



Beyond Compliance: Embracing The Values of the HCBS Settings Rule

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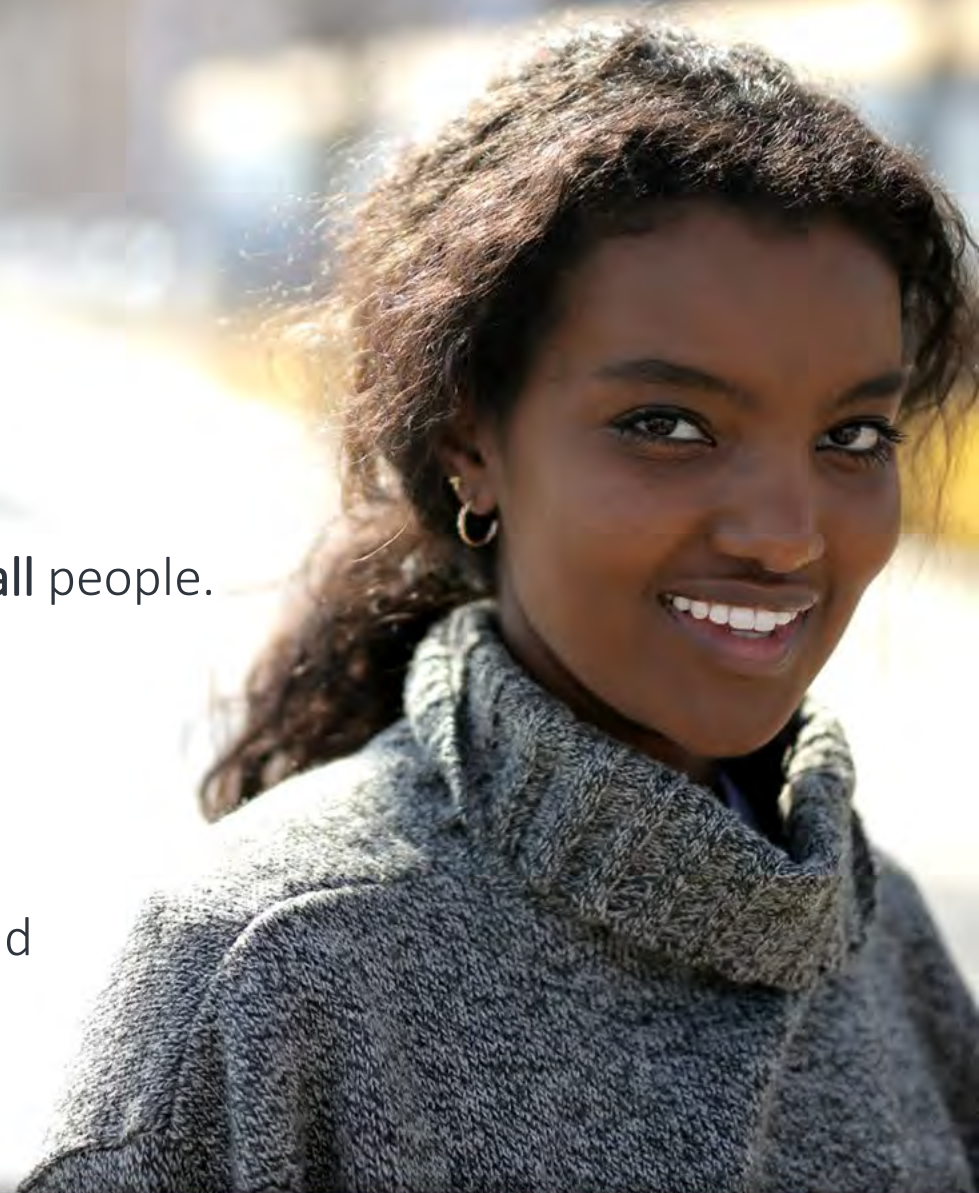
Vision

A world of dignity, opportunity, and community for **all** people.



Mission

CQL is dedicated to the definition, measurement, and improvement of **personal** quality of life.



