

The Home and Community Based Settings Final Rule: New Settings training for New Choices Waiver providers



Utah Department of

Health & Human Services

Integrated Healthcare

The Home and Community Based Settings Final Rule (or Settings Rule) is a federal rule that governs where and how services are provided to individuals receiving services under a Medicaid Home and Community Based (HCBS) Waiver.

All services that fall under a Medicaid Home and Community Based Waiver must comply with this rule.

For NCW services, Adult Day Care and Residential services are a focus of this presentation. All other services are considered presumed compliant under the settings rule.

Effective date of rule: March 17, 2014

All existing settings must currently be in compliance with the rule.

New settings must be in compliance now– before services are provided in the new setting.

The final rule establishes:

- Mandatory requirements for the qualities of home and community based settings
- Settings that are not home and community based
- Settings presumed not to be home and community based
- State compliance and transition requirements

New settings requirements

- All new settings have to be compliant with the Settings Rule prior to providing services
- DHHS cannot pay for services rendered in settings that have not been deemed compliant

HCBS Settings Rule philosophy

- The Settings Rule is not just about regulations and compliance.
- The philosophy behind the rule is really about a change of mindset to person-centered services in regard to policies, processes, values, norms of programming, and everyday practices.
- Settings that are person-centered are more likely to be compliant.

Definitions and housekeeping

Definitions

HCBS: Home and Community Based Services

Dignity of risk: Allowing individuals the right to take reasonable risks as it is essential for their dignity and self esteem and should not be stopped by overly cautious team members

Setting: Where individuals receiving HCBS funding live or receive services

Greater community: Public places outside of the setting, such as restaurants, stores, theaters, parks, etc.

Community integration: Ensuring individuals are actively engaging in the greater community

Reverse integration: Bringing people and activities from the community into the setting

Secure unit: Locked unit such as memory care where residents cannot come and go freely

Settings that are NOT HCBS or presumed NOT HCBS

Some settings are NOT HCBS or presumed not to be HCBS by nature of the setting. These include:

- Nursing facilities
- Institution for Mental Diseases (IMD)
- Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IDD)
- Hospitals

Settings that are NOT HCBS or presumed NOT HCBS

Some settings are presumed NOT to be HCBS. These include:

- 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 HCBS

Settings that are NOT HCBS or presumed NOT HCBS

A setting may have the effect of isolating individuals receiving Medicaid HCBS from the broader community if:

- Due to the design or model of service provision in the setting, individuals have limited opportunities for interaction in and with the broader community.
- The setting restricts individuals' choice to receive services or to engage in activities outside of the setting.
- The setting is physically located separate and apart from the broader community and does not facilitate individuals' opportunity to access the broader community and participate in community services, consistent with an individuals person-centered service plan.

Settings that are NOT HCBS or presumed NOT HCBS

- CMS recognizes that rural communities may have limited ability to facilitate opportunities for HCBS participants.
- Settings located in rural areas are not automatically presumed to have qualities of an institution, and more specifically, are not considered by CMS as automatically isolating to HCBS individuals.
- With respect to determining whether a rural setting may be isolating to HCBS individuals, compare the access that peers living in the same geographical area (but who are not receiving Medicaid HCBS) have to engage in the community.

New settings requirements

- All new settings have to be compliant with the Settings Rule prior to enrollment.
- DHHS cannot pay for services rendered in settings that have not been deemed compliant.

The Final Rule: HCBS settings requirements

- The Home and Community Based Settings Final Rule (or Settings Rule) is a federal rule that governs where and how services are provided to individuals receiving services under a Medicaid Home and Community Based Waiver.
- The rule is governed by Centers for Medicare and Medicaid Services (CMS). All services that fall under a Medicaid Home and Community Based Waiver have to or will have to comply with this rule.
- The New Choices Waiver (NCW), Adult Day Health (ADH), and Adult Residential Services (ARS) are a focus of this presentation. All other service providers are considered compliant under the Settings Rule.

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- On grounds of, or adjacent to, a public institution
- With the effect of isolating individuals from the broader community of individuals not receiving HCBS

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The Final Rule: HCBS setting requirements

The underlying principle of the HCBS Settings Rule and the goal of system transformation is **community inclusion** for all Medicaid HCBS participants.

HCBS setting requirements:

The Settings Rule defines that a Home and Community Based Setting is integrated in and supports access to the greater community to ensure the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community based services (HCBS).

The Settings Rule requires that the setting helps facilitate opportunity for HCBS recipients to have the same opportunities as individuals not receiving HCBS services.



What does this mean?

