assessing Compliance With CMS Global Requirement #3 - Privacy, Dignity, and Respect



The SET evaluates the following characteristics:

- Residents are allowed to have and display personal items, such as pictures, books, and memorabilia as each individual desires
- Residents are informed of the process for making an anonymous complaint
- Residents have a means to control his/her funds, have access to those funds, and are not required to sign over paychecks to the provider
- Residents are routinely asked by staff about what services and supports they want and need
- Residents are able to close and lock their bedroom and bathroom doors
- Residents are able to come and go at any time
- Residents are not required to sit at an assigned seat in a dining area, may converse with others during meal times, and may eat privately if they choose

Strategies to Implement and Ensure Compliance With CMS Global Requirement #3 - Privacy, Dignity, and Respect



The following topics, which are assessed by the SET for compliance with this (and other) HCBS settings requirements, will be addressed in more detail later in this presentation:

- Ability to close and lock bedroom, bathroom, and/or sleeping/living unit doors
- Meals, snacks, availability of food
- Visitation and visiting hour restrictions
- Curfews or other requirements for a return to the setting by a certain time
- Ability of residents to come and go at any time

Strategies to Implement and Ensure Compliance With CMS Global Requirement #3 - Personalizing the Living Space



Example language for a resident handbook can be:

Personal Items and Personalization of Living Space: You may have and display personal items, such as pictures, books, and memorabilia, with the following limitations:

- Agencies may set reasonable limitations on what kind of personalization is permitted, and how certain items are displayed. Examples:
 - ❖ “Residents may not paint walls”
 - ❖ “Residents may not use nails to hang pictures or other items. Tape, Command adhesive hangers, or other non-penetrating hanging aids may be used”
 - ❖ “Decorations and displayed personal items should be in good taste. Keep in mind that other people – your co-residents, agency staff, visitors, and others – may come into your living space, so please be respectful of them, and do not display items or decorations that may be considered vulgar or offensive.”

Strategies to Implement and Ensure Compliance With CMS Global Requirement #3 - Making Anonymous Complaints



Example language for a resident handbook can be:

Making an Anonymous Complaint: You may notify your case manager, any staff member at your home, or (the agency's designated point of contact [POC] for complaints) with complaints or concerns about your home. In some cases, though, you may wish to make an anonymous complaint (that is, not having to give your name or appear in person). In these cases, you may contact any of the following persons or agencies:

- (agency's POC for anonymous complaints)
- DMHA Consumer Support Line, 1-800-901-1133
- Indiana Disability Rights, 1-800-622-4845
- Mental Health America of Indiana Mental Health Ombudsman, 1-800-555-6424

Strategies to Implement and Ensure Compliance With CMS Global Requirement #3 - Access to Funds



Example language for a resident handbook can be:

Access to Funds: In some cases, (agency) serves as the representative payee for a resident's Social Security disability payments (SSI/SSDI). If (agency) serves as your representative payee, please refer to (agency's) policy on accessing those funds. A copy of this policy is available to you on your request, and your case manager can review the policy with you and answer any questions you may have about how your Social Security funds are managed by (agency).

Any money you earn or receive from a source other than Social Security (for example, paychecks from a job, gifts, lottery ticket winnings, etc.) is yours to do with as you please. If you so choose, your case manager can help you set up a bank account in your own name, at the financial institution of your choice, in order to be able to manage your own funds.

CMS Global Requirement #4 - Individual Initiative, Autonomy, and Independence



The CMS HCBS Settings Final Rule states:

“[The setting] Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.”

Assessing Compliance With CMS Global Requirement #4 - Individual Initiative, Autonomy, and Independence



The SET evaluates the following characteristics:

- There are no barriers to entrances, exits, or other certain areas of the setting (with some exceptions)
- Residents have access to television, radio, other leisure activities, and can schedule those leisure activities as they desire
- Resident's schedules vary from other residents at the setting
- Visitors are allowed in the living setting, and are not restricted to specific visiting hours
- Whether there is a curfew at the setting
- Residents can eat meals when they choose, eat privately if they choose, have access to snacks at all times, can converse with others during mealtimes, and can request an alternative meal to the one being served
- Residents decide how they spend their money

Strategies to Implement and Ensure Compliance With CMS Global Requirement #4 - Individual Initiative, Autonomy, and Independence



The following topics, which are assessed by the SET for compliance with this (and other) HCBS settings requirements, will be addressed in more detail later in this presentation:

- Visitation rights and requirements
 - Curfews
 - Meal/dining/snacks policies
-
- Ability to control personal finances was discussed previously under CMS Global Requirement #3

Strategies to Implement and Ensure Compliance With CMS Global Requirement #4 - Restricted/Secured Areas



Example language for a resident handbook can be:

Restricted Areas: There are some areas at your home which are locked for your safety and privacy. These include:

- Staff offices (to safeguard personal information)
- Medication storage areas
- Cleaning supply storage areas
- Mechanical areas, such as the furnace room, hot water heater, and other areas where there are utilities

If you need to access any of these areas, please notify a staff member where you live.

Strategies to Implement and Ensure Compliance With CMS Global Requirement #4 - Recreational/Leisure Activities



Example language for a resident handbook can be:

Recreational Amenities and Leisure Activities: Several options for entertainment and leisure activities are provided for the enjoyment of all residents at (setting name), including a television, radio, board games, etc. Residents are welcome to use these amenities at any time. Please be considerate of your fellow residents and take turns selecting programs to watch . . . (include other language as appropriate)

“The TV in the common area will be on from 6am to 11pm. Residents may continue to occupy these common rooms, but noise level is expected to be kept minimal in consideration of other residents. Residents are not allowed to sleep in the common area.”

