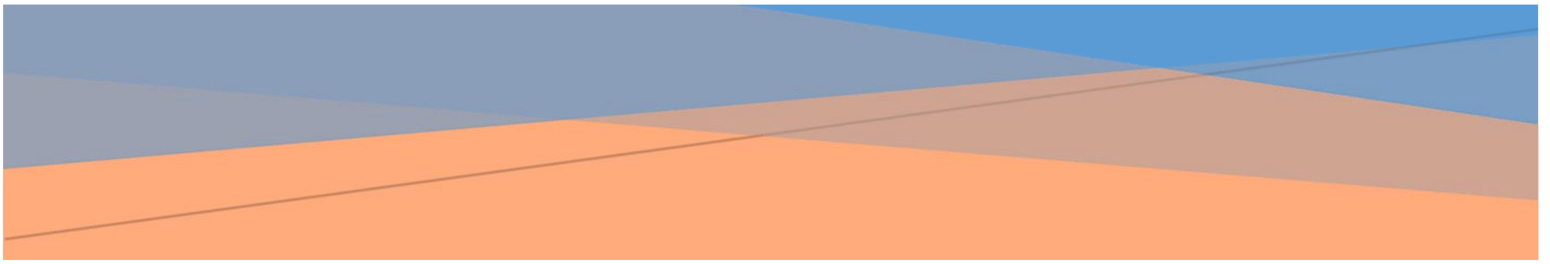

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HCBS RULE: ANSWERS TO PROVIDER QUESTIONS

SC Department of Disabilities and Special Needs

May 2018

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INTRODUCTION

In 2014, the Centers for Medicare and Medicaid issued the HCBS "Final Rule". They have been in effect since that time.[1]The regulations are included in several sections of the Code of Federal Regulations (including 42 C.F.R. § 441.301[2]) as well as sections 1915(c), 1915(i) and 1915(k) of the Social Security Act.[3] Final Rule cannot be appealed. All States are required to fully comply with the regulations by the deadline of March 17, 2022[4]. Failure of any State to fully comply by the deadline will result in the loss of all CMS funding for waiver settings in the State.[5]

DHHS and DDSN have worked towards full compliance with the regulations since 2014.[6] The SC Statewide Transition Plan (STP), required by CMS to demonstrate compliance efforts, was initially approved by CMS in late 2016.[7] Documents, presentations, webinars, and other materials designed to aid compliance efforts are available to providers and are posted online.[8]

SC has already completed several steps of the STP, and is actively pursuing full compliance by the March 17, 2022 deadline. The current step is revising the STP to include updated timelines and actions-to-date, determination of all settings into "buckets" or levels of compliance, and a fully described State HCBS Quality Review process leading to CMS heightened scrutiny actions.

This document (and accompanying slideshow) is a response to questions and concerns raised by providers and other stakeholders concerning the HCBS Rule and its implementation in waiver settings. We hope it will help move our State toward full compliance with this regulation. Thank you for helping us ensure that all South Carolina waiver participants have the opportunity to live their best possible lives.

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[1]https://www.federalregister.gov/documents/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider
[2]https://www.gpo.gov/fdsys/pkg/CFR-2000-title42-vol3/pdf/CFR-2000-title42-vol3-sec441-301.pdf
[3]https://www.ssa.gov/OP_Home/ssact/title19/1915.htm
[4]https://www.medicaid.gov/federal-policy-guidance/downloads/cib050917.pdf
[5]https://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf, p. 3034. "The State's failure to…comply with the terms of the approved transition plan may result in compliance actions, including but not limited to deferral/disallowance of Federal Financial Participation."
[6]https://msp.scdhhs.gov/hcbs/sites/default/files/HCBS%20Rule%20Fall%202014%20Public%20Mtg%20combined%20presentation.pdf
[7]https://msp.scdhhs.gov/hcbs/sites/default/files/South_Carolina_STP_Initial_Approval_11-4-16.pdf
[8]http://www.ddsn.sc.gov/QualityManagement/Pages/HomeandCommunityBasedServicesSettingsRule.aspx; https://msp.scdhhs.gov/hcbs/

AUTONOMY

HCBS Final Rule

According to the HCBS Final Rule a waiver setting "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 whom to interact." Further a waiver setting, "Facilitates individual choice regarding services and supports, and who provides them."[9]

DDSN Standards

DDSN's Residential Habilitation Standards outline not only what the vision, mission, and values of that agency are, but how the standards reflect those as well. A provider of Residential Habilitation (the waiver service) should be doing the following according to the waiver service definition of Residential Habilitation:

> "Residential Habilitation services include the care, skills training and supervision provided to individuals in a non-institutional setting. The degree and type of care supervision, skills training and support of individuals will be based on the plan of care and the individual's needs. Services include assistance with acquisition, retention, or improvement in skills related to activities of daily living, such as personal grooming and cleanliness, bed making and household chores, eating and the preparation of food, and the social and adaptive skills necessary to enable the individual to reside in a non-institutional setting. Payments for Residential Habilitation are not made for room and board, the cost of facility maintenance, upkeep and improvement, other than such costs for modifications or adaptations to a facility required to assure the health and safety of residents, or to meet the requirements of the applicable life safety code. Payment for Residential Habilitation does not include payments made, directly or indirectly, to members of the individual's immediate family. Payments will not be made for the routine care and supervision which would be expected to be provided by a family or group home provider, or for activities or supervision for which a payment is made by a source other than Medicaid. Provider owned or leased facilities where residential habilitation services are furnished must be compliant with the Americans with Disabilities Act. Participants who receive Residential Habilitation paid at a daily rate are not allowed to receive the Adult Companion service."[10]

Modifications

CMS has recognized that modifications to an individual's right of autonomy may be necessary to "allow providers to serve individuals with the most complex needs in integrated community settings to ensure that the setting supports the health and well-being of the individual beneficiary and those of people around them."[11] They continue:

> "For example, providers in many states serve individuals with severe PICA behavior (compulsive eating of non-food items), for whom the physical environment may need to be

[9] https://www.gpo.gov/fdsys/pkg/CFR-2016-title42-vol4/pdf/CFR-2016-title42-vol4-sec441-530.pdf, p. 419-420.
[10] https://www.scdhhs.gov/internet/pdf/IDR-%20Waiver-Amendment-2017.pdf, pg. 59.
[11] https://www.medicaid.gov/medicaid/hcbs/downloads/faq-planned-construction.pdf, p. 4

