

Home & Community Based Services - HCBS FINAL RULE – Residential Provider Training

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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 services that receive Waiver funding

Settings receiving ongoing monitoring:

- 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

Service Codes Eligible for Ongoing Monitoring and Compliance

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

HCBS All Provider Settings

The final rule requires that **all settings**:

- #1 Are integrated in and support full access to the greater community
- #2 Is selected by the individual served from amongst setting options
- #3 Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint
- #4 Optimizes autonomy and independence in making life choices
- #5 Facilitates choice regarding services and who provides them
- #10 The setting is accessible to the individuals served

Residential Settings Provider Owned or Controlled Requirements

- #6 The individual has a lease or other legally enforceable agreement providing similar protections
- #7 The individual has privacy in their unit including the option for a private room, lockable doors which only appropriate staff have keys to, choice of roommate if there is a shared room and the freedom to furnish and decorate the unit
- #8 The individual controls their own schedule and has access to food at any time
- #9 The individual can have visitors at any time

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

How will your service as a provider change?

- **Rights are NOT earned and requiring an individual to earn the ability to exercise rights is a violation of HCBS regulations**
- If you are a service provider who provides services to multiple consumers in the same location, we have to make sure these services do not isolate individuals from the community
- The Final Rule says that settings must be integrated and support full access to the community
- As a provider, you may need to modify where and how your service is delivered to meet the HCBS Final Rule
- Policies and program designs may need to be changed
- Training for your staff will be necessary to assure their understanding of the new expectations

As a residential provider 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 meals, activities and outings, changes to house rules, 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)
- Facilitate your individuals served to be able to decorate and furnish their rooms in ways that bring them joy and fulfillment

As a residential provider how do you facilitate HCBS regulations for your individuals served?

- Initiate planning team meetings when there are conflicts between rights and safety/wellbeing or conflicts between the wants and needs of two or more individuals served within their home
- 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 the home
- Ask yourself, “Would I want to live here?”
- Utilize resident council meetings to ensure that the home is being managed in alignment with the wants and needs of the individuals served, rather than managed by staff preferences
- As an RSP, you own the building and provide staffing, but it is the home of the individuals served

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.

Important Documents

Privacy Policy

- Staff and residents should be given a copy, staff should be trained on it.
- That policy should cover locks on bedroom/bathroom doors and circumstances where staff are allowed to enter without permission of the resident, typically this would be related to health and safety.
- It should also cover privacy while entertaining guests, residents can visit privately unless a court order stipulates otherwise. They can visit in their rooms or common areas of the home.
- If there are shared rooms the privacy policy should stipulate the assistance of staff to mediate between roommates who want to use the room privately to visit or have overnight guests.
- The policy should also cover communications, phone, mail and email.
- Privacy while distributing medication and discussing private information should be covered.

Important Documents

Visitors Policy

- Must be in alignment with most recent PIN from CCL
- Cannot restrict visiting hours including overnight guests
- Cannot restrict where in the home residents chose to visit with their guests
- Cannot restrict who the resident wants to visit with
- May request reasonable amount notice (couple days) for overnight guests to ensure adequate staffing and rights of all residents in the home
- May include a stipulation that guests must follow house rules and not infringe upon the rights of residents

Important Documents

House Rules:

- Think of house rules as a living document, one that is reviewed with residents regularly and adjusted based on their feedback.
- What rules do the residents want that will help them live together as roommates?
- It could also be a “House Values” document instead, there’s no rule to have House Rules.
- Turn rules into a rights-based document for staff and residents that ensures everyone respects each other’s rights and that staff protect the HCBS rights of residents.
- Be wary of authoritarian language, it usually isn’t person-centered or HCBS compliant.
- Don’t restrict access to common areas of the home.
- Don’t restrict where or when or what someone can eat.
- Don’t limit visiting hours, who can visit or areas of the home where individuals can visit privately with their guests.
- You can request a couple of days’ notice for overnight guests to ensure adequate staffing.
- You can also require that guests follow house rules and not infringe on the rights of other residents

Important Documents

Ongoing Documentation

- Focus on being able to document the things you are probably already doing regularly.
- House meeting notes are an excellent source of information. Be sure to document what people want to do in the community, where they want to eat out, what they want on the menu at home, changes they suggest to house rules.
- In consumer daily notes you might also document some of that, but also document observations for your non-verbal consumers. They communicate in a variety of ways and you use what you observe when you decide what goes on the menu or what activities to go out to do.
- You should also document preferences in daily notes. Which staff people prefer to work with, when they prefer to do certain things like sleep late and take care of ADL's at night or skip breakfast but bring it to program with them to eat at 10am instead. All of those things you know about the people you serve, but may not necessarily be documenting.
- Forms can be really helpful. You might create a form to track the response to outings and activities, it can be simple, but very helpful information to use to create activity schedules and menu's. It helps to show the work you're already doing on a daily basis.
- You could also use some of the person-centered planning documents available to create a personalized profile of likes, dislikes, preferences and other helpful information about each resident. Those tools are available at www.vmrc.net/person-centered-thinking/

Ongoing Assessment of Provider Settings

- The initial remediation and validation process was completed in March of 2023 and was considered a desk review of settings based on documentation sent in by providers.
- Maintaining HCBS compliance and evaluating that compliance will be an ongoing process.
- A directive from DDS is expected soon.
- This directive will state the frequency and format of the ongoing HCBS evaluations.
- It may be a combination of desk review and in person HCBS assessments by RC staff.

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/>