

NEWLY REVISED



20 Common Nursing Home Problems—and How to Resolve Them

By Eric Carlson

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New Regulations Will Determine if Medicaid Can Pay for Assisted Living

Your Input Needed: Comments Due by Tuesday June 14

New Medicaid regulations will determine if Medicaid can pay for assisted living services. Comments are due to CMS by June 14.

CMS has proposed important new regulations for the operation of Medicaid Home and Community-Based Services (HCBS) waivers. Most importantly, the proposed regulations set requirements for when a setting can be considered community-based and thus eligible for HCBS funding. NSCLC supports strong standards, so that assisted living facilities generally will be required to provide private rooms in order to be eligible for HCBS payment. On the other hand, NSCLC believes that a setting can be community-based even if some rooms in the same building are nursing home rooms, as the availability of different levels of care is a benefit to consumers.

Many other related issues are addressed in NSCLC's [comment letter](#), and in the template letter which can be adapted by you for submission to CMS. NSCLC has developed extensive comments which you can refer to or use the template letter below to create your own comments. Ideally, you should emphasize the points that are most important to you or your organization and, if possible, include an example that personifies the issue.

To submit your comments (no later than Tuesday, June 14) go to <http://www.regulations.gov> (File Code CMS-22296-P/HCBS Waivers). If possible, please share a copy of your

For more information,
Contact:

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Case consultation help
for advocates

letter with Devon York at the National Senior Citizens Law Center at dyork@nsclc.org. If you have questions about the regulations, please contact Eric Carlson at ecarlson@nsclc.org, or (213) 674-2813.

DRAFT TEMPLATE COMMENT LETTER:

June __, 2011

Dr. Donald Berwick
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-2296-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, Maryland 21244-1850

**Re: File Code CMS-22296-P
HCBS Waivers**

Dear Dr. Berwick:

[INFORMATION ABOUT YOU OR YOUR ORGANIZATION] We are appreciative of CMS's initiative in developing this regulatory package. In our experience, the availability of Medicaid HCBS is vital in allowing persons to receive necessary services outside of a nursing facility or similar institution. [ADD INDIVIDUAL EXAMPLE, IF YOU HAVE ONE]

We support the comments submitted separately by the National Senior Citizens Law Center. However, we wish to emphasize the following points:

- We support the proposal to combine a waiver's target groups. We encourage CMS and the states, when target groups are combined, to design waivers and waiver processes that to the extent possible retain elements specialized for a subpopulation. For example, if a specific service planning process has been developed for a mentally ill population, that process should be retained for that population even if the waiver is revised to include persons without mental illness.

- The preamble's discussion of assisted living standards should be incorporated into regulatory language for HCBS settings generally. The standards articulated in the preamble, by and large, are applicable to all HCBS settings. Also, preamble language or similar sub-regulatory guidance is no substitute for standards set forth in regulation.
- Sharing of a unit should be allowed, but only if each participant has a separate bedroom (with an exception for spouses or partners). A setting cannot honestly be considered home or community-based if, for example, two participants each have a bed in a single bedroom. That is a nursing facility model that HCBS settings should not follow.
- Inability to meet a participant's care needs should not be grounds for dismissal, transfer or discharge, unless the necessary care simply cannot be provided in that setting under relevant law, even after consideration of the reasonable accommodation requirements of the Americans with Disabilities Act. Participants should be able to age in place to the extent possible.
- Care should be provided under a person-centered plan that reflects assessed needs and the beneficiary's preferences.
- Development of a person-centered plan should include the beneficiary and persons chosen by the beneficiary.
- Substantive changes to a waiver should not be retroactive. Changes to eligibility standards, procedures or methodologies should be considered substantive.
- Public input is vitally important for waiver development. The input process must be accessible to the public (including persons with disabilities), and a state must be required to make significant efforts to ensure that persons who want to participate are able to do so.
- Intermediate sanctions are important to ensure that states more likely will comply with waiver

requirements, but a cap on waiver enrollment is an inappropriate sanction, as it penalizes beneficiaries much more than it penalizes a state.

Again, we are grateful to CMS to taking the initiative on this important issue. We look forward to the continued development of HCBS services that are responsive to beneficiaries' care needs and personal preferences.

Sincerely,

[YOUR NAME]

[ORGANIZATION]

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