> tightly controlled to prevent the occurrence of individual behavior that can cause severe injury or death. In addition, some community providers support individuals with a history of sexual predation where line-of-sight supervision and limits on interaction with certain members of the community may need to be imposed. Other community providers serve individuals with dementia for whom measures must be taken to account for safety needs in a person-centered manner, including concerns related to wandering. With the HCBS rule's emphasis on full community integration and control of personal resources and activities, the restrictions needed to provide individuals with these kinds of behaviors or other complex needs, alternatives to institutional placement could otherwise violate the HCBS requirements ."[12]

However, providers may not choose to place modifications on any individual's rights of autonomy. According to the law, modifications can be made only (1) on an individual basis, (2) within a person-centered individual service plan (ISP), and (3) meeting the requirements as spelled out in 42 CFR § 441.301(c)(4)(vi)(F)).[13]

Person-Centered
Key to the issue of autonomy is each individual consumer's goals as listed in their Individual Service Plan (ISP) and Residential Plan. If these plans are person-centered, then the goals outlined for that individual to help them live in the least-restrictive environment are clear. An ISP can include learning skills (such as resume writing), attending classes (such as career prep), and other goals. The individual and their circle of support (which may include their case manager) may be the best people to decide when the individual is ready to make choices.

Risk
"A life of dignity and choice", as Colorado explained well, "generally involves taking risks and even making bad decisions; in other words, there is a dignity of risk. Hence, the provider should support the individual in working toward minimizing or eliminating any rights modifications, including by helping the individual learn self-monitoring, decision making, and boundary-setting, and by reinforcing positive decisions and behaviors."[14]

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[12] https://www.medicaid.gov/medicaid/hcbs/downloads/faq-planned-construction.pdf
[13] https://www.gpo.gov/fdsys/pkg/CFR-2000-title42-vol3/pdf/CFR-2000-title42-vol3-sec441-301.pdf
[14] Ibid.

CO-LOCATION (UNDER DEVELOPMENT)

HCBS Settings Rule

HCBS Settings Rule requirements apply to all waivers and to all services within those waivers including services provided in residential settings (CRCFs, CTH-IIs CTH-I, SLP-IIs and SLP-Is) and non-residential settings (Day Programs) in which waiver services are delivered. DDSN Regional Centers and local/community ICF/IID's do not have to comply with HCBS regulations because they are institutional settings, not HCBS settings. HCBS waiver services cannot be delivered in institutional settings. The Rule states:

> "Home and community-based settings do not include the following: (i) A nursing facility; (ii) An institution for mental diseases; (iii) An intermediate care facility for individuals with intellectual disabilities; (iv) A hospital providing long-term care services; or (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution…." (42 CFR § 441.301 (c)(5))[15]

In other words, waiver services cannot be delivered in institutional settings nor can waiver service be delivered in settings with the qualities of an institutional setting. DDSN is committed to working with providers to prevent compliance issues associated with settings that are presumed to have institutional qualities. Each situation can be programmatically mitigated to ensure autonomy and community integration is offered.

Heightened Scrutiny (HS)

CMS makes a provision for the types of settings that are presumed to have institutional qualities. According to the Rule, CMS may determine that they are in HCBS rule compliance despite their location through a process called "heightened scrutiny". CMSs decision will be "based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings".[16] South Carolina is currently finalizing the HS review process and is committed to mitigating location and programmatic challenges to avoid HS.

PCG Reports

Please note that DDSN has removed the results of indicators A5 and A6 of the Community Integration category of the PCG reports from both assessment and CAP consideration. Individual analysis of provider adjacent residential and non-residential settings will be shared with providers in order to target operational/programmatic mitigation.

[15] https://www.gpo.gov/fdsys/pkg/CFR-2000-title42-vol3/pdf/CFR-2000-title42-vol3-sec441-301.pdf
[16] Ibid.

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DAY SERVICES

Day Programs

Non-residential day programs and services are allowable under the HCBS Final Rule. South Carolina currently has over 80 day service facilities most of which are licensed as an Adult Activity Center (AAC), a Work Activity Center (WAC), and/or an Unclassified Program. These non-residential settings must also comply with CMS requirements in that, the non-residential setting must not have the qualities of an institution as discussed in the Co-Location section of this document. As the HCBS Advocacy Coalition (2015) makes clear:

> "As with residential settings, all non-residential settings must comply with the federal requirements that the setting provide opportunities for participants to engage in community life, to have access to the community, to control their personal resources, and to seek employment and work in competitive settings. Any non-residential settings, including employment settings and day programs must be assessed using the same criteria that apply to all other settings. Specifically, does the program have characteristics that isolate participants from the broader community? In other words, do participants have the same level of access to their community as individuals who do not receive Medicaid?"[17]

Pre-Vocational Services

Social Security Administration (SSA) regulations do not prohibit individuals from receiving pre-vocational services in a facility-based setting such as a:

> "Supported employment and prevocational services may be furnished as expanded habilitation services under the provisions of §1915(c)(5)(C) of the Act. They may be offered to any target group for whom the provision of these services would be beneficial in helping them to realize their goals of obtaining and maintaining community employment in the most integrated setting. As provided in Olmstead Letter #3 (included in Attachment D), the provision of these services is not limited to waiver participants with intellectual or developmental disabilities, and can be a meaningful addition to the service array for any of the regulatorily identified target groups."[18]

The HCBS Settings Rule also requires that every waiver setting, including every non-residential 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

[17] http://www.aucd.org/docs/policy/HCBS/HCBS%20Settings%20Rules_What%20You%20Should%20Know!%20Final%201%2022%202016.pdf, p. 15.
[18] https://downloads.cms.gov/cmsgov/archived-downloads/CMCSBulletins/downloads/CIB-9-16-11.pdf, p. 4.

