



New Jersey Department of Human Services

Division of Developmental Disabilities

**A PROVIDER'S GUIDE TO THE
HOME AND COMMUNITY BASED SERVICES
FINAL SETTINGS RULE**

This guide contains information, best practices and examples to assist service providers in understanding each of the home and community-based services (HCBS) settings requirements and to help generate ideas of HCBS-compliant practices.



Table of Contents

Introduction	3
HCBS Overview	3
Person Centered Approaches	6
Informed Choice	9
Legally Enforceable Leases/Rental Agreements	13
Accessibility	15
Privacy, Lockable Doors, Choice of Roommates, and Freedom to Decorate	17
Rights and Autonomy – Schedules and Activities	24
Rights and Autonomy – Dignity, Respect, Freedom from Coercion & Restraint	28
Community Integration	33
Community Integration/Employment	38
Visitors	41
Resources	45
Questions/Contact	48



Introduction

This guide has been developed to share information with providers related to the federal Home and Community Based Services (HCBS) Final Settings Rule. Here providers will find information, best practices, and examples to assist in generating ideas of HCBS compliant practices.

The HCBS Final Settings Rule indicates that all HCBS must be delivered in settings that are integrated in, and support full access to, their community. This includes opportunities to seek employment and work in competitive settings within the community, engage in community life, control personal resources, and receive services in a similar way as individuals who do not receive HCBS.

This guidebook is organized in a manner where the federal requirements are described, then examples and/or best practice suggestions for implementation are provided. Please note that the examples/best practices are intended as guidance. Providers are encouraged to develop their own policies and practices to ensure that the HCBS criteria are met.

Home and Community Based Settings Overview

What is the Home and Community Based Services (HCBS) Final Settings Rule?

The HCBS Final Settings Rule is a federal policy that was announced by the Centers for Medicare and Medicaid Services (CMS) in January 2014. The Final Rule dictates *where* and *how* Medicaid home and community based services (HCBS) are provided and ensures that people receiving services and supports through Medicaid's HCBS programs have full access to the benefits of community living and are able to receive services in the most integrated setting.

The rule also supports enhanced quality in HCBS settings and adds protections for individuals receiving services. Every state is required to submit a Statewide Transition Plan to CMS that identifies how the state will come into compliance with the Final Rule. The deadline for HCBS compliance is March 17, 2023. For more information on the HCBS Final Rule please visit www.CMS.gov/newsroom/fact-sheets/home-and-community-based-services .

Who does the HCBS Final Settings Rule apply to?

The HCBS Final Settings Rule applies to **ALL** individuals who receive Medicaid HCBS, including those enrolled in the Community Care Program (CCP) or the Supports Program (SP). The Final Settings Rule applies to both **provider managed residential and day services settings**. It is important to note some settings are presumed to already be in compliance with the rule while others are presumed not to be in compliance as seen in the chart below.



Presumed Compliant	Presumed Non-Compliant	Settings Never HCBS Compliant
<ul style="list-style-type: none"> ✓ Person is living in a privately owned or rented home or apartment with family members, friends or roommates; and ✓ The home is integrated in typical community neighborhoods where people not receiving HCBS reside; and ✓ The home is <u>not</u> owned by an unrelated caregiver who is paid for providing HCBS to the person. ✓ Additionally, individuals who hire self-directed employees or direct support professionals to provide services in their own homes are presumed to already be in compliance with the settings rule. 	<ul style="list-style-type: none"> ⊗ Settings in privately owned facilities that provide inpatient treatment. ⊗ Settings on the grounds of, or adjacent to, a public institution. ⊗ Settings that isolate individuals from the greater community not receiving HCBS services. 	<ul style="list-style-type: none"> ⊗ Nursing facilities. ⊗ Institutions for mental health. Intermediate care facilities for individuals with intellectual/developmental disabilities. ⊗ A hospital providing long-term care services.

What does the HCBS Settings Rule require?

The HCBS Final Settings Rule applies to all settings that receive HCBS funding and requires that:

- ✓ The setting is integrated in the greater community;
- ✓ The setting supports the individual’s full access to the greater community, including opportunities to seek employment, work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community;
- ✓ The setting is selected by the individual from among different setting options, including non-disability specific options and an option for a private unit in a residential setting;
- ✓ The setting ensures an individual’s rights to privacy, dignity, respect, and freedom from coercion and restraint;
- ✓ The setting optimizes individual initiative, autonomy, and independence in making life choices, including in daily activities, physical environment, and personal associations; and
- ✓ The setting facilitates individual choice and supports people to have control over their own lives in the same manner as those not receiving Medicaid HCBS funding.



In addition to the above requirements, individuals who reside in provider-owned or controlled settings must:

- ✓ Have a lease or other legally enforceable agreement providing similar protections;
- ✓ Have privacy in their unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit;
- ✓ Have the right to control their own schedule including access to food at any time;
- ✓ Have the right to visitors at any time; and
- ✓ Have a setting that is physically accessible.

Are modifications or exceptions permitted?

All individuals have the right to make choices, even if those choices may result in poor outcomes. People learn from making mistakes. Providers and support coordinators must maximize a person's ability to make choices while minimizing the risk of endangering the person or others.

At times, modifications to settings requirements may be necessary to mitigate health and safety risks. Exceptions to the requirements can be made if supported by a specific need that is justified in the individual's person-centered service plan. The rationale for all modifications must relate to the individual, not the facility.

The requirements of the HCBS Final Settings rule are designed to ensure that people with disabilities living in the community have access to the same kind of choice and control over their lives as those who do not receive Medicaid HCBS.

Any modification or exception to the HCBS requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following items must be documented in the service plan whenever there is a modification:

- ✓ Identify a specific and individualized assessed need;
- ✓ Document the positive interventions and supports used prior to any modifications to the person-centered service plan;
- ✓ Document less intrusive methods of meeting the need that have been tried but were not successful;
- ✓ Include a regular collection and review of data to measure the ongoing effectiveness of the modification;
- ✓ Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
- ✓ Include the informed consent of the individual;
- ✓ Include an assurance that interventions and supports will cause no harm to the individual.



Person-Centered Approaches

The New Jersey Division of Developmental Disabilities uses Person-Centered Approaches that includes person-centered thinking, planning, and practice throughout the service system.

- Person-centered thinking is a foundational principle which emphasizes the importance of consistency in language, values, and actions. It recognizes that people and their loved ones are experts in their own lives and that there must be equal emphasis on quality of life, safety and well-being, and informed choice.
- Person-centered planning is the method used to identify and address the needs, preferences, and goals one has for their life and the supports (paid and unpaid) needed to achieve them. It is a process directed by the person with assistance from their support coordinator and those they choose to include on their planning team.
- Person-centered practices align services and systems to ensure that the person has the full benefits of community living. It involves the delivery of services that focus on individual needs and preferences and facilitates the achievement of the person's desired outcomes (NCAPPS and NQF, 2020).

To be person-centered means treating individuals with dignity and respect; building on their strengths and talents; helping people connect to their community and develop relationships; listening and acting on what the individual communicates; and taking time to know and understand the individual and the things that make them unique. Person-centered thinking involves a deep respect for people, their individual needs, preferences, and personally defined goals and vision for life.

Roles

The Person:

- Directs the development of the person-centered plan and is the central and primary “voice” and perspective for the planning process.
- Identifies who will be on his/her/their planning team, and if needed, supports his/her/their communication.
- Identifies individual needs, preferences, interests, and establishment of outcomes through the use of traditional or supported communication, technology, and/or observations of those that care about him/her/them.
- Makes decisions about services based on a variety of options.
- Must be included to provide input into the development of support strategies to be implemented by their selected providers.

Family, Guardians, Friends:

- Support the person's leadership in the planning process as needed.
- Contributes to the development of the plan by sharing observations and perspectives.



- Supports opportunities for further engagement that promote the individual’s education, exposure, and experience with community and life opportunities.
- Considers the person’s support needs and service options in the context of the person’s preferences and vision for life throughout the planning process.

Support Coordinator:

- Facilitates the person-centered planning process in partnership with and through empowering the individual.
- Assures that the person’s leadership and “voice” is heard throughout the process.
- Demonstrates the competency and skills needed to develop high-quality, person-centered plans, navigate the service system, identify potential supports and services from a variety of paid and unpaid options; assist with problem-solving and decision making; mediate disagreement; advocate with the person; make changes to services as requested by the individual; and monitors the provision of service and revision of plans as required and necessary.
- Assures that the person understands and agrees with what is included in the plan, providing user-friendly versions of the information as necessary.

Service Provider(s):

- Provides the selected service(s) in alignment with the service description, supports and outcomes identified by the individual in the person-centered planning process.
- Supports the person’s leadership in the planning process as needed.
- Contributes to the plan by sharing information about the individual’s needs and preferences grounded by observations of the person’s experiences.
- Supports opportunities for further engagement that promotes the individual’s education, exposure, and experience with community and life opportunities.
- Develops person-centered support strategies in collaboration with the person and his/her/their loved ones and based on the individual’s personally defined outcomes, support needs, and preferences.
- Implements quality improvement strategies that include collecting input from the person and family to assure that services are being provided in the manner desired.
- Identifies and adopts new person-centered support strategies based on the evolving needs, preferences, and goals of the individual.
- Supports transitions to new/different services as determined by the individual and planning team.