Strategies to Implement and Ensure Compliance With CMS Global Requirement #4 - Setting Own Schedule



Example language from providers:

- “Residents are encouraged to meet with friends or family on a regular basis, attend community events, become employed or volunteer, attend church or other spiritual practices, exercise, and perform other leisure activities.”

Strategies to Implement and Ensure Compliance With CMS Global Requirement #4 - Setting Own Schedule



Additional example language from providers regarding participation in required activities:

- “Resident meetings are held on a regular basis. Participation in resident meetings is encouraged. If you are not able to attend a scheduled meeting you can meet with your assigned case worker to obtain the information that was shared at the meeting.”
- “Residents have been provided a copy of weekly program services ... These services are provided on site and off site. Services include but are not limited to group and individual skills training, individual and group therapy, medication training and support, case management, etc. Participation in services varies based on each resident’s individual needs and progress in treatment.”

CMS Global Requirement #4 and Tobacco Use



- DMHA's interpretation is that providers may not prohibit the use of tobacco in a POCO residential setting
- Providers may establish designated smoking areas, and prohibit smoking indoors due to health and safety concerns, but residents must have the opportunity to smoke or otherwise use tobacco at any time
- DMHA will follow up with providers once clarification has been obtained regarding providers' contractual obligation (with DMHA) to maintain tobacco-free settings

Strategies to Implement and Ensure Compliance With CMS Global Requirement #4 - Tobacco Use



Example language for a residency agreement can be:

Smoking/Use of Tobacco: Smoking inside the residence is not permitted at any time, for the health and safety of all residents. This also means you are not allowed to smoke in your bedroom. A designated smoking area has been set up at (location), which is available for your use 24 hours a day.

CMS Global Requirement #5 - Choice of Services



The CMS HCBS Settings Final Rule states:

“[The setting] Facilitates individual choice regarding services and supports, and who provides them.”

Assessing Compliance With CMS Global Requirement #5 - Choice of Services



The SET evaluates the following characteristics:

- Residents are given a choice regarding where to receive services
- Agency staff ask residents about her/his needs and preferences
- Supports are in place for residents who wish to work
- Residents are informed of how to request services, and those requests are accommodated where possible
- Residents are informed how to request a new service provider
- Residents are informed how to make an anonymous complaint

Strategies to Implement and Ensure Compliance With CMS Global Requirement #5 - Choice of Services



Example language from providers for a resident handbook can be:

Choice of Services: You have the right to choose:

- Where you would like to receive your services (at home, in a particular setting/building, etc.)
- What services you wish to receive or participate in
- What services you no longer wish to receive or participate in
- Your service provider, including requesting a new service provider

Choice of Services: If you aren't comfortable with a member of your treatment team, you may request a change of team member. Please contact your treatment team's team leader as needed to discuss any treatment team concerns you may have.



Questions?



Assessing and Implementing Compliance With The “POCO 5” Additional CMS HCBS Settings Final Rule Requirements for Provider Owned, Controlled, or Operated Residential Settings

CMS Additional Requirements for POCO Residential Settings - the “POCO 5”



Per the CMS HCBS Settings Final Rule, *“In a provider-owned or controlled residential setting, in addition to the above qualities at paragraphs (a)(1)(i) through (v) of this section, **the following additional conditions must be met:***

1. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city, or other designated entity;
2. Each individual has privacy in their sleeping or living unit;
3. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time;
4. Individuals are able to have visitors of their choosing at any time; and
5. The setting is physically accessible to the individual

Assessing Compliance with the “POCO 5” CMS HCBS Settings Requirements



- The “POCO 5” are referred to in the Final Rule as “conditions”, not “qualities”
 - DMHA interprets this to mean that the “POCO 5” conditions are requirements, not guidelines
- In most cases, the DMHA SET evaluates whether a specific characteristic, or set of characteristics, is present at a setting, to determine whether a “POCO 5” requirement is met
 - As such, compliance with the “POCO 5” requirements is much more objectively assessed (based on real, documentable features of the setting)
- The characteristics that are evaluated are derived from the CMS-published “Exploratory Questions to Assist States in Assessing Residential Settings”

Implementing and Ensuring Compliance With the CMS “POCO 5” Requirements



Two methods for provider agencies to be compliant with the CMS “POCO 5” requirements:

- 1. Implement procedural and policy changes (where necessary) that are compliant with the CMS requirements for POCO residential settings*** - this is by far the preferred way to achieve compliance
- 2. Justify and document any “POCO 5” requirement that will not be met for an individual*** - this mechanism should only be used in very rare circumstances

CMS “POCO 5” Requirement #1 - Lease or Residency Agreement With Eviction Protections



The CMS HCBS Settings Final Rule states:

“The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants under the landlord/tenant law of the state, county, city or other designated entity (a residency agreement or other form of written agreement will be in place for each HCBS participant, and the written agreement must provide protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law)”

CMS “POCO 5” Requirement #1 - Lease/Residency Agreement with Eviction Protections



- DMHA believes CMS's intent is to ensure members' housing is not contingent on their participation in treatment, and they have the same rights and responsibilities as others in the general community
 - This requirement also embraces the Housing First model of care, which emphasizes the recovery benefit for an individual having stable housing
- An eviction process is initiated when an individual's residency or occupation at a setting has been terminated, and the resident refuses to vacate the setting (an “involuntary removal”)
 - The preferred resolution is to facilitate a voluntary move of an individual who is no longer appropriate for a particular residential setting

Assessing Compliance With CMS “POCO 5” Requirement #1 - Lease/Residency Agreement with Eviction Protections



- The SET evaluates the following criteria:
 - Resident has a lease or residency agreement
 - Lease/agreement contains provides protections to address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law
- Agency may choose whether to use a lease or an agency-developed residency agreement (or both), but the eviction process and protection language must be included

