

Home and Community-Based Services (HCBS) Individually-Based Limitations to the Rules



LeadingAge Spring Conference

May 23, 2017

Home and Community-Based Services



What are Home and Community-Based Services (HCBS)?

Jan. 2014: Federal Centers for Medicare & Medicaid Services (CMS) released new HCBS rules that all states must follow in order to participate and receive funding in the Medicaid Program.



May 9, 2017: CMS released new Information Bulletin extending the Transition Period for compliance with HCBS criteria for all states.

Home and Community-Based Services



Jul. 2018: All Oregon HCBS providers, along with AAA/APD Case Managers, will begin to implement Individually-Based Limitations to the Rules (OAR 411-004-0040).

Sep. 2021: All Oregon HCBS providers [APD, ODDS and HSD (*formerly Addictions and Mental Health*)], both Medicaid-funded and Private-pay, must be in full compliance with HCBS Rules.



Home and Community-Based Services



Oregon adopted the federal regulations into Oregon Administrative Rules (“overarching HCBS rules”) that apply to APD, ODDS and HSD:

- ▶ 411-004-0000 Statement of Purpose
- ▶ 411-004-0010 Definitions
- ▶ 411-004-0020 Home and Community-Based Services & Settings
- ▶ 411-004-0030 Person-Centered Service Plans
- ▶ 411-004-0040 Individually-Based Limitations



HCBS: Individually-Based Limitations to the Rules



In addition to the 411-004 rules, each Licensed Setting's rules incorporate the HCBS expectations. These include:

- ▶ APD AFH: 411-050
- ▶ APD ALF/RCF: 411-054



4

HCBS: Settings



To which settings do the HCBS requirements apply?

- ▶ APD, ODDS and HSD (*formerly Addictions and Mental Health*)
- ▶ Medicaid-funded and Private-pay
- ▶ Residential, Non-Residential, and In-Home
- ▶ Provider-Owned, Controlled, or Operated Residential Settings

HCBS: Settings



A little more about Provider-Owned, Controlled, or Operated Residential Settings:

“Controlled” means the individual’s choice of provider is limited by the operator of the setting where the services are delivered.

These include:

- Adult Group/Foster Homes
- Assisted Living Facilities
- Enhanced Care Facilities
- Memory Care Facilities
- Residential Care Facilities

HCBS: Freedoms, Rights, Protections



Freedoms, Rights, Protections that may not be limited:

- Access to the broader/greater community
- Services in an integrated setting
- Accessible setting
- Control of personal resources
- Privacy, dignity, respect, freedom from coercion and restraint*
- Residency agreement
- Services in a private room, if desired
- Services in a non-disability setting, if desired
- Work, if desired
- Person-Centered Planning and Plans

**see next slide*



HCBS: Freedoms, Rights, Protections



Freedoms, Rights, Protections that may potentially be limited:

- Locked bedroom or living unit door for Privacy
- Choice of Roommate in shared room models
- Decorate and Furnish
- Food at any time
- Visitors at any time
- Control of own schedule
- Freedom from Restraint*



*Starting July 1, 2017

HCBS Individually-Based Limitations



What is an Individually-Based Limitation to the Rules?

It is a defined process for proposing a limit to one or more of the HCBS Freedoms, Rights, and Protections of an individual (resident) for their own or others **health and safety**.

(See OAR 411-004-0040)

When a “limitation” is applied, it may only be done so with the informed consent of the individual or their legal representative.



HCBS: Individually-Based Limitations

What if the individual is unable to consent?
(e.g., cognitive issues)



As of today:

- ▶ The individual's guardian or Legal Representative may consent;
- ▶ If there is no legal representative, a guardian will have to be appointed.

See next slide for proposed process.