The Planning Process:

A robust and informative person-centered planning process is a key element of the HCBS Final Settings Rule and is required by the Centers for Medicare and Medicaid Services (CMS) and the Division of Developmental Disabilities. It is important that the person-centered planning process:



- Provides necessary information and support to the person to ensure that he/she/they directs the process to the greatest extent possible.
- Is timely, and takes place when and where the person prefers.
- Presents the person with a variety of support and service options based on their individual needs, preferences, and desired outcomes; and supports the individual to choose among these options.
- Includes personally identified outcomes related to relationships, community participation, employment, income and savings, health and wellness, and/or lifelong learning/education.
- Includes risk factors and supports needed to minimize them.
- Addresses back up plans and strategies.
- Includes who is responsible for implementing and monitoring the plan as well as their roles.
- Includes purchase/control of self-directed services as needed.
- Excludes unnecessary or inappropriate services and supports.
- Is signed by and distributed to the individual and guardian (as applicable) and providers responsible for implementation of the plan.

The service plan must not prioritize the provider's preferences over those of the individual. If the provider is not willing or able to provide services in a way that aligns with the person's needs, preferences, and goals then alternate service options should be examined. The plan must be reviewed and revised every 12 months and any time there is a reassessment of functional need, when an individual's circumstances or needs change significantly, or at the request of the individual.

Ongoing monitoring of the service plan takes place throughout the year through use of the monthly monitoring tool and service notes. As new information is learned, the plan will be updated and revised as needed.

The plan should always reflect whether the support setting where HCBS services are delivered was selected by the individual and is integrated in and supports full access to the greater community. The plan should indicate opportunities to seek employment in competitive integrated settings and/or person-centered employment-focused prevocational activities based on an individual's needs and preferences. The HCBS Final Settings Rule requires that individuals have opportunities to engage in community life, control personal resources, and receive services in the community to the same degree of access as people without disabilities.

By engaging in person-centered practices throughout plan development and implementation, individuals are assured the opportunity to engage fully in the community to the extent they so choose.



Informed Choice – Selection of Residential Setting

Federal Requirement

The residential setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit within provider managed residential settings. A private unit is defined as a private bedroom with lockable doors or can also be a private rental unit. Residential settings options are identified, discussed with the person, and documented in the Individualized Service Plan (ISP). Decisions made about living arrangements are based on the individual's needs, preferences, and resources available to sustain housing, utilities, and other essentials.

Regardless of living arrangement, individuals are provided with opportunities and support needed to engage in community life, control personal resources, have autonomy, and receive services in the community to the same degree of access as people who do not receive HCBS.

Provider Expectation

People have the ability to make choices about where they live and the supports they receive within that setting and the community. Providers should engage with the person and the team using person-centered thinking and support strategies to:

- Assure that people are aware of the variety of living options that exist; are supported to examine each option based on their needs, interests, preferences, and ability to maintain housing; and are free of coercion that would prevent the person moving if they choose to.
- Educate and support people to experience opportunities within their community for which they can base future choices.
- Support people to maintain their autonomy by making informed decisions.
- Use information found in ISPs and facilitate person-centered planning team discussions to develop support strategies that appropriately and effectively balance autonomy, personal preferences, health, and safety (e.g., Important To and Important For.).
- Prioritize the person's personal preferences over those of a family member's, guardians, and/or providers, unless deemed necessary for an established and documented health and/or safety reason. Where feasible, efforts should be made to address individual preferences in the context of addressing health and safety needs. Human rights committee procedures apply when preferences are not addressed.
- People are supported to communicate their interests and work toward their goals, dreams, and priorities.



To comply with this requirement, providers will:

- Collaborate with the individual and their support coordinator to provide people with a selection of residential and day options that include non-disability specific living arrangements.
- Support people to choose the geographic area in which they live.
- Develop housing options that do not require shared bedrooms, unless requested by the person and the established roommate.
- In the rare cases where a person would share a bedroom, support them to choose their roommate and to consider how that arrangement would be changed should one of the roommates request it in the future.
- Support people to develop their own schedules.

Examples

- William lives in a supervised apartment residence that is a one-hour drive from his family. William prefers to live closer to his family and lifelong friends. His support coordinator and planning team provide William with different supervised apartment options that are within a 30-minute drive or less from his family. His support coordinator also explored opportunities for self-directed staff supports in an unlicensed setting. His support coordinator and others invited by William, join him to visit several supervised apartments, help him to take notes about what he likes and doesn't like about each, and discuss the option to self-direct services so that he can choose the option that best meets his needs and preferences.
- Jojo is 35 years old and lived with his father in Cherry Hill until his father's passing a few months ago. Jojo is temporarily staying with his sister Becca and his nephews in Toms River. While Jojo loves his sister and nephews very much, he misses his independence, his friends and the town he knew best. Jojo, Becca and his support coordinator meet to discuss a variety of residential options within Cherry Hill and the surrounding areas to ensure he maintains the relationships and activities that are most important to him.
- Mora grew up in the same home that she currently resides in. A few months ago, her parents passed away unexpectedly. Mora has not lived alone before but felt she was capable if she had similar supports to what her parents afforded her. These supports include meal preparation, medication administration, scheduling and transportation to medical appointments. Mora's extended family discussed alternate housing options, visited options with her, but ultimately she did not want to leave the home that she lived in her entire life. To assist Mora in meeting her desired residential choice, her support coordinator and the family began discussing options for how she could receive the



supports she needed. As a result of the discussion with her planning team, Mora decided to hire a provider agency to assist her in her home for 15 hours per week and used natural supports to assist her as needed. Mora is happy with this plan as she is able to continue living in her home.

Frequently Asked Questions

How can we make sure that the existing residential setting was selected by the individual from among settings options?

During the annual planning team meeting, it is important to discuss whether an individual wants to remain in their current living environment or if they'd prefer to seek an alternate setting. Often times, people may not realize that they have a choice to seek an alternate living arrangement at any time, or that there may be other options to consider. When considering a relocation, it is important to consider the terms and notifications required in the lease or residency agreement.

Effective Support Strategies for Providers

- ✓ People are supported to select from living options that promote community engagement in preferred activities, maintaining and building relationships, and opportunities for increased independence.
- ✓ People are supported to make decisions around paid competitive employment that can support them to have the means to live as they choose.
- ✓ Providers examine innovative housing development strategies. This includes incorporating a person-centered approach to housing development and considering the use of various housing models.
- ✓ Providers allow for flexibility in the selection of supports to further separate housing from services.
- ✓ People are supported to participate in activities of their choice. This includes activities within the setting, as well as activities in the community.
- ✓ People are provided information about home and community activities and are supported to make decisions based on the information provided, as well as their needs and preferences.
- ✓ People have access to the radio, television, computer/tablet with internet, and phone as desired.
- ✓ People are provided with opportunities to participate in a variety of leisure activities based on their preferences.
- ✓ People are able to have visitors where they'd like in the home, and this is coordinated with other housemates, as necessary, to ensure all persons preferences and needs are considered.
- ✓ People can choose with whom they would like to engage in activities with.



- ✓ Discussions and arrangements related to use of common space, shared household items, and visitors should be coordinated in collaboration with housemates as appropriate.
- ✓ People are supported to complete household responsibilities with supports as needed (e.g. cleaning, laundry, meal prep, etc.). Housemates are encouraged to decide upon and share responsibilities with needed support.

Practices to Avoid

- ⊗ Coercing people to live in one setting over another.
- ⊗ Making decisions for person or housemates for the ease of the provider or support staff.
- ⊗ Having direct support professionals complete household responsibilities without the involvement or input of the person.
- ⊗ Not supporting people to visit new living options as scheduled or requested. Providers tasked with providing daily rate services should support individuals to do what they prefer, and this includes providing or supporting the arrangement of transportation to tour new housing options as desired.
- ⊗ Providers limiting the time a guest can visit their loved one.



Legally Enforceable Leases/Rental Agreements

Federal Requirement

The individual has a lease or other legally enforceable agreement (e.g. Residency agreement) providing similar protections.

Provider Expectation

This requirement ensures that people who live in a provider-owned or controlled residential setting have the same rights and protections as other community members. The lease or residency agreement should contain the HCBS-required resident rights, and it should inform the people and providers of their responsibilities under the agreement, such as:

- Amount and due date for rent and/or room/board.
- Person's responsibilities (i.e., maintaining his/her/their living space and not engaging in activities that disrupt or potentially cause harm to other residents.).
- Provider's timeframe for giving the person a notice of service termination and/or eviction.
- Requirements and conditions outlining when either party wishes to terminate the agreement.
- Information on the individual and/or guardian's right to appeal.

The provider must give a signed copy of the lease/residency agreement to the individual and/or guardian. Licensed programs must also refer to their admission and discharge criteria.

To comply with this requirement, providers will ensure:

- People have the same responsibilities that other tenants have under landlord/tenant laws.
- People are provided the same protection from eviction that other tenants have under landlord/tenant laws.

Examples

- The XYZ Provider meets with Michelle and her support coordinator to review the terms of the lease/residency agreement, including her rights and responsibilities, before Michelle moves in so she can make an informed decision about where she wants to live.

Effective Support Strategies for Providers

- ✓ The provider should include information about rights in a resident handbook, but the lease/residency agreement must explicitly reference that the resident's rights are outlined in the handbook.



