



# 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

# 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

# Individuals 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
- Individuals 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

# Individuals HCBS Rights:

In a licensed residential setting Residents 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 keyed lock on their bedroom door that only appropriate staff have keys to. The right to say no to others including staff entering their room unless there is an emergency
- 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 including overnight guests. They can visit with guests in all common areas of the home and visit with guests privately in their bedrooms including having a guest spend the night in their room.

# 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 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 Residents (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 Individual's 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.

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

## Life Area – Relationships

**The outcome I desire is:** to have a healthy and safe romantic relationship.

**What is currently happening?** I have struggled with understanding what a healthy and safe romantic relationship looks and feels like. I have a hard time meeting people and creating relationships with them that can last a long time. Sometimes it is easier to meet people online and have casual relationships. At times the people I meet online make me feel unsafe or scared. Sometimes when I invite the people I meet online to my home, my roommates and the care home staff worry about my safety and their own safety. I really love the people I live with and the staff that help me at home. I don't want to put myself in danger or the people I care about either. My care home has encouraged me to date people I meet at day program and they regularly talk to me about my safety. They have also tried to find other places for me to meet people to date outside of online dating sites.

**What is important to me?** I want to have a long-term boyfriend who treats me good.

**What is important for me?** I need help to learn how to date safely and create long lasting meaningful relationships where I am safe and treated well. My Service Coordinator has signed me up for the Relationship Class through CVTC where I can learn about safe online dating, setting healthy boundaries, build communication skills and learn how to practice safe sex. My SC has also helped me to get into talk therapy to figure out why I don't always choose relationships where I am safe. **While I work on these skills and learning about myself through therapy, I have agreed to an exception to my right to visitors. I agree that my care home staff can deny a visitor who I met online to come to my home or stay the night. I am not giving up my right to visit with family or known friends from my day program.**

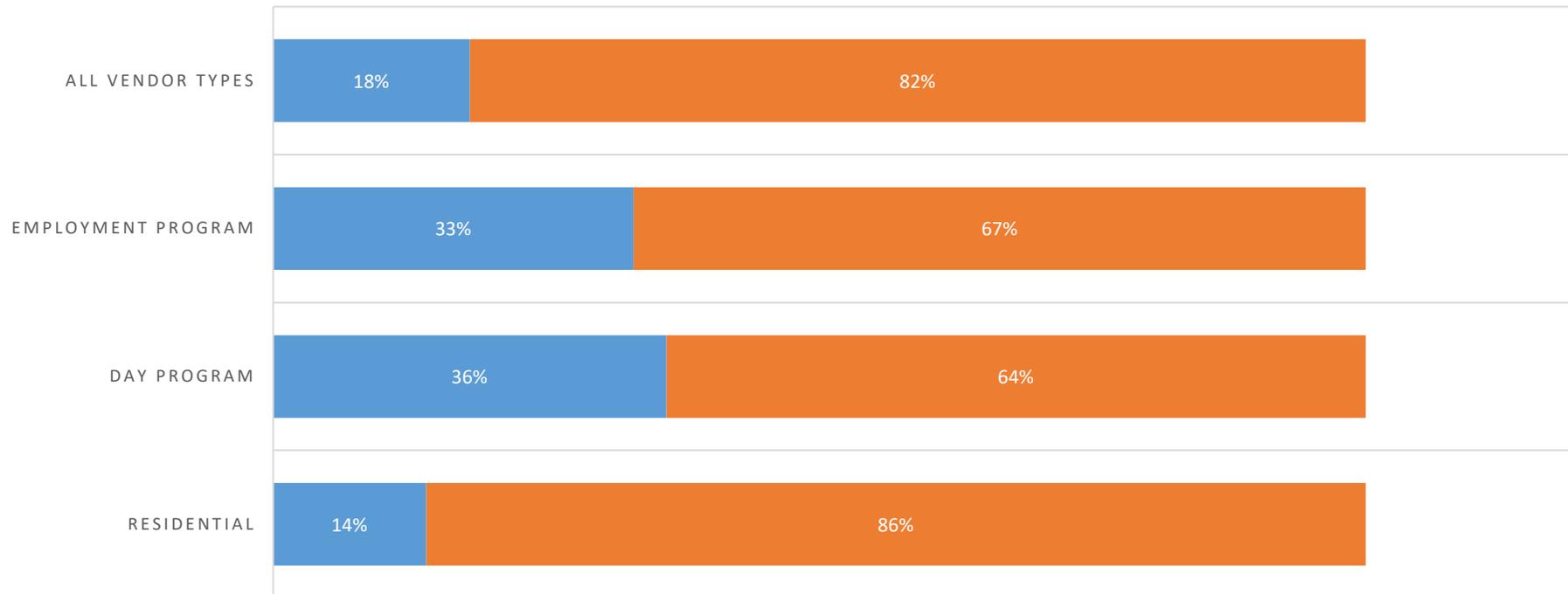
**What needs to be done?** My care home provider and day program will continue to take data about my participation in the Relationship Class and how frequently I am still inviting people I have met online over to the home. They will also help me define known from unknown individuals and help me determine when a person becomes known enough over time to be considered safe. They will review this data at each quarterly meeting with me and my SC.

