

February 11, 2015, Bossier City, LA

February 20, 2015, Gray, LA

CMS HCBS Final Rule and OCDD's Transition Plan

Glossary

- **CMS-** Centers for Medicare and Medicaid Services
- **HCBS-** Home and Community-Based Services
- **OCDD-** Office for Citizens with Developmental Disabilities
- **IMD-** Institution for mental diseases
- **ICF/DD** Intermediate care facility for individuals with developmental disabilities
- **SW** Supports Waiver
- **ROW** Residential Options Waiver
- **CC** Children's Choice Waiver
- **NOW** New Opportunities Waiver

Goals of Presentation

- Build a common understanding of CMS HCBS Community Rule related to settings
- Present the Transition Plan for OCDD
- Accept public comment and questions



MEDICAID FINAL RULE: CMS 2249-F AND CMS 2296-F

- Published in Federal Register on January 16, 2014
- Finalized on March 17, 2014
- Applies to all HCBS 1915(i) State Plans, Community First Choice Section 1915(k), and HCBS Waivers Section 1915(c)

HCBS Settings Final Rule

The 'intent' of the rule:

- For the first time, sets federal standards to ensure that Medicaid-funded HCBS are provided in settings that are **NOT INSTITUTIONAL** in nature and are fully integrated... not just going into the community but interacting with the community, participating in the community, working in the community.....
- These standards apply to residential and non residential services and settings
- The rule focuses on the **EXPERIENCE** of each person receiving services and supports....
 - Are they living the life they want to live
 - Are they working in the community and integrated
 - Are they part of the community
- The goal is to ensure that every person receiving HCBS:
 - Has access to benefits of community living
 - Has full opportunity to be integrated in their community and
 - Has enhanced protections

TIME FRAME

- States must submit a “Transition Plan” when renewing/amending waivers or state plan amendments
- If no renewal or amendment is submitted within the year, then the Transition Plan is due to CMS on **March 17, 2015**



HCBS SETTING REQUIREMENTS

- The home and community-based setting requirements establish an outcome oriented definition that focuses on the nature and quality of individuals' experiences
- The requirements maximize opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting

HCBS SETTING REQUIREMENTS

- The final rule defines, describes, and aligns setting requirements for home and community-based services provided under three Medicaid authorities
- 1915(c)-HCBS Waivers
- 1915(i)- State Plan HCBS
- 1915(k)-Community First Choice

HCBS SETTING REQUIREMENTS

The final rule establishes:

- Mandatory requirements for the qualities of home and community-based settings including discretion for the Secretary to determine other appropriate qualities
- Settings that are not home and community-based
- Settings presumed not to be home and community-based
- State compliance and transition requirements

HCBS SETTING REQUIREMENTS

The Home and Community-Based setting:

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services

HCBS SETTING REQUIREMENTS

- Is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting
 - Person-centered service plans document the options based on the individual's needs, preferences; and for residential settings, the individual's resources

HCBS SETTING REQUIREMENTS

- Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices
- Facilitates individual choice regarding services and supports, and who provides them

Community Setting Qualities

- A more outcome-oriented definition of home and community-based settings
- Not solely based on:
 - Location
 - Geography
 - Physical characteristics
 - Size

Community Setting Qualities

- Setting is integrated in and supports full access to the greater community
- Setting is selected by the individual from among setting options
- Setting ensures privacy, dignity , respect and freedom from coercion and restraint
- Setting facilitates individual choice regarding services and supports

Settings that are NOT Home and Community- Based

- Nursing Facility
- IMD
- ICF/DD
- Hospital
- Any other locations that have qualities of an institutional setting



Setting PRESUMED NOT to be Home and Community- Based

- 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

Person-Centered Service Plans

Final rule includes changes to the requirements regarding person-centered service plans for HCBS waivers under 1915(c) and HCBS state plan benefits under 1915(i) -

- Identical for 1915(c) and 1915(i)
- The person-centered service plan must be developed through a person-centered planning process

RESIDENTIAL V. NON-RESIDENTIAL SETTINGS

- Regulations provide additional requirements for provider-owned residential settings
- However, *regulations apply to non-residential settings as well*, including places where people receive environmental supports

SERVICES IN NON-RESIDENTIAL SETTINGS

- **Habilitation**
- **Day Habilitation**
- **Prevocational**
- **Supported Employment**

Many of these services have historically been provided in settings that are **segregated**.