- ✓ The provider should explain the terms of the lease/residency agreement in a format the person can easily understand.

Practices to Avoid

- ⊗ A provider forces a person to move out without due process, including adequate notice.
- ⊗ A provider discharges/evicts a person for an issue that was not included or described in the admission agreement that was signed by the person or his/her legal representative.
- ⊗ A provider inappropriately uses a lease/residency agreement to force a person to waive/modify certain rights under “house rules” (e.g., a lease/residency agreement cannot prohibit a person from having any visitors).
- ⊗ A provider misrepresents the “housemates” to an individual/family as a being a good match.



Accessibility

Federal Requirement

The setting is physically accessible to the individual.

Provider Expectation

To comply with this requirement, providers must ensure a person's physical environment meets his/her/their needs. For example, people must be able to get into and out of the home, use common areas in the home, such as the kitchen, dining area, laundry area, outdoor space, and shared living space, to the extent they desire.

People must have the right to move freely about and not be confined to any one area of the setting. They should have unobstructed access to all areas of the common living space they wish to access.

To comply with this requirement, providers will ensure:

- People are not limited in what they do because of environmental barriers.
- Environmental modifications are made, as needed, to increase a person's control and independence (e.g. ramps, accessible cabinets and counter, modified sink control, roll in showers, automated technology, etc.).

Example

- Greg lives in an apartment setting. His home has wheelchair-accessible doorways in the common areas and a wheelchair-accessible bathroom so he can easily move in and out of it. While it is important to Greg to be independent within his home by ensuring it is barrier free, it is equally as important to him to be able to independently access all of his favorite locations within his community so he can participate in different activities. For Greg, this means living somewhere he can use transportation options, such as AccessLink, so he can arrange his own transportation to get to and from wherever he wants to go. Greg's support coordinator made sure that Greg was presented with options that not only minimize barriers within the home but also in the community where he lives. His support coordinator also checks in with him monthly to make sure his current living situation is working for him.



Effective Support Strategies for Providers

- ✓ Have conversations with a person and/or their representative, guardian, family about accessibility needs, and develop a plan to address them prior to the individual moving-in.
- ✓ Ensure the physical environment meets the needs of each person who lives in the setting (e.g., accessible access to common areas in the home such as the entryways, kitchen, dining area, laundry, outdoor space, and shared living areas to the extent desired).
- ✓ Make sure appliances and household furniture are accessible and can be used comfortably by the individual and supports are put in place for the person to use them as needed (e.g. front loading laundry appliances, microwave placement, furniture height, etc.).
- ✓ Explain how to request accessibility accommodations, and collaborate with the person to make sure their needs are being properly addressed.
- ✓ Regularly check for fall or trip hazards (loose rugs, uneven surfaces, etc.).
- ✓ Install grab bars, ramps, adapted furniture, etc., as needed, to ensure access to desired areas of the setting and household items.
- ✓ Investigate and implement the safe use of technology (e.g. Alexa, Google Home, Ring/Nest devices, apps, etc.) to promote accessibility and independence while preserving security and privacy concerns.

Practices to Avoid

- ⊗ Restricting people who require mobility support, or use a wheelchair, walker, or cane, to certain parts of the home due to environmental features (e.g., narrow halls/doorways; uneven floors, unlit spaces, etc.).
- ⊗ Restricting people living in the home from maintaining their desired level of independence due to physical accessibility issues in the home.
- ⊗ Using gates or other barriers to prevent access to common areas, entryways, or one's private space.



Privacy, Lockable Doors, Choice of Roommates and Freedom to Decorate

Federal Requirement

Each individual has privacy in their sleeping or living unit including lockable doors and choice of roommates. People must also have freedom to furnish or decorate the unit.

Provider Expectation

Individuals receiving services must have the same rights as anyone else has in their own home. No one would want to return home from a long day at work and have to knock or ring the doorbell to enter their own home. This requirement ensures that an individual with a lease/residency agreement has unrestricted access to enter their home, common areas, and their bedroom. This requirement is intended to ensure individuals have the privacy they desire and can lock their bedroom doors if they choose.

Shared bedrooms are not the norm in New Jersey, but there are some in the service system. The Division strongly encourages all providers to move away from shared bedrooms and does not support the creation of new shared bedrooms, unless expressly desired by the person's involved.

No one wants to share a bedroom with a stranger or someone that may not be a good match, so in those cases where a shared bedroom is available to a person providers must have a process for the individuals to choose with whom they share a bedroom and not have an arrangement forced upon them. There should also be a plan to accommodate people in their own individual bedroom if either decides they do not want to be roommates any longer.

Individual homes should reflect the preferences of the people that live there and have furnishings and decorations chosen by them so that they feel happy and comfortable there.

To comply with this requirement, providers will ensure that:

Privacy:

- People have a place and opportunity to be by themselves when they want to be alone.
- People have control of decisions regarding their living situation.
- People have the space and opportunity for privacy when speaking on the phone/computer, read mail/email, spending time with a guest, etc.
- People's information is kept in a private/confidential location.

Lockable Doors

- People can lock their doors to maintain their privacy.
 - Individuals must have privacy in their bedroom or living unit. Each bedroom or living unit must have a door that can be locked to support personal privacy. Only staff identified as necessary will have keys to the unit's door.



- In a shared living setting, such as a group home, the individual must have a key to the entrance of the home and to their individual bedroom.
 - The staff determined as necessary to have a key to an individual's living unit or bedroom must be decided by the individual and their planning team and documented in the person centered service plan.
 - Staff should have access in the event of an emergency. Through use of the person centered planning process, individuals and their planning team must identify which staff are appropriate to have keys, and the instances that would constitute an emergency, thus allowing staff to open the locked door.
- People have a space to secure and protect their personal belongings.
- Policy or procedures addressing HCBS lockable doors have been developed and reviewed with the individual. Policies or procedures would address how keys are distributed, and returned, and protocols related to informing individuals of their right to a lockable door.

Furnishings and Decoration

- People are afforded the opportunity to decorate and furnish the unit according to their unique preferences.

Roommate Choice:

- Support people choose their roommate if sharing a bedroom and take action to accommodate a person who no longer wants to share a bedroom.
- Support the selection of housemates.

Any restrictions are to be based on a specific assessed need and noted in the ISP and Person Centered Planning Tools (PCPT).

A clearly outlined grievance policy that each individual understands must be established and reviewed with the person.

Frequently Asked Questions

Where do individual rights intersect with health and safety under this requirement?

Providers have a responsibility to protect the health and safety of the individuals they support and all individuals have the right to privacy. A person's health and safety should be addressed in the context of their personal preferences wherever possible.

When there is a medical issue or verifiable health or safety concern, it must be documented in the person-centered service plan and supports should be put in place to address it. These supports should always be the least restrictive possible.



If restrictions must be put in place when less restrictive measures are not successful or there is an emergency that puts the individual or others at risk of peril or harm this must be based on a specific assessed need, time limited, and documented and reviewed by the provider's human rights committee. A plan to remove or fade restrictive practices must be developed and implemented.

Can someone opt-out of having a lock and key to their bedroom?

Locks and keys are to be provided to every individual unless there is a documented modification required. Individuals receiving HCBS have the right to privacy in their bedroom or living unit, and they also have the right to choose whether they want to lock their doors. The individual's choice not to lock their door does not absolve the provider of the responsibility of providing locks on entrance doors, to individual bedrooms or living units; it merely allows the individual to exercise their right to privacy and personal choice.

What kind of keys are acceptable?

The lock and key should meet the physical and accessibility needs of each person in the setting. All locks should allow for individuals to leave their rooms without delay. Locks must be single action, in compliance with current building codes, and must meet all applicable State requirements.

Can a provider remove a lock because the individual often locks themselves out of their room and loses their key?

No. Unless there is an individual limitation or restriction that is documented through the person-centered planning process, a provider cannot remove a lock. Circumstances such as this must be addressed through the person-centered planning process.

May all the staff in a provider-managed/controlled residential setting have a key to each bedroom or living unit door?

The federal rules allow only the individual and their planning team to decide which staff may have an access key to their individual unit/bedroom.

Examples

- Jerry recently moved into a group home and has his own bedroom. Jerry has a seizure disorder that requires frequent checks by his direct support staff. Jerry's staff knock on his bedroom door before entering to allow for privacy. Due to the assessed need related to seizures, Jerry's ISP documents that if he is unresponsive to knocks that staff may open the door to check on him. The plan also states that staff must do frequent checks during the time he is asleep, but do not need to knock in these instances. The plan notes that his



seizure activity will be monitored for additional support needs and potential ability to remove privacy modifications in the future.