- In 'What is currently happening?' the SC has documented the **specific and individualized assessed need**. They have also documented the **positive interventions and supports used prior to any modification** as well as **less intrusive methods of meeting the need**.
- In 'What is important for me?' the SC has documented a **clear description of the condition that is directly proportionate to the specific assessed need**.
- In 'What needs to be done?' the **requirement for data tracking, periodic reviews are identified**.

# Assessment of Provider Settings to Ensure Compliance with the HCBS Final Settings Rule

## ONSITE ASSESSMENT – INITIAL COMPLIANCE DATA

■ % Requiring Remediation   ■ % Compliant at Initial Assessment

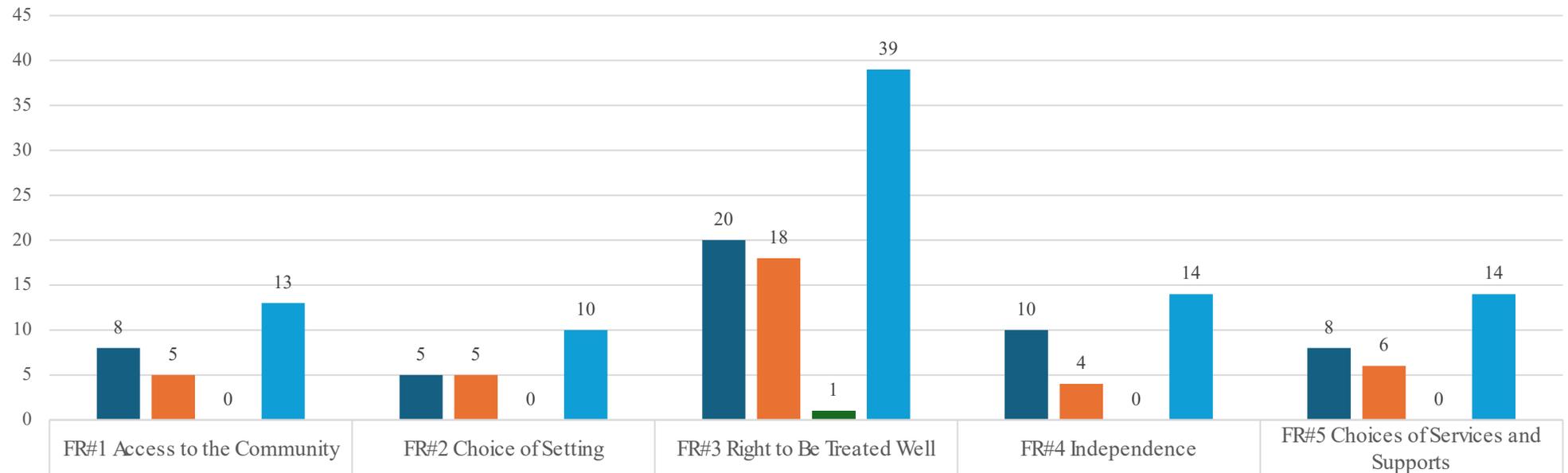


	Residential	Day Program	Employment Program	All Vendor Types
■ % Requiring Remediation	14%	36%	33%	18%
■ % Compliant at Initial Assessment	86%	64%	67%	82%

- A total of 321 providers were assessed during the compliance process
- 263 Residential Providers from service levels 2 through Negotiated Rate and EBSH/CCH
- 55 Day Program Providers
- 3 Supported Employment Providers

# Assessment of Provider Settings to Ensure Compliance with the HCBS Final Settings Rule – All Vendor Types

Remediation by Vendor Type for Federal Requirements 1 through 5



■ Residential	8	5	20	10	8
■ Day Program	5	5	18	4	6
■ Employment Program - Group	0	0	1	0	0
■ All Vendor Types	13	10	39	14	14

