

Home and Community Based-Services (HCBS) & The Settings Final Rule

Provider Version
Enhancing Service Delivery

Content:

This document is a brief overview of the HCBS Settings Final Rule. It will also give guidance to providers on how to enhance services to ensure the 5 Essential Characteristics of Final Rule in Kansas are being practiced in a setting that is owned, managed or controlled.

- Brief Recap of the HCBS Settings Final Rule
- What Does The HCBS Settings Final Rule Mean?
- The 5 Essential Characteristics of HCBS in Kansas:
 - Rights
 - Choice
 - Privacy
 - Autonomy
 - Integration and Inclusion
- Who to Contact for More Information and Concerns

Home and Community Based-Services

- Medicaid Home and Community - Based Services (HCBS) are intended to help persons who qualify to live, work, play and do all the things they want outside of institutional like settings found in hospitals, nursing homes, treatment centers and congregate facilities.
- When individuals receive HCBS, they should be given opportunities to interact with others that do not receive Medicaid. An intent of the HCBS waiver program is to guard against potential isolation and segregation from the broader community of individuals who receive these supports.
- Over the years, concerns developed from individuals served and the public that HCBS was not being used to help individuals live, work, play and to do things they wanted outside of an institutional like setting.

HCBS and the Settings Final Rule

- In response of HCBS not being delivered as intended, the Centers for Medicare and Medicaid Services (CMS) published new regulations (rules) to give more protections to HCBS waiver participants on January 16, 2014. These regulations are often referred to as “Final Rule.”
- The purpose of the Final Rule is to ensure that every person who receives HCBS Medicaid has access to the benefits of community living, including the right to make choices and control decisions in their lives.
- The federal regulation for Final Rule is 42 CFR 441.301(c)(4)-(5).

The Final Rule requires that all home and community-based settings meet these certain qualifications.

- The setting is integrated in and supports full access to the greater community;
- Is selected by the individual from among setting options including those with non- disability specific settings and an option for a private unit in a residential setting;
- Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimizes, but does not regiment, individual initiative, autonomy and independence in making life choices; and
- Facilitates individual choice regarding services and who provides them.

Any modification to these requirements must be supported by a specific assessed need and justified in the person-centered service plan.

The Final Rule also includes additional requirements for provider-owned or controlled home and community-based residential settings. These requirements include:

- The setting is integrated in and supports full access to the greater community;
- Is selected by the individual from among setting options including those with non-disability specific settings and an option for a private unit in a residential setting;
- Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimizes, but does not regiment, individual initiative, autonomy and independence in making life choices; and
- Facilitates individual choice regarding services and who provides them.

Any modification to these additional requirements for provider-owned home and community-based residential settings must be supported by a specific assessed need and justified in the person-centered service plan.

What does the HCBS Settings Final Rule mean for a service provider?

- A service provider must follow Final Rule requirements to help individuals make person-centered choices to go where they want, visit with whom they want, live where they want, work or volunteer where they want and eat what they want and with who they want.
- A residential provider cannot force someone to move without following local and/or Kansas Tenant and Landlord laws.
- Service providers must help individuals have and respect their privacy. A provider cannot make individuals do things they do not want or keep them from the things they want without an approved person-centered support plan in place.
- A service provider cannot have restrictions for persons receiving HCBS without sufficient justification and a personalized plan. If it does, it risks losing Medicaid funding and state licensing.

**The “5”
Essential
Characteristics
of HCBS in
Kansas to
Streamline
Final Rule
Requirements.**

Rights

Choice

Privacy

Autonomy

Integration and Inclusion

HCBS and the Settings Final Rule

The HCBS Settings Final Rule promotes that those who participate in Medicaid Waiver programs have the same **rights, choices, privacy, autonomy, community integration** and **inclusion**, where possible like others who do not receive waiver services.

Each service plan or plan of care should be tailored to:

- Reflect the individual's strengths and preferences,
- Reflect clinical and support needs as identified through an assessment of functional need, and
- Include individually identified goals and desired outcomes.