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> services in the community, to the same degree of access as individuals not receiving Medicaid HCBS."[19]

Within this context, CMS issued the following additional guidance:

> "Therefore, a state could allow pre-vocational services delivered in facility-based settings that encourage interaction with the general public (for example, through interaction with customers in a retail setting). We note, however, that pre-vocational services may be furnished in a variety of locations in the community and are not limited to facility-based or site-based settings, and that states have flexibility in determining whether and when to use facility-based settings. All settings must have the characteristics of HCB settings, not be institutional in nature and not have the effect of isolating individuals from the broader community." [20]

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[19]https://www.gpo.gov/fdsys/pkg/CFR-2016-title42-vol4/pdf/CFR-2016-title42-vol4-sec441-530.pdf, p. 419.
[20] https://www.medicaid.gov/medicaid/hcbs/downloads/q-and-a-hcb-settings.pdf, p. 10.

DEPARTMENT OF LABOR POSTERS

Federal Law

"Some of the statutes and regulations enforced by the U.S. Department of Labor (DOL) require that notices be provided to employees and/or posted in the workplace."[21] Specifically, policy is: "Where an employer has employees reporting directly to work in several different buildings, the employer must post all required federal posters in each building, even if the buildings are located in the same general vicinity, e.g., in an industrial park or on a campus."[22]

DOL's further guidance includes this question and answer: Question: "[If] employees are required to report to the main office only once a week…can I just post the posters there? Answer: Yes, except for the Executive Order 13496 poster. This poster must be posted in locations in which a contractor's or subcontractor's employees engage in work."[23]

In other words, DOL requires the posting of "all required federal posters" in individual settings only when employees do not regularly report to the main office of the provider. If employees do regularly report to the provider's main office, then the only federal required workplace poster in individual settings is the Executive Order 13496 poster.

State Law

According to State law:

> "Employers in South Carolina are required to post two employment notices from the South Carolina Department of Labor, Licensing and Regulation in a place or places where employees can see them. They are:
>
> [1] The LLR Workplace poster, which includes OSHA (Occupational Safety and Health) and the Labor Law Abstract (Payment of Wages and Child Labor), and
> [2] the Right-to-Work poster."[24]

Employers have latitude to post in a way that maintains visibility for employees while not detracting from provision of home-like services.

HCBS Final Rule

The HCBS Final Rule says the following about waiver settings: "Home and community-based settings do not include…any other locations that have qualities of an institutional setting, as determined by the Secretary…unless…the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings."[25]

[21] https://www.dol.gov/general/topics/posters
[22] https://webapps.dol.gov/dolfaq/go-dol-faq.asp?faqid=561&faqsub=Location&faqtop=Posters&topicid=17
[23] Ibid.
[24] http://www.llr.state.sc.us/aboutus/index.asp?file=Posters.htm
[25] https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol4/pdf/CFR-2017-title42-vol4-sec441-530.pdf, p. 416.

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While there are numerous elements that could be included in "qualities of an institutional setting", DHHS has determined one is the posting of employee-specific information in common areas which may be seen by all.

DDSN Standards

DDSN's Residential settings standards have been created to be consistent with federal and state employee rights laws and the HCBS Final Rule. These standards state that waiver settings must "[ensure] an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint" by following 13 guidelines. The first three are:

(1) "Waiver participants are informed of their rights."
(2) "Rights information is posted in an area easily accessible to the waiver participant."
(3) "The setting does not have employee information (such as labor standards and minimum wage posters) posted in common areas and visible to residents."[26]

Placement

To comply with federal and state law, each individual setting must post, at a minimum, DOL's Executive Order 13496 poster and South Carolina's LLR Workplace poster and Right-to-Work poster. These posters must be on display where employees can see them. To comply with HCBS Final Rule and DHHS standards, posters must not be placed in common areas where they will visible to waiver participants. Waiver funded residences must feel and look like "home," not businesses or institutions.

Helpful questions to ask when considering where to place posters include:

- Would I choose to have this poster hanging in this location if it were my home?
- Does the placement of this poster help make this residence look more like a home?
- Does the placement of this poster make this residence look more like an institution?
- What locations would allow employees, but not residents, to see this poster?
- Have I asked the residents for their ideas and opinions about where this poster belongs?
- What other options do I have about locations to place this poster?

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[26]https://msp.scdhhs.gov/hcbs/sites/default/files/SCDHHS%20HCBS%20Residential%20Tool%201-30-2017%20FINAL.pdf, p. 2.

FOOD

HCBS Final Rule

The Rule states that in all waiver settings, "Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time." In other words, all waiver participants must have supported access to food whenever they wish.

Modifications

The law recognizes that the free exercise of this right may not be appropriate for every individual. For example, it may not be appropriate for some people with dietary concerns to have access to certain types of foods. Issues that may require modifications to the exercise of this (or any other) right may therefore be addressed through modifications to the individual's person-centered Individual Service Plan (ISP).[27]

Likewise, DDSN Residential Habilitation Standards (revised February 12, 2018) affirm:

> "Individuals have access to food at all times. Any modification to this requirement must be supported by a specific assessed need, justified in the person-centered plan and reviewed by the Human Rights Committee. Positive interventions and supports must be tried before the modification, use of less intrusive methods documented, and data collected to review the modification. The modification must be time limited to include informed consent and cause no harm."[28]

Key to understanding modifications is a focus on the individual needs of each waiver participant. Providers may not limit an individual's rights by imposing restrictions, setting house rules, or making decisions on their behalf. Providers may not make a blanket policy concerning food or access to food for everyone living in the setting. If a person has a properly assessed need to manage their diet in some way, it must be recorded in their ISP. One individual's needs can only be for that individual and must not impede the other resident's rights to food at any time. To be person-centered, what is needed and best for each person should be the basis for how this is addressed.

Residential Settings

The HCBS Settings Rule requires that in residential settings, individual waiver participants must have the option to choose when and what to eat, as well with whom to eat or not eat (or to eat alone). Questions to consider when determining compliance include:

- Does the individual have a meal at the time and place of his/her choosing?
- Can the individual request an alternative meal if desired?

[27]See https://www.gpo.gov/fdsys/pkg/CFR-2016-title42-vol4/pdf/CFR-2016-title42-vol4-sec441-530.pdf, p. 420.
[28]http://www.ddsn.sc.gov/about/directives-standards/Documents/currentstandards/Residential%20Habilitation%20Standards%20-%20Revised%20(011918).pdf. See RH 1.7, p. 8-9.