HCBS Settings Final Rule



- Developed with extensive public input over more than 5 years
- Multiple rounds of proposed rulemaking, with thousands of public comments
- Change from being solely focused on size or geographic location to one focused on individual experience and community integration in both residential and non-residential services



Important point: It is a myth that this Rule came out of the blue from the federal government



HCBS Settings Rule History

JANUARY 2014
HCBS Settings Rule
Released

MARCH 17, 2019
Implementation
Deadline

MARCH 17, 2022
Implementation
Deadline **Extended**

MARCH 17, 2023
Implementation
Deadline **Extended**

HCBS Settings Rule Values/Concepts

 Integration

 Privacy

 Choice

 Dignity & Respect

 Individual Rights

 Freedom From Coercion

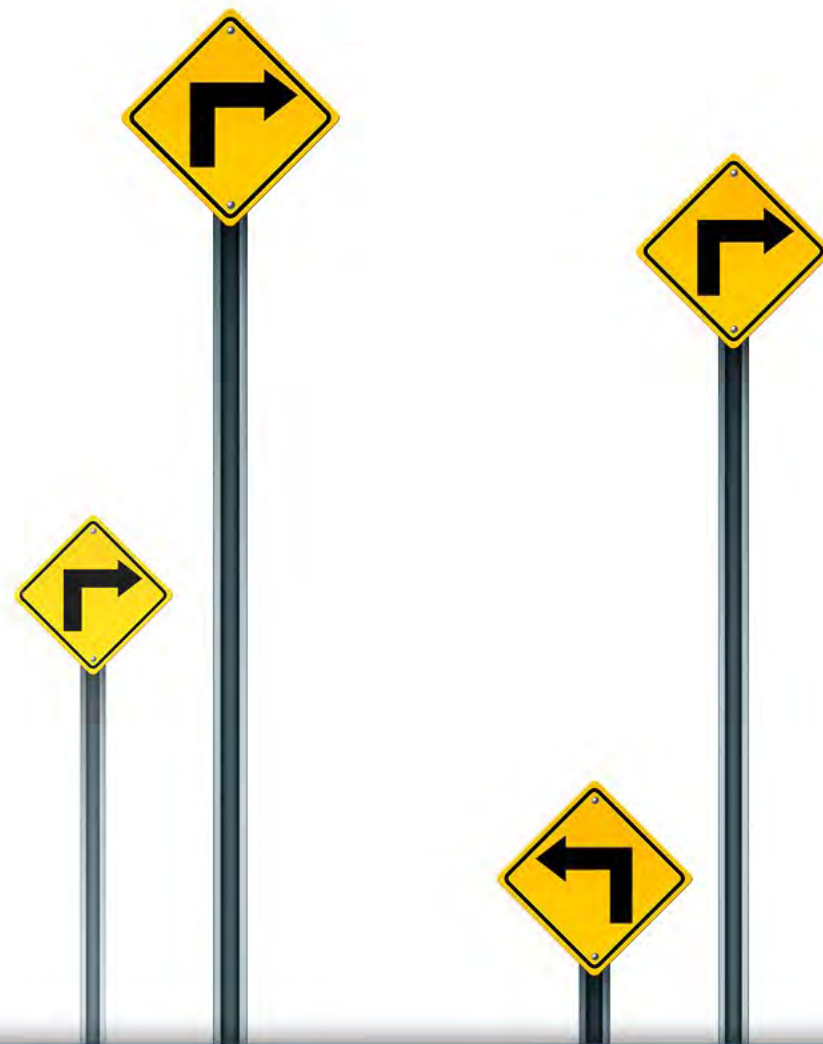
 Independence

 Freedom From Restraint

HCBS Settings Rule Choices Quiz

How many of you ...