Home and community services are to be directed at improving a person's quality of life. They should be flexible and adaptive to encourage informed choice, independent living and creativity to help one have the life they want – not what the service provider, guardian, case manager or others want.

HCBS and the Settings Final Rule

- All efforts should be taken to help educate individuals for them to make informed choices and lead decisions in their lives.
- **Right to Risk** - Individuals have the right to experience all aspects of life. They should be made aware of options available and the possible consequences of their decision.
- When an individual is unable to make informed decisions about their life and it will put them at risk of harm to their safety and well being, the support team should collaborate with them to justify the need for a modification to their rights, choice, privacy, autonomy, integration and inclusion.

Modifications in HCBS Settings

- Any modifications to one's rights, choice, privacy, autonomy, integration and inclusion must be supported by a specific assessed need and justified in the person-centered service plan.
- HCBS modifications are individualized and should not be applied to everyone in a setting. The modification should only be applied to the one needing help to make informed choices regarding their life. A provider cannot and should not have blanket policies and restrictions.

Modifications in HCBS Settings continued...


- The following must be documented in the person-centered service plan:
 - 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 did not work.
 - Include a clear description of the condition that is directly proportionate to the specific assessed need.
 - Include 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.

Enhancing Service Delivery

The service provider, its staff and regular volunteers are expected:

- To be knowledgeable about the HCBS Settings Final Rule. KDADS will start checking for mandatory training certifications 1/1/2025 during onsite visits, audits and as needed for quality assurance.
- To have policies and procedures in place to support the requirements of Final Rule.
- To be familiar with each person's support/service plan.
- To help inform persons of their rights and the appeal process of the provider.
- To assist individuals to be free from harm and to be treated with dignity and respect.
- To help persons, report any violations of their rights, choice, privacy, autonomy, integration and inclusion to the appropriate authorities.

Rights



HCBS Waiver Participants: Have the right to privacy, dignity, respect, and freedom from being forced to do things they do not want. They have the right to protections against evictions from their residential setting.

Rights Practice Examples

Policies and Procedures:

- In non-residential settings a provider must have a service agreement that explains a person's rights and expectations of both parties for the setting type.
- In residential settings a provider must have a lease/residential/service agreement that explains resident rights and expectations of both parties for the setting type. The agreement must include eviction protections following at the minimum, the Kansas Tenant and Landlord Laws.
- A provider should create and maintain a handbook written in a format that everyone can easily understand.
- A provider should have and give a signed and dated copy of any agreements/handbooks to all parties.
- Provider staff should regularly review rights and the lease/residential/service agreements with individuals.
- A provider can include information about rights in a resident handbook, but the lease/residential/agreement must explicitly reference that the resident's rights are outlined in the handbook.
- A provider should train persons, staff and volunteers so that they can state the individual's rights and know where to find a copy of them at the setting when asked.
- A provider must provide training at least annually to persons, staff, volunteers on person-centered thinking/practices, abuse, neglect and exploitation, Final Rule and other relevant topics.

Rights Practice Examples continued....

Policies and Procedures:

- A provider can post a rights document in a public area where persons and others are likely to see it and should be in a format everyone can understand.
- A provider can post information about who to contact to file a complaint or grievance (including an anonymous complaint) in a public location and in a format everyone can understand.
- A provider should give persons and their support team information about filing a complaint upon service initiation and upon request thereafter.
- A provider's complaint policy should include a statement that no retaliation will occur if a complaint/concern is filed.
- A provider should ensure staff receives training on the setting's complaint and grievance policies at least annually.

Rights Practice Examples continued...