- Raul lives in a supervised living apartment with one other person who he says he does not like, although he could not provide a reason why. Raul informed the staff at his apartment that he would like to move. A meeting was held and Raul asked that an old friend from his former neighborhood participate. The team met and, with the help of Raul's friend, it was determined that Raul's issue was not with his current roommate, but the fact that he wants to live alone. Raul was shy about stating this, but overcame that with the moral support from his friend who has known him for many years. The team was able to put together a list of options for housing which included using his housing voucher for a one bedroom apartment within the current agency, moving to a different agency, or finding a non-disability specific rental on his own. Staff worked with Raul on a step by step action plan to help him understand the process of seeking a place to live by himself, which also served as a checklist for him to gauge his progress toward his goal. Raul was happy to be working towards having a place of his own, but staff had concerns about his finances due to \$5000 in credit card debt and limited income. Instead of listing this as a barrier to independent living, staff were able to identify some credit counseling and debt payment solutions that could help Raul pay down his debt while saving money for his own apartment.
- Maria lives in a supervised apartment with her housemate Karen, each have their own bedroom. While Maria enjoys living with Karen, Karen can sometimes insert herself into conversations or eavesdrop when Maria is on the phone. Because of this, Maria sometimes chooses to close and lock her door so she can have privacy and not be interrupted. It is also very important to Maria that her bedroom door be locked when she is not home as she does not want anyone in her bedroom when she is not present.
- Kayla lives her own apartment. One day, during a home visit, her new support coordinator arrived while Kayla was at a friend's apartment down the hall. The support coordinator noticed that the apartment door was wide open. When the support coordinator asked Kayla if she usually leaves the front door open she responded "well, since I can't use a key or open the door on my own I leave the door open so I can get back in." The support coordinator scheduled an emergency planning team meeting and discussed possibilities to help Kayla open and lock her door independently. They identified a lock that will provide Kayla keyless entry to enter and exit her apartment and arranged for this to be installed.
- Greg is an avid baseball fan and loves to watch just about any baseball game that is on TV. He wanted to decorate his room to show his passion for baseball. His staff took him to the local sports and decor stores to buy some items. He didn't seem to like any of the Mets, Yankees, or Phillies items they had in stock. When they went home they tried to



figure out why – a staff person who knows him best spoke up and said – “He’s a Red Sox fan!” Staff helped him get some of his Red Sox memorabilia from his parent’s house and pictures of him, his brother and father at Fenway Park. They also assisted him to get a framed Red Sox poster he wanted from Amazon. He was so happy that his support staff knew that just because he lives in NJ does not mean he likes the Yankees, Mets or Phillies.

- Veronica has shared a bedroom with Melissa for the last ten years. While they have always had a good relationship, Veronica recently informed Melissa that she would really like a bedroom of her own so she can have her privacy when her boyfriend comes over to visit, therefore she is going to be moving out. Before finding someone to take Veronica’s place, the provider takes the opportunity to ask Melissa if she would like to continue to have a roommate or if she would like to explore other options. Melissa decided that she would prefer that she have her own room and the provider accepted this and made arrangements to remove the extra bed and help Melissa redecorate once Veronica moved out. Since they are still friends, they also started to make arrangements for how Melissa and Veronica will stay in touch and get together as they like.
- A new group home was just built by an agency to help them create smaller living arrangements with individual bedrooms for the people they support. There are two homes that they are looking to downsize in the process. They discuss the options to stay or move to a new home with each person and their families. The agency creates an opportunity for everyone to meet and facilitates conversations using interview questions to help the people learn more about who they may want to live with. The questions cover such topics as personal interests, habits (night owl, messy, lighting, sound, etc.), chores and household responsibilities, personal attributes, etc. The families and staff support each person to choose with whom they will best match.

Effective Support Strategies for Providers

Privacy

- ✓ Staff are trained on confidentiality policies and practices.
- ✓ The person has access to make and receive private telephone calls and access to personal communication via text, email or other personal communication method.
- ✓ Personal care is conducted in a private area and with discretion, dignity and support as needed.
- ✓ People have access to spaces for private conversations or quiet time (e.g., a place to be alone if someone is upset or wants to relax).



Locks

- ✓ Individuals have the means to lock/unlock their homes and bedroom doors so that they have privacy in their residence.
- ✓ Staff or other residents receive permission before entering the individual's room. This could include knocking and waiting for the individual to invite them into their room.
- ✓ Staff only access an individual's bedroom or unit as needed to address health and safety concerns.
- ✓ If there are circumstances that would prevent an individual from having a lockable door, these are documented in the person-centered plan.
- ✓ Providers should reevaluate the use of the key and staff permitted access at least annually during the person-centered service plan meeting.

Roommates

- ✓ Provider has a written process supporting individuals in choosing their own roommate.
- ✓ Individual is involved in the selection of a roommate.
- ✓ Provider informs individuals of the process for requesting or changing a roommate.
- ✓ People are supported to choose who they live with through use of self-selection, meet and greets, interviews and other strategies that involves the person.
- ✓ Providers extend processes related to choice of roommate and selection of housemates. Shared interests, preferences, personalities, and good match are considered when coordinating shared housing.

Furnishings and Decor

- ✓ Provider has a process for gathering input from individuals and providing support in decorating bedrooms. This includes providing individuals the opportunity to shop for items with support from staff as needed.
- ✓ Provider supports the individual's choice to decorate his/her/their bedroom and bring in his/her/their own furniture.
- ✓ With permission from the individual, the provider asks family and friends to send photos and the individual decides which photos to frame and display.
- ✓ The individual is supported to go the paint store and pick out paint color samples as well as to make decisions about what color they want to paint their room.
- ✓ Providers encourage individuality with bedroom décor.
- ✓ Providers support housemates to select furniture and décor for common areas that are reflective of the needs, preferences, and personalities of all. People are supported to arrive at equitable decisions when disagreements take place.



Practices to Avoid

Locks

- ⊗ The provider makes decisions on who should have a lock on their door.
- ⊗ The provider does not review the lock policy or changes the lock policy without notifying the individual and guardian.
- ⊗ Provider has a blanket policy that bedroom doors cannot be locked.
- ⊗ Provider has a blanket policy that individuals can't have a key to the front door
- ⊗ Staff and other residents freely enter the room of an individual without permission.
- ⊗ Provider locks the front door at a certain time and everyone must be inside before that time.
- ⊗ Individuals have to knock on their front door or ring a doorbell and wait for staff to let them into their home.

Roommates

- ⊗ Provider selects or makes decisions about the roommate for each individual without the input of the individuals.
- ⊗ Provider does not have a defined process for individuals to request, select, or change roommates.
- ⊗ Making decisions about whom a person lives with solely based on similar support needs (e.g. people living together solely because they have complex behaviors).

Furnishings and Decor

- ⊗ Provider decorates the individual's bedroom without input from the individual.
- ⊗ Provider rules do not allow the option for the individual to personalize their bedrooms.
- ⊗ Individual requests to decorate or redecorate their rooms are ignored by the provider.
- ⊗ Provider does not seek input or involve housemates in choosing furnishings or décor for common areas.



Rights & Autonomy - Schedules and Activities

Federal Requirement

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

Provider Expectation

Individuals receiving services must be able to control their day-to-day lives the same way other community members do. This includes control over planning their own daily schedules and activities and choosing when and what they eat. To comply with this requirement, providers must ensure that people who receive home and community based services choose their daily activities, schedules, and the locations of the activities as opposed to being “told” what they are to do.

It is expected that individuals:

- Receive support needed to make choices about the kinds of work and activities they prefer.
- Decide what they want to eat and when.
- Choose with whom they eat.
- Have access to food and snacks at any time.
- Are able to have visitors at any time.

Examples

- Erik lives in a group home and has a part-time job early in the morning a few days a week. He has to wake up very early and misses breakfast on those days. He also likes to take a nap in the afternoon on workdays. Sometimes he sleeps through dinner and wakes up after his housemates have gone to bed. Other days, Erik enjoys having a snack after dinner and on occasion, after dessert. The provider not only accommodates Erik’s schedule by helping him set his alarm clock and creating flexible mealtimes but also keeps his favorite midnight snack handy for him to munch on.
- Barbara communicates primarily through body language and a device that she can use to indicate “yes” and “no”. When group home staff present her with options to create an activity schedule, staff noted that she always responds with “yes”. Despite this, staff reported that she appears uninterested during some of the outings. Staff reminded her that it is her right to say “no” and she does not have to participate in activities. In an effort to better understand her activity choices, staff contacted her mother and long-time family friend, who are both her guardians. Barbara’s mother suggested staff pay attention to the



nuances of her body language while making activity selections and while experiencing different activities. The guardians suggested that she may not be indicating what she wants but rather what she thinks others may want. Staff conduct monthly activity sampling outings that are used to increase exposure to a variety of activities. Staff started tracking her body language on these outings (i.e.: smiling, hand flapping, etc.) to gain a better understanding of what activities she truly prefers. This information is now used to design activity schedules that Barbara is known to enjoy.

- Keasha lives in a group home, and has several medical appointments each week. Keasha enjoys going to the library and the community center often. Her staff need to make sure she and her housemates are able to get where they need to go. The provider sits down with the group each Sunday to plan their weekly activities so Keasha and her housemates can attend the activities that are important to them.
- Lilly likes her group home and her housemates. While she enjoys the occasional group activity, her true joy is spending time volunteering at the local animal shelter. She really enjoys doing this with her support staff, Jessica, as they are both avid animal lovers. The provider accommodates Lilly's preferences by scheduling Jessica to work on the days that Lilly will be volunteering at the animal shelter so that she can drive her there and provide the support she needs.

Frequently Asked Questions

Does this requirement mean I have to leave the kitchen accessible 24-hours a day?

