



# HCBS Summary of New Federal Rule

This table summarizes the areas of the new federal regulation that will be evaluated and the assessment process.

## FEDERAL REQUIREMENTS FOR HOME AND COMMUNITY-BASED SETTINGS

**Settings that ARE Home and Community-Based must** be integrated in and support full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

### Home and Community-Based Settings must have the following characteristics:

- Chosen by the individual from among setting options including non-disability specific settings (as well as an independent setting) and an option for a private unit in a residential setting.
  - Choice must be identified/included in the person-centered service plan
  - Choice must be based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
- Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- Facilitates individual choice regarding services and supports, and who provides them.

State must assess and ensure Kansas provider settings meet the qualities of the HCBS Setting Rule

### For a provider-owned or controlled residential setting to be considered a home and community-based setting, it must have these additional characteristics:

In a provider-owned or controlled residential setting, in addition to the qualities specified above, must have:

- Have a **lease or a written agreement** with eviction and appeals rights
- Provide **privacy** in sleeping and living units
- Provide individuals with **freedom and support**
- Allows **visitors at any time** of their choosing
- The setting is **accessible** (i.e. ADA compliant)

1. The residential unit or location must be a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services
  - The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.
  - If landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement for each HCBS participant that provides protections that address eviction processes and appeals comparable to those provided under the landlord tenant law.
2. Each individual has privacy in their sleeping or living unit:
  - Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
  - Individuals sharing units have a choice of roommates in that setting.
  - Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
3. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
4. Individuals are able to have visitors of their choosing at any time.
5. The setting is physically accessible to the individual.

KDADS and KDHE are responsible for licensing facilities for populations that includes HCBS recipients

KDADS and KDHE are responsible for licensing facilities for populations which includes recipients of Home and Community Based Services (HCBS), so these settings must be assessed for compliance with HCBS setting characteristics, as indicated below.

- Assisted living facilities
- Residential health care facilities
- Home plus facilities
- Boarding care homes
- Adult day care facilities

KDHE is responsible for licensing the following child care facilities, which may include recipients of HCBS and are likely to conform with HCBS settings characteristics or come into compliance with the rule:

- Foster family homes
- Group homes
- Residential centers
- Maternity homes
- Day care facilities

Non-licensed residential and non-residential settings must also be assessed for compliance with HCBS setting characteristics

KDADS is also aware that some setting types are not currently licensed by the State but may include recipients of HCBS who receive services in those settings as indicated below:

- Residential Settings
  - Children’s Residential
  - Provider-owned/controlled homes/apartments for 1 or more individuals with specific disabilities
- Non-residential Settings
  - Sheltered Employment
  - Disability-Specific Work Crews

## **SETTINGS THAT ARE PRESUMED TO HAVE QUALITIES OF AN INSTITUTION**

KDADS will collect information on provider settings from providers, participants, guardians, parents, stakeholders, and State staff.

**Settings that have the following two characteristics alone might, but will not necessarily, meet the criteria for having the effect of isolating individuals:**

- The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.
- The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.

**Settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:**

- Setting is designed to provide disabled individuals with multiple types of services and activities on-site, including housing, day services, medical, behavioral/therapeutic services, or social and recreational activities.
- People have limited, if any, interaction with the broader community.
- Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid Institutional settings (e.g. restraints and seclusion)

Any modification of the additional conditions specified in items 1 through 4 above, must be supported by a specific assessed need and justified in the person-centered service plan.

The following requirements must be documented in a person-centered service plan:

- Identifies a specific and individualized assessed need.
- Documents the positive interventions and supports used prior to any modifications to the person-centered service plan.
- Documents less intrusive method that attempted to meet the need but didn't.
- Includes a clear description of the condition that is directly proportionate to the specific assessed need.
- Includes regular collection and review of data to measure the ongoing effectiveness of the modification.
- Includes established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- Includes the informed consent of the individual.
- Includes assurances that interventions/supports cause no harm to the person.

