



PROVIDER ASSURANCE TO THE FEDERAL HOME AND COMMUNITY BASED SERVICES (HCBS REGULATIONS)

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
SFN 1010 (2-2023)

The Department of Health and Human Services requires that services and settings be provided according to applicable regulations, policies, state, and federal laws. Failure to abide by these may result in adverse actions including, but not limited to, the denial or termination of a license.

The Centers for Medicare and Medicaid Services (CMS) established regulations for Waiver Home and Community Based Services (HCBS). The regulations are based on characteristics and individual experiences that must be present for each Home and Community Based residential and non-residential setting (home, work, and day services). The regulations are intended to assure that services promote community inclusion, choices, and quality of life.

HCBS Regulations

1. The setting is integrated in and supports 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.
2. The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
4. 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.
5. Facilitates individual choice regarding services and supports, and who provides them.
6. Each individual has privacy in their sleeping or living unit:
 - 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.
7. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
8. Individuals are able to have visitors at their choosing at any time.
9. The setting is physically accessible to the individual.
10. In a provider-owned or controlled residential setting:
 - The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and 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. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement, or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.
 - Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

11. Any modifications to the requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:
- Identify a specific and individualized assessed need.
 - Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
 - Document less intrusive methods of meeting the need that have been tried but did not work.
 - Include a clear description of the condition that is directly proportionate to the specific assessed need.
 - Include regular collection and review of data to measure the ongoing effectiveness of the modification.
 - Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
 - Include the informed consent of the individual.
 - Include an assurance that interventions and supports will cause no harm to the individual.

Settings That are Not Home and Community-Based

Waiver services cannot be authorized in the following locations:

- A nursing facility;
- An institution for mental diseases IMD;
- An intermediate care facility for individuals with intellectual disabilities;
- ICF/IID;
- A hospital

Settings Presumed Not to be Home and Community-Based

Any setting that may fall into the categories below require Developmental Disabilities review:

- A setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- A setting that is located in a building on the grounds or, or immediately adjacent to, a public institution;
- Any other setting that has the effect of isolating individuals from the broader community

Settings in the Family Home

Settings where services are being provided to those individual's living with family members, relatives, or primary caregivers may be presumed to comply with the regulatory requirements if they are integrated in typical community neighborhoods where people who do not receive HCBS also reside.

For more additional information, fact sheets, and training material, go to: <https://www.hhs.nd.gov/dd>

By signing below, I certify that I have read and understand my responsibilities as a provider to comply with the Home and Community Based Services (HCBS) regulations.

By typing my name below, I am signing this application form electronically. I agree that my electronic signature is the legal equivalent of my handwritten signature. I attest, subject to the penalties of perjury that I am the individual completing this application and that I have provided accurate information.

Signature	Title	Date
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