Strategies to Implement and Ensure Compliance With CMS “POCO 5” Requirement #1 - Lease/Residency Agreement with Eviction Protections



- The standard HUD lease for 811 PRAC facilities (form HUD-90105-d) is an **example** of language which sufficiently communicates eviction processes and protections (link: [HUD lease for 811 PRAC](#))
 - DMHA does not expressly endorse the HUD lease
- Section 8 of the HUD 811 PRAC standard lease contains very detailed language regarding eviction processes
 - Gives a list of circumstances which are cause for termination of agreement
 - Specifies notice and service procedures
 - Defines minimum timeframe for leaving the setting
 - References “all judicial remedies under State or local law for the eviction of the tenant”

Strategies to Implement and Ensure Compliance With CMS “POCO 5” Requirement #1 - Lease/Residency Agreement with Eviction Protections



- For providers/settings which do not use the HUD 90105-d lease, one option is to include some key phrases or elements from that lease in the applicable lease/residency agreement
 - Grounds for terminating occupancy
 - ❖ material noncompliance with the agreement [Section 8(d)]
 - ❖ material failure to carry out obligations under a State landlord and tenant act
 - ❖ Section 8(i) lists several criminal activities which can lead to termination of the lease
 - Process and timeframes for giving notice to terminate [Sections 8(f) and 8(g)]
 - Reference to State landlord or tenant law
- DMHA strongly recommends that, whatever language your agency chooses to put in a residency agreement, it is reviewed and vetted by your agency’s legal counsel

Strategies to Implement and Ensure Compliance With CMS “POCO 5” Requirement #1 - Lease/Residency Agreement with Eviction Protections



Example language from one provider of eviction process/protections in a residence agreement:

“In the event that there is a decision to evict you for not paying rent, Indiana requires that you receive a written ten-day notice to vacate the leased premises. If you violate serious rules of the program as identified in the Residential Handbook, you may also be evicted and given a 10-day notice to vacate the leased premises (see IC 32-31-1-6). As a health care program that facilitates services to multiple residents in the same dwelling space, there are expectations such that if violated, would result in immediate eviction action (see IC 32-31-2.9-4). In these situations, you would be provided with immediate notice of our intent to file an eviction notice with the courts should you not fully cooperate in vacating your leased premises within a 24 hour period. Those grounds are as follows:

- Being terminated as a consumer with this agency
- Intoxicated or under the influence of illegal substances
- Sexual misconduct or inappropriateness
- Theft involving another resident or staff’s property
- Physical/verbal aggression resulting in serious injury of another resident or staff member
- Any destruction of residential property resulting in the relocation of residents”

CMS “POCO 5” Requirement #2 - Privacy in the Sleeping or Living Unit



The CMS HCBS Settings Final Rule states:

“Each individual has privacy in their sleeping or living unit (units have entrance doors lockable by the individual, with only appropriate staff having keys to doors; individuals sharing units have a choice of roommates in that setting; individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement)”

CMS “POCO 5” Requirement #2 - Privacy in the Sleeping or Living Unit



Some useful definitions/concepts:

- A “sleeping unit” is most commonly a bedroom (with or without attached bathroom) occupied by one or more individuals, attached to a common living/kitchen area (like a two-bedroom house or apartment) or as part of a communal living situation with shared amenities (think college dorm with hall bathroom)
 - A sleeping unit may be a “subset” of a living unit (i.e., a two-bedroom apartment)
- A “living unit” is most commonly a single-occupancy apartment with attached amenities (bathroom and kitchen area) used by one individual or an individual and his/her family (efficiency, studio, one-bedroom, etc.), or a multi-bedroom apartment with a common living area (den, kitchen, etc.)

Assessing Compliance With CMS “POCO 5” Requirement #2 - Privacy in the Sleeping or Living Unit



The SET evaluates the following characteristics:

- Residents are allowed to arrange personal items, such as pictures, books, and memorabilia as each individual desires
- Residents are able to close and lock their bedroom door
- Residents are able to close and lock their bathroom door
- In settings where shared sleeping/living units are a necessity, residents are given a choice of a roommate
- In settings where shared sleeping/living units are a necessity, residents are informed how to request a roommate change

Implementing and Ensuring Compliance With CMS “POCO 5” Requirement #2 - Lockable Sleeping/Living Unit Doors



Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors

- If one resident occupies a single-occupancy unit, then it is permissible for only the entrance door to be lockable
- If two residents share a bedroom, then each resident must have a key to the bedroom
- If two residents share a 2BR apartment, then both must have a key to the main entrance, but each should have a key to their bedroom only
- The principle concept here is **privacy** – a resident has the right, to the maximum extent possible, to have their “own space” which they are able to secure and to control access

Implementing and Ensuring Compliance With CMS “POCO 5” Requirement #2 - Lockable Sleeping/Living Unit Doors



- Some agencies have raised a concern that state fire safety codes prohibit locked bedroom doors in some settings, which conflicts with the CMS HCBS Settings Final Rule requirement for lockable bedroom doors
- DMHA is working with CMS and the State Fire Marshal’s office to seek clarification on this issue
- In the meantime, agencies are advised to adhere to state/local fire safety regulations, in areas where they conflict with HCBS settings requirements
- If this occurs, agencies must document the circumstances in the resident handbook/residency agreement

Implementing and Ensuring Compliance With CMS “POCO 5” Requirement #2 - Lockable Sleeping/Living Unit Doors



Example of a strategy developed by an agency to address this circumstance:

- Occupant(s) of these living units sign a form acknowledging that they understand why their bedroom door cannot be locked, and that they can request to move to another (lockable) bedroom when one comes available
- Agency ensured ample lockable storage capability for valuables and other personal items
- Agency will post sign that no person may enter the room without knocking and receiving permission from the occupant(s) unless in the case of an actual emergency

Implementing and Ensuring Compliance With CMS “POCO 5” Requirement #2 - Choice of Roommate In A Shared Sleeping/Living Unit



Example language from providers for a resident handbook:

- “Upon admission to the residential program, you will be assigned housing with up to 3 roommates sharing your living space. As program residential locations are for 3-4 people, you will share communal space with roommates but have your own personal bedroom. If you have concerns with your roommate, or would like to request a change in roommate, we will accommodate your preference as much as possible. Please contact a residential team staff member to discuss any of these concerns.”
- “Beds are assigned in a first come, first served basis. However, if you want to share an adjacent room with a specific client, notify the Residential Supervisor and staff will try to accommodate this, provided it does not interfere with anyone’s treatment plan.”