Yes. The kitchen is a part of the home of a person with disabilities, just like anyone else. The kitchen should be accessible to individuals who live in the home so they can get a drink, prepare a snack, or meal when they want and with support as needed. If there are dietary restrictions or specialized needs while dining (ex. Special food consistency, supervision, etc.) providers must support the individual according to their person centered service plan to ensure health and safety.

Does this apply to day habilitation providers?

Yes. While day providers are not expected to serve food to individuals 24/7, individuals should have the opportunity to access food they may have brought with them, as well as where and when they choose to eat.

If an individual makes poor food choices, do I have to still ensure 24-hour access to food?



You may not limit an individual's access to food unless there is an assessed and documented risk to the individual's health or safety that requires rights modification. For example, a provider may not limit an individual's access to food items based on the provider or family's personal beliefs about the individual's weight or because the provider or family has deemed the food as "junk food." The provider should focus instead on helping the individual to make informed food choices.

There may be instances in which 24-hour access to food poses a severe health or safety risk to an individual. In that case, the provider may need to prevent the individual's ability to access food. Such a modification must be based on a specific assessed need, involve data collection (as applicable) and must be documented in the person-centered service plan. The documentation must account for how long the restriction will be in place, and when it will be reviewed. As applicable, certain restrictions will also require a Human Rights Committee review.

Effective Support Strategies for Providers

- ✓ Individuals are supported in planning their daily activities and schedules.
- ✓ Support activities are flexible and work around the individual's preferred schedule.
- ✓ Individuals have the right to refuse to participate in scheduled activities.
- ✓ Individuals can ask for assistance if they would like to schedule appointments for services in the community or arrange for transportation.
- ✓ Staffing patterns during peak hours during the day or evenings support greater flexibility in opportunities for participating in community events.
- ✓ Provider has a systematic process for gathering input from individuals on daily schedules and planning activities. Providers educate and expose people to various opportunities to help them determine where their interests lay and make choices about activities.
- ✓ Individuals can choose when to wake up and when to go to bed.
- ✓ A participant handbook is developed and policies and procedures reflect individuals having the freedom and support to control activities and schedules.
- ✓ Individuals have access to food (meals or snacks) and a place to store snacks (e.g., bedroom, kitchen), if desired.
- ✓ Individuals can purchase their own snacks or food with their money and store them in their bedroom.
- ✓ Individuals can participate in creating the weekly grocery list, share their personal preferences and be supported in making healthy meal choices.
- ✓ Individuals can have a meal at the time and place of their choosing, including in private, and without staff assistance based on individual need. Staff assistance during mealtimes shall be provided as documented in the person centered plan.
- ✓ Individuals can request alternative meals, if desired.
- ✓ Kitchen utensils and appliances are accessible to individuals; kitchen cabinets are not locked.
- ✓ Individuals have the option to cook their own meals and receive support with this task.



- ✓ Individuals are provided the opportunity to have visitors at the time of their choosing.

Practices to Avoid

- ⊗ Provider creates one “set schedule” for all individuals.
- ⊗ Provider plans activities and schedules without input from individuals.
- ⊗ Provider requires individuals to participate in activities.
- ⊗ Requiring all individuals to attend planned community outings.
- ⊗ Policies, procedures, and participant handbooks do not reflect individuals having the freedom and support to control activities and schedules.
- ⊗ A house rule that all food must be stored in one area of the house (e.g., kitchen or pantry).
- ⊗ A house rule that states “No eating food in bedrooms.” (If food is kept/eaten in a bedroom the individual does have the responsibility to clean up dishes and food).
- ⊗ Meals are served at set times with no flexibility to accommodate variations in schedules.
- ⊗ Restricting an individual’s access to food solely because the provider believes the individual is overweight. Restricting whether an individual eats dessert or not based on if he/she/they finished his/her/their dinner.



Rights & Autonomy- Dignity, Respect and Freedom from Coercion & Restraint

Federal Requirement

An **individual's rights of dignity, respect, freedom from coercion and restraint** are upheld. Any circumstances for which restrictions are deemed necessary based on assessed need must have approval through a Human Rights Committee and be documented in accordance with requirements in the person-centered service plan. Alternative options must be explored and put in place prior to use of more restrictive measures.

Provider Expectations (All Settings)

People with disabilities have the same rights as everyone else. Providers are responsible for ensuring that the **rights** of people are supported and protected. Agencies should provide training and support not only to their direct support professionals but also to the individuals served, so that they can be informed and exercise their rights. While some people may have guardians, which may put limitations on certain rights, it does not prevent the person from influencing decisions or exercising other rights. To comply with this requirement, providers will ensure that people with developmental disabilities:

- Have the same rights as people not using HCBS.
- Are informed of their rights and be supported to exercise their rights, regardless of if they have a guardian.
- Do not have their rights impeded due to another person's support needs.
- Are supported with the least restrictions possible. Non-restrictive approaches should be put in place prior to moving toward more restrictive measures with few exceptions. All rights restrictions must complete Human Rights Committee review, and be documented by the provider and in the ISP. A plan for restoring the right/fading the restriction must be developed and implemented.
- Are treated in a respectful manner, have interactions that enhance the person's self-esteem, capitalizes on their capabilities, and encourages engagement.
- Are only prescribed psychotropic medications based on need related to specified psychiatric diagnoses and/or symptomology assessed by a skilled physician or nurse practitioner and reevaluated on a regular basis. Medications are not prescribed for ease of service providers. Informed consent is obtained prior to implementation of intrusive medical or behavioral interventions.



- People are free of abuse, neglect, and exploitation and do not live in fear of physical or emotional harm. They are supported by staff that are aware of, can recognize, and can report all forms of abuse, neglect and exploitation.
- Are not threatened or intimidated to comply with organizational policies or individual staff preferences.
- Have access to a fair and impartial hearing of grievances and an independent review of limitations to personal freedoms.

Providers must maintain a Rights Policy that:

- Specifically details the rights afforded to individuals receiving HCBS.
- Includes clear guidelines that outlines when and how a request may be made to modify person's rights (see DC#5: Human Rights Committees).
- Includes a requirement for the annual disclosure of HCBS rights to individuals and their families.
- Includes a requirement for annual staff training of HCBS rights.

Any rights modifications within a setting are documented and in accordance guidelines in the person-centered service plan. A plan for restoring the right/fading the modification must be developed and documented.

Examples

- Jason lives in a supervised apartment setting and chooses to eat his lunch in the main lounge area so he can visit with Sean. After Jason finishes eating, he is scheduled to take his noon medications. The provider asks Jason if he would like to take his noon medications in the privacy of his unit, or if he prefers to take them at the dining table. Jason indicates that he prefers to take them at the dining table because he and Sean plan to play their daily card game.
- Lisa receives community based support services in Freehold. Lisa and her staff run into Lisa's cousin, Fran, while walking to the library. Fran asks the staff about Lisa's medication and if it is helping her. Lisa's guardian has not signed a release of information allowing staff to share this information with Fran. The staff respects Lisa's privacy by informing Fran that the information she requested is private and confidential. The staff tells Fran to contact Lisa's guardian if she would like information about her medications.



- Melanie lives in a group home setting and has a behavior support plan that includes a restriction from making phone calls to her sister outside of their regularly scheduled time. Prior to implementing this restriction, Melanie would call her sister multiple times every hour. When she could not reach her sister, she would demonstrate aggressive behaviors toward her housemates and staff. Prior to implementing the restriction, the provider agency collected data and discussed the situation with the Planning Team (including Melanie, her sister, the provider, and the support coordinator). After a review of the data and team discussion, it was discussed that Melanie would call her sister each day at 7pm. This schedule was agreed upon by both Melanie and her sister and will be reviewed monthly to determine whether this phone schedule continues to be required.
- Clara recently moved into a group home where staff have been working to better understand her communication style. In addition to being blind in one eye, Clara has been deaf since the age of eight. Due to this, she uses a mix of 10 ASL signs, pointing, vocalizations, and body language to communicate. At her ISP meeting, her sister and brother-in-law were able to help staff decipher the meaning of her vocalizations and facial expressions, which appeared to make Clara happy. The team observed how she interacted with family and gained a better understanding of her wants, needs, and communication style. In response to this, the team discussed training all staff on basic sign language and having Clara evaluated by a speech pathologist to determine the best method to communicate more effectively. The group home manager asked Clara if she would be interested in scheduling this evaluation; to which she signed 'yes'. The team hopes that this will help Clara be more active in conversations and interactions regarding her wants and needs.

Effective Support Strategies for Providers

Rights

- ✓ People are informed of their rights and about their choice to exercise their rights, in ways that are easily understood and regardless if they have a guardian. People are informed about what they can do if they feel that their rights are being impeded against.
- ✓ People's rights are not impeded due to another person's behavior or other support needs.
- ✓ People are treated in a respectful manner, have interactions that enhance the person's self-esteem, capitalizes on their capabilities, supports informed decision making, and encourages engagement in new things.
- ✓ Informed consent is obtained prior to implementation of intrusive medical or behavioral interventions.
- ✓ People using psychotropic medications have a specified psychiatric diagnoses.



- ✓ People are not subjected to actions, by anyone, which cause them physical or emotional harm.
- ✓ People are not threatened or intimidated to comply with organizational policies or individual staff preferences.
- ✓ People live and work free of the fear of physical or emotional harm.
- ✓ People are able to recognize and report all forms of abuse, neglect and exploitation.
- ✓ People have access to a fair and impartial hearing of grievances and an independent review of limitations to personal freedoms.