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- Are snacks accessible and available anytime?
- Does the dining area afford dignity to the diners and are individuals not required to wear bibs or use disposable cutlery, plates and cups?
- Is the individual required to sit at an assigned seat in a dining area?
- Does the individual converse with others during meal times?
- If the individual desires to eat privately, can s/he do so?[29]

Kitchen Access
Having access to a kitchen or facilities to store and prepare food must also be provided to residents. As described by the State of Colorado: "Access to food preparation facilities can be provided in various ways, such as access to the setting's main kitchen; access to a separate kitchenette with a refrigerator, sinks, and stove or microwave; and/or access to a safe, sanitary way to store and prepare food in one's own room/unit. Residential settings must employ at least one approach, but need not adopt all of them."[30]

Locked Storage
Colorado also addressed food storage. "If one person has a rights modification in place restricting their access to food at any time, and part of this modification includes locking the refrigerator and pantry, other people not subject to such a modification must have a way to obtain access to food any time (e.g., have a key to the lock, have a passcode, etc.). Restricting whether or how often people go out to eat is a rights modification that must be handled on an individualized basis."[31]

Meal Times

According to CMS, settings may have standard meal times, but they must make alternative meals available for residents who may wish to eat at another time. "It is understandable that prepared meals may not be available at all times; nevertheless if a Medicaid HCBS participant misses a meal, he or she must have the ability to make a sandwich, for example."[32]

Food Choice
DDSN agrees with the State of Idaho's statement on food choice:

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[29]https://www.medicaid.gov/medicaid/hcbs/downloads/exploratory-questions-re-settings-characteristics.pdf. See questions 7-8.
[30]https://www.colorado.gov/pacific/sites/default/files/HCBS%20Settings%20Final%20Rule-FAQ%20Part%20I%20General%20Questions-January%202018.pdf, p. 17. Note: We are grateful for the contributions of other states to the CMS HCBS Final Rule issues. We will cite their helpful insights throughout the remainder of this document.
[31]https://www.colorado.gov/pacific/sites/default/files/HCBS%20Settings%20Final%20Rule-FAQ%20Part%20I%20General%20Questions-January%202018.pdf, p. 17-18.
[32]http://humanservices.arkansas.gov/images/uploads/daas/Initial_approval_additional_CMS_feedback_11-7-16.pdf, p. 4.

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"Unless there is a documented risk to the individual's health or safety that requires the provider to restrict a person's access to food, a provider may not limit that access. A provider may not limit a person's access to food items solely on the basis that the provider has deemed something as "junk food" or due to the provider's personal beliefs or because the provider believes the individual is not a healthy weight. The provider should focus instead on helping the individual learn to make better food choices if that is an agreed upon goal in their service plan. There may be instances in which 24-hour access to food poses a health or safety risk to an individual. In that case there may be a need to restrict food intake and that should be documented in the person-centered service plan."[33]

Non-Residential Settings

HCBS Rule also requires that in non-residential settings, individual waiver participants must also have the option to choose when and what to eat, as well with whom to eat or not eat (or to eat alone). Questions to consider when determining compliance include:

- "Does the setting allow for individuals to have a meal/ snacks at the time and place of their choosing?
- For instance, does the setting afford individuals full access to a dining area with comfortable seating and opportunity to converse with others during break or meal times?
- [Does the setting] afford dignity to the diners (i.e., individuals are treated age appropriately and not required to wear bibs)?
- Does the setting provide for an alternative meal and/or private dining if requested by the individual?
- Do individuals' have access to food at any time consistent with individuals in similar and/or the same setting who are not receiving Medicaid-funded services and supports?"[34]

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[33]http://healthandwelfare.idaho.gov/Portals/0/Medical/MedicaidCHIP/HCBS/RulesAndGuidance.pdf, p. 21.
[34]http://www.leadcenter.org/system/files/webinar/presentation_files/CMS%20HCBS%20exploratory-questions-non-residential.pdf, p. 5.

HOUSE RULES

HCBS Final Rule

House Rules are permitted under HCBS regulations. However, just like all other programmatic elements, house rules must:

(1) "Ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint."
(2) "Optimize but…not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact."
(3) "Facilitate individual choice regarding services and supports, and who provides them."[35]

DDSN Standards

DDSN standards allow house rules that are discussed and agreed upon by residents. However, the standards do not permit house rules to restrict rights under HCBS final rule.
For example, concerning visitors, DDSN guidance states:

> "When the individual lives with others, conversations among all residents should be held so that all have input and an agreement reached regarding any "rules" for visitors for the house/setting. Any modification to these requirements must be supported by a specific assessed need, justified in the person-centered plan and reviewed by the Human Rights Committee. Positive interventions and supports must be tried before the modification, use of less intrusive methods documented, and data collected to review the modification. The modification must be time limited, include informed consent and cause no harm."[36]

Therefore, "a house rule regarding visitors could provide that visiting hours are open around the clock, except where modified in a resident's person-centered plan."[37] Other examples[38]:

- Rules prohibiting smoking inside and allowing smoking only in designated outdoor areas. (DDSN does not object to such rules, given that they prohibit conduct that is potentially harmful to individuals other than the smoker and that they have no material impact on the rights protected by the HCBS Final Rule, so long as people are allowed to smoke in a designated outdoor area.)
- Rules prohibiting residents from bringing sex workers home for the purpose of engaging in sex for pay. (DDSN does not object to such rules, even though they limit residents' ability to have visitors, given that they prohibit conduct that is illegal for everyone under South Carolina law.)

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[35]https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol4/pdf/CFR-2017-title42-vol4-sec441-530.pdf, p. 415.
[36]http://www.ddsn.sc.gov/about/directives-standards/Documents/currentstandards/Residential%20Habilitation%20Standards%20-%20Revised%20(011918).pdf, p. 9. See RH 1.9-1.93.
[37]As suggested by Colorado. See https://www.colorado.gov/pacific/sites/default/files/HCBS%20Settings%20Final%20Rule-FAQ%20Part%20I%20General%20Questions-January%202018.pdf, p. 25-26.
[38]Also suggested by Colorado. Ibid.

