

SOUTH CAROLINA

Healthy Connections



# Home and Community Based Services (HCBS) Rule

42 CFR Part 430, 431 et al.

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# Home and Community Based Services (HCBS) Rule

- Intent:

“To ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs under the 1915(c), 1915(i), and 1915(k) Medicaid authorities have full access to benefits of community living and the opportunity to receive services *in the most integrated setting appropriate*”

— CMS Webinar presentation; 1/2014



# Home and Community Based Services (HCBS) Rule

- The rule creates a more outcome-oriented definition of home and community-based settings
- Focuses on the *nature* and *quality* of an individual's experiences

- CMS Webinar presentation; 1/2014





# Two Primary Areas of Focus:

- **Person-Centered Planning & Conflict-free Case Management**
- **Home and Community Based Settings Requirements**
  - Day and Residential settings where waiver services are received



# Person-centered Planning:

- The individual is a part of the development of their service plan
- Includes people chosen by the individual
- Good information is available for the individual to lead the process and make informed decisions
- Offers choices for services and supports for the individual
- Service plan is based on the individual's needs and preferences
- Plan is in plain language and is accessible to the individual



# Person-centered Planning:

- **What does this mean for beneficiaries and families?**
  - You are the center of the process in developing your service plan
  - Beneficiaries and whomever they want (like family members) will be included
  - Services should be explained to demonstrate what they are intended to do
  - A list of providers should be given to you so you can choose
  - You should be able to understand your service plan
  - If you disagree, there will be a process for resolving those issues



# Person-centered Planning:

- **What does this mean for providers?**
  - The individual is the center of the process in developing the service plan
  - The process should be scheduled at the convenience of the beneficiary and family
  - Services should be explained to demonstrate what they are intended to do
  - A list of providers should be given to help beneficiaries choose
  - The beneficiary and/or family must be able to understand the service plan
  - All decisions must be well documented in the plan



# Conflict-free Case Management:

- **CMS seeks to separate service coordination from service provision**
- **Exception:**
  - State demonstrates that the only provider willing and qualified to do case management and service plan is also only provider of HCBS in a geographic area
  - State must create conflict-of-interest protections





# HCB Settings Requirements

- **Setting is part of the greater community**
- **Setting helps individuals access the greater community**
- **Individual chooses the setting from different options**
- **Builds individual's independence in making life choices**
- **Assists with individual's informed choice regarding services and who provides them**



# HCB Settings Requirements:

## Residential

- Living space can be owned, rented, or occupied by an individual under a legally enforceable agreement
- Individuals have the same responsibilities and protections from eviction as all tenants under landlord tenant laws
- If tenant laws do not apply, the state makes sure a written agreement is in place
  - Provides protections to address eviction processes and appeals like those in landlord tenant law



# HCB Settings Requirements:

## Residential *(continued)*

- Each individual has privacy in their sleeping or living unit.
- Units have lockable entrance doors with the individual and appropriate staff having keys to doors as needed.
- Individuals sharing units have a choice of roommates.
- Individuals can furnish and decorate their sleeping or living units within the lease or other agreement.
- Individuals have freedom and support to control their schedules and activities
- Individuals have access to appropriate food any time.
- Individuals may have visitors at any time.
- Setting is physically accessible to the individual.



# HCB Settings Requirements:

## Residential *(continued)*

- **What does this mean for beneficiaries and families?**
  - There will be a lease or some written agreement
  - Choice should be available in selecting living locations
  - Choice should be available in selecting roommates
  - Private rooms/space should be available based on your resources
  - It should feel like home with freedom to achieve your goals



# HCB Settings Requirements:

## Residential *(continued)*

- **What does this mean for providers?**
  - Evaluate your current facilities to see where there might be concerns
  - A lease or written agreement must be in place for your residents
  - Individuals will have choice in where they live
  - Individuals will have choice with whom they live
  - Residential settings need to be physically accessible
  - Each person's service is individualized
  - Individuals will have access to the community and community activities



# Next Steps for South Carolina:

- **SCDHHS must create a “Master Transition Plan” for all of our waivers that describes how we will come into compliance with HCBS rule**
  - Will be posted for public review and comment at:

[www.scdhhs.gov/hcbs](http://www.scdhhs.gov/hcbs)

- **Will be hosting several public meetings across the state for input:**
  - Thursday, November 13 – Florence
  - Tuesday, November 18 – Greenville
  - *Wednesday, November 19 – Webinar online!*
  - Tuesday, December 2 – Charleston
  - Thursday, December 4 - Columbia



