HCBS Settings Rule

Division of Provider Services & Quality Assurance

HCBS Settings Rule

Home and Community-Based Services (HCBS) Settings Rule

In 2014, CMS issued a federal criteria for all Home and Community-Based Services (HCBS) providers, both residential and non-residential.

The HCBS Settings Rule is a landmark in disability rights and Medicaid policy. It ensures people receiving HCBS are not just living outside of institutions- but are truly a part of their communities, with the same freedoms to make choices about their lives.

In Arkansas, Level II Assisted Living Facilities can enroll as a Medicaid provider for the Living Choices Waiver. Arkansas' Living Choices Waiver is a 1915(c) Home and Community-Based Services (HCBS) waiver that is mandated to follow the requirements of the Settings Rules designed by CMS.

It is DHS's responsibility to uphold these federal regulations and report back to CMS on the overall compliance of the waiver service providers in the state.

Core Criteria for ALL HCBS Settings

1. Community Integration
   - Setting must be integrated into the broader community.
   - Individuals must have access to community activities, services, and resources just like anyone else.
2. Employment and Community Life
   - Individuals must have opportunities to seek employment in competitive, integrated settings.
   - They should be able to engage in community life and control their personal resources.
3. Access Comparable to Non-HCBS Individuals
   - People receiving HCBS must have the same degree of access to the community as those not receiving Medicaid services.
4. Choice of Setting
   - Individuals must choose their setting from a range of options, including non-disability specific settings.
   - Residential options must include the possibility of a private unit.

Core Criteria for ALL HCBS Settings

5. Person-Centered Planning
   - Services must be based on a person-centered plan that reflects the individual's preferences, goals and needs.
   - The person directs the planning process.
6. Rights and Dignity
   - Settings must ensure privacy, dignity, respect, and freedom from coercion or restraint.
7. Autonomy and Independence
   - Individuals must be supported in making life choices, including daily schedules, activities, and service providers.
8. Choice in Services and Providers
   - Individuals must be able to choose their services and who provides them.

Additional Criteria for Residential Settings

1. Legally Enforceable Lease or Agreement
   - Residents must have a lease or similar legal agreement that provides the same protections as those typical landlord-tenant arrangements.
2. Privacy in Living Unit
   - Each individual must have privacy in their unit.
   - This includes lockable doors, choice of roommates, and freedom to furnish or decorate their space.
3. Control of Schedule and Access
   - Residents must control their own schedules and have access to food at any time.
   - They must be able to have visitors of their choosing at any time.
4. Physical Accessibility
   - The setting must be physically accessible to the individual.
5. Modifications to These Criteria
   - Any modifications must be documented in the PCSP.
   - They must be based on assessed need, not convenience of the provider.

Additional Criteria for Residential Settings

These criteria are designed to ensure that HCBS Settings are not just outside of an institution- but are truly **home-like, empowering, and integrated** into the community.

Heightened Scrutiny

It is important to note that any provider identified as a Heightened Scrutiny setting will also be reviewed by CMS prior to DHS issuing final decisions.

What is Heightened Scrutiny? (See FAQ)

Certain setting that has institutional or isolating characteristics. For example:

- Located in the same building, on the same grounds, or adjacent to a public or private institution
- Gated communities, farmsteads, campus-style
- Rural location which unintentionally isolates from the broader community or limited choice in receiving services

Compliant v. Non-Compliant

Features:

- Lockable doors
- Control over their schedule
- Freedom to decorate
- Legally enforceable lease; choice of roommates
- Visitors at any time and of their choosing
- Meals at any time, not just fixed hours
- Participation in community activities outside of facility

Issues:

- No lockable doors/key access or private spaces
- Staff control when residents wake, eat, and participate in activities
- Visitors are only allowed during limited hours or have to be approved
- Residents discouraged or prevented from leaving/Reverse Integration activities only

Privacy & Dignity

Privacy and dignity are core components in everyone's life.

Best practices should be used not only with living space and personal boundaries, but in staff conduct and training.

- Knock before entering
- Private care delivery
- Confidential communication

Compliant v. Non-Compliant Memory Care Units (ASCU)

Setting: A secured memory care wing.

Features:

- Private rooms with lockable doors and personalized space
- Person-centered planning
- Freedom of movement within the unit, supervised outings
- Modified schedules to reflect individual routine
- Staff training emphasizing dignity, respect and communication for people with dementia.

Setting: A secured memory care wing.

Issues:

- All residents follow the same rigid daily schedule
- Blanket policy of no lockable doors for anyone in the unit
- Not allowed outside the unit- even with supervision
- Activities are generic and not tailored to individual interests or cognitive abilities
- Use of coercive practices (restraints, forced participation)

Compliant v. Non-Compliant Leases/Occupancy Agreements

Agreement Type: A formal lease or residency agreement signed by both the resident and provider.

Features:

- Specifies rent amount, due date, and duration of tenancy.
- Includes eviction protections comparable to state landlord-tenant laws.
- Outlines resident rights, including privacy, autonomy, and appeal processes.
- Clearly defines provider responsibilities (e.g. maintenance, service provision)
- Resident receives a copy and its explained in accessible language.

Agreement Type: A vague "house rules" document or admission form with no legal standing.

