



KDADS STANDARD POLICY

Policy Name:	HCBS Settings Ongoing Monitoring Compliance Policy	Policy Number:	E2024-041
Commission:	Long Term Services & Supports (LTSS)	Date Established:	06/01/2024
Applicability:	HCBS Waiver Programs	Date Last Revised:	04/15/2024
Contact:	HCBS Program Integrity Unit	Date Effective:	06/01/2024
Policy Location:	KDADS Website	Date Posted:	06/26/2024
Status/Date:	Revised 04/15/2024	Number of Pages:	1 of 18
Revision History	01/23/2024, 04/15/2024		

Purpose

This policy establishes the compliance requirements of Home and Community Based Services (HCBS) settings in Kansas. Additionally, this policy establishes the processes and procedures for monitoring continued compliance with 42 C.F.R. § 441.301(c)(4) and its subparts.

Summary

This policy establishes the following:

1. The compliance requirements of providers and settings where individuals participating in HCBS programs receive their supports and services.
2. The processes and procedures by which the state shall conduct ongoing monitoring activities to ensure continued compliance of HCBS settings with 42 C.F.R. § 441.301(c)(4) and its subparts.

Entities/Individuals Impacted

- Entities rendering HCBS 1915(c) waiver services in Kansas
- HCBS 1915(c) waiver participants and participants designated legal representatives
- KanCare contracted Targeted Case Managers (TCMs)
- Kansas Community Developmental Disability Organizations (CDDOs)
- Kansas Department for Aging and Disability Services (KDADS)
- Kansas Department of Health and Environment (KDHE)
- Kansas Department for Children and Families (DCF)
- Child Placement Agency (CPA)
- Managed Care Organizations (MCO)

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I. Policy

A. Monitoring for compliance of the HCBS Settings Final Rule:

1. Monitoring for compliance of the Settings Final Rule does not replace the waiver assurances for monitoring of the HCBS 1915(c) waivers in Kansas.
2. Monitoring for compliance of the Settings Final Rule shall be the responsibility of the state's HCBS Program Integrity Unit.

B. Applicability of the policy:

1. The policy shall be applicable to provider owned, managed, and/or controlled settings. For the purpose of this policy, provider owned, managed, and/or controlled settings shall be defined as, but not limited to, settings where services rendered fall within the following categories and are billed through the billing codes specified below:
 - a) S5101 – Adult Day Care, half day
 - b) S5102 – Adult Day Care, full day
 - c) T2016 – Adult and Children Residential
 - d) T2021 – Day Supports and Prevocational Services
2. The policy shall be applicable to Child Placement Agencies (CPA) that serve children who receive waiver services.
3. The policy shall be applicable to Presumed Compliant Settings:
 - a) HCBS providers and settings that are not classified as provider-owned, provider-managed, and/or provider-controlled as described in Section I(B)(1) of this policy, may be presumed compliant with the Settings Final Rule.

C. Provider owned, managed, and/or controlled HCBS settings shall render supports and services based on the needs of the individual served and as indicated in their person-

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centered service plan, which, if applicable, shall include their person-centered support plan, participant interest inventory, options counseling, and/or behavioral support plan.

D. Provider owned, managed, and/or controlled HCBS settings shall have the following qualities:

1. The setting shall be integrated in and shall be capable of supporting full access of individuals receiving HCBS to the greater community, including the following:
 - a) Opportunities to seek employment and work in competitive integrated settings to the same degree of access as individuals not receiving HCBS; and
 - b) Opportunities to engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving HCBS.
2. The setting shall be selected by the individual from among setting options, including options of non-disability specific settings and residential settings with a private unit.
 - a) The setting options presented to the individual must be based on the individual's needs, preferences, and resources available for room and board for residential settings; and
 - b) This selection process must be documented in the person-centered service plan.
3. The setting shall ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
4. The setting shall optimize, but not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
5. The setting shall be capable of facilitating individual choice regarding services, supports, and who provides them.

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6. The setting (unit or dwelling) shall be a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services.

a) The individual shall have, at a minimum, the same responsibilities and protections from eviction that other tenants have under the Kansas Residential Landlord & Tenant Act.

b) For settings in which landlord tenant laws may not apply:

i. The state requires that a lease, residency agreement, or other form of written agreement shall be in place for each HCBS participant; and

ii. The written agreement shall provide protections that address eviction processes and appeals comparable to those provided under the Kansas Residential Landlord & Tenant Act.