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Prohibitions
House Rules which do not meet HCBS guidelines are not permitted for waiver settings. For example, the following types of House Rules suggested by Colorado are prohibited:

- "Rules which limit rights through broad-based requirements that everyone waive certain rights (e.g., nobody has bedroom locks; nobody may eat other than during designated meal times; nobody may have visitors or phone calls after 9 p.m.; nobody may have alcohol on premises; everybody is subject to a curfew or mandatory "on premises" or "in bedroom" hours);
- Rules that use of improper qualifiers (e.g., visitors are allowed during "reasonable" hours or only "with prior approval");
- Rules that use arbitrary cutoffs to the exercise of rights (e.g., if an individual spills food or drink outside the kitchen even once, they can only have water outside the kitchen going forward; use of the house phone is limited to five minutes at a time, no more than five times a day; visitors may not spend the night and may not stay more than two hours)."[39]

DDSN agrees "these restrictions must be removed, as they limit rights on a non-individualized, subjective, or otherwise inappropriate basis." If warranted, rights modifications can be implemented only through individual person-centered ISPs.[40]

Rule Examples

- Each resident is encouraged to have guests. There are no set visiting hours. Residents are encouraged to have consideration for other residents.
- House Rules are voluntary and are intended to identify ways you and your housemates may live respectfully with each other.
- House Rules may change based on who lives in the home and by request of residents in the home. The House Rules cannot infringe on individual rights or freedoms.
- Each resident may choose the time and place of their meals and snacks.

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[39]https://www.colorado.gov/pacific/sites/default/files/HCBS%20Settings%20Final%20Rule-FAQ%20Part%20I%20General%20Questions-January%202018.pdf, p. 26-27.
[40]Ibid.

KEYS

HCBS Settings Rule

The HCBS Settings Rule states that in waiver settings: "Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors as needed."[41]

Additionally, CMS has issued specific guidance, including four sets of questions and answers:[42]

"Question [1]: Must the individual be given a key to his or her bedroom door and be permitted to carry it outside the residence? What types of staff or caregivers would not be considered appropriate to have keys to an individual's bedroom?"

> "Answer [1]: Individuals should have access to their homes at all times unless appropriate limitations have been determined and justified in the person-centered plan consistent with 42 CFR § 441.301(c)(4) that outlines the process for modifying any of the condition's required for the individual's assessed need. The staff person(s) allowed to have keys to an individual's room should be determined by the provider and participant and should be documented in the person-centered plan. The provision of keys to anyone other than the residents of the setting should be limited to those individuals and circumstances identified and for the purposes described in the person-centered planning process."

"Question [2]: Does the term "living unit" mean that the individual should have a key to the residence as well as his or her bedroom?"

> "Answer [2]: Yes. It is expected that individuals would have keys to the residences in which they live. If there are circumstances that would prevent an individual from having a key to the residence, these should be discussed during the person-centered planning process and described and documented in the person-centered plan. If, as indicated in the person-centered plan, an individual will not have a key to the residence, the individual should still have full access to the residence and methods to make this possible should be included in the plan."

"Question [3]: Does the right to freedom from restraint prohibit locked doors or doors with alarms for individuals who are incapable of protecting themselves unsupervised in the community and/or who have documented histories of wandering?"

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[41] https://www.gpo.gov/fdsys/pkg/CFR-2016-title42-vol4/pdf/CFR-2016-title42-vol4-sec441-530.pdf, p. 420.
[42] https://msp.scdhhs.gov/hcbs/sites/default/files/HCB%20Settings%20Q%20and%20A.pdf, p.5, 7, 8, 12.

> "Answer [3]: In a provider-owned or controlled residential setting, states must ensure that any necessary modification of the requirements specifying the rights of individuals receiving services is based on individually assessed need and justified and documented in the person-centered plan as described in 42 CFR §441.301(c)(4)(vi)(F). In other settings, the individual must be afforded the rights of privacy, dignity and respect, and freedom from coercion and restraint. The person-centered service plan must reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies."

"Question [4]: Are there circumstances under which staff or caregivers may or may not enter an individual's bedroom when the door is locked and the individual is in the bedroom?"

> "Answer [4]: Individuals should be afforded the same respect and dignity as a person not receiving home and community-based services. In an urgent or emergency situation, it may be appropriate for someone providing services to enter an individual's locked room. The person-centered planning process and plan should address the circumstances in which this might happen."

DDSN Standards
DDSN Residential Habilitation Standards (revised February 12, 2018), require the following:

- Each resident must be provided with a key to his/her bedroom. Failure to provide a key must be supported by a specific assessed need, justified in the person-centered plan and reviewed by the Human Rights Committee. (RH2.4)
- Each resident must be provided with a key to his/her home. Failure to provide a key must be supported by a specific assessed need, justified in the person-centered plan and reviewed by the Human Rights Committee. (RH2.5)[43]

Considerations [44]

- Providers should install locks and distribute keys/key codes as a default, without waiting to be asked by individuals
- Locks should allow people to exit the bathroom/bedroom/unit without delay.
- Locks that disengage with the turn of an inside knob or push of an inside lever are recommended.
- Deadbolts or locks that can only be unlocked from inside pose a safety hazard and should not be used.

[43]http://www.ddsn.sc.gov/about/directives-standards/Documents/currentstandards/Residential%20Habilitation%20Standards%20-%20Revised%20(011918).pdf, p. 11.
[44]Adapted from https://www.colorado.gov/pacific/sites/default/files/HCBS%20Settings%20Final%20Rule-FAQ%20Part%20I%20General%20Questions-January%202018.pdf. See pg. 14.

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- For people who have trouble keeping track of a key/code, staff may be able to help them lock and unlock their door and/or help store the key safely.
- Residents can receive skills training on proper management and safekeeping of their keys, as well as the responsibilities of having a key, as part of the Residential Habilitation service.

