

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

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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

# 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

# Participants HCBS Rights:

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- Have a right to a person-centered IPP and ISP
- The settings (programs/residential options) must give people full access to the community
- Participants 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

# Participants HCBS Rights:

In a licensed residential setting Participants 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

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

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**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.

# 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 Residents 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 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 Participants (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

# Important Documents

## **Privacy Policy**

- Staff and participants should be given a copy, staff should be trained on it.
- The policy should also cover communications, phone, mail and email.
- Privacy while distributing medication and discussing private information should be covered.
- Privacy while receiving assistance with personal care activities

# Important Documents

- **Ongoing Documentation**

- Focus on being able to document the things you are probably already doing regularly.
- Notes from meetings are an excellent source of information. Be sure to document what people want to do in the community, where they want to eat out,.
- In participant daily notes you might also document some of that, but also document observations for your non-verbal participants. They communicate in a variety of ways and you use what you observe when you decide what activities to go out to do, what in program activities people want to participate in.
- You should also document preferences in daily notes or on person centered documents. Which staff people prefer to work with, when they prefer to do certain 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 larger celebrations. 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/](http://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 was received 12/1/2023 that stipulated all settings vendorized prior to March 18<sup>th</sup>, 2023 must have an onsite HCBS evaluation. These evaluations are ongoing.
- The evaluation consists of a provider interview, resident interview, review of relevant documentation and tour of the home.
- Updated information will be posted to [www.vmrc.net/hcbs](http://www.vmrc.net/hcbs)

# Resources

- VMRC's HCBS Webpage
  - <https://www.vmmc.net/hcbs/>
- VMRC's PCT Webpage
  - <https://www.vmmc.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/>
- Tri-Counties Regional Center HCBS Videos
  - [https://www.youtube.com/playlist?list=PL2sVu\\_Vi1tqUnSW5DWrbU9O7\\_4Q8ecZ3C](https://www.youtube.com/playlist?list=PL2sVu_Vi1tqUnSW5DWrbU9O7_4Q8ecZ3C)