

HCBS Settings: **Understanding the Rights of Those Served and Supported**

September 28, 2023

Michele Baughan, QIO HCBS Operations Manager

OBJECTIVES:



1. Overview of the HCBS Settings Final Rule and key concepts of the rule.
2. Overview of Iowa's Statewide Transition Plan (STP).
3. Overview of Iowa Medicaid's Quality Improvement Organization (QIO) Home and Community Based Services (HCBS) unit and their role in implementing the HCBS settings.
4. Providers will understand the HCBS settings requirements for Waiver and Habilitation services in Iowa.
5. What to expect regarding quality oversight.

History and Philosophy

Building a foundation of understanding.

History of Home and Community Based Services (HCBS)

- Home and Community Based Services (HCBS) first became available in 1983 when Congress added section 1915(c) to the Social Security Act, giving States the option to receive a waiver of Medicaid rules governing institutional care.
- In 2005, HCBS became a formal Medicaid State plan option.
- 47 states and DC are operating at least one 1915(c) waiver.
- States implement waivers and are responsible for ensuring quality services and supports are available. CMS has oversight of the states to ensure this.

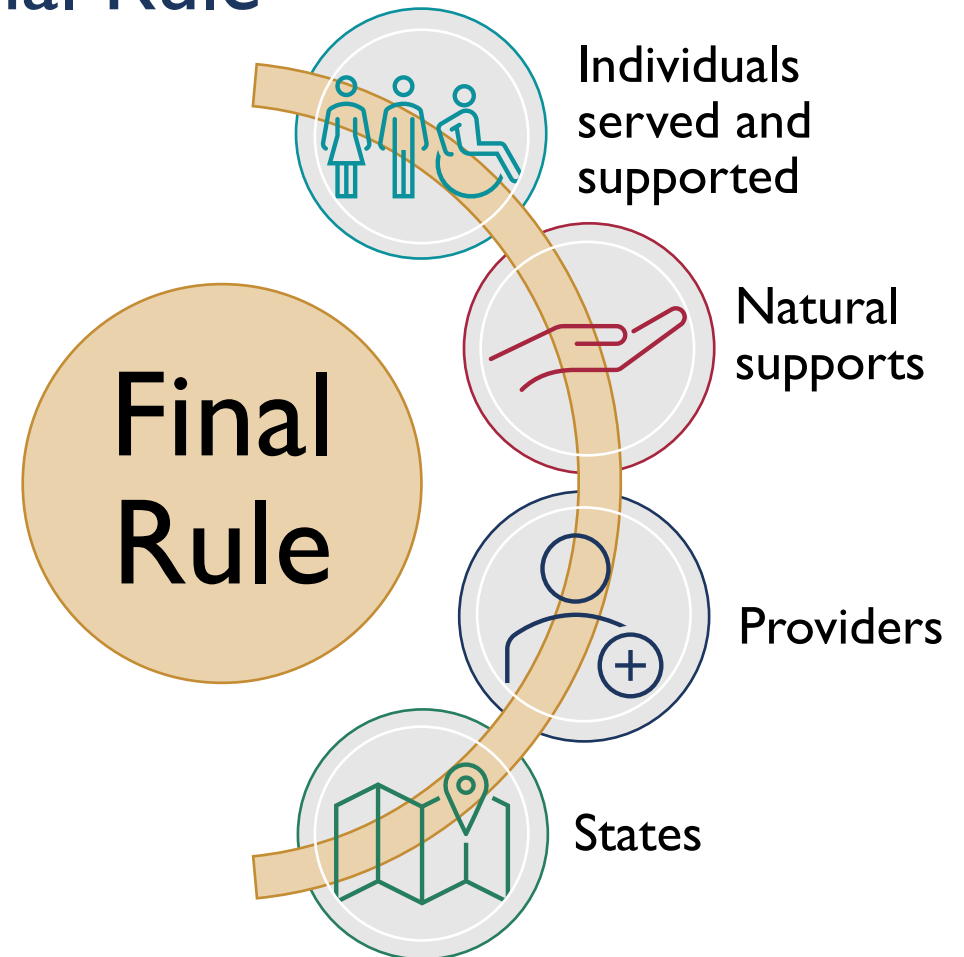


History of HCBS- National Movement

1973	The Rehabilitation Act
1975	Education for All Handicapped Children Act
1988	Fair Housing Amendments Act
1983	Social Security Act updated with 1915(c)
1990	Americans with Disabilities Act of 1990 (the ADA)
1999	Olmstead Decision
2001	The Individuals with Disabilities Education Act
2005	HCBS becomes a formal Medicaid State Plan Option
2014	HCBS Final Rule – HCBS Settings Rules.