Issues:

- No mention of eviction protections or appeal rights.
- Resident can be removed at the provider's discretion without notice.
- No clear terms for rent, responsibilities, or duration.
- Agreement is not signed by both parties or not provided to the resident.
- Resident is unaware of their rights or how to challenge decisions.
- Charging more, or having discriminatory pricing, for the same unit and services of HCBS beneficiaries vs. non-HCBS beneficiaries.

Compliant v. Non-Compliant Employment Services

Compliant Features:

- Residents are encouraged to pursue **competitive, integrated employment**.
- Staff assist with job searches, resume writing and interview prep.
- Transportation is arranged for work shifts and residents choose their own jobs.
- The PCSP includes employment goals tailored to each individual's interests and abilities.

Non Compliant Issues:

- Residents are **discouraged or prohibited** from working outside the facility.
- No support is provided for job-seeking or skill-building.
- Employment options are limited to **in-house chores/volunteering** or token tasks with no pay or community interaction.

Compliant v. Non-Compliant
Meal & Food Access

Compliant Features:

- Residents choose **when, where, & with whom** they eat.
- No rigid mealtimes- meals & snacks are available throughout the day.
- If someone misses a meal due to an outing/activity/employment, staff save a plate or offer alternative.
- Residents can **store personal snacks** in rooms or designated kitchen area.
- **Accessible** kitchen and pantry areas.

Non Compliant Issues:

- Strictly scheduled mealtimes with **no flexibility**.
- Residents must eat in assigned seats and cannot choose dining companions.
- No food available outside of designated meal periods.
- Food or snacks that are available outside of meal periods are not individual preferences.
- Kitchen and food storage area **locked** and off-limits.

Compliant v. Non-Compliant
Meal & Food Access

Compliant Features:

- Staff assist with **grocery shopping**, budgeting, and meal planning if requested.
- Residents can request **alterative meals** if they don't like what is served or on the menu.
- Dietary choices are respected- even if the staff disagree with them.
- Nutrition education is offered, but decisions remain with the resident.

Non Compliant Issues:

- Residents cannot keep personal snacks and beverages in room.
- Staff control what food is appropriate based on personal beliefs or assumptions about health.

Compliant v. Non-Compliant Visitation

Compliant Features:

- Residents can have **visitors at any time**, including evenings and weekends.
- Overnight guests are allowed based on the resident's preferences and lease agreement.
- No need for staff approval or scheduled visitation windows.
- Residents choose **who visits, when and where-** including private areas like their rooms.
- Staff respect the resident's wishes and do not interfere unless there is a safety concern.

Non Compliant Issues:

- Visitors are only allowed during **strictly scheduled hours** (e.g., 2-4pm on weekdays).
- No overnight guests are permitted under any circumstances.
- Residents must **request permission** for visitors.
- Staff may deny visits based on arbitrary rules or facility convenience.
- Visits must occur in **common areas** only; residents cannot host guests in their rooms.
- Staff may monitor or interrupt conversations **without cause.**

Reverse Integration is NOT Compliant

Issue	Why It's Not Compliant
Simulated Inclusion	It creates a façade of community life without offering real-world experiences.
Limited Autonomy	Individuals aren't making choices about where to go or who to interact with- they're passive recipients.
Institutional Feel	The setting remains disability-specific and segregated, reinforcing isolation.
Fails True Integration	HCBS requires individuals to engage in competitive employment, community activities, and civic life outside the facility.
No Equal Access	People with disabilities must have the same access to community resources as anyone else- not just visits from outsiders.

CMS guidance emphasizes that reverse integration does not meet the standard for community integration under the HCBS Settings Rule.

Modifications

CMS recognizes that there may be individuals that require **modifications** for safety, but those must be justified in the person-centered plan and **not applied universally**. The goal is to ensure that even residents with cognitive impairments experience their environment as **home-like, respectful** and **empowering**.

DHS's Living Choices Nurses have developed a revised PCSP form they will begin using to document these modifications.

Modifications

Example Scenario: A resident with dementia has a history of unsafe wandering.
Modification Needed: Their unit has a secure door with staff-controlled access.
Compliance:

- ✓ The individual was assessed on his/her own situations and documented in the person-centered plan.
- ✓ Less restrictive options were tried first (e.g,. motion sensors, supervision)
- ✓ The resident's rights are still respected (e.g., access to outdoor areas with staff support)

Modifications

Example Scenario: A resident has a medical condition requiring strict dietary control.
Modification Needed: Access to snacks is limited and monitored.
Compliance:

- ✓ The restriction is based on documented clinical need, not facility convenience, and noted in the person-centered plan.
- ✓ The plan includes education and alternatives to support their autonomy.
- ✓ Other residents retain full food access.

Modifications

Example Scenario: A resident has a seizure disorder and requires overnight monitoring.
Modification Needed: Staff perform hourly bed checks.
Compliance:

- ✓ The need is medically documented and noted in the person-centered plan.
- ✓ The resident consents to the checks, in writing.
- ✓ Other residents are not subject to the same practice.

Online Resources

DHS is committed to continued guidance and education for providers on the HCBS Settings Rule. We have created a direct link to information on our website for you to refer to and we will continue to update this page with new information and resources when available.

humanservices.arkansas.gov/u/HCBSrules/

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