Implementing and Ensuring Compliance With CMS “POCO 5” Requirement #2 - Choice of Roommate In A Shared Sleeping/Living Unit



- Note that an agency is not required to grant the request for a specific roommate, but must ensure residents have the right, and are informed of the process, to request a different (or specific) roommate
 - Some roommate requests may be denied for a number of legitimate reasons (interpersonal conflicts, inappropriate relationships, lack of availability, etc.)
 - Agencies must still make an effort to accommodate choice of roommate whenever possible
- If a roommate request will not be approved due to a specific assessed need of the individual, the reason(s) why must be documented in the individual’s person-centered service plan (this constitutes a modification – discussed later in presentation)

Implementing and Ensuring Compliance With CMS “POCO 5” Requirement #2 - Furnishing/Decorating Living Space



Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement

- Suggestions for implementing compliance with this requirement, along with example language for resident handbooks, were provided earlier in this presentation under “Big 5” Requirement #3

CMS “POCO 5” Requirement #3 - Control of Schedule and Access to Food 24/7



The CMS HCBS Settings Final Rule states:

“Individuals have the freedom and support to control their own schedules and activities, and have access to food any time”

Assessing Compliance with CMS “POCO 5” Requirement #3 - Control of Schedule and Access to Food 24/7



The SET evaluates the following characteristics at the setting:

- Residents' schedules vary from others in the same setting
- Residents are able to come and go at will (can shop, attend religious services, schedule appointments, have lunch with family and friends, or otherwise participate regularly in meaningful non-work activities in integrated community settings as each resident chooses)
- Residents have access to and can schedule and participate in recreational and leisure activities at the residential setting when they choose
- Whether there is a curfew or other requirement for a scheduled return to the setting
- Residents are able to have a meal at the time and place of his/her choosing, can have an alternative meal if desired, and may eat privately if desired
- Snacks are accessible and available anytime

Implementing and Ensuring Compliance with CMS “POCO 5” Requirement #3 - Control of One’s Own Schedule



Residents’ schedules vary from others in the same setting; residents are able to come and go at will (can shop, attend religious services, schedule appointments, have lunch with family and friends, or otherwise participate regularly in meaningful non-work activities in integrated community settings as each resident chooses); residents have access to and can schedule and participate in recreational and leisure activities at the residential setting when they choose

Suggestions for implementing compliance with these requirements, along with example language for resident handbooks, were provided earlier in this presentation under “Big 5” Requirement #4

DMHA's Position on CMS "POCO 5" Requirement #3 - Curfews



- DMHA's previous understanding of this requirement was that a setting-wide curfew was permissible, so long as:
 - The established curfew was made known to a resident while they were choosing from among residence options
 - The curfew applied equally to all residents at the setting, and
 - The resident agreed to the curfew restriction
- DMHA's current interpretation of this requirement, based on new information provided by CMS in August 2016, is that CMS see curfews as limiting choice and freedoms:

A curfew or other requirement for a scheduled return to the setting may not be established as a "house rule", general policy, or other restriction that applies to all residents at a given POCO residential setting

Implementing and Ensuring Compliance with CMS “POCO 5” Requirement #3 - Curfews



Any requirement that an individual return to the setting at a specified time constitutes a modification, and must be justified and documented in the person-centered treatment plan.

While a setting-wide curfew may not be established as a “house rule” or general restriction at a setting, providers may encourage or recommend, but not mandate, that residents return to the setting by a certain time.

Implementing and Ensuring Compliance with CMS “POCO 5” Requirement #3 - Curfews



Example language from a provider for resident handbooks:

“Curfew: The (program) does not have a curfew for residents. Residents can come and go as they please. However, residents are asked to notify (program) staff prior to leaving the property as well as what time they plan to return. This gives (program) staff time to coordinate your medication schedule and treatment team appointments.”

Implementing and Ensuring Compliance with CMS “POCO 5” Requirement #3 - Meal/Snack/Dining Considerations



The setting’s meal, dining, snacks, and food access policy (the “food plan”) will likely be somewhat lengthy, as there are several elements which DMHA believes may be evaluated by CMS, and which must be communicated to residents. The setting’s “food plan” must address the following characteristics (derived from CMS’s Exploratory Questions):

- If the setting serves meals in a communal dining area, members have the option to eat privately if they desire
- If the setting serves communal meals, members have a choice of an alternate meal to the one being served
- If the setting serves communal meals, members may sit in any seat they choose
- If the setting has established meal times, members may eat a meal whenever they choose
- Snacks must be available and accessible at all times

Implementing and Ensuring Compliance with CMS “POCO 5” Requirement #3 - Option to Eat Privately



If the setting serves meals in a communal dining area, members have the option to eat privately if they desire

- Providers may implement reasonable limitations on where residents may eat meals, if not eaten in the communal dining area (for example, meals may not be eaten in bedrooms)
- Allowing a member to eat in the dining room at a time other than during scheduled meal times is acceptable for meeting the “private dining” option

Implementing and Ensuring Compliance with CMS “POCO 5” Requirement #3 - Option to Eat Privately



Members have the option to eat privately if they desire

Example language from providers for this requirement:

“Meals are served family-style in the dining area. You are encouraged to eat in the dining area, since mealtimes are very social and you can talk and ‘catch up’ with your fellow residents. However, if you choose to eat your meal privately, please inform staff that you would like to eat alone, and arrangements will be made for you.”