- The settings provides the resources required (e.g. transportation, activities, funding, support staff, etc.).
- The setting provides training and/or support to access resources not provided by the setting (public transportation, how to contact case coordinator or natural supports, budgeting, etc.).
- The intention is that individuals receive the support they require to access these same opportunities to the level they desire.
- This will promote independence, increasing opportunities for engaging in preferred activities, events, and experiences.

Settings that are NOT HCBS or presumed NOT HCBS

- CMS recognizes that rural communities may have limited ability to facilitate opportunities for HCBS participants.
- Settings located in rural areas are not automatically deemed non-compliant due to their geographical location.
- To determine whether a rural setting may be isolating to HCBS individuals, compare the access that individuals living in the same geographical area (but who are not receiving Medicaid HCBS) have to engage in the community.
- More information on isolating and institutional factors and how to overcome them can be found [here](#).

HCBS requirements for provider-owned adult residential services

HCBS setting requirements

- The Settings Rule defines that a home and community based setting is integrated in and supports access to the greater community to ensure the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community based services (HCBS).
- Reverse integration activities are not sufficient to meet the true intent and spirit of the HCBS settings rule.
- Reverse integration involves bringing people and activities from the broader community into the setting, instead of supporting people in the setting to access the broader community. Visits by community members have value, but cannot replace community access for individuals.

HCBS setting requirements

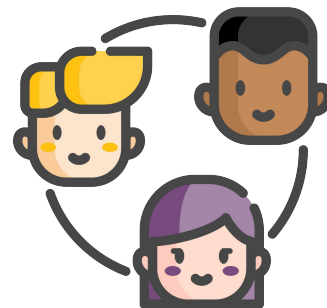
A compliant setting:

- Is located among other residential buildings, private businesses, retail businesses, restaurants, etc. that facilitates integration with the greater community.
- Allows the individual(s) the freedom to move about inside and outside of the setting as opposed to one restricted room or area within the setting and they are allowed to come and go at any time.
- Facilitates the opportunity for the individual(s) to have access to and control personal funds.
- Provides information about, or training on, how to access and use public transportation, such as buses, taxis, Uber, etc.

HCBS setting requirements

A compliant setting continued:

- 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.



HCBS setting requirements

A compliant setting (continued):

- Ensures an individual's information is kept private.
- Has staff who interact and communicate with the individual(s) respectfully and in a manner in which they would like to be addressed.
- Allows individual(s) to have a private cell phone, computer, or other personal communication device, or the setting provides access to a device to use for personal communication in private.
- Provides each individual's supports and plan to addresses behavioral needs that are specific to the individual and not the same as everyone else in the setting (in settings with more than one individual).

HCBS setting requirements

A compliant setting (continued):

- Facilitates individual choice.
- The setting does not restrict services, providers, or supports and affords the opportunity for individual(s) to update or change their preferences.
- The setting provides the individual(s) receiving support in developing plans / individualized goals to support their needs and preferences.
- Setting staff is knowledgeable about the capabilities, interests, preference, and needs of the individual.
- Tasks and activities are matched to individual skills, abilities, and desires.
- Individual(s) sit in any seat in the dining area, can eat privately if desired, and can request an alternative meal.

HCBS setting requirements: optimizing individual initiative

A compliant setting optimizes individual initiative by:

- Offering a secure place for the individual(s) to store personal belongings.
- Supporting individuals who need assistance with their personal appearance in private.
- Affording dignity to the diners (i.e. not required to wear bibs).
- Allowing individuals to engage in legal activities (ex. consuming alcohol).
- Ensures the physical environment supports a variety of individual goals and needs (indoor and outdoor gathering spaces, larger group activities, solitary activities, stimulating, as well as calming activities).

HCBS settings requirements for adult residential service providers

HCBS settings requirements for adult residential service providers

- The individual has a lease or other legally enforceable agreement providing similar protections.
- The setting ensures the individual has privacy in their sleeping or living unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.
- The setting ensures the individual has the freedom and support to control his/her own schedule and activities, and have access to food at any time.
- The individual can have visitors of his/her choosing at any time.
- The setting is physically accessible to the individual.

HCBS settings requirements for adult residential service providers

Legally enforceable agreement:

- A lease or residency agreement is provided to each resident and the lease or agreement should be comparable to those provided under the jurisdiction landlord tenant laws.
- Individuals are informed of their rights regarding housing and when they could be required to relocate.
- Individuals are informed of how to relocate and request new housing.
- The written agreement includes language that provides protections to address eviction processes and appeals comparable to those provided under the jurisdiction landlord tenant laws.