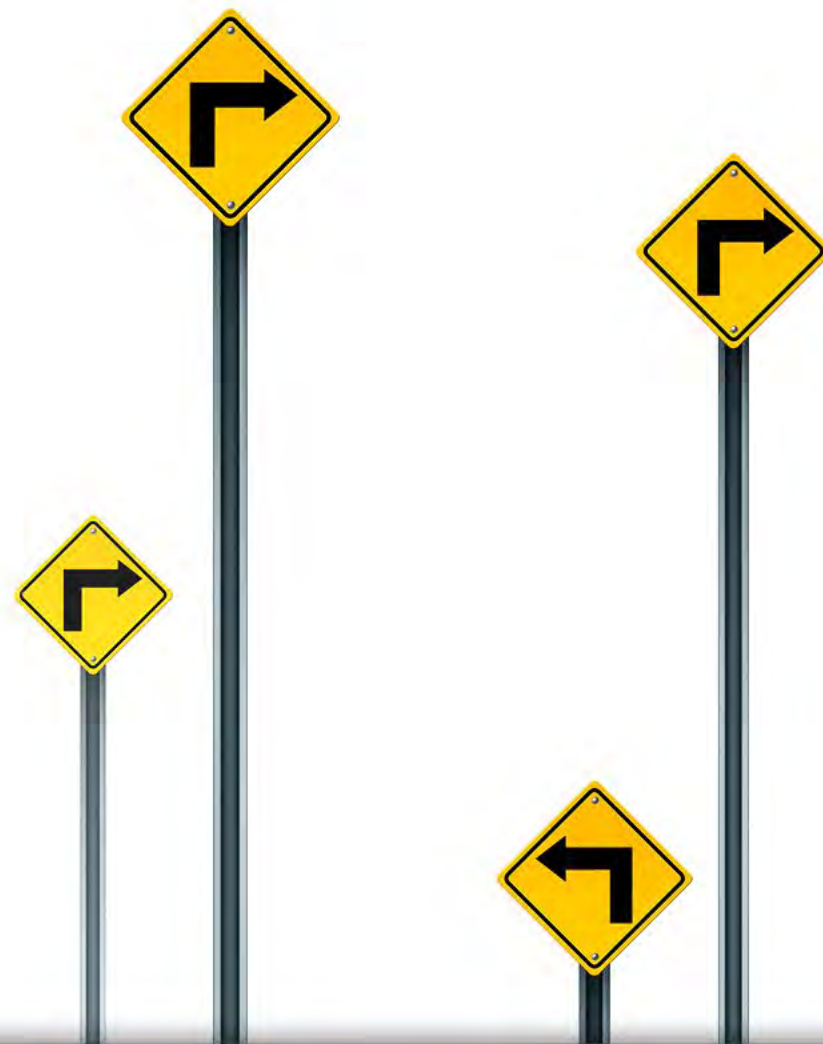
1. Chose where you live?
2. Chose who you live with?
3. Have personal space and time alone?
4. Come and go as you please?
5. Set your own schedule?
6. Choose how to spend your money?
7. Choose who cuts your hair?
8. Choose which grocery store you go to?
9. Choose which pharmacy you use?
10. Choose which doctor you see?
11. Choose which church/religious service (if any) you attend?
12. Chose where you work?



HCBS Settings Rule Choices Quiz

Think about a person you know in services...

1. Choose where they live?
2. Choose who they live with?
3. Have personal space and time alone?
4. Come and go as they please?
5. Set their own schedule?
6. Choose how to spend their money?
7. Choose who cuts their hair?
8. Choose which grocery store to go to?
9. Choose which pharmacy to use?
10. Choose which doctor to see?
11. Choose which church/religious service (if any) to attend?
12. Choose where to work?



HCBS Settings Rule

The Intent



- Ensure that people receiving services and supports through home and community-based services (HCBS) have full access to the benefits of community living
- Ensure that people participating in HCBS have the opportunity to receive services in the most integrated setting possible
- Enhance the quality of HCBS and provide protections to people receiving HCBS services



HCBS Settings Rule

Key Provisions

- Define, Describe, and Establish Quality Requirements
- Establish an outcome-oriented definition based on individual experiences
- Maximize opportunities for access to integrated community living
- Define person-centered planning requirements



SETTINGS RULE

Qualities of a Home and Community Based Setting

An aerial photograph of a suburban residential neighborhood. The houses are mostly two-story brick or stone buildings with green lawns and trees. A semi-transparent circular overlay is positioned in the center-right of the image, containing the text 'The setting is integrated in the greater community'.


The setting is **integrated**
in the greater community

Integrated In The Community

What Does This Mean?