“If at anytime you would prefer private dining please let staff know and a private dining area will be set up for you.”

Implementing and Ensuring Compliance with CMS “POCO 5” Requirement #3 - Alternate Meal Choices



If the setting serves communal meals, members may request/eat an alternate meal to the one being served

- This does not mean multiple meal options must be served. The “alternate meal” may be PBJ, ham and cheese, fruit, veggies, etc.

Example language from providers for this requirement:

“Meals are prepared three times per day. Simple alternative meals are available if the planned meal is not wanted.”

“Alternate choices such as cold cut sandwich or peanut butter and jelly are available.”

Implementing and Ensuring Compliance with CMS “POCO 5” Requirement #3 - No Assigned Seating



If the setting serves communal meals in a dining area, members may sit in any seat they choose

Example language for this requirement:

“Residents are allowed to sit anywhere they like in the dining area.”

Implementing and Ensuring Compliance with CMS “POCO 5” Requirement #3 - Eating at Desired Time



If the setting has established meal times, members may eat a meal whenever they choose

Example language from providers for this requirement:

“Times of meals will be decided by you and staff. Residents are encouraged to prepare and eat meals together as well as clean up. However, you are not required to do so and do have the right to eat whenever you want.”

“Meals are prepared three times per day. Although encouraged to eat at mealtimes, alternative arrangements may be requested.”

“If you miss a meal, one can be saved for you, provided that you notify staff ahead of time.”

Implementing and Ensuring Compliance with CMS “POCO 5” Requirement #3 - Availability of Snacks



Snacks must be available at all times, and members must have a way to access food at any time

- Rules about where food may be stored may be appropriate based on health and cleanliness reasons, but there must be a designated place where residents can store snacks. It may mean that that staff will open the locked refrigerator at anytime. **Example language** for this limitation:
 - “Eating is permitted only in the dining room. Residents should not keep snacks in their bedrooms.”
 - “Food items will be stored separately from non-food items. Food and drinks are not permitted in the bedrooms or the family rooms to prevent insects/rodents.”

Implementing and Ensuring Compliance with CMS “POCO 5” Requirement #3 - Availability of Snacks



Snacks must be available at all times, and members must have a way to access food at any time

Additional **example language** from providers for this requirement:

- “Healthy snacks are available at all times.”
- “If a client is not available for designated snack time they have access to their own individual snacks.”
- “Healthy snacks are provided at designated times (posted with kitchen hours). FRUIT IS ALWAYS AVAILABLE.”

CMS “POCO 5” Requirement #4 - Visitors Of Own Choosing At Any Time



The CMS HCBS Settings Final Rule states:

“Individuals are able to have visitors of their choosing at any time”

DMHA's Position on CMS "POCO 5" Requirement #4 - Visitors Of Own Choosing At Any Time



- DMHA's previous understanding of this requirement was that a setting-wide visiting hour restriction was permissible, so long as:
 - Established visiting hours were made known to a resident while they were choosing from among residence options
 - The visiting hours applied equally to all residents at the setting, and
 - The resident agreed to those visiting hour restrictions
- DMHA's current interpretation of this requirement, based on new information provided by CMS in August 2016, is:

“Visiting hours” or other limitations on when residents may have visitors may not be established as a “house rule”, general policy, or other restriction that applies to all residents at a given POCO residential setting

Assessing Compliance With the CMS “POCO 5” Requirement #4 - Visitors Of Own Choosing At Any Time



The SET evaluates the following characteristics:

- Whether visitors are allowed in the living setting
- If visitors are restricted to specified visiting hours

Implementing and Ensuring Compliance With the CMS “POCO 5” Requirement #4 - Visitor Conduct



- Instead of restricting visiting hours, providers may regulate the conduct of the visitors. **Examples** of visitor conduct regulations can include:
 - Visitors are asked to check in with staff upon arrival
 - Visitors are expected to exhibit appropriate behavior, and will be asked to leave if they exhibit unacceptable behavior
 - Visitors must be accompanied by their resident at all times
 - Visitors may not bring drugs, alcohol, or illegal items into the house
- Agencies may post rules about visitor behavior while on the premises
- Facilities may ban particular visitors based upon the visitor’s prior behavior (criminal trespass warning)

Implementing and Ensuring Compliance With the CMS “POCO 5” Requirement #4 - Visitors



Example language from providers that addresses visitation:

“Each resident is encouraged to have guests. There are no set visiting hours, however, residents are encouraged to have consideration for other residents. Residents are asked to inform staff of all expected guests.”

“You may have anyone come and visit you at your residence as long as they do not interfere with your treatment or the treatment needs of others. All visitors must be accompanied by the resident and residents should not allow their visitors to remain in the residence in their absence. Violation of this may constitute just cause for eviction and will be enforced. You are responsible for your guests following the program rules.”

Implementing and Ensuring Compliance With the CMS “POCO 5” Requirement #4 - Visitors



Additional example language from providers that addresses visitation:

“After 10:00pm it is considered to be quiet time. All parties must be within your apartment and not spill out into the hallways and common areas. As a lease holder you are responsible for the behavior of yourselves, children, and your guest. If management receives this complaint during or after work hours, management will call police to shut it down.”

“You have the right to receive visitors while residing at (facility). We just ask you respect the space of your roommate and other residents while in the facility.”