5

HCBS: Individually-Based Limitations

Proposed Process for Individuals who are “Unable to Consent”



- ▶ Providers and AAA/APD Case Managers request, at intake/admission or annual reviews, individual designate a representative (Rep) who will help make Long-Term Care (LTC) decisions on their behalf if he/she is no longer able to do so;
- ▶ If Rep not designated, individual is advised that if he/she becomes unable to make LTC decisions, Rep will be appointed - in this order: Guardian or Legal Rep for Long-Term Care decisions, spouse, majority of adult children, parent, majority of adult siblings, any adult relative or friend, Advocacy Agency or Individual
- ▶ If Doctor or other qualified health professional determines individual is unable to make LTC decisions, the Provider and Case Manager will work with the individual and the Rep for any future Limitations.

Additional information will be provided when a solution is finalized.⁵

HCBS Limitations Process



What requirements must be met before a limitation can be applied?

- ▶ The individual has a defined and specific individualized need.
- ▶ The provider must have proof that they have:
 - Tried positive interventions and supports prior to requesting a limitation; and
 - Tried less intrusive methods of meeting the need, and those methods did not work.
- ▶ A clear description of the specific limitation being requested that is directly proportionate to the specific, assessed need.



6

HCBS Limitations Process



What else must the limitation include?

- ▶ Regular collection and review of data to measure the effectiveness of the limitation(s).
- ▶ Established time limits for periodic reviews to determine if the limitation(s) is still necessary or can be terminated.
- ▶ The informed consent of the individual.
- ▶ An assurance that interventions and supports will cause no harm to the individual.



7

HCBS Limitations Process

Limitations are:

- ▶ Not portable or transferrable:
 - When a person moves, the limitation does not follow them.
 - The new provider must again demonstrate that they have tried alternatives.
- ▶ Only considered if there is a risk to the individual or others health or safety.
- ▶ Not for the convenience of the provider.
- ▶ Like restraints - a last resort option after all alternatives have been tried and did not work.



15

HCBS Limitations - Medicaid Process

Medicaid Case Managers will screen requests for Limitations:



- ▶ **Cognition** - the individual must have a cognitive impairment that is causing the need for the limitation;
- ▶ **Health or safety risk** - there is a significant risk to health and safety of the individual or others; and
- ▶ **Ability to understand the risk** - person does not understand the risk.

If yes to all of the above, a Limitation may be considered.



16

HCBS Limitations - Medicaid Process

- ▶ Once the needed information is gathered, the Medicaid Case Manager will document proposed Limitation(s) in system and prints the Individual Consent to HCBS Limitations form.
- ▶ Meet with individual, provider, and others to discuss proposed limitation(s).
- ▶ If individual (or guardian/legal rep) consents, limitation is put into effect for agreed upon time period (no longer than a year).
- ▶ If there is no consent, limitation can not go into effect.



17

HCBS Short-Term Timeline

Starting July 1, 2017:

- Medicaid Case Managers will begin educating individuals of their HCBS rights, freedoms and protections.
- Providers and Case Managers will request a designated representative who will act on his/her behalf if he/she is no longer able to make long-term care decisions.
- If individual cannot exercise a specific HCBS right, freedom or protection, Person-Centered Team, which includes the individual, works together on possible ways to achieve individual's goal.



18

HCBS Short-Term Timeline

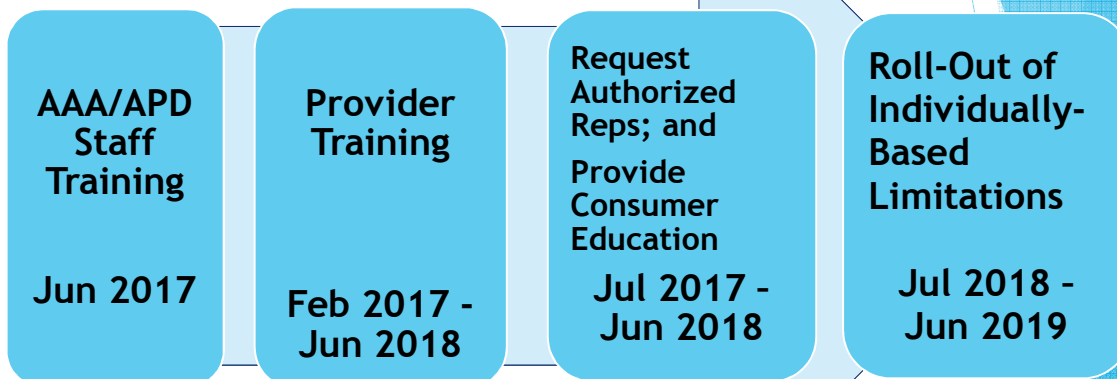
Starting July 1, 2018:

- At the resident's plan review, Private-Pay and Medicaid providers will review whether the resident needs a Limitation(s). (ALF/RCF quarterly, AFH bi-annually)
- Providers are encouraged to informally review plans up until July 1, 2018, in order to familiarize themselves with individuals that may need formal Limitations in the future.
- New Admissions beginning July 1, 2018, will be assessed at the time of admission.

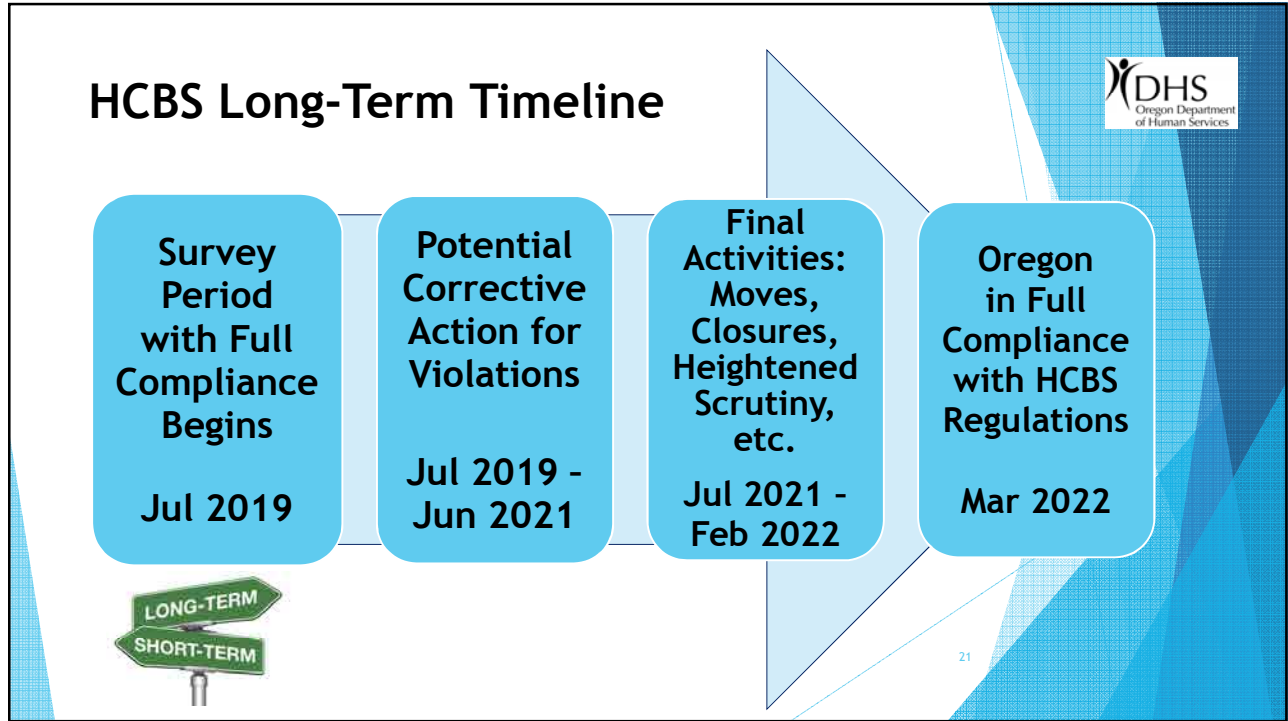


19

HCBS Short-Term Timeline



20



HCBS Rules: Changes and Impact on ALF/RCF Communities

Questions?

Email us: HCBS.Oregon@state.or.us

Online Resources:
<https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCBS/Pages/Resources-Oregon.aspx>

DHS
Oregon Department of Human Services