Dignity and Respect

- ✓ Direct Support Professionals assist people with all personal care in a dignified and private manner.
- ✓ People are supported to eat meals with dignity and respect while assuring safety needs are addressed (e.g. not required to wear bibs or use disposable cutlery, plates and cups).
- ✓ People choose clothes, hairstyles, and make-up that meet their personal preferences with support to make informed decisions as needed.
- ✓ People with disabilities are included in conversations about their needs and/or experiences – Nothing About Us, Without Us.
- ✓ Direct Support Professional dress like community members, not in scrubs or medical attire.
- ✓ People are addressed by their preferred name, not “hun,” “sweetie” or similar names.
- ✓ DSPs are essential community models and mentors. They should direct conversations about the person to the person regardless of the individual’s ability to communicate using words and provide communication support as needed.
- ✓ Staff converse respectfully with people while providing care and assistance, regardless of the person’s ability to vocalize a response.
- ✓ Staff use written, verbal and non-verbal communication that demonstrates the values of respect and dignity.

Freedom from Coercion and Restraint

- ✓ The provider develops and implements policies and practices that ensure the rights of people are supported and protected.
- ✓ The provider provides training and supports to help people understand personal freedoms and the rights of others.
- ✓ The provider assists the person to fully exercise their rights and make choices.
- ✓ The provider provides people with access to a fair and impartial hearing of grievances.
- ✓ Guardianship status does not prevent the person from influencing decisions.



Practices to Avoid

- ⊗ Supporting personal care activities (e.g. changing clothes, bathing, using the restroom, etc.) outside of a private space.
- ⊗ Opening/reading mail or other forms of communication without the consent of the person.
- ⊗ Staff share a person's private information without the consent of the person or his/her/their guardian.
- ⊗ Physicians or nurse practitioners are asked to prescribe medications for the convenience of the provider.
- ⊗ Independently requesting the physician to change the person's diagnosis without consent of the person or his/her/their guardian.



Community Integration

Federal Requirement

The setting is integrated and supports full access to the greater community for people receiving HCBS services. This includes 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 people who do not receive HCBS.

Provider Expectation

People who receive HCBS must have equal access to the same community resources and activities as those not receiving HCBS. Providers must not have rules that restrict or obstruct community access. It is critical to ensure service and support delivery practices do not isolate older adults and people with disabilities from the community. Providers must also ensure service and support practices do not create an environment that is institutional in nature. Providers must support people in their desires to participate in the community as they choose. To comply with this requirement, providers will ensure:

- People are supported to interact directly with other members of the community who are not paid to do so.
- People are supported to participate in community activities based on their preferences and interests.
- People have the opportunity, freedom, and support to define what they would like to do and who they would like to do things with.
- People are provided with various opportunities and supports to meaningfully engage in their communities, including running errands, shopping, going out for entertainment, eating at a restaurant, attending a religious service, etc.
- People participate in the life of the community with opportunities to meet others through routine and special activities that occur in the community.
- People are provided opportunities and support to pursue competitive, integrated employment.
- People have access to various transportation options that may include private pay, public transportation or provider transportation and other supports as needed to regularly access resources and activities similar to those used by the community at large.
- People have access to meet and spend time with others outside of the HCBS setting.



Examples

- Michelle receives HCBS services in the community. When engaging in community activities, she relies on preferred support staff to assist her with navigating her surroundings and communication. During a service plan meeting, it was discussed that Michelle enjoys outdoor community events and visits to local parks. When engaging in these activities Michelle demonstrates gestures/body language that indicate enjoyment.

Based on these observations, Michelle and her team have decided to explore the community groups in which she might have interest in participating in. Her support coordinator identified a local bird watching group that meets at the local park on the first and third Saturday of every month. This option was presented to Michelle and her team, and it was agreed that her preferred staff would take Michelle to try it out. When Michelle tried the activity, it was clear that she was enjoying herself. She and her team decided that she would join the group and would participate along with her preferred staff each time the group met. Michelle now participates in this activity regularly and has made new friends in the community that she looks forward to seeing on the first and third Saturday of each month. It was learned that Michelle also enjoys watching nature programs and has a general interest in learning more about local birds and wildlife. At the end of the year, the group will participate in a community showcase. Michelle is looking forward to participating in this event, as well as others that this group may engage in.

In this example, staff helped Michelle explore being a part of a community group. Support was provided by talking with Michelle, her support coordinator and people who know her best (family, friends and staff) about her interests, goals, and dreams. Michelle's preferred means of communication is gestures and/or body language so staff observe what Michelle enjoys doing (hobbies, leisure activities and interests) and also what she's good at (skills and talents). The information helped Michelle and staff identify a community group that matched her interests. Staff contacted the community group to inquire about membership and made arrangements for Michelle to attend the groups and other upcoming community events and meetings.

Frequently Asked Questions

How can a rural setting meet this requirement?

A rural setting may have fewer local resources or opportunities for people to participate in community events or activities, but this is also true for the general public who resides in a rural area. The key is to be sure people have the same access to the community as others who live in that community. This may include opportunities to participate in activities and utilize resources outside one's local community.



Is integration different for everyone?

Yes. Each person may have different needs, interests, and preferences. Individuals should also be permitted to change their needs, interests and preferences as they see fit. Providers must address individual needs, interests, and preferences and find a way to help every person obtain these to the greatest possible extent. Providers must consider how they will assist individuals to explore opportunities in the community rather than simply planning for group outings.

One person's needs should not limit another person's freedoms. If one person does not like loud noise or large crowds but another person wants to attend a street fair, the provider should not prevent others from attending. Instead, activities should be coordinated in a way in which each participant is supported.

While a person may enjoy participating in a group activity, individual opportunities and opportunities where a person can participate in activities with people with shared interests should be coordinated.

What are the expectations for service providers regarding “individual community opportunities?” Do you expect us to provide one-on-one community activities?

Unless indicated in the person-centered service plan, service providers are not required to support a person with one-on-one supervision in the community but are encouraged to support one-to-one options when desired and feasible. Providers should talk to/learn about the likes, dislikes, interests, and needs of each person they support. They must make sure they have opportunities to participate in activities that match their preferences and are supported in ways that promote success. Providers should share community activity information to raise awareness of and access to the broadest array of integrated activities. It is not acceptable for providers to offer only on-site activities or only bring community members into the facility.

- The goal of group activities is to provide opportunities for people to not just be *present* in the community but **integrated** in the community.
- Groups can go out together but people should be encouraged to engage in individual activities as desired. Providers are encouraged to discuss the activity with the group so they can plan ahead to have proper staffing.
 - For example, a group can go to a Fall Festival. One person can decide to pick apples while another person decides to go on a hayride. Prior to attending the festival, the staff discussed what types of activities would be available and planned ahead to make sure there was appropriate staffing to support the people who chose to attend.



Effective Support Strategies for Providers

To support full community integration, providers must facilitate regular activities based on individualized, person-centered needs and preferences. These activities should include opportunities with others who do not receive HCBS (not including paid staff). In residential settings, if access to the community is limited due to geography or location, the provider should facilitate access to transportation however possible. For example:

- The provider can coordinate agency-based transportation (e.g., provider owned vehicles).
- The person can contact a natural support for transportation.
- The provider can facilitate/support use of public transportation; taxis, Uber, or Lyft, or other modes of transportation (e.g., walking, riding bikes) with DSP support as needed.
- The provider can help the person use community transportation.

Ideally, there should also be some community activities at which a person can choose to spend their own money, as well as provider-sponsored or no-cost activities. People should be supported to review activity options and choose based on their interests; providers are discouraged from setting a “community outing calendar” that dictates what people will do.

Service providers should educate people about community opportunities, expose people to options to learn more about what they enjoy and don't enjoy, provide people experiences to get involved and be integrated.

To engage with the person and the support team, the provider should use person-centered approaches (e.g. Charting the LifeCourse, Person-Centered Thinking, and CQL concepts and tools) to:

- ✓ Ensure people have opportunities and supports they need to be fully included in their community, individually and with others as desired.
- ✓ Assist individuals to explore new activities in the community.
- ✓ Identify, develop and make available information on transportation options for community access.
- ✓ Assist people with developing meaningful relationships with other members of the community.
- ✓ Ensure people have services, resources and supports to help them explore or maintain meaningful activities. Licensed programs must also refer to their applicable licensing/registration requirements regarding access to the community, including engagement in community life.



- ✓ Ensure people have assistive, adaptive and rehabilitative devices, equipment and software that support independence and interaction in the community.
- ✓ Assist with implementation of technology that support and encourage community engagement.
- ✓ Ensure that support staff are informed of the preferences identified in the individual's service.

Practices to Avoid

- ⊗ Avoid creating barriers or obstructions that isolate the person from full access to the community.
- ⊗ Not utilizing creative and effective solutions to provide access and integration in the community. (e.g., identifying opportunities in the community, natural supports, technology).
- ⊗ Planning activities without input from individuals.
- ⊗ Discouraging individuals from trying new activities because of concerns about the perceived limitations or support needs of the individual.
- ⊗ Creating an admission agreement that imposes limitations on integration and community access (e.g., a prohibition on being employed or a requirement that residents must receive other services on-site or attend a provider's day program as a condition of residing there).
- ⊗ Requesting Individual Service Plan modifications based on the provider's ability or preference to provide support rather problem-solving and putting supports in place in order to meet the community engagement desires of the individual.
- ⊗ Preventing an individual from seeking alternate services when the provider is unable to support community engagement to the extent desired.

