

Final Rule Stakeholder Call

Topics:

09/18/2019

Noon call (100 participants on the line)

1. **Question/Comment:** The assessment is a snapshot of the location at one point in time, if or when a location has changes in occupants then what?

KDADS: Any changes that might affect compliance will be captured through ongoing monitoring. CMS requires the state to have an ongoing monitoring process.

2. **Question/Comment:** Under the FAQ (frequently asked questions) it mentions sites to be assessed are those that are provided owned or operated yet in other places it says that all sites where services are provided even where a client rents from a community landlord they must be assessed too- could you clarify which is true?

KDADS: What is meant with that is if you've got a client and I know you specifically directed to IDD so along with that, if you've got a client that is receiving residential services and they have their own apartment or their own house, it is because of that residential services that CMS had considered it to be provider owned or operated.

3. **Question/comment:** This is an IDD question as well. You just answered regarding residential but what about employment? If you have a client, say receiving HCBS services at Home Depot or another form of employment, does that count as part of the final rule. Does it need to have an assessment at the site?

KDADS: Hi Jim, this is Michelle. For employment because it is a one to one service it is presumed compliant so you do not need to do a site specific assessment wherever they are working, Home Depot, or wherever that may be.

4. **Question/Comment:** I think this will be addressed in the future from my understanding. A little clarification on prevocational services versus day support. It is my understanding there was some misinformation provided whether funding could be HCBS funding could be Medicaid- I'd like a little clarification on which it is. I understand that the system has to create and differentiate a new procedure code so that it can be accurately defined.

KDADS: This is Michelle. You are correct, we've been instructed by CMS to unbundle day services and prevocational services. You can receive HCBS funding in prevocational. We do have to have guidelines around what that's going to look like and we are going to be working on that with stakeholders to make sure that the definition comes into compliance with Final Rule.

- 5. Question/Comment:** If I could ask one more question on that- I'm sure everybody that works in day supports is familiar with what we call subcontracting and reading into some of your materials it appears like what we call subcontracting, or a contract with a third party to make good business, is not going to be allowed to be covered under Medicaid HCBS, is that correct?

KDADS: We are looking at models from other states who are addressing that concern. If we put certain things in place at our prevocational services I don't think we can work through that. We're getting further information from other states that have already come into compliance with Final Rule and did have prevocational services so were going to get some information on that and be sharing that with stakeholders.

- 6. Question/Comment:** After you print your self-assessment, if you discover a problem can you edit it later? Or how would they change on of their responses if they needed to?

KDADS: If I understand correctly, and I will get clarification from our technical folks but as long as you have no completed all of your providers that you can go in and upload additional information if that is the case where you cannot, during the desk review there will be outreach to the provider for additional information and supporting documents that we may find more helpful or to provide more clarity to help individuals become at a higher level of compliance.

Clarification from Carri: Once they are submitted you can't change the answer but when the review begins you will have the opportunity to clarify. So you're not locked into the answer forever and you can reach out and correct it during the desk review process.

- 7. Question/Comment:** I'm looking for a little bit of clarification on FMS providers, if FMS providers are required to do this assessment. In reading through it, I got the impression that maybe they were excluded but then reading other certain areas thinking that FMS providers did need to do that. Can you clarify that for me please?

KDADS: Yes, this is Michelle. No, they do not need to do this assessment. They don't provide any HCBS services in a controlled site. FMS is excluded from that.

- 8. Question/Comment:** This is a follow up to the first question regarding individuals who live in their own apartment or house and say they don't want to cooperate with us providing pictures of, for example, they lock the bathroom door for privacy. What is going to be done in those situations?

Clarifying Question from Carri: Are these people who live in their own home or apartment?

Answer: Correct

Clarifying Question from KDADS: And are they receiving residential services?

Answer: Yes

Clarifying Question from KDADS: And so they are locking their bathroom door for privacy?

Answer: They have their own apartment, I mean they have their own bathroom, what would be a standard apartment for anybody.

Clarification from Carri: It sounds like your question is about uploading pictures for the setting, Michelle, is that type of setting something that-

KDADS: I think that what we're asking there is that they have a key to their apartment and if they can shut their door for privacy.

As long as they don't have a roommate, then it could be explained in the person centered support plan, they could explain that and also if you do happen to ask for a picture of that or something you could reply to that with a response and we could take that into consideration.

9. Question/Comment: Okay and I trust that by roommate you mean an HCBS funded roommate because if they lived with, say, their significant other who is not HCBS funded, that wouldn't apply, correct?

KDADS: Yes, they would need to be an HCBS funded roommate.

10. Question/Comment: Will we only have one user welcoming per agency?

KDADS: Yes.

