

HCBS Settings Rule: Workshop 1: Visitors and Food

SC DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS

MAY 7, 2018

Introduction

In 2014, the CMS issued the HCBS “Settings Rule”

- Code of Federal Regulations (including 42 C.F.R. § 441.301)

All States are required to fully comply by March 17, 2022.

- DHHS and DDSN have been transitioning toward full compliance since 2014.

This presentation provides responses to issues raised by providers and other stakeholders in recent webinars/meetings.

17 Issues To Address Through Workshops

*bold denotes priority issues

- 1. Autonomy
- **2. Co-Location**
- 3. Day Services
- 4. DOL Posters
- **5. Food**
- 6. House Rules
- 7. Keys
- **8. Lease**
- 9. Money
- 10. Person-Centered Planning
- 11. Programmatic Mitigation
- 12. Service Plans
- 13. Setting Selection
- 14. Site-Specific Assessment
- 15. Staff Selection
- **16. Visitors**
- **17. Compliance Action Plan Completion**

Scheduled Workshops

1. May 7, 2018 10:00 AM

Food and Visitors

2. May 9, 2018 10:00 AM

Money and Leases

3. May 14, 2018 10:00 AM

Next Topics TBA

4.-# To Be Announced

Training Currently In Development

- Human Rights Committee Training on HCBS Settings Rule
- Training for Parents and Community – Partnering with Able SC and Family Connection
- Individual Rights and Responsibilities Training

Philosophy

HCBS Settings Rule is built on a person-centered/community integration philosophy and aims to improve the life experiences of those receiving waiver services.

- **Person-centered philosophy** promotes the belief that people with disabilities are people first; they have the same rights as people without disabilities. As people, through listening and discovering, each person can help those around him/her learn how they want to live and what supports are needed to help them move toward a life they consider meaningful and productive.
- **Community integration philosophy** promotes the belief that every person deserves an opportunity to live, work and play in a community of his/her choice and in a way that reflects his/her own vision for life. People should be supported to optimize their personal, social, and vocational competency to live successfully in the community.

Health and Safety

The HCBS Settings Rule's general default is to maximize individuals' access to their own home and their community in ways that are meaningful to them.

The HCBS Settings Rule may create challenges for providers as they learn to manage what is important to the person, what is important for the person and the proper balance between the two.

Providers must be aware that HCBS Settings Rule compliance can be obtained without jeopardizing the health and safety (important for) of individuals. Some individuals may require restrictions due to the assessed impact of their disability on their everyday access.

Setting “Qualities”

The HCBS Settings Rule specifies that Home and Community-based Settings are required to have certain “qualities.” Examples of those “qualities” **include, but are not limited to:**

- “Facilitates individual choice regarding services and supports, and who provides them.”
- “Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.”
- “Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.”

The required “qualities” may only be modified on an individual basis when supported by a specific assessed need and justified in the person’s plan.

Modifications should be focused on the health and welfare of the person.

Modification of Required Quality

In accordance with the Settings Rule, when a modification of a required “quality” is necessary, the following must be present:

- (1)** Identification of a specific and individualized assessed need.
- (2)** Documentation of the positive interventions and supports used prior to any modifications to the person-centered service plan.
- (3)** Documentation of less intrusive methods of meeting the need that have been tried but did not work.
- (4)** Inclusion of a clear description of the condition that is directly proportionate to the specific assessed need (i.e., the modification is in line with the need).

Modification of Required Quality (Cont'd)

(5) Inclusion of regular collection and review of data to measure the ongoing effectiveness of the modification.

(6) Inclusion of established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

(7) Inclusion of the informed consent of the individual.

(8) Inclusion of an assurance that interventions and supports will cause no harm to the individual.

Additional requirements are noted in DDSN Directive 532-02-DD: Human Rights Committee.

House Rules

HCBS Settings Rule

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

- “Ensure an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.
- 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.
- Facilitate individual choice regarding services and supports, and who provides them.”

Department of Health and Human Services, CMS (2014)

House Rules

Prohibited House Rules

- “Rules which limit rights through broad-based requirements that everyone waive certain rights.
- Rules that use 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.”
- Rules which deny access to all appropriate areas of the home.

What are House Rules?

House Rules are voluntary and are intended to identify ways housemates may live respectfully with each other.

Regulation 61084, Section 100.F for CRCF Locations

“Residents shall be provided the opportunity to provide input in “House Rules.”

Positive Practices

House Rules

House Rules followed by residents and not enforced by staff are allowable.

How do we do this?