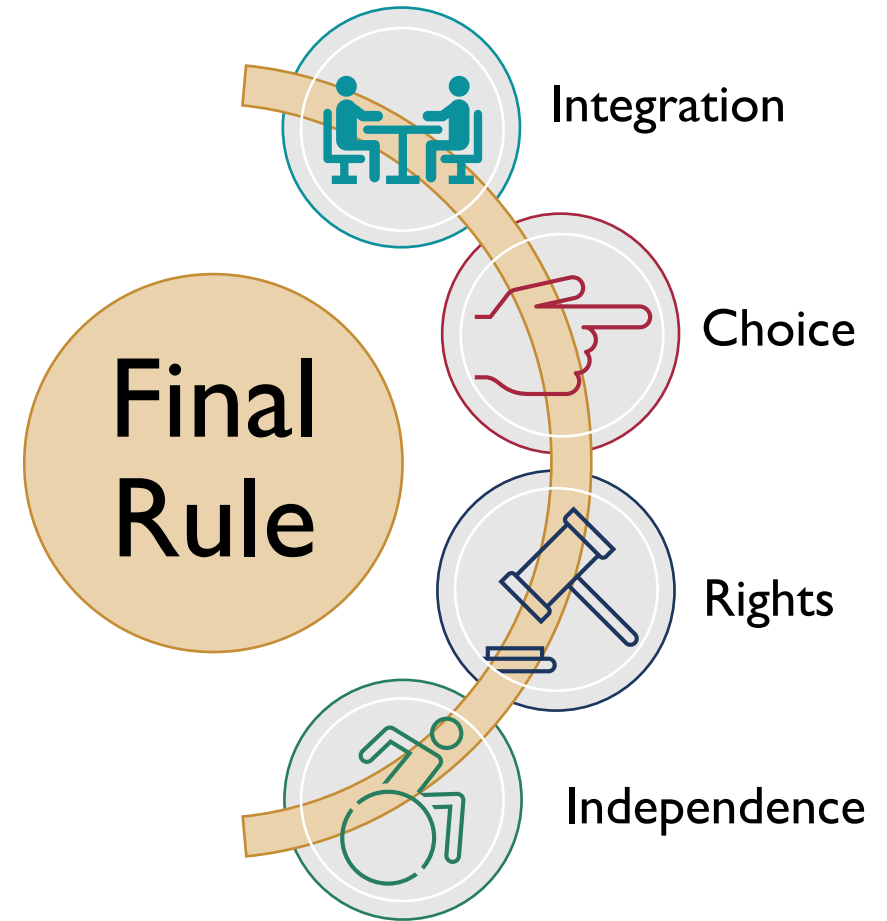
Introduction to HCBS Settings Final Rule

- The final HCBS regulations (known as the “Final Rule”) were published in the Federal Register on January 16, 2014, after much consideration was given to stakeholder input as shown in the image to the right.
- Rules became effective March 17, 2014.
- Designed to enhance the quality of HCBS, provide additional protections, and ensure full access to the benefits of community living.
- Quality of life matters.



Introduction to HCBS Settings Final Rule

- The rule creates a more outcome-oriented definition of home and community-based settings, rather than one based solely on a setting's location, geography, or physical characteristics.
- This rule is a commitment to facilitate beneficiary autonomy and community participation. Community integration, choice, rights, and independence are key.
- The rule also describes the minimum requirements for person-centered planning.



Background: HCBS “Final Rule”

Where can the actual language of the rules be found?

- The rules for HCBS settings are found in sections 441.301, 441.530, and 441.710 of Title 42 of the Code of Federal Regulations.
- These sections govern the HCBS waiver, the Community-First Choice option, and state plan HCBS, respectively. Sections 441.301 and 441.710 also include standards for the person-centered planning process.
- [eCFR :: 42 CFR 441.301 -- Contents of request for a waiver.](#)
- [Federal Register](#) released a summary of the new rule with public comment and response to help guide states in understanding the intent of the rules in January 2014.¹

1. CMS, Questions and Answers — 1915(i) State Plan Home and Community-Based services, 5-Year Period for Waivers, Provider Payment Reassignment, Setting Requirements for Community First Choice, and 1915(c) Home and Community-Based Services Waivers —CMS 2249- F

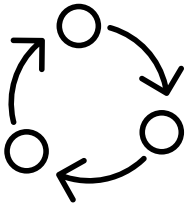
Historical and current settings information has its own page on the IHH website.