11. Question/Comment: On the manual it says, settings that are presumed to be fully compliant members own or lease homes which is not provider owned or controlled and where services are provided in that persons home. So if there is a person that receives residential services but rents an apartment from an apartment complex that is not provider owned, do we have to fill out an assessment for that individual?

KDADS: Thank you for your question, if the person is receiving residential services even though they don't lease from you, they lease from an apartment complex, yes you will need to do a site-specific assessment for that.

12. Question/Comment: Reading through some of the materials, I keep seeing references to site policy which state a provider is going to have to cite a specific policy for each site. How specific or detailed do the policies have to be if that is the case?

KDADS: If that is the case that will be discussed in the remediation piece. What we're really looking at right now, pulling the desk review and site specific assessments at this point. Upload what you have and if it happens to cover multiple sites and it covers it

adequately then it won't be a need for additional policy but each individual is what we are looking at. So we will be working on that on the remediation piece.

The other thing we will be looking at is if there is a restriction in a home because someone has, let's say, --- and you have to lock up the food we want documentation from that part of their person centered support plan that would show why the restriction is in place, your behavior policy, and then if there are 3 roommates at least a copy of that specific section on that one other persons plan and how you propose that they would be able to get food and access the food at any time. You don't have to upload the whole piece, just the information that refers to that.

Also something to keep in mind is that in most cases the recommended documentation and suggested documentation is only a suggestion so you'll use whatever information you have that supports your answer. If you don't have a policy but have something else that supports your answer then you can use that documentation.

13. Question/Comment: Thank you because I'm assuming that not that many providers have policies for the site and I'm assuming again that any policies they have reference person centered plans and all that rather than general specifics for that particular site so I guess this is something that we will all deal with in the future.

14. Question/Comment: Can you confirm that we will be completing an assessment for every client home not rent or leased by the agency as a separate site? We provide HCBS residential in the client's home rather than the community.

KDADS: Hi, this is Michelle. If you are providing residential you will need to do every site that you are providing the service to. So if you have 10 you'll need to do 10 residential site specific assessments.

15. Question/Comment: How are the desk reviews and support/chat system staffed?

KDADS: For desk review it will be staffed by KDADS contracted individuals and oversight will be directly provided by KDADS on site to ensure that the desk review is done consistently across all contracts.

For the chat that will be handled by WSU who has been contracted to provide technical and website information.

Questions that come in the chat are supported by KDADS staff help answer questions that come through.

Right so if it's a technical question, it will probably be routed to the technical people to help you access the site or if you are having trouble uploading a document that will be an issue that is handled by the IT people.

If it is HCBS related that will come directly to KDADS staff and they will review that question and respond back to that.

Just a little bit more detail on the chat feature, it is manned live and if someone cannot answer the questions right away, then we get back to them with a response within one business day. So again, some questions just need a little bit more time to respond so we will get back to those questions after.

16. Question/Comment: How will you proceed with an accessible environment for individuals that live in their own apartments or homes? Section H for accessible environment pertains to an individual that lives in their own apartment or their own home. Is the facility physically accessible to the person that lives on site, how is a desk review going to be handled in a situation where we don't have the capacity to go in and create a fully KAKE ADA accessible site in that persons own apartment?

KDADS: Thank you for that question, there is no expectation that you're going to have to have it fully accessible for anyone, if just needs to be accessible for the people who live there.

17. Question/Comment: We don't perceive making any changes to the apartments.

KDADS: No, that would have already been done for the individuals living there.

18. Question/Comment: What about personal care services which is also an HCBS service?

KDADS: Personal Care Services are delivered in somebody's own home so they are presumed compliant because not a controlled or operated site.

Evening Call (participants on the line)

1. Question/Comment: We are a statewide organization we have three executive directors so will each ED have a username and account to enter their information?

KDADS: Tom, this is Russel. All three are with the same organization?

2. Question/Comment: That's right, we have an east, central, and west geographical area. My area is south central Kansas which is Sedgwick county, Harvey.

KDADS: I might have you get back with specifics on that, because you are three different regions you may fall into basically three different provider. I'd have to look into that a bit more, but I think we might have to work that, but again I'd have to look into it a little bit more.

Carri: It might be helpful if you reach out to Russel and send that question to him so he can make sure he gets back with you and has contact information in order to do that.

3. **Question/Comment:** I haven't read through all the information, but I did see the screen where we can upload pictures. So do we have to upload pictures of each of our locations.

KDADS: Yes, there is a multitude of different information that you can upload. Pictures is one of them that is pretty much going to be standard, if you have one of your facilities that basically is not attached to an institution of some sort on the grounds of an institution then, you can upload a photos, a google map photo of your particular facility. That allows to show that you are not on or attached to a institution. And with that I did want to explain too that in that provider manual there is an appendix that covers documentation examples by section of questions so that is a helpful tool to look through and it is 25 pages if you want to print it out.