HCBS settings requirements for adult residential service providers

Individuals have privacy and freedom to furnish or decorate their unit:

- Only necessary staff have keys or access to keys to an individual's private living space (house, apartment, room, etc.).
- Staff only use a key to enter a living area or privacy space under limited circumstances agreed upon with the individuals.
- Staff always knock and receive permission prior to entering a private living space.
- Furniture, linens, and other household items reflect individual preferences, interests, and hobbies as desired.
- Individuals have a choice of roommates.
- Individuals know how to request a roommate change.

Camera and lock requirements

HCBS requirements for adult residential service providers: Locks

- Individuals must be able to close and lock their bedroom door.
- If an individual chooses to have a lock on their bathroom door it is required that it be implemented. Locks on bathroom doors should take a person-centered approach on the individual's preferences around privacy.
- Bathroom locks are required in rooms with roommates.

HCBS requirements for adult residential service providers: Locks

When installing locking door hardware, locks also need to comply with R432-6, ADA, and the International Fire Code. To be in compliance, locks need to:

- Be equipped with hardware that allow emergency access from the outside
- Be the lever type
- Operate with one hand
- Unlatch by one operation
- Be fully operable without tight grasping, pinching, or twisting of the wrist
- Operate with a maximum force of 5 pounds
- Have a clear space on both sides for maneuvering that complies with ADA 404.4.2.

You can find more information on locks here:

https://medicaid.utah.gov/Documents/pdfs/ltc/hcbstransition/Files/Settings_Rule_flyer_Locks.pdf

Cameras in NCW settings

- Surveillance cameras in a setting may change the perception of the site as institutional in nature versus home and community based.
- Although the allowance/prohibition of cameras is not specifically discussed in the HCBS Settings Final Rule, a minimum requirement of states is to ensure individual rights to privacy, dignity, and respect in all HCBS service settings.
- The use of cameras must be assessed against the HCBS Settings Rule to ensure that the presence and intended use of cameras is in compliance with the Rule.

Cameras in NCW settings

- Surveillance equipment in the following circumstances generally do not raise privacy concerns and can be used as similar non-HCBS settings would use them:
 - In areas dedicated to provider staff (desks/offices)
 - Monitoring entrances and exits
 - Monitoring exterior areas of the building (parking lots)
 - In commercial/integrated areas of the setting (such as stores, cafes, etc.)

Cameras in NCW settings

- Surveillance equipment may also be used if it achieves one of the following:
 - Increased independence for individual(s) receiving HCBS services
 - Addresses a complex medical condition or other extreme circumstance
 - Reduces or minimizes critical incidents
 - Improves the quality of supports

Modifications and restrictions

HCBS setting requirements: Modifications and restrictions

- A rights restriction is a limitation to the rights of an individual due to a specific assessed need in order to support the health, safety, and well-being of the individual or the community.
- Although the Settings Rule allows a process for modifications or restriction, **NCW does not allow restrictions.**

HCBS setting requirements: Modifications and restrictions

Examples of rights restrictions that are not allowed as part of NCW services:

- Not allowing alcohol
- Not allowing individuals to come and go as they choose
- Restricting food or snacks
- Restricting areas of their home (laundry, kitchen, etc.)

Unsafe wandering or exit-seeking behavior

- Settings with secured units (memory care) should be able to demonstrate how they can make individual determinations of unsafe exit-seeking risk and make individual accommodations for those who are not at risk.
- Memory care placement must be approved by the NCW program prior to moving to a secured unit.
- Should a person choose to reside in a secured unit, the setting must develop person-centered care plans that honor autonomy, as well as minimize safety risks for each person, consistent with his or her plan goals.

Unsafe wandering or exit-seeking behavior

- Technological solutions, such as unobtrusive electronic pendants that alert staff when an individual is exiting, may be used for those at risk. These may not be necessary for others who have not shown a risk of unsafe exit-seeking behavior.
- Spouses or partners who are not at risk for exit-seeking and who reside in the same secured unit should have the ability to come and go by having the code or key to an electronically controlled exit.

Reverse integration and dignity of risk

Examples of modernizing HCBS settings

The best way to be a meaningful part of their community is to be out in the community. **What does this look like and what does this NOT look like?**

DOES: Hanging out with friends in the community (a coffee shop, library, restaurants, the mall)

DOES NOT: Hanging out at a provider controlled facility

DOES: Assisting individuals to develop meaningful relationships with others in the community by engaging in social interactions

DOES NOT: limiting interactions to those only living in the facility

Keep in mind “community” means the **greater community** such as a public place outside of the facility.