SERVICES IN NON-RESIDENTIAL SETTINGS

Habilitation Services

- Includes home-based habilitation services that may help people gain skills in activities of daily living

Day Habilitation Services

- Typically center-based services that are meant to assist the individual to gain their desired community living experience

SERVICES IN NON-RESIDENTIAL SETTINGS

Prevocational Services:

which prepare an individual for paid or unpaid employment

- Not focused on job tasks or specific employment objectives but rather general skills, like following directions, attendance, task completion, safety, etc.
- Individuals are not paid, or not paid more than 50% of minimum wage

Supported Employment Services: (individual and group)

- Ongoing supports provided to obtain and maintain an individual job in competitive or customized employment or self-employment in an integrated work setting

REQUIREMENTS FOR EMPLOYMENT SERVICES

- The following requirements will apply to services non-residential as well as residential settings
- This includes day programs, prevocational services and supported employment programs

FULL ACCESS TO COMPETITIVE INTEGRATED EMPLOYMENT

Final rule:

The setting in which the person receives services “is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.”

FULL ACCESS TO COMPETITIVE INTEGRATED EMPLOYMENT

- Setting must be integrated to “the same degree” of access as people not receiving HCBS.
- This refers to rural, at-home, or other settings where interaction may be limited for reasons other than disability.

FULL ACCESS TO COMPETITIVE INTEGRATED EMPLOYMENT

- Person is not *required* to seek employment, but cannot waive the *opportunity* to seek employment or control personal resources in the future
- Segregated “prevocational” or habilitative programs that have a poor track record of placing people in competitive integrated employment may not be considered to provide adequate opportunities

OPPORTUNITY TO CONTROL PERSONAL RESOURCES

- Employment or other habilitative services must offer opportunity to “control personal resources”
- Consumers may need counseling in financial competency in order to manage benefits and finances while earning a paycheck.

CONFLICT OF INTEREST

- **Providers** of HCBS services for the individual **CANNOT** be part of person-centered planning process unless there are robust conflict of interest provisions
- This applies to sheltered workshop operators, who may otherwise encourage sheltered work during planning process

INFORMED CHOICE

- Individuals must have the opportunity for “**informed choice**” during the person-centered planning process
- Options must include “**non-disability specific settings**”

PROVIDER-CONTROLLED SETTINGS

- Final Rule includes specific standards that apply to provider-owned or operated *residential* settings
- HCBS recipients must have rights as tenants, right to privacy, right to control own schedules and activities, right to accessible structures
- Some “provider-owned” settings, like hospitals or nursing facilities, are *automatically* not HCBS

PROVIDER-CONTROLLED SETTINGS

- CMS may apply similar “extra” standards to “provider-operated” employment or training settings, such as:
 - Ability to set employment goals
 - Right to accessible workplace or education, including reasonable accommodations
 - Protection by laws governing employment, such as Fair Labor Standards Act or Family Medical Leave Act
 - These standards are *supplements* to the other requirements, including access to non-disability-specific settings and competitive integrated employment

OTHER CONSIDERATIONS

- Recent ADA *Olmstead* litigation over use of segregated employment programs:
 - *United States v. Rhode Island* (settled 2014): consent decree requires phase-outs of sheltered workshops and increase in supported employment services
 - *United States v. Virginia* (2012): requires states to provide supported employment to people with ID/DD
 - *Lane v. Kitzhaber* (Oregon, pending): Department of Justice issued findings letter stating that segregated employment services violate the ADA



OTHER CONSIDERATIONS

- Compliance with *Olmstead* in provision of HCBS is one of the stated goals of the Final Rule
- As a result, the Final Rule should be interpreted as incorporating *Olmstead* requirements into Medicaid HCBS funding decisions