[**HCBS Initiatives**](#)

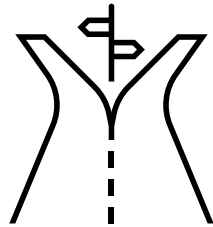
An Exploration of Key Concepts

Key Concepts from the HCBS Settings Final Rule

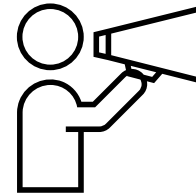
Integration



Choice



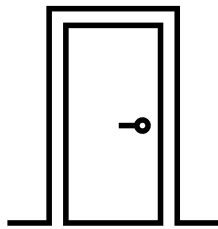
Individual
Rights



Independence



Privacy



Dignity and
Respect



Freedom from
Coercion and Restraint



Key Concepts from the HCBS Settings Final Rule

Are integrated in and support access to the greater community

Ensure the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS

Provide opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources

Are selected by the individual among setting options including non-disability specific settings.

Ensure an individual's rights of privacy, respect, and freedom from coercion and restraint

Facilitate individual choice regarding services and supports and who provides them

Optimize individual initiative, autonomy, and independence in making life choices

Key Concepts: Integration



- What “community integration” is not.
- What “community integration” is.
- Settings that MAY require remediation to ensure the setting supports access to the greater the community.
 - Settings designed specifically for people with disabilities or for people with a certain type of disability.
 - Settings where individual in the setting are primarily or exclusively people with disabilities and onsite staff provides many services to them.
 - Settings designed to provide people with disabilities multiple types of services and activities on-site.
 - Settings where people in the setting have limited, if any, interaction with the broader community.
 - Multiple settings co-located and operationally related that congregate many people with disabilities together and provide for significant shared programming and staff, such that people’s ability to interact with the broader community is limited.

Key Concepts: Integration

■ Things to consider...

- Is the setting integrated into the greater community, allowing members full access to community resources and amenities such as but not limited to essential and non-essential shopping, recreation, restaurants, religious services, exercise, healthcare, personal grooming services, and opportunities for competitive and integrated employment?
- Is the setting located in an area that facilitates members' ability to access community resources without being totally dependent on the service provider to access them or if limitations exist, have adaptations been made to facilitate members' access?
- Does the setting have available public transportation options or, where public transportation is limited, are other means of transportation available?

