

Home and Community Based-Services (HCBS)
&
The Settings Final Rule
Know Your Rights and Responsibilities
Waiver Participant Version



Content: This document will introduce rights and responsibilities under the HCBS Settings Final Rule for Medicaid waiver participants.

Discussion Topics:

- What is the HCBS Settings Final Rule?
- Know Your Rights and Responsibilities
- Person-Centered Planning
- Responsibilities of My Guardian
- Rights and Responsibilities of My Service Provider
- Who to Contact for More Information or Concerns

What is 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.
- The purpose of 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.
- This means that you or anyone receiving HCBS must be able to access the benefits of community living, including the right to make choices and control decision making in your life. You should not be treated as if you receive services in a facility or an institution (hospital, nursing home or treatment center).
- The federal regulation for Final Rule is 42 CFR 441.301(c)(4)-(5).

You Have Rights and You Have Responsibilities

You Have Rights:

A right is the basic freedom that belongs to you, no matter your race, sex, nationality, ethnicity, language, religion, where you live, work, volunteer, socialize, receive services or any other status you might have.

You Have Responsibilities:

A responsibility is you being accountable for how you think and act in your life. It is something that affects your life and other people's lives.



Know Your Rights and Responsibilities with the HCBS Settings Final Rule

You have the right to:

- Pick when and where you want to go in the community,
- Privacy, dignity and respect,
- Say no and not be forced to do something you do not want,
- Know how to stay safe in your home and community,
- Say no to any services you do not want,
- Have a job or volunteer if you want,
- Visit with who you want,
- Know what is written and said about you,
- Have your own money, clothing and other personal property,
- Not have anyone hit, kick, slap, bite, say or do things that hurt you.

You have the responsibility to:

- Keep yourself and others safe when you are in the community,
- Make choices that keep you safe at home and in the community,
- Respect other's privacy and treat others with dignity and respect,
- Allow others to say no and not force them to do something they do not want,
- Keep appointments and meetings for the services you have chosen,
- Learn skills you need to get the job you want or do the things you want,
- Use your money wisely and to take care of the things you have,
- Not hit, kick, slap, bite or say things that will hurt others.

Additionally, you have the right through your supports to:

- Seek employment and work with people who do not have disabilities or receive HCBS Medicaid.
- Engage in community life (church, clubs, library, concert, sporting events, school, shopping, etc.).
- Have and control your own budget, money and personal resources.
- Receive services in the community with the same degree of access as people who do not receive HCBS Medicaid.
- Choose your living and work setting from other/all available options, which includes places that are for people without disabilities.
- Freedom from coercion and restraint.
- Optimizes individual initiative, autonomy and independence in making life choices, which includes setting a daily schedule and choosing with whom to interact with.
- Choose services and supports and who provides them.
- Let others know when you have a concern about your supports or staff.
- Make changes to services when they are no longer what you want.

When you live somewhere, you also have the right to:

- Live by yourself or with others.
- The choice of housemates and/roommates (if selecting a shared home).
- A lease or other legally enforceable agreement.
- Not be forced out of your home without due process of the law.
- Have a key or other mode of access to your home.
- Privacy in your bedroom, bathroom and other areas of your home.
- Have lockable doors to your home, bedroom and bathroom.
- Freedom to furnish and decorate your bedroom and home.
- Freedom and support to control your schedule and activities (when to wake up/go to bed, get dressed, take your medications, when to watch TV, do laundry, eat, etc.).
- Get food and eat at any time you want.
- Freedom to have visitors at any time (as appropriate when living with others).
- Physical accessibility to move about your living space when you choose (not asking permission or waiting for staff to move around).

The HCBS Settings Final Rule vs. My Guardianship

HCBS Settings Final Rule Regulations:

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

Per the 2012 Kansas Statutes 59-3075. Guardian's duties, responsibilities, powers and authorities. (2)

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)*

Know Your Rights and Responsibilities During Person - Centered Planning

You have the right to:

- Lead your meeting.
- Ask anyone you want to attend your meeting.
- Choose your goals and what is on your plan.
- Choose what time and what place to have your person-centered planning meeting.
- Pick the supports you want from the choices of services you have.
- Pick the agencies and support team you want.
- Ask for help when needed to make better choices for yourself.

You have the responsibility to:

- Attend your meeting.
- Listen to other people's suggestions.
- Respect someone's right to say they can not or do not want to come to your meeting.
- Follow the choices you make in your plan.
- Ask for changes to your plan when things are not working out.
- Understand you need to choose a meeting time that will work for everyone you want to attend the meeting.
- Understand that you must make choices about your services and supports.
- Know an agency might not be able to give you services or supports when you want them.

Rights and Responsibilities of My Service Provider

My support team (service provider, case manager, care coordinator, etc.) must follow Final Rule requirements to help educate me so that I can make the best choices for myself on:

- What supports I want, who provides my supports and where I want to receive supports.
- Being able to visit with other people I want and when I want; including those who do not receive HCBS Medicaid.
- Live where I want and with who I want. Help me live alone or with others if I want.
- Help me have a job or work toward a having a job where I want if I want; including a place with those who do not receive HCBS Medicaid.
- Help me volunteer or work toward volunteering doing what I want; including being around those who do not receive HCBS Medicaid.
- Let me choose what I want to eat, where I want to eat, when I want and with who I want to eat.
- Having privacy when I want and as needed.
- Making sure I have a residential agreement/lease and not be evicted from where I live without following the Kansas Tenant and Landlord laws.
- Following my person-centered plan and taking away restrictions when they are no longer needed.

Who to contact when you have 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



If you feel your rights, choices and privacy are not being followed by your service provider, guardian or someone else:

- Let others know (friends, staff, guardian, case manager, care coordinator, church member, administrator, state agency etc.).
- File a formal complaint with the service provider.
- Abuse, Neglect & Exploitation Hotline at 1-800-922-5330
- Contact the Disability Rights Center of Kansas 1-877-776-1541 or at info@drckansas.org
- Kansas Long Term Care Ombudsman 1-877-662-8362
- KanCare Ombudsman 1-855-643-8180
- Call KDADS IDD Licensing and Quality Manager **(785) 296-4737**
- Call KDADS Aging Hotline 1-800-842-0078
- Kansas Legal Services 1-800-723-6953
- Kansas Attorney General 785-296-2215

The End

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