4. **Question/Comment:** I think I head you mention for residential services that are in an apartment type complex that you would do a self-assessment for each apartment, is that correct?

KDADS: That is correct.

5. **Question/Comment:** Okay so for HCBS in the community for the frail and elderly, were going into individual's homes to provide services. Do we have to do a self-assessment for each of those homes?

KDADS: No, because those are not considered provider owned or operated under the frail elderly waiver.

6. **Question/Comment:** Okay, so it has to do with the waiver more than it has to do with anything else. So if I'm in the individual homes where I am providing services under the IDD waiver then I do have to do a self-assessment for each of those homes.

KDADS: Pretty much the stipulation on that under IDD is if it is a residential service, so if you're providing residential services you would need to do an assessment. And to clarify, even if that setting is being leased or owned by the individual and not by the provider who is providing those residential services, CMS still considers that as a provider owned or operated facility.

7. **Question/Comment:** So for an assisted living or residential care facility, an adult care home where we are providing HCBS services, is that individual apartment, do we need to do a self-assessment on that individuals apartment, or do we do it for the assisted living itself?

KDADS: It would be for the assisted living itself.

For the most part that particular piece applies mostly to the IDD waiver.

8. Question/Comment: Could he provide clarification again on people who live in their own apartments and rent those in their name that we provide HCBS services, if we have to complete the assessment for those?

KDADS: Only if its providing residential services, so if you're providing a personal care attendant under the self-directed or the agency directed then that is considered as complaint. But if you are a residential services provider providing residential services in a client's apartment that the client leases or owns, at that point it is considered provider owned or operated so then a self-assessment would need to be completed.

9. Question/Comment: Once its, how often- is it a yearly completion of the form or once it is complete its complete- complete and approved

KDADS: Once you've completed this and you have to do remediation and you've gone through that and been found compliant, you'll receive a letter from KDADS that says you've been found compliant. However we do need to do some kind of continued monitoring to make sure that providers continue to be in compliance with final rule. At this time we are looking for models for that and how were going to show CMS that we are going to continue to follow up. I don't have that answer for you tonight, but we will be working on that and will be sharing that with providers as we move forward.

10. Question/Comment: I have a question about permission to take pictures in people's apartments where we have to take pictures in people's apartments when we don't own the property. I assume we need to get permission to take pictures in people's apartments when we don't have the lease, we don't own the property, I mean some of the supporting documentation might be kind of hard to get if they don't allow us to do some of that stuff.

KDADS: Yes, if they are in their own apartment and it is them alone in their apartment they are the only HCBS individual in there you can take pictures of the outside and do google mapping for that, you can also provide supporting documents by virtue of policies, person centered services plans, although we do like to have them redacted because the less chance to share specific peoples information the better. But there are other methods other than taking pictures for that. You can describe that yes their door does lock to the bathroom or yes the bedroom door can lock, yes they're inside an apartment complex and they do have their own key. There are other ways of documentation other than just photos.

11. Question/Comment: Okay so we can just give you a write up? Because I'm thinking, yeah they aren't going to allow that, there is no reason to assume they'd give us a copy of their lease or for the laundry facility question or locking door question- so a write up from the provider is sufficient documentation to describe that environment?

KDADS: Correct, If it contains all the information that is needed, If you write something and during the desk review they need some clarification our desk reviewers will reach out to the providers specifically and as for clarification.

12. Question/Comment: What would the provider's responsibility be? You're talking about maybe the door to their bedroom locking and they own the house themselves, they don't want to buy a lock for their bedroom door, what is the provider's responsibility?

KDADS: Basically just document what exists and what doesn't exist at this point. We're not going to make the providers be responsible for something that they don't have control over, being that it is their own home. For most cases, you're not going to have multiple HCBS people in a home so its going to be a spouse or a family member that lives with them. So, yes, as long as their front door can close and lock, I think we pretty well meet that they have privacy.

13. Question/Comment: Okay, you know there are other requirements. I think that you answered but I'm just curious, what all is a provider going to be expected to do if places don't meet your criteria? What is our responsibility if they're renting an apartment from a landlord and maybe there is something that doesn't meet the standard, we can't pay for all of that.

KDADS: Sure, and you may not even have the authority to do that. We're aware of that and that will be worked through on the remediation piece.

14. Question/Comment: The weekly calls (rapid response)- will they send out emails on those, or have those already been sent out?

KDADS: Yes we will get those out to you through the listserv.

And again if you want to make sure you are on our listserv go to communityconnections.org, which is where the website is housed. Then go down to the bottom, it will allow you to sign up for your email to make sure that we do get information out to you.