- People **live** in neighborhoods with people without disabilities
- People are supported to **participate fully** in their community
- Person **choose** where they live from different options or choices
- People do many different things in the community
- If living in a rural area, people can travel around and participate in community life, in the same way that other people who live in that community do



A photograph of an elderly person with short, grey hair, seen from behind, sitting in a wheelchair. The wheelchair has a maroon seat and backrest, and a light blue safety strap across the back. The person is looking out over a bright, scenic landscape with a body of water and trees in the distance. The image is partially overlaid by a large, semi-transparent white circle on the right side, which contains the main text.

The setting supports
full access of people
receiving Medicaid
HCBS to the greater
community

What Does This Mean?

Opportunities to:

- **Work** in competitive integrated settings (at least minimum wage and with people who do not have disabilities)
- **Engage** in community life
- **Control** personal resources (money)
- Receive services in the **community** to the same degree as people not receiving HCBS



What Does This Mean?

Does NOT Mean:

- The only time a person is in the community is on a “group trip” or “outing”
- All activities are scheduled by staff without asking people their interests
- Participating in the community doing the same limited set of activities - without experiencing lots of different options



What Does This Mean?

The setting is selected by the person from options that include non-disability specific settings

- The state provides an option for a private unit in a residential setting
- The choices presented to the individual are documented in the Person-Centered Plan
- A non-disability specific setting means that people with and without disabilities can live there

A man with dark hair and glasses, wearing a bright yellow sweater and blue jeans, is sitting on a bed with white linens. He is looking off to the side with a thoughtful expression. The room has a modern aesthetic with wood-paneled walls and a white bedside table. A semi-transparent white circle is overlaid on the right side of the image, containing text.

The setting must
ensure a person's
rights including ...

Individual Rights

What Does This Mean?



Privacy

Having the option to be alone or spend time with other people at home and in the community



Dignity

People being able to do things that are important to them, speak up for themselves and be the person they are and want to be



Respect

High regard for the feelings, property, wishes, rights, opinions, and/or traditions of people

Individual Rights

What Does This Mean?


Freedom From Coercion:

- Making decisions without being pressured or forced to do something you don't want to do
- Not being talked into something you don't want to do

Freedom From Restraint:

- Not being held against your will or kept from doing something you want



A photograph of two women in a dance studio. The woman in the foreground is wearing a red long-sleeved top and dark leggings, leaning back with her arms raised. The woman behind her is wearing a dark top and is assisting her by holding her arms. The studio has large windows on the left, letting in bright light. A large, semi-transparent white circle is overlaid on the right side of the image, containing the text.

The setting encourages
individual initiative,
autonomy and
independence in
making life choices



Individual Initiative, Autonomy, & Independence

What Does This Mean?

- Being able to express desires or start something new
- Being able to do things on one's own as much as possible

A stylized, grayscale illustration of a city skyline. It features several buildings of varying heights and widths, some with grid patterns on their facades. The buildings are layered, creating a sense of depth. The style is flat and modern.

All About:

- What people do each day
- Where people live, work or spend time
- Who people talk with



The setting makes sure that people have a **choice** about their services and supports and who provides them

Choice

What Does This Mean?

- Control over where and with whom to live
- Control over where to work or how to earn money
- Options about what to do during the day
- Decisions about who to interact with or spend time with
- Selection of service providers



Provider Owned or Operated Settings Requirements

Along with meeting general requirements of the Rule regarding community-based settings, these residential settings must ensure people have:

- A lease or other legally enforceable agreement to protect from eviction
- Privacy, including the ability to lock bedroom doors and access locked home entrances
- Choice of where and with whom to live
- Freedom to furnish and decorate
- Control of schedule and activities
- Access to food at any time
- Visitors of their choosing at any time
- Physical accessibility



SETTINGS RULE

What It Means For
Work And Day

Regulation section(s)
435.219(b) and 436.219(b)
441.656(e)(2) of proposed rule
441.710(e)(2) of final rule
441.659(a) of proposed rule
441.715(a) of final rule
441.659(b) of proposed rule
441.715(b) of final rule
441.677(a)(1)(i) of proposed rule
441.745 (a)(1)(i) of final rule
441.677(a)(2)(iii) of proposed rule
441.745 (a)(2)(iii) of final rule
441.677(a)(2)(iv) of proposed rule
441.745(a)(2)(iv) of final rule
441.677(b) of proposed rule
441.745 of final rule
Total

VI. Regulatory Impact Analysis

A. Statement of Need

The state plan HCBS benefit authorized under section 1915(i) of the Deficit Reduction Act of 2005 (DRA) and was amended by the Affordable Care Act of 2010. The resulting state plan HCBS benefits establish state plan HCBS benefits.