Dignity and Respect:

- A provider should train staff, volunteers and all setting participants on how to ensure persons they serve are always treated with dignity and respect in all aspects of their life. This includes respecting one's likes/dislikes and talking with persons in a way that makes them feel respected and heard.
- Staff should be trained to interact and converse respectfully with persons while providing supports regardless of the individual's ability to vocalize a response. Remember that everyone communicates in their own unique way (facial expressions, sounds, body movement, etc.).
- Staff should be trained to use written, verbal and non-verbal communication that demonstrates the values of respect and dignity when referencing persons.
- During mealtimes, staff should be trained and know not to require persons to wear bibs or use disposable silverware, plates and cups or other less dignifying supplies without a justified modification to supports.
- Persons are to be assisted to dress in appropriate clothes, have hairstyles, use makeup and/or other expressive characteristics that meet their personal preferences.
- Persons are to be addressed by their preferred name.
- Staff and regular volunteers should not discuss a person who is present like they are not there. The person should be included in the conversation, especially when decisions are being made about them.

Rights Practice Examples continued....

Freedom from Coercion and Restraint:

- A provider must ensure persons receive services in the least restrictive manner possible.
- A provider must show people that they account for and honor their choices according to one's person-centered plan.
- Staff must be trained on how to use interventions and positive supports as the first response.
- A provider should aim to not allow practices that include restraint interventions of persons in their care. This includes physical and chemical restraints.
- The support team should inform persons that they have the right to live and be in an environment free from coercion or restraint.
- A provider should have a process in place to educate persons of their rights and instructions on how to file a complaint/concern if their rights are violated by a peer, staff or any other person.

Choice

HCBS Waiver Participants: Have the right of informed choice to make decisions in daily activities, their physical environment, and with whom to be around. They have the choice regarding services and supports based on their needs, and who provides them. They have a choice of housemates and roommates, to live alone or with others. They have the choice to control financial resources. They have the choice of when to eat, what to eat, to eat alone or with others. They have the choice in furnishing and decorating their home and bedroom.

Choice is the priority of the person's preferences, not the provider or guardian. If modifications are needed for health and safety reasons, they must be justified and clearly documented in the person-centered support plan.

Choice Practice Examples

Daily Activities and Services:

- A provider must support persons in planning their day-to-day activities and schedules (when to wake up, take medications, do laundry, bathe, watch TV, eat and go to bed, etc.).
- A provider should be flexible when planning meetings and other activities so that persons can coordinate their schedules.
- A provider must educate persons on how to ask for assistance if they would like to schedule appointments for services and activities in the community and to help them arrange transportation. Transportation and mobility options should explore natural supports, walkability, public transportation, ride share, etc.).
- A provider can help create an activity calendar each week to help persons make decisions about activities in which they would like to participate.
- In residential settings, a provider must include individuals to help develop the week's grocery list and participate in grocery shopping to select the items they want.
- The support team needs to assist persons have opportunities to be informed about services, to explore and choose whether they want to receive services, what services are appropriate for them and who they want to receive services from.

Choice Practice Examples continued....

Daily Activities and Services:

- Staff should be trained to take the time to understand fully what services or supports the individual would like to receive off-site and provide the support needed to ensure that it can happen when feasible. Planning should be well documented.
- Staff should be trained to encourage persons to share ideas and make choices about setting activities based on their personal goals, interests and strengths. Discussions should be well documented.
- The support team must educate persons on how to make a request for a new setting and/or changes to current services and supports. This should be well documented.
- The support team should have procedures in place for opportunities of feedback and input regarding settings, services, providers and staff from persons. This should be well documented.
- The support team should have a process in place where persons are educated and encouraged to ask questions about their services and setting options. This should be well documented.
- The support team should have a process in place where persons are supported to visit or view a setting as part of their informed decision-making process. This should be well documented.
- The support team should have a process in place to educate persons on how and to whom they can request a change to current services and or staff. This should be well documented.
- The support team must have a process in place where persons are informed of all possible living opportunities. This should be well documented.

Choice Practice Examples continued...