OCDD TRANSITION PLANS

- OCDD has created 3 Transition Plans
 - Overall plan that encompasses all 4 waivers
 - Supports Waiver plan
 - ROW plan
- All 3 plans along with the Waiver Amendment for the SW and ROW are posted on OCDD's website
<http://new.dhh.louisiana.gov/index.cfm/page/1991>
- The SW and ROW will be submitted prior to the deadline of **March 17, 2015**- which is when Louisiana's Transition Plan is due to CMS (which includes Office for Aging and Adult Services (OAAS) and Office for Behavioral Health (OBH))

The Office for Citizens with Developmental Disabilities (OCDD) Home and Community Based Services (HCBS) Developmental (DD)/Intellectual Disability (ID) Waiver Settings Transition Plan

Section 1: Assessment

Action Item	Description	Proposed Start Date	Proposed End Date
Settings Analysis	<p>Louisiana will assess all HCBS rules/regulations and policies/procedures to determine degree of compliance with HCBS rule.</p> <p>Louisiana will identify HCBS settings as they potentially conform to the HCBS setting rule and ability to comply in the future.</p>	10/1/2014	10/31/2014
Participant Survey	Louisiana will obtain feedback from HCBS participants to determine if their services are provided in HCBS settings. If they reside in provider owned or controlled setting, Louisiana will determine if the participant has control over their environment and access to the community.	1/1/2015	12/31/2015
Develop Provider Self-Assessment Tool	Louisiana will develop a self-assessment tool based on the questions received from CMS for Service Providers to complete and evaluate their agencies compliance with HCBS settings rule.	11/1/2014	2/1/2015
Training on the Provider Self-Assessment Tool	Providers will be trained on how to complete the self-assessment for their agency.	2/1/2015	3/31/2015
Completion of Provider Self-Assessment Tool	Providers will complete the self-assessment	4/1/2015	5/30/2015
Monitoring of Provider Self-Assessment	Louisiana will randomly sample (10%) of the providers serving HCBS participants to assess whether service sites have the characteristics of HCBS.	6/1/2015	9/30/2015

Section 2: Remediation

Action Item	Description	Proposed Start Date	Proposed End Date
Information sharing	Louisiana will draft and finalize informational letters describing proposed transition, appropriate HCBS settings, deadlines for compliance, and technical assistance availability.	1/1/2015	12/31/2015
	----- Louisiana will also offer a public stakeholder meeting and invite participants and their families, advocacy groups, service providers, support coordination, local governing entities, etc.	10/1/14	12/31/2015
Provider Assessment Findings	HCBS providers will submit a corrective action plan for any setting that requires remediation. The corrective action plan will provide detail about the steps to be taken to remediate issues and the expected timelines for compliance.	10/1/2015	12/31/2015
Service Definition Manual	As part of the larger Systems transformation and movement to a Managed Care structure, Louisiana has been evaluating and will continue to evaluate service options/definitions. The state has announced intention to complete an 1115 demonstration waiver application and submit to CMS in Spring 2015. The demonstration concept has the existing 1915(c) waivers phasing out and being replaced by the 1115 waiver. Thus, Louisiana will not amend the four existing 1915(c) I/DD waivers, but instead will submit 1115 application. Louisiana plans to implement the 1115 waiver via phase in beginning January 1, 2016.	1/1/2015	12/31/2015
Louisiana Administrative Code	As part of the development and implementation of the 1115 demonstration waiver, Louisiana will revise rules as necessary to reflect federal regulations on HCBS settings.	1/1/2016	12/31/2016
Enrollment	To ensure ongoing compliance, Louisiana will request that the MCO continue the provider self-assessment and appropriate participant survey. The MCO will be required to collect and report information to support monitoring of compliance and will support planning and remediation strategies.	1/1/2016	12/31/2016
Quality Framework Strategies	Louisiana will develop and monitor settings outcome measures.	1/1/2016	Ongoing