Examples of modernizing HCBS settings

Providers should promote community integration and encourage individuals to come and go from the setting, as they please. **What does this look like?**

- Individual interests should be taken into consideration when planning community activities
- A formal process for individuals to create their schedule should be in place
- Providing education on transportation options and helping coordinate transportation so individuals are able to go to events as they desire
- Encourage individuals to develop relationships in the community to create a sense of safety and make it more likely for individuals to frequent the community (e.g. the staff at a local coffee shop know their name)

Community integration vs. reverse integration

We should encourage individuals to access community events versus bringing events into the facility. What can this look like?

Community integration	Reverse integration
Attend classes out in the community (e.g. exercise, cooking, arts and crafts, etc.)	Bring instructors and classes into the facility
Participate in community events (e.g. plays, dances, craft fairs, art exhibits, etc.)	Solely promote activities that occur within the facility
Use natural supports to assist individuals in accessing their community (e.g. providing transportation such as Uber, UTA, Lyft, community members)	Only promotes options provided by the facility

Dignity of risk

- Although the safety of individuals is important, so is their ability to make their own decisions.
- Informed decision-making is a process where you support an individual to obtain information and knowledge about a situation or problem and make a decision. Assist the individual to understand the decision/issue/situation.
 - Gather information
 - Explore options and consider outcomes
 - Allow the individual to decide, act, and empower
 - Evaluate the decision
- NCW has a **Person-Centered Conversation Tool for Risk Factors** to help guide these conversations.

Dignity of risk

Example #1: An individual would like a glass of wine with dinner. You know they're on a medication that their doctor advised them not to consume alcohol due to potential interactions.

- You support the individual in making an informed decision.
 - Discuss pros and cons of alcohol consumption, which is ultimately their choice.
- You support their decision because allowing individuals to make their own decisions will improve their autonomy and self-worth.

Dignity of risk

- It is a provider's responsibility to assure safety, and individuals have the right to make decisions in their lives.
- We all make decisions that are not always the healthiest or safest.
- The team should consider every possible way for the person to carry out the decision they are making to the greatest extent possible.

Dignity of risk

Example #2: An individual would like a glass of wine with dinner. You know they're on a medication that their doctor advised them not to consume alcohol due to potential interactions. **The individual is due for their dose of a controlled substance.**

- The RN can assess the intoxication of a individual and the risk of taking the controlled substance.
- If the risk is **high**, the RN may withhold the medication until later to reduce the risk of interactions.
 - Providers are welcome to reach out to NCW for guidance if desired.

Balancing safety with the dignity of risk... there is room for both!

Positive risk-taking:	Over-protection:
Improved autonomy	Patronized
Improves social interaction	Smothers the person
Improves health	Removes hope
Live independently	Diminishes the person
Construct lives in accordance to their values/personality	Prevent individuals from reaching potential
Self-determination and feelings of worth	

Person-centered practices for providers

Promising practices for providers

Use person-centered practices:

- Help the individual to develop and build relationships in the community that include individuals not receiving HCBS services.
- Promote a variety of public transportation options to encourage individual community access.
- Notify individuals of activities and programs that promote independence and autonomy both inside and outside of the facility (i.e. community bulletin boards).

Promising practices for providers

Use person-centered practices to:

- Foster access to technology and other innovations as a way to stimulate natural supports.
- Offer activities and programs that encourage families and friends to participate regularly and that promote greater independence and autonomy.

In summary

The underlying principle of the HCBS Settings Rule is greater community inclusion and individualized choice for all Medicaid HCBS participants.

If you have any questions contact: newchoiceswaiver@utah.gov

References

Woolford M., Lacy-Vawdon C., Ibrahim J., Bugeja L., and Weller C. Exploring the concept of 'Dignity of Risk.' Monash Forensic Medicine, Monash University.

Raffaele J. (2019). Informed Decision Making, Direct Support Professional Roles & Responsibilities. National Alliance for Direct Support Professionals, Center for Integrative Health.

Resources

- Sign up for the HCBS Newsletter subscription here:
<https://medicaid.utah.gov/ltc-2/hcbstransition/>
 - Note: This is how all additional guidance and Settings news will be communicated
- HCBS Settings Rule Transition webpage:
<https://medicaid.utah.gov/ltc-2/hcbstransition/>
- HCBS Settings email: HCBSSettings@utah.gov

Quiz

- As a new setting, a quiz is required to ensure understanding of the Settings Rule.
- You can find the quiz [here](#).
- There are 10 questions with a possible 30 points. The passing score is 90% (27/30).
- You can retake the quiz if you do not pass the first time.