Living Arrangements and Meals:

- If a shared living setting is selected, the support team should consider housemate/roommate compatibility and give the person an opportunity to provide input on the decision.
- The support team must have a process in place that allows persons to meet potential housemates/roommates.
- A provider should train staff and the person on how they can request a change in housemates/roommates.
- A provider should have a written notice that is given to individuals when the provider plans to add a housemate/roommate or move someone to a different unit.
- A provider owned/controlled/managed setting should not have all units decorated the same. Persons should be informed and assisted to decorate their living spaces as desired by choosing decorations or furnishing of their choice.
- A provider must assure persons have access to food at anytime. Any modifications to this right and choice must be documented in the person-centered plan.
- A provider should work with persons to develop a plan regarding meals and snacks. Persons cannot be kept from eating when they want, what they want, with who they want and at regimented times. If a modification is needed for safety and well-being it must be justified and documented in the service plan. Also, if a modification is needed for one person, it cannot be applied to everyone at the setting.
- Persons who work or attend day supports should have access to food through typical workplace rules that everyone follows.

The HCBS Settings Final Rule vs. Guardianship

HCBS Settings Final Rule Regulations:

- Do not speak to a Guardian's choice or rights, but to the waiver participant's choices and rights.
- The support Team (service provider, case manager, care coordinator, etc.) should help educate the guardian on choices and rights of the waiver participant under the HCBS Settings Final Rule.
- The guardian should understand that they cannot place restrictions on the waiver participant's choices and rights without sufficient justification. If they do, it violates the HCBS Settings Final Rule and puts the individual's and others Medicaid funding at risk if the provider allows such at the setting.

A Cross Walk of the HCBS Settings Final Rule and Kansas Guardianship

HCBS Settings Final Rule Regulations:

- The individual will lead the person-centered planning process where possible.
- The person-centered planning process should provide necessary information and support to ensure that the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions.
- Setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.



Kansas Guardianship Statutes:

- A guardian shall encourage the ward to act on the ward's own behalf to the extent the ward is able.
- A guardian shall exercise authority only as necessitated by the ward's limitations. A guardian shall encourage the ward to participate in making decisions affecting the ward.
- A guardian shall assure that the ward resides in the least restrictive setting appropriate to the needs of the ward and which is reasonably available.

Per the 2021 Kansas Statutes 59-3075. Guardian's duties, responsibilities, powers and authorities. (2)

A Cross Walk of the HCBS Settings Final Rule and Kansas Guardianship continued.....

HCBS Settings Final Rule Regulations:

- Ensures and individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with who to interact.
- Facilitates individual choice regarding services and supports, and who provides them.



Kansas Guardianship Statutes:

- A guardian shall promote and protect the comfort, safety, health and welfare of the ward.
- A guardian shall encourage the ward to develop or regain the skills and abilities necessary to meet the ward's own essential needs and to otherwise manage the ward's own affairs.
- A guardian shall encourage the ward to participate in making decisions affecting the ward.

Per Federal Regulation 42 CFR 441.301

Per 2021 Kansas Statutes 59-3075. Guardian's duties, responsibilities, powers and authorities. (2)

Privacy

HCBS Waiver Participants: Can have privacy in their sleeping area, when they use the bathroom/restroom, during personal care, during phone calls, while on the internet, watching TV or other personal devices. They should be able to secure personal belongings where they live, in day services and work.

Privacy Practice Examples

Housing, Locks, Personal, Personal Care:

- Locks should be standard on all bedroom/bathroom doors and a person has a choice to use them or not.
- A provider must assure persons have their own key/fob/code or other method to access their home and bedroom.
- A provide must make sure only appropriate staff have keys to a person's home and personal spaces (bedroom, bathroom, closet).
- When persons select a shared living setting, they should be offered their own private bedroom as a first option.
- Provider staff, volunteers and guest should knock and receive permission before entering one's personal space.
- Staff, volunteers and guest should be trained to only access a person's bedroom/bathroom/other personal space as needed to address health concerns, safety concerns or by the person's request.
- Staff should be trained on a safety plan to us in an emergency if a person's bedroom/bathroom/door is locked.
- Staff is trained to assure privacy for persons during personal care supports.
- Staff should not listen or watch individuals during activities of personal care and using technology (phone, internet, computer, tablet, video games, etc.).