It is important to remember that all people receiving HCBS have the right to access their community to the extent that they so choose, and to the same degree of access as people who do not receive HCBS. It is the provider's responsibility to ensure that people receiving services are not only offered these opportunities, but that they are educated about options, and the selection of activities is made based on individualized needs and preferences.



Community Integration/ Employment

Federal Requirement

The setting is integrated and supports full access to the greater community for people who receive HCBS services. This includes opportunities to seek employment and work in competitive integrated settings. Work can help people feel a sense of purpose and contribution to their community. It also helps people earn money that helps them engage in community life, participate in activities, and access services in the community to the same degree of access as people who do not receive HCBS.

Provider Expectation

To comply with this requirement, the provider must engage with the person and his/her planning team by using person-centered thinking, planning, and support strategies to ensure:

- A person's needs, desires and options about work are identified and discussed. The person is supported to make decisions through an informed choice process, which includes having community experiences (e.g., utilizing community businesses, working, work trials, volunteering, internships, etc. on which to base decisions).
- People have opportunities to explore, seek, and experience employment in a competitive integrated setting.
- People are educated about resources that can be put in place to support opportunities for gainful employment. (e.g., NJWINS, Workability, etc.).

Examples of Community Integration in Employment Settings

- Staff helps Mai explore her skills and interests to help her identify potential job opportunities in the community. This help is provided through observing what Mai enjoys doing (chores, hobbies, leisure activities, interests, etc.) within the home and by talking with Mai and the people (family, friends, staff, etc.) who care about and support her. In addition, Mai is provided the opportunity for community activities to identify potential skills, abilities, preferences that match up to competitive employment in the general workforce.
- Jackson is not sure whether he would like to work in the community because he previously only participated in center-based work and day programs. His Supported Employment provider coordinates opportunities for Jackson to sample some community job possibilities (situational assessments, trial, work experiences) and visit businesses that are of interest to Jackson. This way, he has some real-life experiences on which he can base his decision.



- Chris recently expressed a desire to volunteer at a local newspaper due to his strong interest in current events and writing fiction. However, Chris has difficulty holding a pen and paper and using a computer keyboard to document his thoughts. To support Chris in meeting his stated goal, staff discussed adaptive equipment options to help hold writing tools as well as speech-to-text software. In addition, staff submitted a request for an Assistive Device Evaluation to determine any other technology that may be available. Staff also researched various local classes and events and provided Chris information about groups that are available. After weighing each option, Chris chose to pursue speech to text software that would enable him to participate in a local writer's group, where he can share his ideas and receive feedback from other writers. During the group home monthly activity scheduling, the group home manager discussed Chris' choice with his housemates. The GH manager noted that when planning activities it would be necessary to ensure adequate staff coverage is in place while Chris is being taken to and from his writing group. All staff agreed to support Chris in meeting his desired goals.

Frequently Asked Questions

New Jersey became an Employment First state in April of 2012, meaning that “competitive employment in the general workforce is the first and preferred post education outcome for people with any type of disability.”

What does competitive, integrated employment mean?

- Performed on a full-time or part-time basis, with or without supports, including self-employment.
- Paying at least minimum wage, as defined by the Fair Labor Standards Act, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by workers without a disability.
- Paid for by an employer who is not the person's service provider.
- Performed in an integrated setting typically found in the competitive labor market where people with disabilities have the opportunity to interact with non-disabled co-workers during the course of performing their work duties to the same extent that non-disabled co-workers have to interact with each other when performing the same work.
- Provides the employee with a disability with the same opportunities for advancement as employees without disabilities in similar positions.



What happens if a person decides that he or she does not want competitive employment?

- Help identify why the individual is not interested in competitive employment and try to address the concerns and potential myths by explaining supports that are available and providing community experiences to expand his/her/their perspective and allow for informed choice.
- Collaborate with the individual, his/her/their supports (family, staff, friends, etc.) and the Support Coordinator to complete the Employment Pathway which assists everyone in identifying the individual's current employment ideas, thoughts, goals and objectives, what barriers exist to pursuing employment, and discuss how to work towards removing identified barriers.
- Include in service planning opportunities for the person to expand their participation in community life based on areas of interest, including the identification and understanding of various roles and employment opportunities available.
- At a minimum of once per year, schedule check-ins to discuss and update the Employment Pathway, which explores the person's interest in competitive integrated employment during service planning and support team meetings.
- Many people may not be ready for employment at this moment, however, all individuals receiving HCBS are required to have an employment outcome that relates to the information gathered in their Employment Pathway or plan. Providers should be linking the service strategies and goals to employment outcomes and identify accordingly on the Individualized Goals and Strategies sheets. Support Coordinators, should be checking in with the individual monthly, and with the service provider quarterly, to measure progress towards meeting the established employment goal and more importantly, to make sure that the goal is meaningful and relevant to the individual.

What are the expectations for residential and adult day service providers to support people who work?

You must provide flexible scheduling and activities during times that complement a person's work schedule. The requirement states that people who want to work must be supported in their choice, and that no barriers are in place if they choose to work. For example, if an individual has a varied work schedule, meaning that the person may work in the morning on Monday, late afternoon on Wednesday and full days on the Saturdays and Sundays, the provider must schedule staff accordingly to support and accommodate the person's work schedule. Also, it is important to keep in mind that many older adults choose to retire or not seek employment, but other, older adults are interested in work. It is important to provide work opportunities to anyone who is interested.



Effective Support Strategies for Providers

- ✓ A person receiving HCBS has the right to hold a job, engage in community life, control personal resources, and receive services in the community to the same extent as someone who does not receive HCBS.
- ✓ When exploring competitive, integrated employment, the person is supported to receive benefits counseling in order to understand ways in which earnings may impact public benefits and resources (e.g., Workability) that can be put in place in order to maintain Medicaid benefits.
- ✓ Identify employment resources (e.g., employment related services, goods, services and educational opportunities).
- ✓ Support staff assist by helping the person to prepare day and helping them to engage in meaningful household and community activities that could lead to employment.
- ✓ When people choose employment, the first and expected option is competitive, integrated employment.
- ✓ Consider access to transportation assistance as necessary.
- ✓ Make sure that people know how to request assistance and support to pursue a job change should the need or interest arise.

Practices to Avoid

- ⊗ Setting policies or schedules that prohibit work or make employment too challenging to pursue. (e.g., limiting access to day habilitation services to those willing to commit to a set a set number of hours; requiring those using residential services to use the same agency's day services; limiting transportation opportunities; inadequate staffing/support preventing the person to work the hours requested of employers.
- ⊗ Not permitting DSPs to conduct activities that support employment. Remember all of us do some tasks at home to prepare for our current or future jobs whether it be choosing work appropriate clothes or networking in our communities. These tasks do not necessarily make them "employment service" specific.



Visitors

Federal Requirement

The individual can have visitors of his/her choosing at any time.

Provider Expectation

Individuals have the opportunity to develop close, private, and personal relationships without having unnecessary barriers or obstacles imposed on them. The HCBS Setting Final Rule requires that individuals be able to have visitors at any time, without restriction, just like anyone would have in their own home. This does not mean that individuals can be inconsiderate of others' rights or the need for quiet and safety in the residence. It is intended to ensure that individuals who live in residential settings have the same freedoms any of us have in relationships with visitors in our own homes.

Providers may develop and enforce policies that address visitors, but only if the rules do not conflict with the HCBS settings requirements or human rights regulations or pose an undue burden or prevent the relationship. Policies may only be established to promote the general safety and well-being of all individuals residing in a home and not impede one's right to have visitors of their choosing.

Housemates are encouraged to work together with support to make decisions about visitors particularly as it relates to use of common space and considerations related to shared parts of the home (e.g. bathrooms, appliances, noise, privacy, etc.).

To comply with this requirements, providers must ensure:

- People have the space and opportunity to visit with others.
- People are supported in having visitors of their own choosing and to visit others.
- People are satisfied with the amount of contact they have with their visitors.
- People can choose their visitors and have no restrictions on visit times or duration.
- Any modifications to this HCBS right is based on an individually assessed need.

Examples

- Visitors are allowed at any time at Bridget's group home. Bridget's boyfriend, Mark, visits at random times when in the area. Bridget asked that he call or text to make sure it's a convenient time for him to visit. Mark does not live there, so he respectfully uses the doorbell upon arrival. Sometimes Bridget will ask that he text when he get there so she or her DSP can answer the door without disrupting others. If Mark visits when other individuals are sleeping, or not wishing to be disturbed, Mark is expected to be quiet and respectful of all individuals who live in the home.



- Donna often meets new people while spending unsupervised time in the community. Sometimes she chooses to have people over to her apartment to spend time alone with them in her room. Staff ensures that she has privacy, can lock her bedroom door, and is not interrupted while having visitors. Staff have also taken the time to discuss with her how she defines relationships and intimacy and to what extent she believes is satisfactory. Staff give Donna opportunities to ask questions while providing education about potential risks such as sexually transmitted diseases, pregnancy, and how to self-advocate if an interaction feels uncomfortable. Donna is also provided with information and assistance accessing birth control which she has chosen to utilize. Staff had a discussion with Donna and her housemate so that both residents could voice their questions or concerns. A mutual agreement was reached and Donna will call or text her housemate and staff to let them know when to expect a visitor. While there are no restrictions regarding the time of day that Donna has visitors, the agreement is that if it will be after 10pm, Donna and her visitors will be quiet while in common areas and they will not enter the housemates' own room.