Section 3: Public Comment

Action Item	Description	Proposed Start Date	Proposed End Date
Announcement of Public Notice	<p>Louisiana will send individuals, advocates, providers, associations and other stakeholders a public information notice describing the new HCBS settings rule, a draft transition plan, and notice to submit comments electronically and in writing via the designated email address established by OCDD.</p> <p>Louisiana will include a draft transition plan with explanation on a designated website. Stakeholders will be notified of the opportunity to provide public comment by direct email.</p>	10/6/2014	2/28/2015
Public Comment Period and Forum	<p>Louisiana will host a listening session to highlight the settings requirement and offer insight into the changes that will be required and when those changes are effective. The listening session will be live streamed via the web so that stakeholders across the state will have access to view, ask questions and provide comments via email during the session.</p> <p>Two additional public forums will be held in Bossier City and Houma to obtain public comment and questions.</p>	10/28/14	10/28/2014 10am-12pm
		2/11/2015 2/20/2015	2/11/2015 2/20/2015
Ongoing Stakeholder Feedback	As part of Louisiana's Systems Transformation/MLTSS discussions, stakeholder groups have been established. There are established meeting dates/times. Information related to progress and proposed actions will be shared with this group to get feedback/comments.	Ongoing	On going

The Office for Citizens with Developmental Disabilities (OCDD) Home and Community Based Services (HCBS) Developmental (DD)/Intellectual Disability (ID) Waiver Settings Transition Plan for the Supports Waiver

Section 1: Assessment

Action Item	Description	Proposed Start Date	Proposed End Date
Settings Analysis	OCDD will assess all HCBS rules/regulations, related licensing, and policies/procedures to determine degree of compliance with HCBS rule for the Supports Waiver.	11/1/2014	11/30/2014
Participant Survey	OCDD will obtain feedback from HCBS Supports Waiver participants to determine if their services are provided in HCBS settings.	1/1/2015	12/31/2015
Develop Provider Self-Assessment Tool	OCDD will develop a self-assessment tool to gather information on current state of compliance and to evaluate the provider agency's compliance with HCBS settings rule.	11/1/2014	2/1/2015
Training on the Provider Self-Assessment Tool	Supports Waiver providers will be trained to complete the self-assessment for their agency.	2/1/2015	3/31/2015
Completion of Provider Self-Assessment Tool	Supports Waiver providers will complete the self-assessment for their agency.	4/1/2015	5/30/2015
Monitoring of Provider Self-Assessment	OCDD will randomly sample (10%) of the providers serving HCBS Supports Waiver participants to assess whether service sites have the characteristics of HCBS. This assessment will be completed onsite.	6/1/2015	9/30/2015
Analysis	OCDD will compile and analyze the results of the settings analysis and onsite assessment. Findings will be presented to stakeholders in a public forum as well posted on OCDD's website. Heightened Scrutiny will be applied as needed.	10/1/2015	12/31/2015

Section 2: Remediation

Action Item	Description	Proposed Start Date	Proposed End Date
Information Sharing	OCDD will draft and finalize informational letters describing proposed transition, appropriate HCBS settings, deadlines for compliance, and technical assistance availability and share on the website.	11/17/2014	12/31/2015
Provider Assessment Findings	HCBS providers for the Supports Waiver will submit a corrective action plan for any setting that requires remediation. The corrective action plan will provide detail about the steps to be taken to remediate issues and the expected timelines for compliance.	10/1/2015	12/31/2015
Service Definition Manual	As part of the larger Systems transformation and movement to a Managed Care structure, Louisiana has been evaluating and will continue to evaluate service options/definitions. The state has announced intent to complete an 1115 demonstration waiver application to submit to CMS in Spring 2015. The demonstration concept has the existing 1915(c) Supports Waiver phasing out and being replaced by the 1115 waiver. Louisiana plans to implement the 1115 waiver via phase in beginning January 1, 2016. The Supports Waiver, along with the other three waivers managed by OCDD will be phased in over the course of the first year in the new waiver.	1/1/2015	12/31/2015
Louisiana Administrative Code	As part of the development and implementation of the 1115 demonstration waiver and to ensure compliance with the new setting rule, OCDD will revise rules as necessary to reflect federal regulations on HCBS settings.	1/1/2016	12/31/2016
Enrollment	To ensure ongoing compliance, OCDD will request that the MCO continue the provider self-assessment and appropriate participant survey. The MCO will be required to collect and report information to support monitoring of compliance and will support planning and remediation strategies.	1/1/2016	12/31/2016
Quality Framework Strategies	OCDD will develop and monitor settings outcome measures. For example: number of sites visit reviewed fully meeting the setting requirements compared to the number of sites reviewed.	1/1/16	On going