Privacy Practice Examples continued....

Policies and Procedures:

- Staff and volunteers should be trained on provider confidentiality policies and practices.
- Staff and volunteers should be trained to not discuss a person in the open or within earshot of those who do not need to hear the discussion.
- Staff should be trained to not display documents and other personal information to those who do not need to know (medical records, diet restrictions, personal identifying information like DOB, full names, social security numbers, etc.) without the person's consent.
- A provider must assure the setting is set up for persons to make and receive private telephone calls and access to personal communication via text, email or other personal communication methods.

Autonomy

HCBS Waiver Participants: Have the freedom to control their own resources. Should be able to access areas of their home and job when they choose without barriers. Examples, kitchen, meal area, microwave/refrigerator, laundry, dining area, bathroom, restroom, social gathering spaces. Should be able to have and spend their own money on the things they want, as appropriate. Can control their own schedule, as appropriate.

Autonomy Practice Examples

Daily Activities, Services and Supports:

- A provider must assist persons in planning their day-to-day activities and schedules (when to wake up, take medications, do laundry, watch TV, eat, what they would like to do for the day, when to go to bed, etc.).
- The support team should have procedures to encourage persons to share ideas and make choices about life activities based on their own personal preferences and interests.
- The support team should offer persons actual experiences on which they can base future choices.
- The provider must give the individual's personal preferences priority over a guardian's or provider's preferences (unless for a documented health and safety reason and proper protocols are followed to modify services).
- Staff and volunteers should be trained to help persons feel supported and inspired to work toward their goals, dreams and priorities.
- Staff and volunteers should be trained to support persons to participate in age-appropriate activities of their choice that are consistent with the goals and objectives identified in their plan of service.
- A provider is encouraged to use the natural environment as frequently as possible to help persons learn new skills (budgeting, spending money, take medications, cook, clean, do laundry, have and take care of a pet, etc.).
- The support team should educate and encourage persons to choose whom they would like to do activities with.
- A provider can compile suggestions about activities through a comment box or small group sessions with persons to decide on individual and group outings.

Autonomy Practice Examples continued....

Accessibility:

- The support team should be talking with and documenting a person's accessibility needs before they choose a service setting.
- A provider should regularly assess the physical environment to assure it meets the needs of people at the setting (persons can use common areas in the home such as the kitchen, dining area, laundry to the extent desired without having to ask staff for permission, wait on staff to assist or staff to allow access). The day service common areas should also be accessible for persons.
- A provider should have a process in place to educate persons on how they can request a reasonable accommodation.
- Staff and volunteers should be trained to regularly check for restricted accessibility, fall and other hazards (loose rugs, uneven surfaces, low hanging branches, loose fixtures etc.).
- A provider should check for and install automatic door openers, grab bars, ramps, adapted furniture/equipment and counters, etc. to ensure access to desired areas and items. Individuals should be able to move about freely without waiting for staff and/or asking permission.

Autonomy Practice Examples continued....

Personal Resources:

- The support team must have procedures in place for persons to control their personal funds (income from monthly benefits, pay from working, etc.) and resources (ID card, snap card, check book, debit card, gift card, etc.) and access to information about their income.
- A provider must identify roles and responsible parties as it relates to a person's money management.
- Staff and volunteers should be trained to safeguard funds/resources and follow the person's plan. Any modification to the person's autonomy regarding funds/resources must be documented.
- The support team must have procedures and policies in place for persons to be able to access their money when they choose, not just during a set timeframe or business office hours.
- A provider should include in the lease/residency/service agreement, or rights document a person's right to control their personal money and resources.