These regulations are necessary in order to include the state plan HCBS within the Code of Federal Regulations (CFR). Additionally, these regulations provide states with direction and clarity regarding the framework under which the programs can be established.

B. Overall Impact

We have examined the impact of this rule as required by...



WORK AND DAY

The Rule Applies
Here Too!



Day Programs And Workshops

Same general values found elsewhere in the Settings Rule apply to where people work and what they do during the day:

- Includes regular **meaningful** non-work activities in **integrated** community settings
- Information is provided and choices offered to do different activities including competitive work, shopping, religious services, medical appointments, dining out, etc. outside of the setting
- An ability for people to set their work schedule, break/lunch times, vacation and sick time, and medical benefits



Day Programs And Workshops

Same general values found elsewhere in the Settings Rule apply to where people work and what they do during the day:

- Access to and training on the use of public transportation
- An ability to combine activities such as employment and day program or workshop services
- A secure place (like a locker) for people to put their belongings
- Choice about who to do activities with
- Options to do things outside of the day program building



More for these settings to think about ...

- Is there a “Staff Bathroom”?
- Are there rules that keep people from being able to open doors, go to certain rooms or places, or outside if they want?
- Are there locks or gates to keep people from going certain places in the building?
- Are people receiving services are treated like adults?



Treating people like adults ...

- Can people eat lunch with whomever they want?
- Can people have the same food as staff or visitors? If the staff can buy pop or snacks, can the people who receive services?
- Can people eat where they want?
- Can people talk to others during break or mealtimes?

Requirements In Place Since 2014

- Directed by person
- Includes who the person chooses
- Happens when and where the person chooses
- Goals chosen by person
- Outlines who, what, and when of service provision
- Plan in format the person can actually understand



SETTINGS RULE

What It Means For Temporary Restrictions (Modifications)

Regulation section(s)
435.219(b) and 436.219(b)
441.656(e)(2) of proposed rule
441.710(e)(2) of final rule
441.659(a) of proposed rule
441.715(a) of final rule
441.659(b) of proposed rule
441.715(b) of final rule
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B. Overall Impact

We have examined the impact of this rule as required by 5 U.S.C. 12866



TEMPORARY MODIFICATIONS

Sometimes people need extra support and may not be able to take part in all the freedoms the new Rule provides. When that happens, the provider has very strict rules they have to follow.



If People Need Extra Support

- Base the modification on a specific need
- Show that positive interventions have been tried
- Show that less intrusive methods have been tried but haven't worked (and document it)
- Show that the support indicated is directly proportionate to the specific accessed need
- Keep measuring to determine if the modification is effective
- Show that any modification is **temporary** – review regularly to know if it's still needed
- Get informed consent
- Show the intervention will cause no harm



If People Need Extra Support Due Process Principles

- Limitations/Restrictions based on **specific need**
- People are informed of **options**
- **Informed consent**
- Organizations ensure each restriction is **temporary**
- Plans are in place for **skill development**
- Organization demonstrates the restriction will cause **no harm**
- Human Rights Committees in place



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Part II

Department of Health and Human Services

Centers for Medicare and Medicaid Services
42 CFR Part 430, 431 et al.
Medicaid Program; State Plan Home and Community-Based Services,
5-Year Period for Waivers, Provider Payment Reassignment, and Home
and Community-Based Setting Requirements for Community First Choice
and Home and Community-Based Services (HCBS) Waivers; Final Rule

HCBS

It's all about ...

Choice!



THE FOUNDATIONAL ESSENCE
Rich, Valued Lives in the
Community



Resources

HCBS-ACT Project

<https://www.c-q-l.org/HCBS-ACT>

HCBS Advocacy Coalition

<https://hcbadvocacy.org/>

MN Provider's Guide

<https://mn.gov/dhs/>

Contact Us

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