



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

Child Placement Agency Version

Content:

This document will give a brief overview of the HCBS Settings Final Rule and the 5 Essential Characteristics that should be in practice to all waiver participants in Kansas, regardless of their program or setting type.

- 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

Brief Recap of the HCBS Settings Final Rule

- On January 16, 2014, the Centers for Medicare and Medicaid Services (CMS) published new regulations (rules) to give more protections to home and community-based services (HCBS) waiver participants. These regulations are often referred to as “Final Rule.”
- The purpose of the HCBS Settings Final Rule is to ensure that every person who receives Medicaid funded HCBS has complete 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).

Foster Care and HCBS Settings

- CMS requires HCBS Settings Final Rule qualities to be present in foster care homes because children in these locations can receive Medicaid waiver services.
- HCBS Waivers for Children in Kansas:
 - Serious Emotional Disturbance (SED) Waiver
 - Intellectual/Developmentally Disabled (IDD) Waiver
 - Brain Injury (BI) Waiver
 - Autism (AU) Waiver
 - Physical Disability (PD) Waiver
 - Technical Assistance (TA) Waiver

Age - Appropriate

- In reviewing foster care settings for HCBS Settings Final Rule compliance, age appropriateness will always be considered.
- Age - appropriate means “activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity. Age - appropriateness is based on the development of cognitive, emotional, physical and behavioral capacity that is typical for an age or age group.” Kansas Department for Children and Family Services (DCF)

The HCBS Settings Final Rule requires all settings meet these qualities:

As age-appropriate and in consideration of DCF's administrative responsibilities –

- 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.

These additional qualities are required for provider-owned or controlled HCBS residential settings:

As age-appropriate and in consideration of DCF's administrative responsibilities –

- The individual has a lease or other legally enforceable agreement providing similar protections as the state's tenant landlord law;
- The individual has privacy in their sleeping or living unit including lockable doors with only appropriate staff having keys to the doors, choice of roommates and freedom to furnish or decorate the unit;
- The individual has freedom to control their own schedule and activities, including access to food at any time;
- The individual can have visitors of their choosing at any time; and
- The setting is physically accessible to the individual.

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 waiver participants?

- When children in foster care receive HCBS, they should be living in a homelike setting without the feeling of being in an institution.
- They should be given choices to live, work, be social and interact with others who have disabilities or those who do not have disabilities as age appropriate.
- If they want to work, they should be able to work with others in the greater community and in places where they can make more money as age-appropriate.



What does the HCBS Settings Final Rule mean for Child Placement Agencies?

- The CPA is responsible for ensuring foster care homes where children are residing follow HCBS Settings Final Rule requirements.
- Children must be able to make person-centered choices to go where they want, visit with whom they want, live where they want, work, volunteer or socialize where they want and eat what they want and with who they want as age-appropriate.
- Foster care homes must help individuals have and respect their privacy as age appropriate.
- The foster care home cannot make individuals do things they do not want or keep them from the things they want without an approved person-centered service plan in place.
- A foster care home cannot have restrictions for individuals receiving HCBS without sufficient justification.

**The “5”
Essential
Characteristics
of HCBS in
Kansas.**

Rights

Choice

Privacy

Autonomy

Integration and Inclusion

Rights as age appropriate:

Right to Privacy

HCBS participants have the right to be free from being observed or disturbed by others when they choose.

Right to Freedom from Coercion and Restraint

HCBS participants have the right to be free from being bullied, restrained and forced to do things they do not want.

Right to Respect

HCBS participants have the right to be admired and acknowledged for their abilities, qualities and achievements.

Right to How Services are Offered

HCBS participants have the right to be educated on the types of services available and to be aware of what to do when they have a concern or complaint with services.

Right to Dignity

HCBS participants have the right to be treated with honor and worthiness.

Right to Protection from Unlawful Evictions

HCBS participants have the right to a rental or housing agreement and to not be evicted from their home with out due process of the law.

Choice as age appropriate:

Choice of Daily Activities

HCBS participants have the right to make choices in their daily activities and with whom to be around.

Choice of Meals

HCBS participants are to be given the choice of what to eat, when to eat, to eat alone or to eat with others.

Choice of Services and Supports

HCBS participants are to be involved in choosing their services, supports and who provides them.

Choice of Decorations and Living Space

HCBS participants should be given choice on how to decorate their bedroom and home.

Choice of Housemate(s) and/or Roommate(s)

HCBS participants are to have input on the choice of if they want to live alone or with others.

Choice During Changes

HCBS participants are to be educated on and involved in choices when changes occur to services they want or need.

Privacy as age appropriate:



HCBS waiver participants have the right to privacy:

- in their sleeping area
- when they use the bathroom/restroom
- during personal care
- during phone calls
- while on the internet
- watching TV or using personal devices
- staff should knock and wait for permission before entering a participant's personal spaces
- Participants should be able to lock doors to personal/private spaces when they choose
- Participants should be able to secure personal belongings when they choose
- Participants have the right to know what is written and said about them

Autonomy as age appropriate:

Access

HCBS participants should be able to move around to access all areas of their home without having to wait on others or ask permission.

Resources

HCBS participants have the right to access and control their money/resources, and to spend it how they want.

Personal Items

HCBS participants have the right to pick out their own clothing, express themselves and to have personal property.

Informed Choice and Right to Risk

HCBS participants have the right to experience all aspects of life. They should be made aware of options available and the possible consequences of their decision.

Integration and Inclusion as age appropriate:

HCBS waiver participants can:

- pick when and where they want to go in the community
- have freedom to schedule activities when they like
- the choice of where they want to live and to live with others who do not have disabilities or receive HCBS
- have a job or volunteer with others who do not have disabilities or receive HCBS
- have visitors and visit with who they want, when they want including those without disabilities or receiving HCBS



How to help ensure HCBS Settings Final Rule characteristics are being practiced in residential and non-residential settings:

- Become knowledgeable about the HCBS Settings Final Rule.
- Help waiver participants become familiar with the 5 Essential Characteristics of the HCBS Settings Final Rule.
- Observe and report if you witness or are being told by a waiver participant; they are not able to go where they want, visit who they want, work where they want, live where they want, etc.
- Help educate waiver participants on how they can report or talk with others if they have concerns about their services and/or provider (see slide 19).

What happens if a foster homes is not allowing the qualities of HCBS Settings Final Rule?

- KDADS HCBS Settings Final Rule Compliance Team will work with the CPA to identify areas of non-compliance and work with them to remediate.
- If the foster home is unwilling or unable to comply to meet compliance, HCBS Medicaid funding will not be able to be utilized in the residential or non-residential setting.
- The CPA will be notified of the non-compliance status and risk of losing HCBS funding for the individual.
- A new foster home that is compliant with the HCBS Settings Final Rule will need to be obtained for the child or other funding to pay for services will need to be secured.

Who to contact when there are concerns about the HCBS Settings Final Rule.

Contact: Kansas Department for Aging and Disability Services - HCBS 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 Settings Coordinator
503 S. Kansas Avenue
Topeka, Kansas 66603



Additional Training Needed?

- Need more information, training or have questions regarding the HCBS Settings Final Rule?
- Contact Kansas Department for Aging and Disabilities Service at 785-296-4986 or at kdads.finalrule@ks.gov.
- Ask for the HCBS Training Specialist.



Content developed by LaTonia Wright, latonia1.wright@ks.gov



The End