Section 3: Public Comment

Action Item	Description	Proposed Start Date	Proposed End Date
Announcement of Public Notice	<p>OCDD will send individuals, advocates, providers, associations and other stakeholders a public information notice describing the new HCBS settings rule, a draft transition plan, and notice to submit comments electronically and in writing via the designated email address established by OCDD.</p> <p>Louisiana will include a draft transition plan with explanation on a designated website, waiver amendment and waiver document for the Supports Waiver. Stakeholders will be notified of the opportunity to provide public comment by direct email.</p>	10/6/2014	2/28/2015
Public Comment Period and Forum	<p>Louisiana will host a listening session to highlight the settings requirement and offer insight into the changes that will be required and when those changes are effective. The listening session will be live streamed via the web so that stakeholders across the state will have access to view, ask questions and provide comments via email during the session.</p> <p>Additionally, several public listening sessions will be held around the state to obtain feedback.</p>	<p>11/17/2014</p> <p>2/11/2015</p> <p>2/20/2015</p>	<p>2/28/2015</p> <p>2/28/2015</p> <p>2/28/2015</p>
Ongoing Stakeholder Feedback	<p>As part of Louisiana's Systems Transformation/MLTSS discussions, stakeholder groups have been established. There are established meeting dates/times and the public will be sufficiently informed of these dates/times. Information related to progress and proposed actions will be shared with this group to get feedback/comments.</p>	Ongoing	Ongoing

The Office for Citizens with Developmental Disabilities (OCDD) Home and Community Based Services (HCBS) Developmental (DD)/Intellectual Disability (ID) Waiver Settings Transition Plan for the Residential Options Waiver

Section 1: Assessment

Action Item	Description	Proposed Start Date	Proposed End Date
Settings Analysis	OCDD will assess all HCBS rules/regulations, related licensing, and policies/procedures to determine degree of compliance with HCBS rule for the Residential Options Waiver.	11/1/2014	11/30/2014
Participant Survey	OCDD will obtain feedback from HCBS Residential Options Waiver participants to determine if their services are provided in HCBS settings.	1/1/2015	12/31/2015
Develop Provider Self-Assessment Tool	OCDD will develop a self-assessment tool to gather information on current state of compliance and to evaluate the provider agency's compliance with HCBS settings rule.	11/1/2014	2/1/2015
Training on the Provider Self-Assessment Tool	Residential Options Waiver providers will be trained to complete the self-assessment for their agency.	2/1/2015	3/31/2015
Completion of Provider Self-Assessment Tool	Residential Options Waiver providers will complete the self-assessment for their agency.	2/1/2015	5/30/2015
Monitoring of Provider Self-Assessment	OCDD will randomly sample (10%) of the providers serving HCBS Residential Options Waiver participants to assess whether service sites have the characteristics of HCBS. This assessment will be completed onsite.	6/1/2015	9/30/2015
Analysis	OCDD will compile and analyze the results of the settings analysis and onsite assessment. Findings will be presented to stakeholders in a public forum as well posted on OCDD's website. Heightened Scrutiny will be applied as needed.	10/1/2015	12/31/2015