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LEASE

HCBS Final Rule

The Rule requires the following concerning a waiver participant's lease/rental agreement:

> "The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law."[45]

CMS clarified that this provision of the law "is not intended to override existing rules governing adherence to proper eviction procedures." Rather, it ensures "individuals receiving Medicaid HCBS who are in provider owned or controlled settings have the same or comparable protections related to evictions as individuals not receiving Medicaid HCBS."[46]

DDSN Standards

DDSN Residential Habilitation standards (revised February 12, 2018), similarly state:

> "A legally enforceable agreement (lease, residency agreement, or other form of written agreement) is in place for each person in the home setting within which he/she resides. The agreement provides protections that address eviction process and appeals comparable to those provided under South Carolina's Landlord Tenant Law. (S.C. Code Ann. § 27-40-10 et. seq.)"[47]

Lease Type

The type of each agreement or lease depends on who owns the residence. As the law delineates, "In circumstances where landlord tenant laws do not apply, a lease, residency agreement, or other form of written agreement must be in place that provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law."[48] A sample lease agreement is available as an attachment to DDSN Directive 250-09-DD: Calculation of Room and Board for Non-ICF/IID Programs.[49]

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[45] https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol4/pdf/CFR-2017-title42-vol4-sec441-530.pdf, p. 415.
[46] https://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf. p. 2961.
[47] http://www.ddsn.sc.gov/about/directives-standards/Documents/currentstandards/Residential%20Habilitation%20Standards%20-%20Revised%20(011918).pdf. See RH 1.3, p. 8.
[48] https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol4/pdf/CFR-2017-title42-vol4-sec441-530.pdf, p. 415.
[49] http://www.ddsn.sc.gov/about/directives-standards/Documents/attachments/250-09-DD%20Attachment%20C%20-

Lease Terms

CMS permits landlords and providers to set "reasonable limits" on lease terms, provided:

> "Landlord tenant laws may allow landlords to set reasonable limits as long as the limits are not discriminatory or otherwise deny rights granted to tenants under the state law…In a provider-owned or controlled setting, the individual's freedom to furnish and decorate sleeping or living units may contain limits within the scope of the lease or agreement.[50]

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%20Residency%20Agreement%20for%20Residence%20Controlled%20by%20a%20Provider%20-%20Website%20(102717).pdf

[50] https://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf. p. 2963.

MONEY

HCBS Final Rule

The HCBS rule requires HCBS waiver participants to have the opportunity to control their personal resources, which includes their personal funds.

> "The 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."[51]

Waiver participants' degree of control over personal resources must match that of the degree of control of individuals not receiving waiver services. In other words, waiver participants have the right to choose what to do with their own money just like everyone else. They can choose to spend, save, keep, give away, invest, or otherwise direct their money. The free exercise of this right cannot be restricted. However, it may be modified through properly made modifications to the individual's person-centered Individual Service Plan (ISP).[52]

To assess whether individuals have control of their resources, CMS suggested these questions:

- "Does the individual have a checking or savings account or other means to control his/her funds?
- Does the individual have access to his/her funds?
- How is it made clear that the individual is not required to sign over his/her paychecks to the provider?"[53]

Representative Payees

CMS specified that the "control personal resources" requirement in the law "does not restrict the opportunity of individuals with representative payees to participate in Home and Community-Based Services (HCBS) waivers. Additionally, individuals with other types of fiduciaries, such as conservators, guardians, trustees, etc. are not precluded from participation in HCBS waivers."[54]

The details of a representative payee arrangement must be based on an individualized assessment of skills and preferences and documented in the individual's person-centered plan. Specifically, the plan must document any request for the provider to control the individual's funds, the reasons for the request, and the parties' agreement on how the provider should handle the funds, including the SSA's requirements for representative payees.

[51] https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol4/pdf/CFR-2017-title42-vol4-sec441-530.pdf, p. 415.
[52] Ibid, p.416. See 42 CFR § 441.530(c)(4)(vi)(F) for guidelines on making modifications to ISPs.
[53] https://www.medicaid.gov/medicaid/hcbs/downloads/exploratory-questions-re-settings-characteristics.pdf , p. 2.
[54] https://msp.scdhhs.gov/hcbs/sites/default/files/HCB%20Settings%20Q%20and%20A.pdf, p. 4.

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DDSN Directive 200-12-DD: Management of Funds for Individuals Participating in Community Residential Programs

- “Residents or his/her representative payee have the right to manage his/her own personal funds.”
- “[Residential] providers should assist with money management and promote normalization in the use of money to the extent of each individual’s capabilities.”
- Individuals receiving residential services from DDSN have the following rights:…To have reasonable access to their personal funds.”

Considerations

- How long does it take for someone to get their money in order to make a desired purchase?
- Does anyone else, other than the person, have to “approve” of how the person’s money will be used?
- Can a desired purchase/action be prohibited by anyone other than the person?

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PERSON-CENTERED PLANNING

HCBS Final Rule

The term "person-centered service plan" is incorporated in the portion of the Final Rule concerning Home and Community-Based Settings. According to CMS:

> "Service planning for participants in Medicaid HCBS programs under section 1915(c) and 1915(i) of the Act must be developed through a person-centered planning process that addresses health and long-term services and support needs in a manner that reflects individual preferences and goals…the person-centered planning process is directed by the individual with long-term support needs, and may include a representative that the individual has freely chosen and others chosen by the individual to contribute to the process. [55]
>
> The rule describes the minimum requirements for person-centered plans developed through this process, including that the process results in a person-centered plan with individually identified goals and preferences, including those related to community participation, employment, income and savings, health care and wellness, education and others. The plan should reflect the services and supports (paid and unpaid), who provides them and whether an individual chooses to self-direct services.
>
> This planning process, and the resulting person-centered service plan, will assist the individual in achieving personally defined outcomes in the most integrated community setting, ensure delivery of services in a manner that reflects personal preferences and choices, and contribute to the assurance of health and welfare. CMS will provide future guidance regarding the process for operationalizing person-centered planning in order for states to bring their programs into compliance." [56]

DDSN Guidance

Person-Centered Planning is a process which begins with understanding:

- What is <u>important to</u> the person, and
- What is <u>important for</u> the person.

Then, finding the balance between so that health and long-term service and support needs can be addressed in ways that are fitting with the preferences of the person.

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[55] https://www.gpo.gov/fdsys/pkg/CFR-2000-title42-vol3/pdf/CFR-2000-title42-vol3-sec441-301.pdf
[56] https://www.medicaid.gov/medicaid/hcbs/downloads/1915c-fact-sheet.pdf, 2-3

PROGRAMMATIC MITIGATION (UNDER DEVELOPMENT)

South Carolina is committed to mitigating location and programmatic challenges.