7. Each individual shall have privacy in their sleeping or living unit:

a) Units shall have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

b) Individuals sharing units shall have a choice of roommates in that setting.

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

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

10. Individuals shall be able to have visitors of their choosing at any time.

11. The setting shall be physically accessible to the individual.

E. Any modification of the conditions and requirements of a provider-owned, managed and/or controlled setting as described in this policy shall be supported by a specific

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assessed need of the HCBS participant and justified in the person-centered service plan, which shall include their behavioral support plan.

1. The following requirements shall be documented in the person-centered service plan of the participant:

- a) Identify a specific and individualized assessed need;
- b) Document the positive interventions and supports used prior to any modifications to the person-centered service plan;
- c) Document less intrusive methods of meeting the need that have been tried but did not work;
- d) Include a clear description of the condition that is directly proportionate to the specific assessed need;
- e) Include regular collection and review of data to measure the ongoing effectiveness of the modification;
- f) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
- g) Include the informed written consent of the participant; and
- h) Include an assurance that interventions and supports shall cause no harm to the participant.

F. Providers enrolling to render services under any of the service codes listed under Section I(B)(1) shall be required to present a Kansas HCBS Compliance Portal Registration Verification letter.

G. Any potential violations shall be reported directly to KDADS via phone or through the Settings Final Rule email.

H. Where there is a conflict between the requirements of this policy and existing state regulations administered by KDADS, 42 C.F.R. § 441.301(c)(4) and its subparts shall supersede existing state regulations administered by KDADS for individuals receiving supports and services through HCBS.

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II. Procedures

A. Compliance Portal Registration

1. The KDADS designated system of record shall be the Kansas HCBS Compliance Portal.
2. Providers enrolling with KMAP to render services under the provider types and specialties listed below shall present verification of HCBS Compliance Portal registration prior to completing the enrollment process:

Provider Type	Provider Specialty	Billing Codes Captured
55	363	S5125, S5126
55	364	T2016
55	365	S5125
55	367	S5125, S5126, S5160, S5161, T2025
55	410	S5101, S5102
55	510	S5125, S5130
55	520	T2020, T2021

- a) Providers that operate under a licensed service, without an existing service delivery setting, shall present verification of HCBS Compliance Portal registration to the licensing entity.
- b) Providers that operate under a licensed service, with an existing service delivery setting, shall present verification of HCBS Compliance certification for each setting to the licensing entity.

B. Procedures and Outcomes for Compliance Monitoring for Child Placement Agencies (CPA):

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1. CPA providers that serve children receiving waiver services shall be required to complete the foster care assessment in the HCBS Compliance Portal.
2. The CPA shall be required to submit documentation that indicates its settings shall follow the provisions of this policy.
 - a) Interviews of non-kinship foster care parents will be completed by the CPA and KDADS as part of the initial assessment.
3. A certificate showing the CPA setting is compliant shall be issued if all the conditions listed in this policy have been met.
4. If the CPA does not complete a foster care assessment or/and meet the conditions of compliance as described in Section I(B)(1) and an HCBS participant is active and receiving services with the CPA, then KDADS will issue a written notice of noncompliance to the provider indicating the provider's non-compliant components with the rule with a deadline by which the provider shall respond with a remediation plan.
 - a) If remediation with the notice of noncompliance is not achieved, or if the state does not receive a response, then a transition shall be initiated following the KDADS HCBS Transition Policy.

C. Procedures and outcomes for compliance monitoring for presumed compliant services:

1. A new HCBS provider that enrolls to provide any of the following services shall be required to complete the Presumed Compliance screening for each service:
 - a) S5125 – Personal Care Services, agency-directed
 - b) S5130 – Personal Care Services, self-directed
 - c) S5160 – Personal Emergency Response System
 - d) S5161 – Personal Emergency Response System/Medical Alert
 - e) T2025 – Enhanced Care Services/Sleep Cycle Support
2. Providers presumed compliant shall be issued a Presumed Compliance Certificate.