# Next Steps for South Carolina

## Initial Steps:

- > Determine if current Residential, Day, and Adult Day Health Care centers meet the HCBS Rule settings requirements
- > Make sure new providers meet new requirements
- > Services and provider qualifications will be reviewed to determine further compliance
- > Policy revisions may be needed to meet requirements



# Next Steps for South Carolina

## Future Steps:

- **HCBS Services through 1915(i) State Plan Optional benefit**
- **We anticipate that current providers and settings will provide those services**
- **Examples include:**
  - Supported employment services
  - Supported housing services and supports





# What have we learned so far?

- This is an opportunity
- It will take a lot of work – and working together
- This will take time
- There are unknowns in this process
- Knowledge and information can ease concerns about future impact
- This can only be good for our state and our beneficiaries



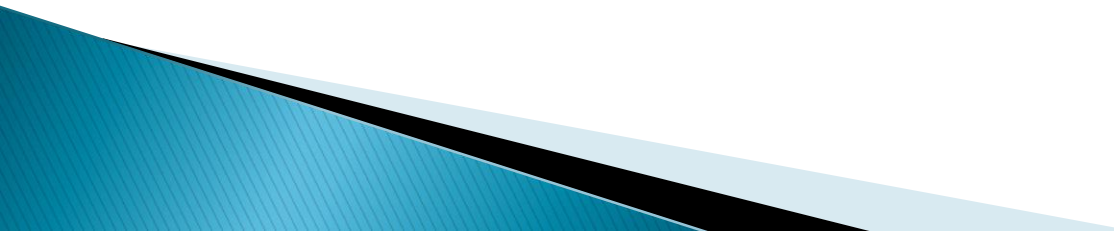
# **SC Department of Disabilities and Special Needs**

## **CMS Final Rule Meeting**

# To whom does the new Final Rule apply?

- ▶ Applies across multiple populations:
  - Intellectually Disabled/Related Disability
  - Autism Spectrum
  - Mentally Ill
  - Elderly
  - Physically Disabled

# To whom does the new Final Rule apply ?

- ▶ The ID/RD and Autism populations are at the heart of the new rule.
  - ▶ These populations will likely be the focus of follow up action from Centers for Medicaid/Medicare Services (CMS) and the Department of Justice (DOJ).
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# Continued Enforcement of Community Inclusion:

- ▶ Department of Justice will continue to push states through litigation towards more community inclusive systems.
- ▶ DOJ will use:
  - The Americans with Disabilities Act
  - The Olmstead Supreme Court Decision
  - New CMS HCBS Final rule

# DOJ Enforcement

- ▶ In April new Rhode Island Settlement sets Employment Precedent
  - Resolves violations of the ADA for people with ID/DD
  - Found that RI overly relied on segregated services to the exclusion of integrated alternatives in violation of the ADA.
  - Requires RI to increase individualized supported employment and provide integrated non-work activities for time when not working.

# What has changed with the New Rule:

- ▶ The new rule changes the definition of community inclusive services for all Medicaid waiver services
- ▶ Previously the rule focused on residential settings, where the person lived. Are they integrated into the community?
- ▶ The new rule looks at not only where a person lives, but where, how, and with whom they spend their day.

# What does the new rule do?

- ▶ Focuses on the nature and quality of individuals' experiences
- ▶ Focuses on outcomes for a person's life
- ▶ Maximizes opportunities for individuals to have access to the benefits of community living
- ▶ Maximizes the opportunity to receive services in the most integrated setting



# What does the new rule do?

- ▶ Provides some mandatory requirements for the qualities of home and community-based settings
- ▶ Defines settings presumed not to be home and community-based
- ▶ Establishes state compliance and transition requirements

# How does the rule define Home and Community Settings?

- ▶ Integrated in and supports access to the greater community
- ▶ Provides opportunities to:
  - seek employment
  - work in competitive integrated settings
  - engage in community life
  - control personal resources