KDADS is responsible for licensing the following facilities and services for persons with intellectual and developmental disabilities who may be recipients of HCBS; however, these settings must be assessed for compliance with HCBS setting characteristics:

- Day supports for adults with intellectual and developmental disabilities
- Residential supports for adults with intellectual and developmental disabilities
  - *Residential supports may be provided in an individual's own home, in a group home setting, in a disability specific apartment complex, in a rural farm or campus for other individuals with disabilities*
  - *Includes Host Homes/Shared Living/Extended Family Teaching Model*

## CMS DESCRIPTIONS FOR INSTITUTIONAL SETTINGS AND QUALITIES

**Settings that are NOT Home and Community-Based include** a nursing facility; an institution for mental disease; an intermediate care facility for individuals with intellectual disabilities; a hospital; or any other locations that have qualities of an institutional setting.

**Settings that are Presumed to have the Qualities of an Institution:**

- Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.
- Any setting that is located in a building on the grounds of, or immediately adjacent to a public institution; or
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

KDADS is responsible for licensing the following institutions, which are not HCBS settings:

- Nursing facilities
- Nursing facilities for mental health
- Intermediate care facilities for individuals with intellectual disabilities
- Private Psychiatric Hospitals
- Psychiatric Residential Treatment Facilities
- Substance Use Disorder (SUD) Treatment Facilities
- Residential care facilities for persons with mental illness
- Adult family homes for persons with mental illness

## STATE STANDARDS TO ASSESS

What does the state need to change in these areas to help provider settings be HCBS compliant?

**The State will look at all standards to determine changes needs to ensure compliance with the HCBS Setting Rules.** These actions include a review of:

- Licensing/certification standards
- Provider qualifications
- Service definitions and standards
- Provider training requirements
- Participant rights protections
- Plan of care requirements

## HCBS PROVIDER SELF-ASSESSMENT SURVEY

Must be completed online by June 30, 2014

All providers who own, operate and control settings should complete one (1) survey for every setting type that they own, operate and control. Please answer the questions with the type of activities that are “typical” of the setting type. Comments can be added to the end of the survey if you would like to provide additional information and pose questions for future follow up.

**Survey:** [http://www.aging.ks.gov/HCBSProvider/CMS\\_Final\\_Rule\\_HCBS.html](http://www.aging.ks.gov/HCBSProvider/CMS_Final_Rule_HCBS.html)

## IF A PROVIDER DOES NOT CURRENTLY COMPLY WITH THE RULES, BUT MAY?

The State will develop a response and plan for CMS review and approval

If current participants are living in a setting that is determined to be out of compliance with an HCBS Setting Rule the State will develop a plan to bring them into compliance.

**The State will evaluate settings after completing all assessments to determine compliance and the impact on HCBS recipients and identify:**

- The types, size of settings, and locations not in compliance
- The state do if a provider is found to be in violation of these standards
- The compliance action that is expected
- The appropriate benchmarks and timeframe for compliance
- How the MCOs and State help the providers come into compliance

**The State will evaluate HCBS settings in terms of how they conform to HCBS characteristics, in 3 categories:**

- Compliant with the HCBS Setting Rule
- Presumptively Non-HCBS Settings
- Partially/Potentially Compliant

**For Settings that currently do not meet HCBS characteristics, but may comply with the Rule, the State will develop a response and plan for compliance that may:**

- **Propose Changes** with timeline & milestones to conform to HCBS
- **Submit evidence to CMS** for a Heightened Scrutiny Process CMS

## COMMENTS, QUESTIONS AND PUBLIC INPUT

KDADS is available for presentations and Question & Answer sessions related to the HCBS Final Rule upon request.

**Contact KDADS** with comments, questions and public input until July 15, 2014.

**In Person:** HCB Setting Final Rule Public Comment Sessions and as scheduled

**By Phone:** 785-296-4986, Provider and Consumer Conference Calls

**By Email:** [HCBS-KS@kdads.ks.gov](mailto:HCBS-KS@kdads.ks.gov)Email: [HCBS-KS@kdads.ks.gov](mailto:HCBS-KS@kdads.ks.gov)

**By Mail:** KDADS, Attn: HCBS Programs, 503 S. Kansas Ave, Topeka, KS 66603

**By Fax:** 785-296-0256

The Transition Plan coordinator is **Aquila Jordan** who can be contacted at [HCBS-KS@kdads.ks.gov](mailto:HCBS-KS@kdads.ks.gov).