

Home & Community Based Services - HCBS FINAL RULE – Day and Employment Program Providers

Anna Sims Sr. Community Services
Liaison, HCBS Program Evaluator

(209) 955-3353

asims@vmrc.net

Why HCBS?

- In 1999 the Supreme Court ruled on Olmstead v. L.C.
- The Olmstead ruling found that unjustified institutionalization of individuals with disabilities by a public entity is a form of discrimination under ADA of 1990
- As a result, states are generally required to provide community-based care to such individuals
- Olmstead had implications for Medicaid as the nation's largest payer of long-term services and supports (LTSS)
- Ongoing litigation in multiple states against state agencies for not implementing the Olmstead ruling caused Medicaid to enact rules for the use of Medicaid funds for Home and Community Based services
- In 2014 CMS finalized the HCBS settings rule to require that states are only able to use federal Medicaid (in CA Medi-Cal) to pay for services that are community based and do not have institutional characteristics

WHO DOES THE HCBS FINAL RULE APPLY TO?

- All settings that serve more than one individual
- Residential settings, including certified and licensed homes
- Day programs, and other day-type services
- Employment options and work programs
- All SDP services

Eligible Service Codes

Residential Services

- 096
- 113
- 900, 901, 902, 903
- 904
- 905, 915
- 910, 920

Employment Services

- 950
- 954

Day Type Services

- 028
- 055
- 063
- 475
- 505
- 510
- 515
- 855

What is the Goal of the HCBS Final Rule?

To enhance the quality of services provided by:

- Maximizing opportunities and choices for individuals
- Promoting community integration by making sure individuals have full access to the community
- Making sure individuals have the opportunity to work and spend time with other people in their community who do not have disabilities
- Ensuring individual preferences are supported and rights are protected
- Establishing person-centered service planning requirements, which includes a process driven and directed by the individual to identify needed services and supports

Consumers HCBS Rights:

- Have a right to a person-centered IPP and ISP
- The settings (programs/residential options) must give people full access to the community
- Consumers have the right to seek employment and work in competitive (minimum wage or greater), integrated settings
- Control their own money and resources
- Choose their services from amongst settings options
- Have privacy, dignity and respect and freedom from coercion and restraint
- Independence in making their own choices about their lives including but NOT limited to the things they do each day, where they spend their time and who they spend time with
- Choice about who provides their services and supports
- If they have mobility needs the setting must be easy for them to move around in as independently as possible

Consumers HCBS Rights:

In a licensed residential setting consumers have additional rights including:

- A legal agreement that protects them to the same degree as a lease, at VMRC this is the admissions agreement along with the attachment A.
- Privacy in the room they sleep in and the right to have a lock on their bedroom door that only appropriate staff have keys to
- A choice in roommate if they share a room
- Be able to decorate and choose furniture for their bedroom
- Have freedom and support from staff to decide on their own schedule and choice in the things they do
- Have access to food at any time
- Have visitors at any time

As a provider for Day Type Services or Employment Services how do you facilitate HCBS regulations for your individuals served?

- Incorporate the use of person-centered thinking skills and planning tools
- Hold meetings with the individuals you serve either individually or as a group when planning activities and outings, and addressing disagreements between consumers (PCT Tools: Important to Important For, Working/Not Working, 4 + 1 Questions/Reflection)
- Approach all situations from a position of respect and dignity
- Be creative with scheduling activities to allow individuals served maximum opportunities for choice and community involvement (PCT Tools: Important to Important For, Good Day/Bad Day)
- Initiate planning team meetings when there are conflicts between rights and safety/wellbeing
- Be creative with staff scheduling to allow individuals served to work with preferred staff to the maximum extent possible (use the People Matching tool from PCT Training)
- Do not use blanket restrictions within program

Modifications (time limited denial of rights) to HCBS Rights – Required Process

Restrictions or Modifications to an Individuals HCBS Rights must appear on the IPP after a thorough process to assess and justify the modification.

- (1) Identify a specific and individualized assessed need. (What is the need, why does the specific HCBS right need modification?)
- (2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan. (vendor should provide this information, SC should facilitate discussions about ways to maintain health and safety without a modification put in place)
- (3) Document less intrusive methods of meeting the need that have been tried but did not work. (vendor should be tracking these and be able to show proof to the SC)
- (4) Include a clear description of the condition that is directly proportionate to the specific assessed need. (is the requested modification reasonable and proportionate to the actual need?)
- (5) Include regular collection and review of data to measure the ongoing effectiveness of the modification. (vendor should be documenting and collecting data, ideally with the input of a behaviorist and should be able to show proof of that documentation to the SC)
- (6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. (no less often than at quarterly review meetings, more frequently if needed)
- (7) Include the informed consent of the individual.
- (8) Include an assurance that interventions and supports will cause no harm to the individual.

Resources

- VMRC's HCBS Webpage
- <https://www.vmrc.net/hcbs/>
- VMRC's PCT Webpage
- <https://www.vmrc.net/person-centered-thinking/>
- DDS's HCBS Webpage
- <https://www.dds.ca.gov/initiatives/cms-hcbs-regulations/>
- DDS/PCG Training on Person Centered Thinking in Alignment with HCBS
- <https://www.youtube.com/watch?v=QUWmXyydTbo>
- HCBS Advocacy Coalition
- <https://hcbsadvocacy.org/>