Frequently Asked Questions

How will the regulation's requirement that an individual in a provider owned or managed residential setting have access to visitors at any time be balanced against the rights and desires of others living in that setting?

The regulation requires that individuals in a provider owned or managed residential setting have visitors in the same manner as individuals not receiving Medicaid-funded home and community-based services. No restrictions on the ability to have visitors should be imposed for the convenience of the provider.

Housemates are encouraged to work together, with support, to make decisions about visitors particularly as it relates to use of common space and considerations related to shared parts of the home (e.g. bathrooms, appliances, noise, privacy, etc.). This is similar to what those not using HCBS living together would do to show respect to each other, understand each other's needs and perspectives, assure each other's privacy, and avoid potential conflict.

The regulation does not supersede orders of protection or other parameters governing the movement or actions of individuals visiting the setting that may arise under landlord/tenant or other laws or terms of the lease or rental agreement.

Additional Guidance

Visitors should have access to all appropriate areas of the setting when visiting and should not be denied entry to common areas or the person's room they are visiting. The setting may require



visitors to sign in and/or notify the provider that they are in the setting or adhere to other procedures to ensure the safety and welfare of individuals who live and work there. However, procedures should not restrict visitors for the convenience of staff or restrict the individual from association with those they choose.

It is understood that in a shared living situation the needs of other residents must also be respected. If there are concerns from other individuals in the setting about a visitor(s), the providers should facilitate communication between the parties.

Effective Support Strategies for Providers

- ✓ Policies and procedures state that individuals are allowed visitors of their choosing at any time, visitation must include options for privacy with visitors and must be contained in the resident rights document and the resident handbook.
- ✓ Policy and procedures address overnight guests.
- ✓ Provider helps individuals coordinate arrangements for visitors.
- ✓ Staff is trained on and adheres to HCBS Rights.

Practices to Avoid

- ⊗ The provider makes decisions on who may visit and who may not.
- ⊗ The provider does not have a policy or procedures addressing HCBS visitation rights.
- ⊗ Provider enforces visitation hours for all individuals.
- ⊗ Provider policy only offers alternative arrangements, thus restricting visitation in the setting (i.e., provider offers to pay for the visitor's hotel room for situations when overnight visitation is requested).



Provider Resources

Policy Guidance

CMS HCBS Settings Final Rule

<https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-services-final-regulation/index.html>

NJ DHS DDD Statewide Transition Plan

[Division of Developmental Disabilities | HCBS Statewide Transition Plan](#)

Understanding the Shift of Housing Payments from DDD Contracts to the Supportive Housing Connection: <https://www.state.nj.us/humanservices/ddd/documents/shift-to-shc-for-individuals-in-ddd-funded-settings.pdf>

Division Circular #5: Human Rights Committees

<https://www.state.nj.us/humanservices/ddd/assets/documents/circulars/DC5.pdf>

Universal Declaration of Human Rights

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

Training & Practice Guidance

Developing Effective Person-Centered Planning Tools & New Jersey Individualized Service Plan (SCA Resource)

<https://www.rwjms.rutgers.edu/boggscenter/documents/PCPTISPGuidebook-F.pdf>

Developing Person-Centered Outcomes and Support Strategies

<https://rwjms.rutgers.edu/boggscenter/publications/documents/DevelopingPersonCenteredOutcomes-final.pdf>

Your Right to a Community Life (Individual Advocacy Resource)

<https://rwjms.rutgers.edu/boggscenter/documents/CQL-HCBS-AdvocateGuide2018Final.pdf>

Supporting the Right to a Community Life (Supporters/Caregiver Resource)

<https://rwjms.rutgers.edu/boggscenter/documents/HCBS-CQL-SupporterGuide2018Final.pdf>

Personal Outcome Measures: An Introduction (SC/DSP Resource)

<https://www.rwjms.rutgers.edu/boggscenter/training/CommunitySupportsandQuality.html>

Developing and Implementing Outcome-Based Support Strategies

<https://www.rwjms.rutgers.edu/boggscenter/training/CommunitySupportsandQuality.html>



Training Opportunities for Support Coordinators

(<https://rwjms.rutgers.edu/boggscenter/training/support.html>):

- Support Coordination Orientation: Person-Centered Planning & Connection to Community Supports
- Developing Person-Centered Outcomes: Technical Assistance Workshop for Support Coordinators
- Supervising Support Coordinators: Strategies to Enhance Quality while Meeting Requirements
- Strategies to Implement Charting the LifeCourse Concepts: A Workshop for Support Coordinators

Participant Statement of Rights and Responsibilities

<https://www.state.nj.us/humanservices/ddd/assets/documents/services/participant-rights-responsibilities-english.pdf>

Prevention of Abuse, Neglect, & Exploitation (Required Training - Available on College of Direct Support in DDD System Mandatory Training Bundle)

Preventing Abuse Neglect and Exploitation Agency Competency Verification Form

https://www.nj.gov/humanservices/ddd/documents/PANE_competency_assessment_form.pdf

Civil Rights and Advocacy [CDS] -

<https://www.directcoursecatalog.com/contentPath/content/course-listings/direct-support/cds/civil-rights?contentDirectory=directCourseCatalog&catalogId=contentPath>

Individual Rights and Choice [CDS] -

<https://www.directcoursecatalog.com/contentPath/content/course-listings/direct-support/cds/individual?contentDirectory=directCourseCatalog&catalogId=contentPath>

The Health Insurance Portability and Accountability Act (HIPAA) [CDS] -

<https://www.directcoursecatalog.com/contentPath/content/course-listings/direct-support/cds/hippa?contentDirectory=directCourseCatalog&catalogId=contentPath>

Employment Resources

Policy Guidance

Office of Disability Employment Policy: Employment First:

<https://www.dol.gov/agencies/odep/initiatives/employment-first>



NJDDD Principles of Employment for People with Intellectual and Developmental Disabilities:
https://www.state.nj.us/humanservices/ddd/assets/documents/principles_of_employment.pdf

Training & Practice Guidance

Advocacy and Professional Development Updates: <https://apse.org/>

Lead Center: <http://www.leadcenter.org/>

NJ DDD Pathway to Employment:

https://www.state.nj.us/humanservices/ddd/assets/documents/pathway_to_employment.pdf

College of Direct Support Training Modules (8):

Supporting Jobs and Careers in the Community

<https://www.directcoursecatalog.com/contentPath/content/course-listings/direct-support/cds/supporting-lives?contentDirectory=directCourseCatalog&catalogId=contentPath>

Employment Supports for People with Disabilities -

<https://www.directcoursecatalog.com/contentPath/content/course-listings/direct-support/cds/employment-disabilities?contentDirectory=directCourseCatalog&catalogId=contentPath>

Additional Employment Resources:

Functional Employment Exploration Tool -

<https://rwjms.rutgers.edu/boggscenter/publications/FunctionalEmploymentExplorationTool.html>

Situational Tool for Exploring Possibilities -

<https://rwjms.rutgers.edu/boggscenter/publications/STEP.html>

Self-Advocate's Guide to Choosing a Post-Secondary Program: Charting Your Course Through a New Landscape

<https://rwjms.rutgers.edu/boggscenter/publications/Self-AdvocatesGuidetoChoosingaPost-SecondaryProgram.html>

Selecting a Supported Employment Agency: Making Choices, Becoming Empowered -

<https://rwjms.rutgers.edu/boggscenter/publications/SelectingaSupportedEmploymentAgency.html>



Comprehensive Assessment of Supported Employment Service (For Supported Employment Providers)

<https://rwjms.rutgers.edu/boggscenter/publications/ComprehensiveAssessmentofSupportedEmploymentService.html>

Individual and Family Resources

The Home and Community Based Services - Advocates Creating Transformation (HCBS-ACT) Project (Individual/Family Resource)

<https://www.c-q-l.org/resources/projects/the-hcbs-act-project/#:~:text=The%20HCBS-ACT%20Project%20is%20the%20result%20of%20a,the%20Elizabeth%20M.%20Boggs%20Center%20on%20Developmental%20Disabilities>

General Resources

HCBS Matrix (Monitoring)

<https://hcsadvocacy.files.wordpress.com/2020/01/12.1.19-matrix-of-rule-outcomes-and-measures-to-clpc.pdf>

The Impact of HCBS Final Settings Rule Outcomes on Health and Safety (Provider Resource)

https://www.aaid.org/docs/default-source/default-document-library/friedman-hcbs-settings-rule-and-outcomes.pdf?sfvrsn=c7023621_2

Tracking Progress and Success of Implementation of the HCBS Setting Rule: Potential Outcomes and Measurements Provider (Provider Resource)

<https://hcsadvocacy.files.wordpress.com/2020/01/12.1.19-outcomes-and-measurements-summary-branded.pdf>

Questions?

If your organization has questions about the HCBS Final Settings Rule please contact: DDD.HCBShelpdesk@dhs.nj.gov