



Public Notice Requirements in the Final Regulation



Division of Long Term Services and Supports
Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services

Background and Overview

Final Regulation became effective on March 17, 2014

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

Background and Overview (cont'd)

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

Background and Overview (cont'd)

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

Key Points

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

Public Notice Requirements

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

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

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

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

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

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

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

1915(c) Waiver Modifications

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

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

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

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

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

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

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

Summary

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

For Further Information

For Questions contact:
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