- House Rule discussions, facilitated by staff, need to start with establishing what is important to and for people.
- Next, establish how decisions will be made. In a democratic environment, the majority vote is accepted by all. Or, must decisions be unanimous?
- Staff may facilitate the establishment of house rules that are reasonable by adding to the considerations and judgment to form the rules.
- Provide communication support for individuals who may have more difficulty communicating verbally or making decisions quickly.
- Establish a way for the group to decide it would like to review infractions to the rules and review through a house meeting how the rules are working for everyone.

House Rules

Examples of Permitted House Rules

- Each resident is encouraged to have guests. There are no set visiting hours.
- Each resident may choose the time and place of their meals and snacks.
- Residents have the right to a legally enforceable lease/rental agreement which may influence development of House Rules (e.g., pets).

What about the Preferences of Legal Guardians?

The concept of supported decision making may be helpful in this regard. If the individual has a guardian or other legal representative, that representative may or may not be able to override the individual's position: "The individual's representative should have a participatory role, as needed and as defined by the individual, unless State law confers decision-making authority to the legal representative."

<https://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf>, p. 3005. See §441.301(b)(1)(i)(A)(5).

What About Legal Guardians' Preferences?

Individual Guardianship agreements include various details on the scope of decisions to be made by the Guardian.

It is encouraged that the person be involved in planning decisions impacting their daily life even if a guardian ultimately must make that decision.

If the guardian's decision is not compatible with the decisions of the housemates, it should be remembered that the legal guardian's vote counts as one vote for the house.

Ultimately, the decisions for one individual should be considered as they may impact the rights of others.

1. Visitors

HCBS Settings Rule

“Individuals are able to have visitors of their choosing at any time.”

Department of Health and Human Services, CMS (2014)

“The intent of this provision is for individuals have the opportunity to develop close, private, and personal relationships without having unnecessary barriers or obstacles imposed on them. Individuals should be able to have visitors at any time, without restriction, just like anyone would have in their own home or rental unit.”

Idaho Department of Health and Welfare

Visitors

DDSN Standards

“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.”

Visitors

Restrictions

“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.”

Department of Health and Human Services, CMS (n.d.)

Visitors

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.”

Department of Health and Human Services, CMS (2014)

DDSN Licensing and Visitors

Just as staff working in the setting are not included in license capacity, temporary visitor counts do not count within the license capacity.

Visitors

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...

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.”

Idaho Department of Health and Welfare

Visitors

Additional Guidance, continued.

“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.”

The provider may not 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.”

Positive Practices

Visitors

No management/agency decided schedule is in place for when visitors are allowed

Staff help participants coordinate arrangements to see their friends and families

Staff support participants in planning and coordinating dates

Establish resident preferences and limits through House Rule development facilitated by staff

2. Food

HCBS Settings Rule

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 the opportunity to have supported access to food whenever they wish.

Department of Health and Human Services, CMS (2014)

Setting and Typicality

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.

Food

Kitchen Access

Access to a kitchen or facilities to store and prepare food must be provided to residents.

Access can be provided in one or more ways, including:

- 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.

SC Regulations 61-84 Section 1303.F for CRCFs

Requires there to be specific times for serving, but still allowing the kitchen to be available to residents during other times.

Section 1303.H allows residents to have tray service, but encourages residents “to eat in the dining room at mealtime.” It should be noted that a person may choose to eat privately, but may be encouraged to eat together with other people.

Positive Practices Concerning Food Access

Residents have input and choice with respect to menu planning, storing and eating food in their room/unit, and having access to kitchen or facilities to store and prepare food must be considered.

Documentation, in any manner, including weekly meetings discussing meal planning, or if the quarterly progress note indicates that the consumer participated, will be sufficient.

There is no expectation that there be a checklist of some sort indicating daily participation in each. The consumer does not need to sign indicating participation.

Positive Practices Concerning Food Access

Access to food can be restricted only on an individualized basis. 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.

Food

Food Choices

“Unless there is a documented risk to the individual’s health or safety in the ISP... 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.”

Food

Meal Times

Settings may have standard meal times. However, settings must make alternative meals available for residents who may wish to eat at another time. CMS stated:

“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.”

Department of Health and Human Services, CMS. (November 7, 2016)

Seating During Meals

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.

The setting allows for individuals to have meal/snacks at the time and place of their choosing. Providers should educate residents about their responsibility for safe storage and preventing pests caused by food exposure.

The setting must encourage the person to follow special dietary restrictions.

Individuals choose their own seats and company (or lack thereof) while dining.

Individuals access their own food when they wish.

THE END

Questions? Comments? Concerns?

Please contact:

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Next HCBS Work Shop

May 9, 2018 10:00 AM

Money and Leases