CMS “POCO 5” Requirement #5 - Physical Accessibility



The CMS HCBS Settings Final Rule states:

“The setting is physically accessible to the individual”

CMS “POCO 5” Requirement #5 - Physical Accessibility



Americans with Disabilities Act (ADA) and HCBS – 2 key points:

1. Compliance with the Americans with Disabilities Act (ADA) does not automatically equal compliance with the HCBS Settings Final Rule regarding physical accessibility!
2. This HCBS regulation does not affect obligations under the ADA. For specific requirements of the ADA, we recommend you contact the Department of Justice Civil Rights Division. Contact information is available at: <http://www.justice.gov/crt/contact/>.

Assessing Compliance With the CMS “POCO 5” Requirement #5 - Physical Accessibility



The requirement to have accessibility modifications in place only applies when a member ***currently living at that setting*** needs some form(s) of access modification in order to live safely and comfortably

The SET evaluates the following characteristics:

- The setting has required accessibility modifications, if needed
- Furniture and furnishings are comfortable and meets the needs of residents requiring disability access modifications

Implementing and Ensuring Compliance with CMS “POCO 5” Requirement #5 - Physically Accessible Setting



Examples of disability access modifications which may be required include:

- Wider doorways (for wheelchair access)
- Walk-in/roll-in showers and shower seats
- Grab bars
- Furniture/furnishings at a convenient and comfortable height
- Strobes, “rumblers”, or other visible/tactile alert devices for deaf individuals



Questions?



Justifying and Documenting Modifications to the CMS “POCO 5” Requirements

CMS Language Regarding Modifications to the “POCO 5” Settings Requirements



- The CMS HCBS Settings Final Rule states,

“Any modification of the additional conditions, under paragraphs (a)(1)(vi)(A) through (D) of this section, must be supported by a specific assessed need and justified in the person-centered service plan.”

- Additional clarifying language from CMS states,

“[T]here is a section of the settings provisions in the regulation ... that allows for limitations to be implemented on the qualities of a home and community-based setting that is provider owned or controlled, for health and safety issues of residents. These modifications must meet the criteria set forth in the regulation and be documented in the Person-Centered Service Plan.”

Modifications to the CMS HCBS Settings Requirements



- In the HCBS Settings Final Rule, CMS established a method by which a modification to any of the first four “POCO 5” requirements may be made
 - The fifth requirement, that all settings must be physically accessible to residents living there, is not modifiable
- A “modification” means that one or more of the conditions required to be present at a POCO residential setting will not be met ***for an individual resident***
- **The “Big 5” global requirements are not modifiable!!!!!!!!!!**

Modifications to the CMS “POCO 5” Requirements - Previous Understanding



- DMHA’s previous understanding was that a “general” modification to any of the “POCO 5” requirements at a setting was permissible, so long as:
 - The modification was made known and explained to the member before the member chose to live at that setting,
 - The member had multiple setting options from which to choose, and
 - The modification applied equally to all residents at the setting, not just those receiving HCBS
- This understanding was based on an interpretation of answers to FAQs published by CMS in June 2015
- **New guidance** received from CMS in August 2016, however, informs the states that a voluntary waiver of “POCO 5” requirements by an individual is not permitted

Modifications to the CMS “POCO 5” Requirements - Current Guidance From CMS



CMS issued updated guidance on modifications to the “POCO 5” requirements during the August 2016 NASUAD HCBS Conference. The position of CMS regarding “POCO 5” modifications is currently:

Any modification to any of the “POCO 5” requirements may only be implemented for an individual, not for a group of residents or to an entire setting as a “general” modification

- All modifications must be clinically driven
 - Must be based on a **specific assessed need of an individual**
 - Must be **justified in the individual’s person-centered service plan**

Members Must Give Consent to Modifications to the “POCO 5” Requirements



A provider may not initiate modifications without the informed consent of the member, as evidenced by the member’s signature on the person-centered treatment plan. Per CMS,

“An individual must provide informed consent prior to a necessary modification of conditions related to home and community-based settings being implemented, and providers cannot modify these conditions without such consent... If an individual continues to reside in the setting without the necessary modification in place, the state is still responsible for assuring the individual’s health and welfare and implementation of services consistent with the person-centered plan. The state would therefore need to determine if it could assure the health and welfare of the individual if he or she continues to reside in the setting without the modification...”

Modifications to the CMS HCBS Settings Requirements - Key Points



- 1. MODIFICATIONS ARE NOT A LOOPHOLE TO AVOID COMPLIANCE WITH THE “POCO 5” REQUIREMENTS!!!!**
 - This is not a mechanism by which your agency may continue to do “business as usual” at POCO residential settings
 - Cannot be implemented for the convenience of the provider
 - Cannot be “voluntarily waived” by a resident
- 2. Modifications may only apply to an individual resident**
 - Cannot be applied generally to all residents at a given setting, or at all settings run by a provider agency
- 3. Modifications must be based on specific assessed needs**
- 4. Modifications only apply to the “POCO 5” requirements for POCO residential settings. The “Big 5” global requirements ARE NOT MODIFIABLE!!!!**

Modifications to the “POCO 5” Requirements - DMHA SET General Observations and Guidance



- CMHCs might consider doing assessments for needs prior to referral, then referring members to settings that include other members with similar needs so that modifications will be similar
 - While this may seem redundant, individuals in these settings are there because they are in need of such a setting due to their high acuity. As such, a person-centered assessment of these individuals will likely show that many of the individuals have similar needs and require similar modifications
- Settings that have a number of individuals with similar risk factors may need to document similar modifications for each resident
 - Example: SGL for SMI individuals who are also registered sex offenders, and so cannot possess or display pornography, or have computers with internet access
- Some settings, based on their specific treatment focus, may also need to have similar modifications documented for all residents
 - Example: substance use/dual-diagnosis treatment facility documenting prohibition against alcohol

