

What is the Home and Community Based Services (HCBS) Settings Rule?

Home and Community Based Services (HCBS) are Medicaid services for people with disabilities to help them live in their own homes and communities. The HCBS Settings Rule further ensures federal dollars for HCBS are used to support people to experience life in the community. The HCBS Settings Rule ensures settings and services do not isolate people from their broader community.

For these reasons, the settings rule changes the way Day and Residential Habilitation services are offered. There is a new focus on services that keep families together. This means more individualized, person-centered services.

When will the new rule happen?

The State of Alabama is working with service providers, the Alabama Medicaid Agency and the Centers for Medicare and Medicaid Service (CMS) to prepare for the new rule. The deadline for community providers to be in full compliance with the HCBS Settings Rule is March 2023. This date allows for a transition period for people to choose other providers, in the event a provider is not deemed compliant. This transition also allows time to review services and explore the possibility of more appropriate services.

Why is the Rule Important?

CHOICE, RIGHTS, OPPORTUNITIES

It will:

- Ensure that individuals are empowered to experience and be actively engaged in their communities at the level they desire – employment, recreation, home with family and friends, home of their own, etc.
- Ensure individuals have the same access to the community as individuals who do not have disabilities.
- Protect individuals' rights.
- Give individuals the opportunity to define their life, choose the supports and services needed to experience their life, and have those supports and services provided in the setting of their choice.

How does the rule serve people with disabilities?

The rule sets forth the expectation that all people receiving services obtain conflict-free Support Coordination and Person-Centered Planning. The plan includes the person's vision for their preferred Good Life, in the settings the person chooses, and it must include those options available to people without disabilities – home with families, in their own home or apartment, where they work, etc.

Once a setting is chosen, the provider offering supports must respect the person's choice about where, when and how they spend their day and who they spend their day with, to the greatest degree possible.

Any exceptions must be assessed to show why opportunities for independence are restricted and opportunities to remove the restriction must be well documented and included in the Person-Centered Plan.

Operators of HCBS settings must allow individual residents to have:

- Physical accessibility
- A lease/similar agreement that is legally enforceable
- Privacy with lockable doors, roommates of their choosing and freedom to furnish or decorate as they see fit
- Reception of visitors at any time
- Control of their own schedule with 24/7 food access

I provide services to regional center consumers. Are there any guidelines on what is not a home and community-based setting?

According to the federal rules, settings that are presumed not to be home and community-based include those that fall into the categories below:

1. Any setting that is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment;
2. Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution;
3. Any other setting that has the effect of isolating individuals receiving HCBS from the broader community of individuals not receiving HCBS.

If I operate a setting presumed not to be home and community-based, what recourse do I have?

The federal rules allow for a heightened scrutiny process to allow states to present evidence and public input to demonstrate that these settings do, in fact, comply with the new requirements. All providers, receiving HCBS dollars, must meet all elements of the federal rules.

What is Heightened Scrutiny, and how is it applied?

If the state initially determines that a setting has the effect of isolating individuals, it may receive heightened scrutiny in a review of its setting. Under the heightened scrutiny process, CMS reviews the evidence packet submitted by the state and makes a determination as to whether the evidence is sufficient to overcome the presumption that the setting has the qualities of an institution or has the effect of isolating individuals from the broader community of individuals not receiving HCBS.

If I operate a setting generally considered to be home and community-based, how do I know if I meet the regulatory requirements?

Existing providers completed an HCBS Settings Assessment. New settings are required to complete the same. ADMH Regional Office staff validate the assessments and work with you to develop a remediation plan to come into compliance, if needed.

How long will I be given to make changes if necessary?

The Centers for Medicare and Medicaid deadline for full compliance is March 2023. This will allow for a transition period to move people from providers not in compliance so the state can meet the deadline for full compliance.

Will the State grant exceptions to providers if it is determined that a setting does not meet the federal home and community-based settings rules?

No. The federal regulations do not provide for any exceptions to or waivers of the home and community-based settings requirements.

I work for a company that specializes in providing services and supports in residential communities for adults with intellectual/developmental disabilities. The company also develops housing and provides services for the communities residents to ensure they can remain safely in their own units. Will the federal home and community-based settings regulations change the way we conduct business?

It depends. The residents must be allowed to access services and supports outside of their residential settings and engage in community activities of their choosing. These individuals must be allowed to seek competitive employment, control their own resources, be free to come and go as they desire and have opportunities to choose other living arrangements, including those not provider owned and operated in the community. All settings must meet all elements of the federal rules.

What about individuals who live in rural settings? Does this automatically mean that rural facilities are isolating?

Not automatically. Individuals with disabilities who receive services in a rural area must have the same opportunity for community integration as people without disabilities in that community.

Is there a minimum number of residential settings that must be offered to an individual?

No. However, the individual must be given the choice of all settings that meet their needs, preferences, and resources available for room and board.

What is the meaning of “non-disability-specific settings”? Does this requirement mean that the options must include settings in which other individuals with similar disabilities do not reside or receive services and supports?

“Non-disability-specific” means that among the options available, the individual must have the option to select a setting that is not limited to people with the same or similar types of disabilities. However, the “non-disability-specific setting” must be able to meet the needs of the individual as documented in the person-centered plan.

Must the individual be given a key to his or her bedroom door and be permitted to carry it outside the residence?

Individuals should be afforded privacy and have access to their homes, especially their living quarters/bedrooms, at all times unless appropriate limitations are assessed.

As with any limitations, documentation of why the limitation was determined and justified should be included in the Person-Centered Plan. Empowering a person to have control and access to their environment is encouraged as a step towards independence.

Does the rule prohibit facility-based or site-based settings?

No. Federal guidance states that the location alone does not make the setting or the type of service unallowable. However, the setting must still comply with the federal rules, state policy and ID/LAH waiver requirements.

Does the rule prohibit individuals from receiving pre-vocational services in a facility-based setting such as a sheltered workshop?

No. Federal guidance states that the type of service or location alone does not make the setting or the type of service unallowable. However, the setting must comply with the federal rules, state policy and ID/LAH waiver requirements.

If a setting is not currently compliant with the new rule, must the provider stop providing services immediately?

No. The provider compliance deadline is March 2023 to allow for people to transition from non-compliant settings.

Who should be contacted for Technical Assistance?

Call the Developmental Disabilities Division at 334-242-3701.

What is the main goal of HCBS?

The main goal of the HCBS Settings Rule is to ensure that services give the opportunity for independence in making life decisions, to allow for full participation in community life and to make sure that individual rights are respected.

Learn more about how the Home and Community Based Services Settings Rule can improve your community at www.HCBSAlabama.org.

RESOURCES

- Centers for Medicare & Medicaid Services: <https://www.medicaid.gov/medicaid/hcbs/index.html>
- HCBS Advocacy Coalition: <http://hcbsadvocacy.org>
- Self Advocates Becoming Empowered (SABE): <http://www.sabeusa.org/>