■ Residential

■ Day Program

■ Employment Program - Group

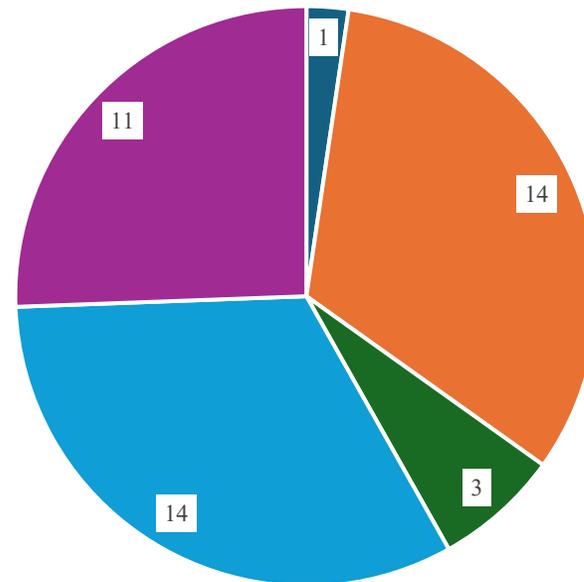
■ All Vendor Types

# Working Towards Compliance in Collaboration with Our Provider Community

- Meaningful community access has been increased through requiring providers to engage with their participants and residents regarding their interests. Recently HCBS Liaison staff are also working with providers to train them on using Leisure Inventories to document interests amongst participants. The data from leisure inventories is then used by providers to find activities within the community that fit the interests of their participants or residents.
- Choice of Setting is documented by the SC within the Individual Program Plan, it is the responsibility of the SC to ensure that each individual served has choice over their programs and residential options.
- The right to be treated well encompasses the rights to privacy, dignity, respect and freedom from coercion and restraint. All providers are required to have a privacy policy ensuring these rights that is shared with all staff and participants/residents. Providers were also required to show that all staff and individuals served were trained on the HCBS Final Settings Rule.
- Independence encompasses many areas including choice of daily activities and schedules and with whom to interact. All providers must show that they have documentation related to these preferences and choices for each individual served.
- Choice of services and supports encompasses the right to choose who provides supports, it also includes the right to file a grievance. Providers were required to show through Person Centered documentation what the staffing preferences were for individuals served and that those preferences were supported. Providers were also required to show proof that both staff and individuals served had access to their grievance policy.

# Assessment of Provider Settings to Ensure Compliance with the HCBS Final Settings Rule – Residential Only

Chart Title



- FR#6 Residential Agreement
- FR#7 Privacy
- FR#8 Control of Schedule and Access to Food
- FR#9 Right to Visitors
- FR#10 Accessibility

# Working Towards Compliance in Collaboration with Our Provider Community

- The residential agreement requires that individuals served living in care homes and FHA's have the same protections as anyone else in the State under a lease or rental agreement including protections against eviction.
- The right to privacy in residential settings includes having a keyed lock on all bedroom doors that only appropriate staff have access too. The right of residents to say no to others entering their room. As say over roommates if they share a room. Privacy in the bathroom. Privacy in all forms of communication. Providers are required to have a robust privacy policy that all staff and individuals served have access too.
- Control over one's schedule is also a requirement for providers. Providers were required to show proof that they know the scheduling preferences of individuals and prioritize those preferences. This requirement also includes access to food and the kitchen at all times. Providers were also required to show the preferences of individuals with regards to favorite foods and times they preferred to eat meals.
- The right to visitors 24 hours a day requires providers to have a comprehensive visitors policy that does not limit when individuals can visit with guests or where in the home they can visit with them. Residents have the right to have overnight guests and to visit with their guests privately including in their bedrooms.
- Accessibility of the homes for the residents is required. Should an individual need modifications to the home in order to access all common areas or their bedroom, this access must be provided. The physical sites were evaluated during the onsite assessment. Privacy doors in share bedrooms with open bathrooms were installed and in one instance a ramp was installed leading into the backyard for an individual whose mobility needs increased after moving into the home.

# 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 Resident daily notes you might also document some of that, but also document observations for your non-verbal Residents. 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/](http://www.vmrc.net/person-centered-thinking/)

# Working Towards Compliance in Collaboration with Our Provider Community

- VMRC in collaboration with our vendor community and individuals served completed the onsite compliance evaluations and achieve full compliance on September 27<sup>th</sup>, 2024.
- Providers will continue to be assessed for ongoing compliance moving forward and discussions with DDS on what that process will look like are ongoing.
- Concerns with ongoing compliance at individual vendor sites will be undertaken through VMRC's already established Alerts process. Concerns will be investigated and findings supporting compliance issues will be addressed through increased training and guidance through various corrective measures. It is always our goal to work collaboratively with our individuals served and our vendor community to increase the quality of our services available to the individuals supported by VMRC!
- We continue to offer ongoing training opportunities for our vendors on the HCBS Final Settings Rule on a quarterly basis. We also offer training on HCBS during our orientation programs for day programs, SLS programs and new residential providers. We believe training is key to increasing the quality of services available throughout VMRC. Since 2021 our Community Services Team has provided 120 hours of training on HCBS to our vendor community.

# Resources

- [VMRC's HCBS Webpage](#)
- [VMRC's PCT Webpage](#)
- [DDS's HCBS Webpage](#)
- [DDS/PCG Training on Person Centered Thinking in Alignment with HCBS](#)
- [HCBS Advocacy Coalition](#)

You can view the HCBS Series produced by Tri-Counties Regional Center on their YouTube channel here:

[Tri-Counties HCBS Series in English - For Providers](#)

[Tri-Counties HCBS Series in English – For Individuals Receiving Services](#)

[Tri-Counties HCBS Series in Spanish - For Providers](#)

[Tri-Counties HCBS Series in Spanish - For Individuals Receiving Services](#)

[Tri-Counties HCBS Series with ASL - For Providers](#)

[Tri-Counties HCBS Series with ASL - For Individuals Receiving Services](#)