Documenting a Modification to the “POCO 5” Requirements In The Person-Centered Treatment Plan



Documentation in the person-centered service plan must include the following eight elements of information:

1. Identify a specific and individualized assessed need
2. Document the positive interventions and supports used prior to any modifications to the person-centered service plan
3. Document less intrusive methods of meeting the need that have been tried but did not work
4. Include a clear description of the condition that is directly proportionate to the specific assessed need
5. Include regular collection and review of data to measure the ongoing effectiveness of the modification
6. Include established time limits for periodic reviews to determine if modification is still necessary or can be terminated
7. Include the informed consent of the individual
8. Include as assurance that interventions and supports will cause no harm to the individual



CMS “POCO 5” Requirement #1 - Lease/Residency Agreement with Eviction Processes and Protections

The CMS HCBS Settings Final Rule states,

“The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants under the landlord/tenant law of the state, county, city or other designated entity (**a residency agreement or other form of written agreement will be in place for each HCBS participant, and the written agreement must provide protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law**)”

Documenting a Modification to CMS “POCO 5” Requirement #1 - Lease/Residency Agreement with Eviction Processes and Protections



DMHA's position is that there is no legitimate reason this requirement cannot be met. Every resident at a POCO residential setting must have a lease or residency agreement which contains eviction processes and protections language.

CMS “POCO 5” Requirement #2 - Privacy in the Sleeping or Living Unit



The CMS HCBS Settings Final Rule states:

“Each individual has privacy in their sleeping or living unit (units have entrance doors lockable by the individual, with only appropriate staff having keys to doors; individuals sharing units have a choice of roommates in that setting; individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement)”

When to Document a Modification to CMS “POCO 5” Requirement #2 - Privacy in Sleeping/Living Unit



Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors

- In situations where lockable sleeping/living unit doors are not permitted due to an administrative prohibition (for example, conflict between the HCBS requirement and state fire safety code), this does NOT need to be documented in the person-centered treatment plan as a modification, and can be included in the residency agreement
- If an individual, due to specific assessed health and safety needs, is not permitted to have a lockable sleeping/living unit door, that MUST be documented in the person-centered treatment plan as a modification



Example of Documenting a Modification to CMS “POCO 5” Requirement #2 - Lockable Entrance Door

“Joe has a long history of suicidal thinking and multiple attempts. Due to his current mental status, including suicidal thinking and history of attempts, Joe’s door is not lockable, to ensure staff can check on him frequently and to reduce risk of harm. This restriction will be reassessed at least once per week.”

When to Document a Modification to CMS “POCO 5” Requirement #2 - Privacy in Sleeping/Living Unit



Individuals sharing units have a choice of roommates in that setting

- If choice of roommate is not able to be accommodated due to a non-clinical reason (for example, room/bed availability issues), this does NOT need to be documented in the person-centered treatment plan as a modification, and may be addressed in the lease, residency agreement, or resident handbook
- If an individual’s choice of roommate will not be accommodated due to specific assessed health and safety needs, that **MUST** be documented in the person-centered treatment plan as a modification

Example of Documenting a Modification to CMS “POCO 5” Requirement #2 - Choice of Roommate Restriction



“Joe and (another resident) have a history of fighting and assaultive behavior when they have shared a room in the past. Joe has attended anger management counseling, but despite this and other interventions, the fighting continued. Even though they fight, Joe and (the other resident) continue to request to share a bedroom. In order to ensure Joe’s safety, he will no longer be allowed to share a bedroom with (other resident). Staff will revisit this restriction every 90 days during Joe’s periodic treatment plan reviews.”

When to Document a Modification to CMS “POCO 5” Requirement #2 - Personalizing the Sleeping/Living Unit



Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement

- Limitations to a resident’s freedom to furnish and decorate their sleeping/living unit can be included in the resident handbook, and does NOT need to be documented in the person-centered treatment plan as a modification (as long as the limitations are equally applicable to each resident at the setting)
- If a specific individual’s freedom to furnish and decorate their sleeping/living unit will not be accommodated (or will be restricted in a way not applicable to other residents at the setting) due to specific assessed health and safety needs, that MUST be documented in the person-centered treatment plan as a modification

Example of Documenting a Modification to CMS “POCO 5” Requirement #2 - Personalizing the Sleeping/Living Unit



“Joe prefers to hang swastikas, Confederate flags, pornographic pictures, and other inappropriate items on his walls. Despite repeated efforts to encourage Joe to hang more appropriate wall decorations, he replaces the offensive materials shortly after taking them down. Because of this, several other residents have expressed feelings of intimidation and offense. Joe frequently has no roommate, which contributes to a shortage of available bed space for other consumers in need of residential treatment. Joe will not be permitted to display offensive pictures or items in his room, until he moves into a single-occupancy unit. This restriction will be revisited every 90 days during Joe’s periodic treatment plan review.”

CMS “POCO 5” Requirement #3 - Control of Schedule and Access to Food 24/7



The CMS HCBS Settings Final Rule states:

“Individuals have the freedom and support to control their own schedules and activities, and have access to food any time”

When to Document a Modification to CMS “POCO 5” Requirement #3 - Control of Schedule



Individuals have the freedom and support to control their own schedules and activities

- Language regarding reasonable expectations on residents’ participation in household activities (for example, attending weekly/monthly residence meetings, asking that television/radio volumes be kept low after a certain time, being respectful of “quiet hours”, etc.) can go in a resident handbook and does NOT need to be documented in the person-centered treatment plan as a modification
- If a specific individual will not be afforded the opportunity to control their own schedule (for example, is subject to a curfew, cannot participate in certain leisure activities as they choose, is unable to go into the community on their own, etc.) due to specific assessed health and safety needs, that MUST be documented in the person-centered treatment plan as a modification

Example for Documenting a Modification to CMS “POCO 5” Requirement #3 - Control of Schedule



“Joe routinely watches TV in his room all night, and sets the volume at a level which disturbs his roommate and the residents in an adjacent room. Joe was provided headphones for his private use, but refuses to wear them. Because of the disruption to his roommate and fellow residents, Joe may not have a TV in his room. He is restricted to using the TV in the common area, which staff turns off at 10:00 p.m. This restriction will be revisited every 90 days during Joe’s periodic treatment plan review.”