HCBS Final Rule
According to the Rule, waiver settings which are in close proximity, co-located with, or adjacent to another waiver setting, regardless of which provider(s) may own or operate the settings, are presumed to have institutional qualities. Such settings are not considered HCBS waiver settings and are therefore not eligible for waiver funding. However, CMS may determine that they are in HCBS rule compliance despite their location through a process called "heightened scrutiny".[57]

It is also possible for waiver settings which are not in close proximity, co-located, or adjacent, to also be presumed to have institutional qualities. This can happen if, for example, a setting effectively isolates individuals from the rest of the community. Such settings are also not considered HCBS waiver settings by CMS and are therefore also not eligible for waiver funding. In these cases, programmatic mitigation may bring the setting into compliance.[58]

Achievable
CMS believes programmatic mitigation of waiver settings is achievable before the deadline, which has been recently extended by CMS to March 2022.[59]

> "It is not the intent of this rule to prohibit congregate settings from being considered home and community-based settings…We acknowledge that for some settings, implementing these requirements will require a change to operational protocol, and perhaps changes to licensure requirements, but we believe that the requirements are achievable and provide for reasonable transition time to facilitate such changes as may be necessary."[60]

Difficulty
CMS addressed the issue of difficulty of achieving compliance to HCBS Final Rule as follows:

> "We received some comments related to the difficulty of achieving compliance…. We believe there will be residential settings that meet the HCB requirements as outlined in this regulation. However, we recognize that there may be some residential facilities that may not currently meet all of the HCB setting requirements for provider-owned or controlled settings. We will allow states a transition/phase-in period for states to demonstrate compliance with the requirements. …. States are expected to demonstrate substantial progress toward compliance throughout any transition period."[61]

[57]https://www.gpo.gov/fdsys/pkg/CFR-2000-title42-vol3/pdf/CFR-2000-title42-vol3-sec441-301.pdf
[58]Ibid, p. 415-416.
[59]https://msp.scdhhs.gov/hcbs/site-page/hcbs-deadline-extension
[60]https://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf, p. 2957.
[61]Ibid, p. 2979.

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SERVICE PLANS

There are currently three types of service plans in South Carolina.

1. **Support Plan**

    - Completed by the Case Manager following an assessment of the person's strengths, needs and preferences.
    - Identifies the specific needs of the person, and
    - The services/support necessary to address the person's medical, social, educational and other service needs including the HCBS Waiver services to be delivered along with the duration, frequency and type of provider who will render the services.

2. **Residential Services Plan**

    The purpose of this plan is to actively solicit the person's interests and life goals. The person's preferences and goals must be the focus of the planning process.

    - Developed within 30 days of admission to the setting.
    - Implemented within 10 working days of development.
    - Re-developed every 365 days.

3. **Day Services Plan**

    Includes essential information to ensure appropriate services and supports are in place to assure health, safety, supervision and rights protection of waiver participants in day programs and services.

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SETTING SELECTION

HCBS Final Rule
The Rule contains the following regulations concerning setting selection:

> "The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board."[62]

DDSN Standard
South Carolina's Residential Habilitation Standards likewise affirm:

> "Individuals choose where they live from a variety of options. The person's preferences must be actively solicited on an on-going basis and results documented in service notes/residential summary of progress. On-going basis means that at a minimum, on a quarterly basis, service notes/residential summary of progress, should contain documentation that the preferences/wishes/desires for how, where and with whom they live are learned from the person and that those preferences/wishes/desires are acted upon whenever possible within the resources of the person/provider."[63]

Implications

- Waiver participants have the right to choose where they live from among a variety setting options available, including settings that are not waiver-funded.
- Waiver participants may make this decision based on any parameters that they choose, including but not limited to preference of location, roommate, housemate, and proximity to family and friends.
- Waiver participants may also make new decisions as to where to live as many times as they would like. Setting selection is to be specifically addressed on an on-going basis as part of each participant's ISP.
- Individuals may receive help in making setting selections from their case manager and circle of support, who can provide mechanisms for individuals to address where they would like to live, why, and when, as well as consideration of all options.

[62] https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol4/pdf/CFR-2017-title42-vol4-sec441-530.pdf, p. 415.
[63] http://www.ddsn.sc.gov/about/directives-standards/Documents/currentstandards/Residential%20Habilitation%20Standards%20-%20Revised%20(011918).pdf , p. 8.

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SITE SPECIFIC ASSESSMENT (UNDER DEVELOPMENT)

Please note the following concerning site-specific assessment:

- Site-specific assessment of waiver settings, both residential and day, were conducted by PCG on behalf of DDSN in 2016 and 2017. The assessments were a requirement of the HCBS Final Rule Statewide compliance process, as indicated in the Statewide Transition Plan (STP).[64]

- These assessments recorded what PCG staff observed on the day(s) and time(s) the assessment was conducted in each setting location.

- It is understood that other factors may have been involved which may have affected the assessment results if the PCG staff had observed the setting on a different day(s) or (time).

- However, each setting's assessment was conducted only once. Waiver settings which have already been assessed by PCG will not be reassessed for the same purpose.

  The results of PCG's site specific assessments are not appealable for any reason, including concerns over possible contradictions between results and actual policy and/or practice or possible inaccurate answers to assessment questions provided by staff and/or waiver participants.

- DHHS and DDSN are currently revising the CAP process due to provider feedback on the PCG data. An HCBS workshop will be scheduled as soon as possible to provide training.

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[64] https://msp.scdhhs.gov/hcbs/sites/default/files/SC%20Statewide%20Transition%20Plan%20-%20CMS%20Submission%2011-3-2016.pdf, p. 38-45.

STAFF SELECTION

HCBS Settings Rule

The regulation requires that providers facilitate "individual choice regarding services and supports, and who provides them."[65] This gives choice of selection of staff to the individual waiver participant. This right must be fully supported by the setting provider.

DDSN Standards:

DDSN Residential Habilitation Standards reflect CMS values and incorporate the HCBS Final Rule, including the facilitation of "choice regarding services and who provides them."[66] DDSN agrees with CMS that "any modification to these requirements for provider-owned or controlled home and community-based residential settings must be supported by a specific assessed need, justified in the person-centered plan and reviewed by the human rights committee. Positive interventions and supports must be tried before the modification, use of less intrusive methods documented and data collected to review the modification. The modification must be time limited, include informed consent and cause no harm."[67]

Additional Guidance

1. "If an individual is unhappy with my service, what should I do? First, the provider should try to understand why the individual is unhappy. If it's something that can be corrected or easily addressed, that's always a good first step. If not, the provider should acknowledge that sometimes a service or service provider is not the best fit and encourage the individual to contact their case manager to discuss possible changes.

