Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

PROPOSED RULE

13 CSR 70-3.290 Home and Community-Based Services Waiver Setting Requirements

PURPOSE: This rule implements federal regulatory requirements promulgated by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services at 42 CFR 441.301(c)(4) establishing the requirements that must be met for settings in which home and community-based services are provided under a 1915(c) HCBS Waiver Program. 1915(c) Home and Community Based Services (HCBS) Waiver Programs are programs that provide home and community based services to individuals who, in the absence of those services, require the level of care provided in a hospital, a nursing facility or and ICF/IID. To offer a 1915(c) HCBS Waiver Program the state must submit a waiver application for approval to the Centers for Medicare and Medicare Services, who, on behalf of the Secretary of Health and Human Services, determines if the waiver meets the statutory and regulatory requirements found in 42 CFR 441.301 – 441.310.

(1) Home and Community-Based Setting Requirements. Home and community-based settings must have all of the following qualities based on the needs of individuals as indicated in their person-centered service plans—

(A) The setting is integrated in and supports full access of individuals receiving Medicaid Home and Community-Based Services (HCBS) to the greater community, including providing 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.

(B) The setting is selected by the individual from setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

(C) The setting ensures the individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.

(D) The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

(E) The setting facilitates individual choice regarding services and supports, and who provides them.

(F) In a provider-owned or controlled residential setting, in addition to the qualities at 13 CSR 70-3.290 (1)(A) through (E), the following additional conditions must be met—

1. The unit or dwelling is a physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State of Missouri, county, city, or other designated entity. For settings

in which landlord/tenant laws do not apply, a lease, residency agreement or other form of written agreement must be in place for each HCBS participant, and that document must provide protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

2. Individuals have privacy in their sleeping or living unit—

A. Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors;

B. Individuals sharing units have a choice of roommates in that setting;

C. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement;

3. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time;

4. Individuals are able to have visitors of their choosing at any time;

5. The setting is physically accessible to the individual; and

6. Any modification of the additional conditions, under (F)1. through 4. of Section (1) of this rule, must be supported by a specific assessed need and justified in the person-centered service plan. If any modifications are made, the following requirements must be documented in the person-centered service plan:

A. A specific and individualized assessed need;

B. Positive interventions and supports used prior to any modifications to the person-centered service plan;

C. Less intrusive methods of meeting the need that have been tried but did not work;

D. A clear description of the condition that is directly proportionate to the specific assessed need;

E. Regular collection and review of data to measure the ongoing effectiveness of the modification;

F. Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

G. The informed consent of the individual; and

H. An assurance that interventions and supports will cause no harm to the individual.

(2) Settings that are not Home and Community-Based. Home and community-based settings do not include the following—

(A) A nursing facility;

(B) An institution for mental diseases;

(C) An intermediate care facility for individuals with intellectual disabilities;

(D) A hospital; or

(E) Any other locations that have qualities of an institutional setting, as determined by the Department of Social Services (DSS) or its designee.

(3) Heightened Scrutiny process. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS, will be presumed to be a setting that has the qualities of an institution and is not a home and community based setting. The provider may submit

information to DSS or its designee as evidence that the setting does have the qualities of a home and community-based setting. If DSS or its designee, based on the information presented by the provider, determines that the setting does have the qualities of a home and community-based setting, the evidence will be sent to the Centers for Medicare and Medicaid Services to make the final determination as to whether the evidence is sufficient to overcome the presumption that the setting has the qualities of an institution.

(4) Provider Enrollment.

(A) Prior to enrolling with MO HealthNet, HCBS providers will need to certify in writing on forms provided by the Missouri Medicaid Audit and Compliance Unit (MMAC) that they understand and will comply with the requirements of this rule. Providers will certify by the signature of an authorized agent of the business as part of their MO HealthNet application documentation. Providers that refuse to certify shall be denied enrollment with MO HealthNet.

(B) HCBS providers shall be subject to a pre-enrollment site visit per 13 CSR 65-2.020(9)(B)(2)(B). Enrolling HCBS providers who are non-compliant with Sections (1)-(3) of this rule shall be denied enrollment with MO HealthNet.

1. Providers who request in writing an extension to their application process in order to become compliant with Sections (1)-(3) of this rule shall be granted 30 calendar days to become compliant, without paying an additional application fee per 13 CSR 65-2.020(5). This 30-day time period is in accordance with the provisions of 13 CSR 70-3.020(2)(D) and MMAC shall notify the provider in writing of the 30 day extension accordingly. If, at the end of the 30 day extension, the provider is still non-compliant, the provider shall be denied enrollment.

(5) Provider Revalidation. All MO HealthNet providers must revalidate in accordance with 13 CSR 65-2.020(4). HCBS providers must be compliant with Sections (1)-(3) of this rule upon revalidation or they shall not be entitled to continued MO HealthNet participation. If an enrolled HCBS provider is found to be out of compliance during its revalidation process, the provider shall be granted thirty (30) days to come into compliance or shall be denied continued enrollment in the MO HealthNet program.

(6) Providers enrolled with MO HealthNet on or after March 17, 2014, must be in compliance and maintain continued compliance with all the requirements of this regulation upon publication of the regulation.

(7) Providers enrolled with MO HealthNet prior to March 17, 2014, that do not meet the requirements of this regulation, must come into compliance within ninety (90) days of the publication of this regulation or submit and have approved a remediation plan to come into compliance with the requirements of this regulation. The remediation plan must be submitted and approved by DSS or its designee. All providers must be in compliance with the requirements of this regulation no later than March 17, 2022.

(8) Sanctions. Enrolled providers that are non-compliant with Sections (1)-(7) of this rule, during their participation with MO HealthNet, are subject to sanctions per 13 CSR 70-3.030.

(A) DSS or its designee shall inform enrolled providers of non-compliance in writing by e-mail or U.S. Mail.

(B) Enrolled providers shall submit a plan to remediate areas of non-compliance ("transition plan") to DSS or its designee within forty-five (45) calendar days of the notice of non-compliance.

(C) Remediation must be complete within one hundred twenty (120) days of the notice of non-compliance or the provider shall be subject to sanctions per 13 CSR 70-3.030 (5)(A).

AUTHORITY: sections 208.153, 208.201, and 660.017, RSMo. Original rule filed December 21, 2018.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, Legal Services Division-Rulemaking, P.O. Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.