Example for Documenting a Modification to CMS “POCO 5” Requirement #3 - Individual Curfew



“Joe has, on several occasions in the past six months, returned to the residence well after midnight. He is usually intoxicated, and is loud and disruptive to his fellow residents. On several occasions, Joe has been physically assaulted while out of the home at night. In addition, Joe frequently misses doses of his evening medications, which destabilizes his physical and psychiatric health. In the past Joe has agreed to return to his home by 9:00, but does not routinely adhere to this agreement. In order to ensure Joe’s health and safety, Joe is required to be back at home no later than 9:00 p.m. every night, unless he is on an approved overnight visit with family. If Joe returns to the setting after 9:00 and is disruptive to others, he will be assessed for a higher level of care or staff will call the police. This restriction will be revisited every 90 days during Joe’s periodic treatment plan reviews.”

When to Document a Modification to CMS “POCO 5” Requirement #3 - Access to Food 24/7



Individuals ... have access to food any time

- Approved (and unapproved) areas for eating, and storage and access procedures for resident snacks, can be documented in a resident handbook and does NOT need to be documented in the person-centered treatment plan as a modification
- If a specific individual's freedoms with regard to meal arrangements and 24/7 access to food will be restricted due to specific assessed health and safety needs, that MUST be documented in the person-centered treatment plan as a modification

Example of Documenting a Modification to CMS “POCO 5” Requirement #3 - Access to Food 24/7



“Joe is diagnosed with Prader-Willi syndrome, a genetic condition of which a feature is chronic overeating. His physical health is jeopardized by his weight gain, as he is diagnosed with obesity, hypertension, and Type 2 diabetes. Since moving into (setting), Joe has repeatedly demonstrated an inability to regulate his food intake. Joe will not be allowed to keep snacks in his bedroom, and must follow the meal and snack schedule approved by the dietitian. Staff will also monitor and intervene when Joe attempts to acquire food and snacks from other residents. These restrictions will be revisited every 90 days during Joe’s periodic treatment plan reviews, though it is unlikely that Joe will be able to manage his own food intake.”

Example of Documenting a Modification to CMS “POCO 5” Requirement #3 - Access to Food 24/7



“Joe is diagnosed with insulin-dependent Type 2 diabetes, which is poorly managed due to Joe’s insistence on consuming high-sugar snacks and full-sugar beverages. Since moving into (setting), Joe has been hospitalized on five occasions for blood sugars exceeding 500. In order to contribute to maintaining Joe’s blood sugars at a healthy level, Joe must follow a specific meal and snack program. His choice of foods, including meals and snacks, is limited to those items approved by the dietitian. The timing of his meals and snacks is also prescribed by the dietitian. He is also not permitted to drink sugar-containing beverages. These restrictions will be revisited every 90 days during Joe’s periodic treatment plan reviews, to assess his ability to adhere to an approved diet.”



CMS “POCO 5” Requirement #4 - Visitors Of Own Choosing At Any Time

The CMS HCBS Settings Final Rule states:

“Individuals are able to have visitors of their choosing at any time”



When to Document a Modification to CMS “POCO 5” Requirement #4 - Visitors Of Own Choosing At Any Time

- Recommended visiting hours and a “visitor management policy” (residents are responsible for their guests’ behavior, visitors sign in and out and are accompanied by the resident at all times, etc.) can be included in a resident handbook and does NOT need to be documented in the person-centered treatment plan as a modification
- If a specific individual’s freedom to have visitors of their choosing at any time will not be afforded due to specific assessed health and safety needs, that **MUST** be documented in the person-centered treatment plan as a modification
 - This includes a requirement for an individual to only have visitors in common areas of the residence

Example of Documenting a Modification to CMS “POCO 5” Requirement #4 - Visitors Of Own Choosing



“Joe has a friend who, on several occasions, has furnished crack cocaine to Joe during visits. That person has been issued a criminal trespass warning, and is not permitted at the residence. This restriction will be revisited every 90 days during Joe’s periodic treatment plan reviews.”

Example of Documenting a Modification to CMS “POCO 5” Requirement #4 - Visitors At Any Time



“Joe has a history of having visitors over late at night, and they are routinely loud and disruptive, waking other residents and requiring staff intervention. Joe had agreed to receive visitors only in common areas of the residence, but they frequently migrate to his bedroom, where their conduct disturbs Joe’s roommate and other residents who are trying to sleep. Joe will not be permitted to have visitors after 10:00 p.m. This restriction will be revisited every 90 days during Joe’s periodic treatment plan reviews, to assess his willingness to monitor his visitors’ behavior.”



Questions?

Contacts and References



- DMHA State Evaluation Team – for questions regarding HCBS compliance: dmhaadulthcbs@fssa.in.gov
- [Indiana HCBS Statewide Transition Plan](http://www.in.gov/fssa/4917.htm)
(<http://www.in.gov/fssa/4917.htm>)
- [CMS website for Home and Community Based Services Final Rule Implementation](http://www.Medicaid.gov/HCBS) (<http://www.Medicaid.gov/HCBS>)