



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

General Stakeholder and Advocate Group 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).

All HCBS Settings are required to have these qualities:

- 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.

Additional requirements for provider-owned or controlled home HCBS settings include:

- 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 individuals receive HCBS, they should be living in their own home or a place like their own home 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.
- 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.



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

- A service provider must follow requirements to help individuals 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.
- 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 service plan in place.
- A service provider cannot have restrictions for individuals receiving HCBS without sufficient justification. If it does, it risks losing Medicaid funding and licensing.

What does the HCBS Settings Final Rule mean for a guardian?

- The HCBS Settings Final Rule does not speak to a Guardian's choices or rights but to the choices and rights of the waiver participant.
- A guardian should understand that they cannot place restrictions on a waiver participant's rights, choices, privacy, autonomy, integration and inclusion without sufficient justification. If they do, it violates the HCBS Settings Final Rule and puts the individual's Medicaid funding at risk if the service provider allows unjustified restrictions.
- A guardian is to help support one through informed choice and to help them live their best quality of life using the least restrictive environment. A guardian's role is not to control an individual's life choices.

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 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.

Person-Centered Thinking (PCT), Planning and Practices

Person-Centered Thinking helps to establish the means for a person to live a life that they and the people who care about them have good reason to value.

Person-Centered Planning is a way to assist people who need HCBS and supports to construct and describe what they want and need to bring purpose to their life.

Person-Centered Practice is the alignment of service resources that give people access to the full benefits of community living and ensure they receive services in a way that may help them achieve individual goals.

Resource: <https://ncapps.acl.gov/about-ncapps.html>

Understanding and Implementing Person-Centered Practices

Everyone has a role in promoting person-centered practices not only to adhere to person-centered service planning requirements in regulations, but more importantly, to reach **the person's vision for their good life with optimal outcomes including independence, good health, and quality of life.**

Person-Centered Service Plans help create a sustainable system where older adults and people with disabilities live their lives by making informed choices, having full control, and accessing a broad array of quality services.

Resource: <https://ncapps.acl.gov/about-ncapps.html>

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

Rights

Choice

Privacy

Autonomy

Integration and Inclusion

Rights

Waiver participants are to have the same rights as those not receiving HCBS.

Right to Privacy

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

Right to Respect

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

Right to Dignity

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

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 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 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

Choice is about being able to choose from more than one option.

Waiver participants should be engaging in life choices and/or activities with non-disabled persons which includes housing, employment, social and recreational activities. Choices are to be person-centered and led by the individual with input from their support team.

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



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

Waiver participants are to have freedom to direct oneself without asking for permission.

Access

HCBS participants should be able to move around to access all areas of their home and workspace 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

Waiver participants should be given opportunities to interact in community activities with those that do not have disabilities or receive HCBS.

HCBS 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.
- If you help to support an individual that receives HCBS, help them inquire to their chosen provider if it is adhering to the Settings Final Rule and are certified compliant by KDADS for the place of service.
- 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 21).

What happens if a provider is not allowing the characteristics of HCBS Settings Final Rule?

- KDADS HCBS Settings Compliance Final Rule Team will assess the provider to identify areas of non-compliance and work with them to remediate into compliance.
- If the provider 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 provider and waiver participants will be notified of the non-compliance status and risk of losing HCBS funding.
- Waiver participants will need to find a new provider or service location that is compliant with HCBS Settings Final Rule requirements or pay for existing services with other funding if they choose to stay with the non-compliant provider or setting.

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.



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