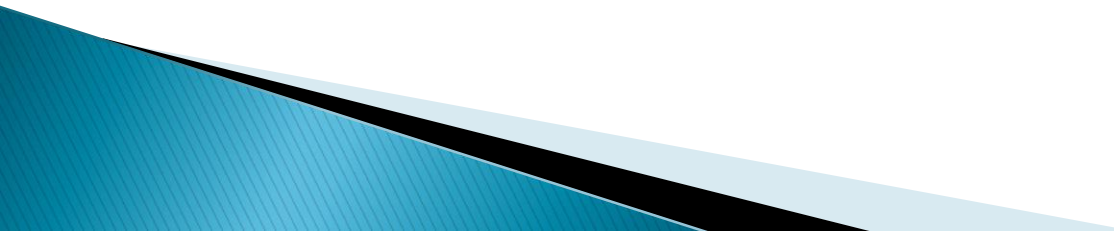
# Examples given by CMS:

- ▶ Settings presumed NOT TO BE home and community based:
  - Institution for mental diseases (IMD)
  - Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
  - Nursing facility
  - Hospital

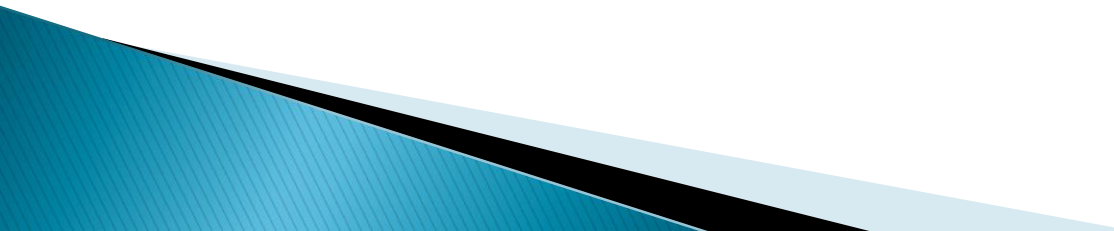
# Examples given by CMS:

- ▶ Settings presumed NOT TO BE home and community based (continued):
  - Settings in a publicly or privately-owned facility providing inpatient treatment
  - Settings on grounds of, or adjacent to, a public institution
  - Settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS


# **Residential settings that need to be evaluated:**

- ▶ Clusters of homes in close proximity
  - ▶ Homes located on the same campus or directly beside a day program or other large facility
  - ▶ Supported apartment settings where the apartments are clustered together and not interspersed within a larger complex of apartments.
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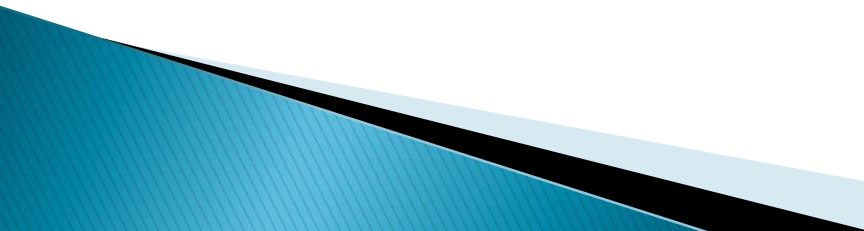
# What about South Carolina?

- ▶ The Day Program structure that currently exists in the SC DDSN system is given by CMS as an example of a service setting that may not be considered community inclusive.
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# **Why is the current day program structure not as community inclusive as CMS's new expectations?**

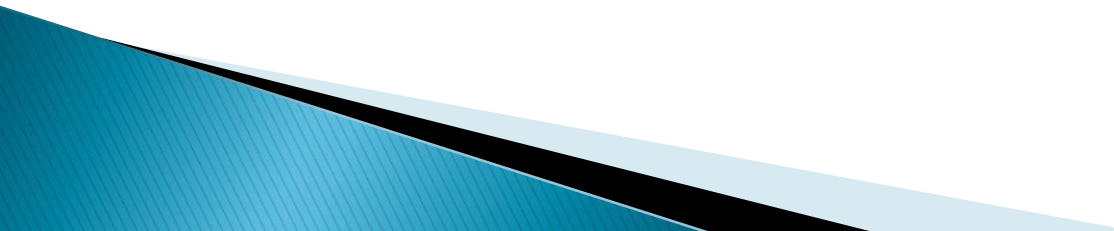
- The fact that individuals go to a building to spend their entire day with other people who have a similar diagnosis as themselves.
  - People do almost the same thing everyday with little choice in what they do.
  - During the day, individuals rarely see people without disabilities who are not paid support staff.
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# What does CMS want the States to do?