Community Access and Integration

HCBS Waiver Participants: Should have full access to the greater community and be able to seek employment, work in competitive integrated settings, engage in community life, and receive services in the community as the same degree of access as people who do not receive HCBS. Persons Have the right and freedom to schedule activities when they would like, as appropriate. Persons can have visitors and visit with others when they want, as appropriate.

Community Access and Integration Practice Examples

Employment:

- A provider and support team should be regularly checking with persons on their goals, desires and building skills to exercise their right to work, to hold an integrated competitive job, engage in community life, control personal resources, and receive services in the community with others who do not receive HCBS.
- The support team should connect persons to a benefits specialist to educate them on how potential earnings could impact their HCBS benefits and personal resources.
- The support team should help identify employment resources (skill building programs, career exploration programs, training programs and educational opportunities).
- For persons who seek to work - the first and expected option should be competitive integrated employment as the setting and not a sheltered/segregated setting.
- If a sheltered/segregated setting is the first choice or best choice at the time, a plan of regular education and informed options should be held to assist those who want to progress into an integrated community setting. It is okay for persons to try multiple times until a right fit is obtained.
- The support team must have a process to help educate persons on how to request assistance to pursue skill building, a job or position change if interested.

Community Access and Integration Practice Examples continued....

Community Access:

- A provider can assure one's rights to engage in community life and receive services in the community are well documented.
- A provider should create policies and procedures on how it will educate and assist persons access community activities. This includes how to use natural and scheduled supports of mobility and transportation (walking, biking, skateboarding, scooter use, public transportation, ride sharing, etc.). It is important for staff to document community engagement activities with progress notes, activity and transportation logs, calendars and implementation plans.
- The provider can assure staff adhere to clear expectations of the services and activities identified in person-centered plans.
- The provider can help organize a variety of age-appropriate activities with input from persons at the setting each week to take place inside and outside of the setting.
- A provider can help persons explore community activities to interact with those who do not receive HCBS (cooking classes, craft classes, exercise classes, clubs, attending religious functions, shopping, appointments, etc.).
- The provider should hold planning meetings with persons, staff and volunteers to discuss strategies to plan trips into the broader community. A plan should be in place for individuals to integrate with others and not just staff and others receiving HCBS.
- The support team must help create a service plan that balances safety and well being for persons to come and go from the setting as they choose.

Community Access and Integration Practice Examples continued...

Visitation and Right to Have and Develop Relationships:

- The support team must help create a service plan that balances safety and well being for persons to choose their visitors and have visitation with others.
- Modifications cannot be placed on visitation times and limits (how long someone can visit, having overnight guests, specified visiting hours, person unable to have privacy during the visit, etc.) without justifying such in the person-centered plan.
- The provider must have a policy and procedure for visits.
- A provider should include a person's right to have visitors of their choosing at any time in the resident rights document, the resident handbook or the lease/residency/service agreement.
- Yes, a provider should and can address health and safety concerns with the person regarding visitation and relationships (sign-in sheets, doorbells, intercom system, courtesy notifications for others that share the setting to help accommodations be made).



If a person's rights, choice, privacy, autonomy, integration and inclusion are being denied:

Final Rule Compliance Team:

Phone: 1-800-432-3535 or 1-785-296-4983 (TTY: 1-711)

Email: kdads.finalrule@ks.gov

Mail: Kansas Department for Aging and Disability Services

Attn: HCBS Programs – HCBS Compliance Team

503 S. Kansas Avenue

Topeka, Kansas 66603

Other Contacts

- Let others know (guardian, case manager, care coordinator, administrator, state agency etc.).
- File a formal complaint with the service provider.
- Abuse, Neglect & Exploitation Hotline at **1-800-922-5330**
- Disability Rights Center of Kansas at **1-877-776-1541** or at info@drckansas.org
- Call KDADS IDD Licensing and Quality Manager at **(785) 296-4737**
- Call KDADS Aging Hotline at **1-800-842-0078**

The End

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