Section 2: Remediation

Action Item	Description	Proposed Start Date	Proposed End Date
Information Sharing	OCDD will draft and finalize informational letters describing proposed transition, appropriate HCBS settings, deadlines for compliance, and technical assistance availability and share on the website.	11/17/2014	12/31/2015
Information Sharing	Planning to ensure current OAAS waiver participants receive the most appropriate services and care management under OAAS' transition to managed care; Individuals with intellectual and developmental disabilities (I/DD) who are receiving Office of Aging and Adult Services - Community Choice Waiver and/or Adult Day Health Care Waiver services will be transitioned to the Residential Options Waiver (ROW) through the Office for Citizens with Developmental Disabilities (OCDD).	10/1/2014	12/31/2015
Provider Assessment Findings	HCBS providers for the Residential Options Waiver will submit a corrective action plan for any setting that requires remediation. The corrective action plan will provide detail about the steps to be taken to remediate issues and the expected timelines for compliance.	10/1/2015	12/31/2015
Provider Assessment	OCDD will support all qualified CCW/ADHC providers with enrollment as ROW provider	05/01/2015	10/31/2015
Service Definition Manual	As part of the larger Systems transformation and movement to a Managed Care structure, Louisiana has been evaluating and will continue to evaluate service options/definitions. The state has announced intent to complete an 1115 demonstration waiver application to submit to CMS in Spring 2015. The demonstration concept has the existing 1915(c) Residential Options Waiver phasing out and being replaced by the 1115 waiver. Louisiana plans to implement the 1115 waiver via phase in beginning January 1, 2016. The Residential Options Waiver, along with the other three waivers managed by OCDD will be phased in over the course of the first year in the new waiver.	1/1/2015	12/31/2015
Louisiana Administrative Code	As part of the development and implementation of the 1115 demonstration waiver and to ensure compliance with the new setting rule, OCDD will revise rules as necessary to reflect federal regulations on HCBS settings.	1/1/2015	12/31/2015
Enrollment	To ensure ongoing compliance, OCDD will request that the MCO continue the provider self-assessment and appropriate participant survey. The MCO will be required to collect and report information to support monitoring of compliance and will support planning and remediation strategies.	1/1/2016	12/31/2016
Quality Framework Strategies	OCDD will develop and monitor settings outcome measures. For example, number of sites visit reviewed fully meeting the setting requirements compared to the number of sites reviewed.	1/1/2016	On going

Section 3: Public Comment

Action Item	Description	Proposed Start Date	Proposed End Date
Announcement of Public Notice	<p>OCDD will send individuals, advocates, providers, associations and other stakeholders a public information notice describing the new HCBS settings rule, a draft transition plan, and notice to submit comments electronically and in writing via the designated email address established by OCDD.</p> <p>Louisiana will include a draft transition plan with explanation on a designated website, waiver amendment and waiver document for the Residential Options Waiver. Stakeholders will be notified of the opportunity to provide public comment by direct email.</p>	10/6/2014	3/12/2015
Public Comment Period and Forum	<p>Louisiana will host a listening session to highlight the settings requirement and offer insight into the changes that will be required and when those changes are effective. The listening session will be live streamed via the web so that stakeholders across the state will have access to view, ask questions and provide comments via email during the session.</p> <p>Additionally, several public listening sessions will be held around the state to obtain feedback.</p>	<p>11/17/2014</p> <p>2/11/2015 2/20/2015</p>	3/12/2015 2/11/2015 2/20/2015
Ongoing Stakeholder Feedback	As part of Louisiana's Systems Transformation/MLTSS discussions, stakeholder groups have been established. There are established meeting dates/times and the public will be sufficiently informed of these dates/times. Information related to progress and proposed actions will be shared with this group to get feedback/comments.	Ongoing	Ongoing

NEXT STEPS

- OCDD must engage in an extensive assessment process of its HCBS settings to determine whether the settings are compliant with CMS standards to be considered integrated the established standards.
 - This includes a provider self-assessment and an onsite visit (random sample) from OCDD



Depending on the assessment...

Settings will be categorized:

1. The setting fully complies with the CMS requirements.
2. The setting, with changes, will comply with the requirements.
3. The setting is presumed to have the qualities of an institution but for which the State will provide evidence to show that the setting does have the qualities of an HCBS setting (“heightened scrutiny”).
4. The setting cannot meet the requirements.

COMMENTS OR QUESTIONS

OCDD DOCUMENTS AND EMAIL LINK:

<http://new.dhh.louisiana.gov/index.cfm/page/1991>

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OCDD

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CMS' Final Rule and Guidance

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>