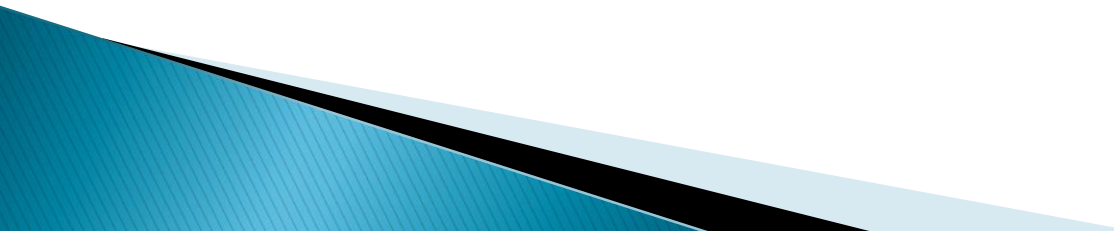
- ▶ Demonstrate that individuals lead individual lives
  - ▶ Individualize programming options
  - ▶ Increase employment opportunities
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# What does this mean for the future here in SC?

- ▶ We are going to have to determine how to provide day supports in a different way than is done currently.
  - ▶ We need to increase emphasis on employment opportunities for people.
  - ▶ We will focus on more individualized support options for people who are not employed or only employed part time.
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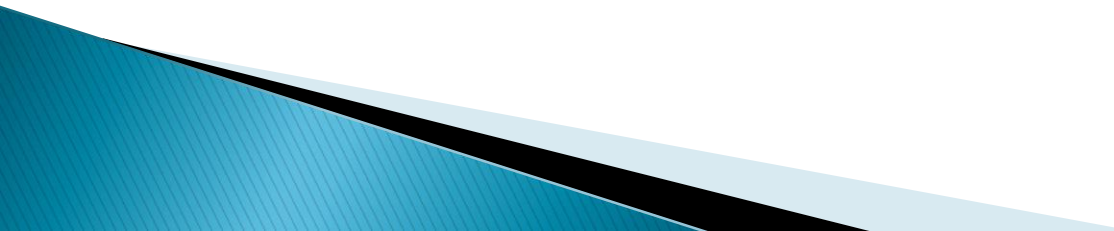
# This **DOES NOT** mean that all the current day programs are closing.

- The day programs provide an essential service to families. They allow people to work or receive needed respite from caring for their loved one.
  - Day programs and supports allow the individuals to socialize and engage with people outside of their families.
  - SC has millions of dollars invested in the physical building structures of the community day programs that should not simply be abandoned.
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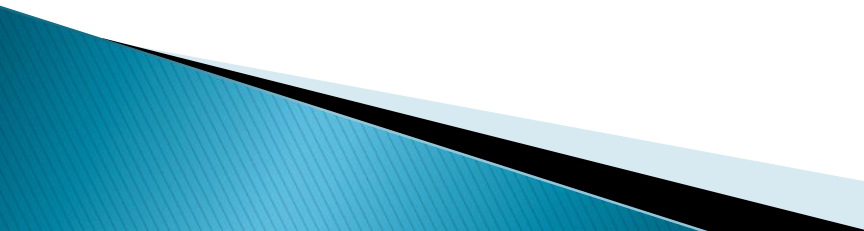
# This **DOES** mean that the way services are provided today will change.

- Services need to evolve to be more individualized and more integrated into the community.
- People need to have more say in exactly how they spend their day.
- People need to interact more with the community and not just other people with similar disabilities or paid support staff.
- More employment opportunities! By employment, we mean real jobs!
  - At least minimum wage
  - Within the greater community
  - Working along side people without disabilities
  - Greater choice, or better fit, in employment options

# Opportunity is Knocking:

- ▶ This is a wonderful opportunity to improve services in South Carolina.
  - ▶ The new rule is not intended to take anything away from individuals and families.
  - ▶ It is intended to increase opportunities for individualized services, including “real” employment, and provide more community inclusion.
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# Focusing on the Mission

- ▶ DDSN will continue to focus on what is most important: meeting the needs of the people we support.
  - ▶ DDSN will continue to focus on individualized supports and services and increased community participation.
  - ▶ DDSN is committed to working with self-advocates, families, providers, and other stakeholders to improve services through these system changes.
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# HCBS Rule Informational Meeting

## Comments/Questions

Written comments can be submitted to the SCDHHS website at:

[www.scdhhs.gov/hcbs](http://www.scdhhs.gov/hcbs)

Or by mail to:

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