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- a) Providers shall be required to recertify a service or setting’s presumed compliance annually and/or immediately upon a change in a previously presumptive certification.
3. Providers who do not pass the presumed compliant screening shall contact the KDADS Settings Final Rule Administrator to clarify the denial.
- D. Procedures for compliance monitoring for new provider owned, managed, and/or controlled HCBS settings:
1. A new HCBS provider that enrolls to provide any of the following services in its settings shall have those settings classified by the state as provider owned, managed, and/or controlled:
 - a) S5101 – Adult Day Care, half day
 - b) S5102 – Adult Day Care, full day
 - c) T2016 – Adult and Children Residential
 - d) T2021 – Day Supports and Prevocational Services
 2. New provider owned, managed, and/or controlled settings shall be required to submit documentation that indicates the settings shall follow the provisions of this policy.
 3. The process for indicating settings compliance for new provider owned, managed, and/or controlled settings shall be known as the HCBS Readiness Assessment for Residential/Day Services.
- E. HCBS Readiness Assessment for Residential/Day Services
1. Providers shall complete the HCBS Readiness Assessment to demonstrate compliance for each service delivery setting prior to billing in that setting.
 2. HCBS Readiness Assessment Screening Levels:
 - a) Screening I: Provider Readiness Assessment. During this review process, which shall be completed through the HCBS Compliance

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Portal, providers shall demonstrate evidence presented through policies, manuals, handbooks the following:

- i. The provider’s existing Residential and Day Services settings, or Residential and Day Services settings being opened, are administered using policies, manuals, or handbooks that are compliant with the provision described in Section I(C) through (E) of this policy.
 - ii. The provider's satellite image of the setting and its immediate surrounding structures for verification on whether a Screening II Settings Heightened Scrutiny assessment is required.
- b) Screening II: Settings Heightened Scrutiny. During this review process, providers with settings presumed to have qualities of an institution and/or the characteristics of potential isolation shall be subject to an additional heightened scrutiny assessment.
- i. Settings shall be presumed to have qualities of an institution or the characteristics of potential isolation if they fall under any one of the three listed categories below:
 - (a) Settings located in a building that is a publicly or privately operated facility that provides inpatient institutional treatment;
 - (b) Settings located in a building located on the grounds of, or immediately adjacent to, a public institution; or
 - (c) Any other settings that isolate individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.
 - ii. Heightened Scrutiny: For heightened scrutiny, providers shall show through an interactive process how the setting can overcome the presumptive qualities of an institution and/or the characteristics of potential isolation as described in Section I(C) through (E) of this policy.

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F. Outcomes of the HCBS Readiness Assessment for Residential/Day Services

1. Screening I: Provider Readiness Assessment:

a) Setting is Compliant (HCBS Residential and/or Day Services)

i. Provider must demonstrate compliance through documentation, such as policies, manuals, handbooks, and images which show:

(a) The operational documents used to administer existing or newly established Residential and Day Services settings in accordance with the provisions outlined in Section I(C) through (E) of this policy, are compliant with the stated requirements.

b) Setting is not Compliant (HCBS Residential and/or Day Services)

i. Provider has failed to meet the condition for compliance as described in Section I(C) through (E) of this policy.

ii. If an HCBS participant is active and receiving services with such a provider, then KDADS shall issue a written notice of noncompliance to the provider indicating the provider's non-compliant components with the rule with a deadline by which the provider shall respond with a remediation plan.

(a) If remediation with the notice of noncompliance is not achieved, or if the state does not receive a response, then a transition shall be initiated following the KDADS HCBS Transition Policy.

2. Screening II: Settings Heightened Scrutiny Screening:

a) When Heightened Scrutiny is Required:

i. Heightened Scrutiny is required if a provider-owned, provider-managed, and/or provider-controlled setting has completed Screening I of the HCBS Readiness Assessment

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and has indicated qualities that qualify the assessed setting for a Screening II: Heightened Scrutiny Review.

- ii. A notification with a required attestation to sign shall be sent to the provider prior to billing HCBS in the setting.

b) When Heightened Scrutiny is not Required:

- i. Heightened scrutiny is not required if a provider-owned, provider-managed, and/or provider-controlled setting has completed Screening I of the HCBS Readiness Assessment and has indicated qualities that clears the settings from further Heightened Scrutiny Review.
- ii. A certificate showing the setting is compliant shall be issued if all the conditions listed in this policy have been met.

c) Provider Has Overcome Presumption of Heightened Scrutiny Review

- i. A provider owned, managed, and/or controlled setting completed Screening II of the HCBS Readiness Assessment; qualified for a Heightened Scrutiny Review; has been reviewed; and
- ii. A reviewer has determined that the setting has overcome the presumptions of institutionalization; and
- iii. A general summary of provider information is posted for public comment for a minimum of thirty days; and
- iv. The State responds to all public comments and the summary packet has been sent to the Centers for Medicare and Medicaid Services (CMS) for final determination; and

- (b) A notification with a required attestation to sign shall be sent to the provider prior to continuing to bill HCBS in the setting.