2. What role does the person-centered service plan have in meeting this requirement? The service plan is the central place where the individual's choices for services, supports, and who provides them should be determined and honored. If an individual is unhappy with their services and supports, the provider should encourage the individual to contact their case manager to discuss possible changes." [68]

3. What should not occur? Policies and procedures should not be in place "that say that a particular service MUST be obtained in-house and the individual is not able to utilize external providers for those services. In a setting that offers support services such as haircuts on site, or doctors who visit the setting, providers should never pressure participants to access those services at the setting rather than working to support an individual's right to access those same services in the community."[69]

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[65]https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol4/pdf/CFR-2017-title42-vol4-sec441-530.pdf, p. 415.
[66]http://www.ddsn.sc.gov/about/directives-standards/Documents/currentstandards/Residential%20Habilitation%20Standards%20-%20Revised%20(011918).pdf, p. 2.
[67]Ibid.
[68]http://healthandwelfare.idaho.gov/Portals/0/Medical/MedicaidCHIP/HCBS/RulesAndGuidance.pdf, p. 15.
[69]Ibid.

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VISITORS

HCBS Settings Rule

The Settings Rule addresses the issue of visitors to waiver participants in waiver settings as follows: "Individuals are able to have visitors of their choosing at any time."[70] As Idaho explained well, the intent of this statute is that:

> "Individuals have the opportunity to develop close, private, and personal relationships without having unnecessary barriers or obstacles imposed on them. HCBS rules require that individuals be able to have visitors at any time, without restriction, just like anyone would have in their own home or rental unit. Providers should also not be screening who the individual has as a visitor. This does not mean that individuals can be inconsiderate of others' rights or the need for quiet and safety in the residence. It is intended to ensure that [waiver participants] have the same freedoms any of us have in relationship to visitors in our own homes."[71]

DDSN Standards

Per DDSN Residential Habilitation Standards (RH 1.9 – RH 1.93):

> "Individuals are allowed to have visitors at any time. Guests of individuals may visit announced or unannounced. Individuals must have a way to allow guests entry without assistance from staff. Individuals may have overnight guests. Prior notice is not required. When the individual lives with others, conversations among all residents should be held so that all have input and an agreement reached regarding any "rules" for visitors for the house/setting. Any modification to these requirements must be supported by a specific assessed need, justified in the person-centered plan and reviewed by the Human Rights Committee. Positive interventions and supports must be tried before the modification, use of less intrusive methods documented, and data collected to review the modification. The modification must be time limited, include informed consent and cause no harm."[72]

DDSN believes "residential programs support relationships when they:

- Identify the people who are important to each person who receives services and provide them with assistance to re-establish or maintain contact with them.
- Recognize that family members are very important to some people and work to negotiate any conflicts that arise between the program and family members in ways that protect relationships.
- Encourage people to reach out to other people. Some people who have been socially isolated need opportunity, guidance and coaching to assist them in making friends.
- Welcome the people a person with a disability chooses as friends. If the person's choice of a friend conflicts with the person's health and safety interests, respectfully

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[70]https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol4/pdf/CFR-2017-title42-vol4-sec441-530.pdf, p. 415.
[71]http://healthandwelfare.idaho.gov/Portals/0/Medical/MedicaidCHIP/HCBS/RulesAndGuidance.pdf, p. 22.
[72]Ibid, p. 9.

negotiating these situations strengthen the quality of staff relationships with the people they serve."[73]

Restrictions

The HCBS Settings Rule does not place any restrictions on the right to have visitors. It does not list any exclusions or exceptions, including who the visitors may be, what age they are, what time they come to visit, or how long the visit lasts. Elsewhere, the law requires that HCBS waiver settings optimize but do not "regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact."[74]

However, CMS does allow "necessary" restrictions to be implemented on a case-by-case basis:

> "An individual's rights, including but not limited to roommates, visitors or with whom to interact must be addressed as part of the person-centered planning process and documented in the person-centered plan. Any restrictions on individual choice must be focused on the health and welfare of the individual and the consideration of risk mitigation strategies. The restriction, if it is determined necessary and appropriate in accordance with the specifications in the rule, must be documented in the person-centered plan, and the individual must provide informed consent for the restriction."[75]

Occupancy Issues

The law does not intend to allow visitors to move into the waiver setting or become unofficial residents. CMS affirmed: "It would be reasonable for there to be limitations on the amount of time a visitor can stay as to avoid occupancy issues. Such limitations should be clearly stated in a lease, residency agreement, or other form of written agreement".[76]

Additional Guidance

- "Visitors should have access to all appropriate areas of the facility when visiting and should not be denied entry to common areas or the person's room."[77]
- "Procedures should not unnecessarily restrict visitors for the convenience of staff or restrict the person from freedom of association with those they choose.
- It is understood that in a shared living situation the needs of other residents must also be respected.

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[73] http://www.ddsn.sc.gov/about/directives-standards/Documents/currentstandards/Residential%20Habilitation%20Standards%20-%20Revised%20(011918).pdf, p. 4.
[74] https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol4/pdf/CFR-2017-title42-vol4-sec441-530.pdf, p. 415.
[75] https://msp.scdhhs.gov/hcbs/sites/default/files/HCB%20Settings%20Q%20and%20A.pdf, p. 13.
[76] https://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf, p. 2966.
[77] http://healthandwelfare.idaho.gov/Portals/0/Medical/MedicaidCHIP/HCBS/RulesAndGuidance.pdf, p. 23.

- There should be an effort to communicate and coordinate all aspects of visitations between the affected parties rather than having blanket house rules restricting when and how a person can receive visitors."[78]
- Providers may not impose "visitation hours for all residents" or determine "who may visit and who may not, based on their own feelings about the character of the visitor or impose visitation hours for all residents."[79]

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[78] http://healthandwelfare.idaho.gov/Portals/0/Medical/MedicaidCHIP/HCBS/RulesAndGuidance.pdf, p. 23.
[79] Ibid.