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- v. CMS agrees with the states' determination, at which point a certificate showing the setting is compliant shall be issued since all the conditions listed in this policy have been met.
- d) Provider Has not Overcome the Presumption of Heightened Scrutiny KDADS Review
- i. A provider owned, managed, and/or controlled setting completed Screening II of the HCBS Readiness Assessment; qualified for a Heightened Scrutiny Review; has been reviewed; and
 - ii. A reviewer has determined that the setting has not adequately shown the capability to overcome the presumptions of institutionalization or the characteristics of potential isolation.
 - (a) If an HCBS participant is active and receiving services with such a provider, then KDADS will issue a written notice of noncompliance to the provider indicating the provider's non-compliant components with a deadline by which the provider must respond with a remediation plan.
 - (b) If remediation with the notice of noncompliance is achieved, and a reviewer has determined that the setting can now overcome the presumptions of institutionalization or the characteristics of potential isolation, the setting shall now follow the process outlined in section II.E.2.c.
 - (c) If remediation with the notice of noncompliance is not achieved, or if the state does not receive a response, then a transition shall be initiated following the KDADS HCBS Transition Policy.
- e) Provider Has Not Overcome Presumption of Heightened Scrutiny CMS Review

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- i. A provider-owned, provider-managed, and/or provider-controlled setting, completed Screening II of the HCBS Readiness Assessment; qualified for a Heightened Scrutiny Review; has been reviewed; and
- ii. A reviewer has determined that the setting has adequately shown the capability to overcome the presumptions of institutionalization or the characteristics of potential isolation; and
- iii. A general summary of provider information is posted for public comment for a minimum of thirty days; and
- iv. The State responds to all public comments and the summary packet has been sent to CMS for final determination; and
- v. CMS deems the setting has not adequately overcome the presumptions of heightened scrutiny.
 - (a) If an HCBS participant is active and receiving services with such a provider, then KDADS will issue a written notice of noncompliance to the provider indicating the provider's non-compliant components with a deadline by which the provider must respond with a remediation plan.
 - (b) If remediation with the notice of noncompliance is achieved, and a reviewer has determined that the setting has adequately shown the capability to overcome the presumptions of institutionalization or the characteristics of potential isolation, the setting shall now follow the process outlined in Section II.E.2.c.
 - (c) If remediation with the notice of noncompliance is not achieved, or if the state does not receive a response, then a transition shall be initiated following the KDADS HCBS Transition Policy.

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G. Recertification Criteria:

1. Providers offering services that are not categorized as provider owned, managed, and/or controlled, which may be presumed to be compliant with the Settings Final Rule, shall undergo the presumed compliant screening every 365 days for each service presumed to be compliant.
 - a) The provider shall recertify in the event there is a change in service delivery.
 - b) A certificate showing the service delivery method is compliant shall be issued.
2. Providers of settings classified as provider owned, managed, and/or controlled, shall complete the HCBS Readiness Assessment for Residential/Day Services, and
 - a) Shall re-confirm that no changes have been made to the settings or its immediate surroundings every 365 days after the setting was issued compliance status.
 - b) A certificate showing the setting is compliant shall be issued.
 - c) If there have been changes to the setting or its immediate surroundings, then the changes may require the setting to complete a new HCBS Readiness Assessment for Residential/Day Services.

III. Documentation/Quality Assurance

- A. Providers shall ensure all documents and evidence uploaded through the HCBS Compliance Portal is current and kept up to date.
- B. HCBS waiver participants, MCO Care Coordinators, CDDOs, or other entities may report potential violations of the settings rule to KDADS.
- C. Providers that operate under a licensed service, without an existing service setting, shall present verification of HCBS Compliance Portal registration to the licensing entity.

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- D. Providers that operate under a licensed service, with an existing service delivery setting, shall present HCBS Compliance certification for each setting to the licensing entity.
- E. The Managed Care Organizations (MCOs) in the state shall check each setting for verification of compliance as part of the HCBS provider qualification audit. Acceptable compliance documentation includes one of the following:
1. A current HCBS Compliance Certificate, or
 2. A signed Heightened Scrutiny Attestation.
- F. The MCOs in the state shall survey all HCBS participants and their guardians on the essential characteristics of the HCBS Settings Rule annually during the person-centered service plan meeting.
- G. Settings Final Rule complaints and on-site monitoring:
1. HCBS Participants, guardians, DPOAs, providers, or any other interested party may report any potential violations of 42 C.F.R. § 441.301 and 42 C.F.R. § 441.301(c)(5) directly to KDADS.
 - a) Reports shall be made to the Settings Rule Administrator by calling 785-296-4986, or emailing KDADS.FinalRule@ks.gov.
 - b) KDADS shall track and follow up with all reports made.
 2. KDADS shall conduct onsite monitoring activities of providers and their HCBS settings to ensure services are being delivered as stated in policies and procedures. Onsite visits shall occur regularly and/or as needed in the event of a complaint or concern which violates the settings rule regulation found at 42 C.F.R. § 441.301 and 42 C.F.R. § 441.301(c)(5).
 - a) Settings may be examined by KDADS at any point in time. KDADS reserves the right to conduct quality oversight reviews upon notification of any violations to 42 C.F.R. § 441.301 and 42 C.F.R. § 441.301(c)(5).
 - b) In order to verify continued compliance with the Settings Final Rule Regulation, KDADS may request access to records/documentation, and

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interviews with staff, participants, volunteers, and/or legal representatives, where applicable.

H. HCBS Settings Final Rule Training Requirements:

1. HCBS providers shall ensure all staff and recurrent volunteers have consistent and reinforced training annually and/or as needed which shall include the HCBS Settings 5 Essential Characteristics 101 Course.
 - a) Training of new staff and recurrent volunteers must be provided within three months of their starting date with provider. This course covers HCBS Settings Final Rule characteristics (rights, choice, privacy, autonomy and integration) required wherever HCBS are rendered in Kansas.
2. KDADS will offer training opportunities on the essential characteristics (rights, choice, privacy, autonomy and integration). KDADS will conduct in-person and virtual HCBS Settings 5 Essential Characteristics 101 Course trainings upon request. A competency test with a passing score of 100% shall be required of all provider staff. A certification of completion for the course will be issued to each staff that must be kept on file by the provider.
3. HCBS providers shall keep a record of trainings and awareness for all provider staff, recurrent volunteers, and persons-served to be shown upon request to the KDADS Settings Final Rule Monitoring Team. Records shall describe how staff are trained and monitored on their understanding of the HCBS Settings Final Rule. Training records must be kept on file for five years.
4. The HCBS Program Integrity/Compliance Monitoring Team shall offer guidance and training on how to remediate a settings' identified areas of non-compliance when needed and upon request.

IV. Definitions

CMS – Centers for Medicare and Medicaid Services

Compliance – Refers to a provider and/or setting where Medicaid HCBS waiver funds are billed and have been determined to meet the requirements of 42 C.F.R. § 441.301(c)(4).

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HCBS – Home and Community-Based Services

HCBS Settings Final Rule – Federal regulation defined in 42 C.F.R. § 441.301(c) which outlines the required qualities of settings to be eligible to receive Medicaid HCBS funding.

HCBS Readiness Assessment – The process for indicating settings compliance for new providers, comprised of two screenings, and achieved through the HCBS compliance portal.

Living Unit- Single-family occupancy residential unit or dwelling. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.

Notice of Noncompliance – Plan issued by KDADS identifying the area(s) in which the provider or setting is not compliant with the Settings Final Rule and containing a timeline for remediation.

Sleeping Unit- Private sleeping area within a multi-family occupancy residential unit or dwelling. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.

Authority

Federal Authorities

- 42 U.S.C. § 1396n
- 42 C.F.R. § 441.301
- 42 C.F.R. § 441.302
- 42 C.F.R. § 441.530
- 42 C.F.R. § 441.710

Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 119 S.Ct. 2176 (1999)

State Authorities

State of Kansas Home & Community-Based Services 1915(c) | Medicaid Waiver Programs

Policy Name:	HCBS Settings Ongoing Monitoring Compliance Policy	Policy Number:	E2021-041
Commission:	Long Term Services & Supports (LTSS)	Date Established:	06/01/2024
Applicability:	All HCBS Waiver Programs	Date Last Revised:	04/15/2024
Contact:	HCBS Program Integrity Unit	Date Effective:	06/01/2024
Policy Location:	KDADS Website	Date Posted:	06/26/2024
Status/Date:	Revised 04/15/2024	Page Number:	18 of 18

Related Information

PUBLIC COMMENT PERIOD: 01/23/24 – 02/23/24

RELATED CONTENT:

- Approved Kansas Final Rule Statewide Transition Plan (STP)

Policy:

- PCSP Policy
- Transition Policy
- Adverse Incident Reporting Policy