Ensure the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS

Provide opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources

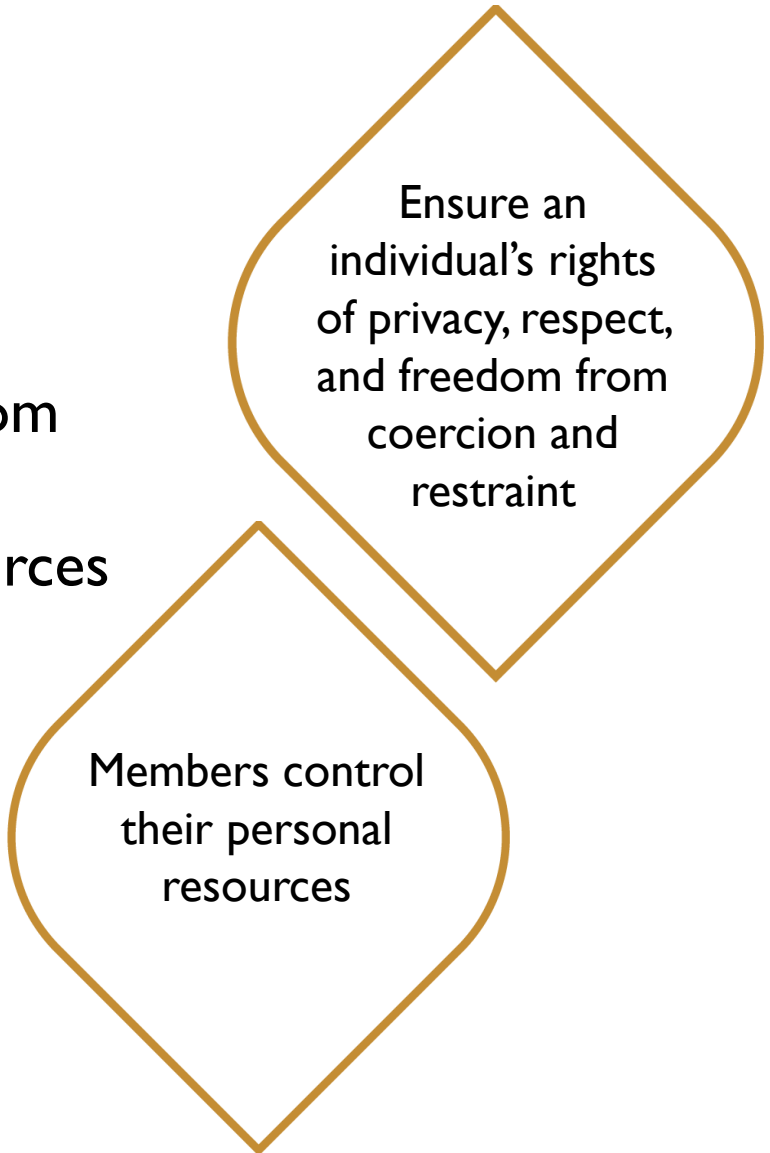
Key Concepts: Choice

- Informed choice-the process of choosing from options based on accurate information, knowledge, and experiences.
- The setting must be selected by the individual based on informed choices of other available options including non-disability specific options.
- Choice regarding services and supports and who provides them must be facilitated.
- Individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact. must be optimized and not regimented.



Key Concepts: Individual Rights

- The HCBS Settings Final Rule requires that:
 - Individual rights of privacy, respect, and freedom from coercion and restraints are ensured.
 - Members should control their personal resources including money and other possessions.
- Privacy
- Respect and Dignity
- Coercion
- Restraint
- Controlling Personal Resources



Ensure an individual's rights of privacy, respect, and freedom from coercion and restraint

Members control their personal resources

Key Concepts: Requirements for Residential Settings

- Specific protections are required for residential settings.
- Again, some of the concepts specific to residential settings overlap with other concepts of HCBS settings.
- The residential setting must be a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the member receiving services, and the member has, at a minimum, the same responsibilities, and protections from eviction that the tenants have under the landlord/tenant laws of the state, county, city, or other designated entity.



Key Concepts: Dignity of Risk

- All people have a right to self-determination. What does this mean?
 - We have a right to make our own choices – even if it could have negative consequences.
 - People have a right to set their own goals.
 - Consequences may be loss of a relationship, getting lost, being heartbroken, or an injury.
- Making decisions for someone takes away their dignity by assuming they cannot evaluate the risk/reward.
- Having autonomy, self-determination, and dignity of risk leads to greater independence.
- Greater independence leads to a higher quality of life and greater satisfaction.
- It is important not to make assumptions about or on behalf of others.

Key Concepts: Dignity of Risk

- How do we help someone have dignity of risk?
- Ensure people have choice
- Person-Centered Planning and assessment
- Use the communication style/strategy they want or need
- Use plain language
- To learn more, read the Mental Health and Developmental Disabilities (MHDD) [Self-Determination & Dignity of Risk Fact Sheet](#).

HCBS Concepts and Human Rights

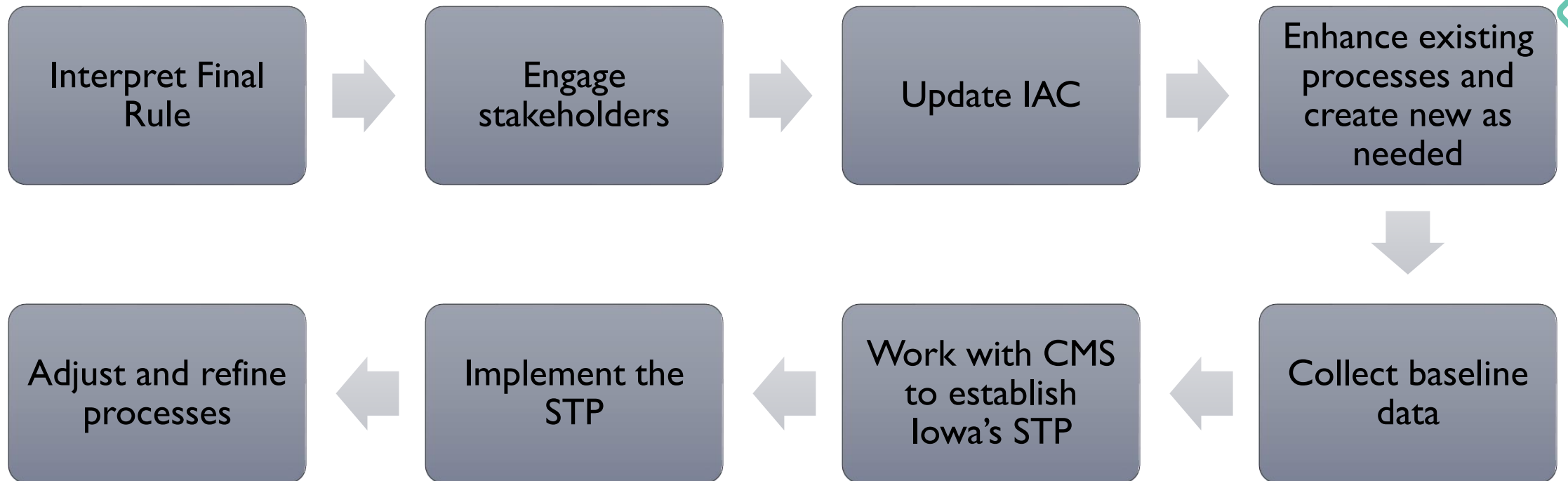
Individual rights are the rights needed by everyone to pursue their lives and goals without interference from others or the government. The rights to life, liberty, and the pursuit of happiness as stated in the United States Declaration of Independence are typical examples of individual rights. Additional rights include, but are not limited to:

- To make choices
- To vote
- To speak and voice opinions
- To express sexuality
- To choose relationships
- To live free of restraint and coercion
- To privacy
- To have personal possessions
- To feed yourself
- To have services for health
- To be included in the community
- To due process

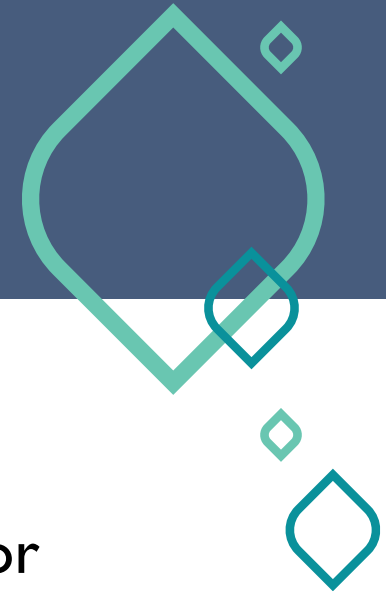
Iowa's Implementation Path

Iowa's transition plan and ongoing quality oversight activities.

Key Steps of Iowa's Implementation Path



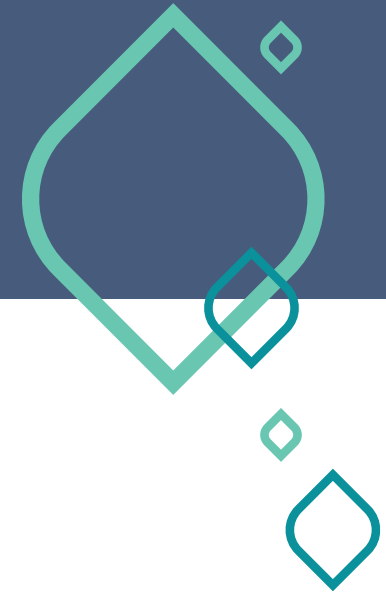
State Transition Plan History and Current



- After the HCBS Settings Final Rule was issued, states were required to create a transition plan. These plans are known as Statewide Transition Plans (STP).
- The time between the establishment of the final rule and the deadline for all states to fully comply was referred to as the “transition period”.
- The transition period ended on March 17, 2023.
- Some key items addressed in the STP:
 - Public comment/input
 - Identification and categorization of settings
 - Identification of a systemic and setting-specific assessment process
 - Report of assessment results including identification of heightened scrutiny settings

Key Pieces of Iowa's Implementation Path

Understanding and Categorizing Iowa's Settings



- After the initial address collection period, Iowa analyzed and began categorizing the various types of settings where HCBS is provided in our state.
- Allowed for an organized approach to assessing the over 5000 settings in the state.
- This categorization broke down the settings into various groups.
 - Settings that are not and cannot be HCBS.
 - Settings that were presumed to meet the rule without any changes required.
 - Settings that required assessment to determine if they met the rule or could meet the rule with modifications.
 - Settings that required heightened scrutiny review from CMS.
 - Residential service settings and Nonresidential service settings.
 - Provider owned or controlled versus member owned and controlled settings

Understanding and Categorizing Iowa's Settings

Heightened Scrutiny



Category 1

- Located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.

Category 2

- In a building on the grounds of, or immediately adjacent to a public institution.

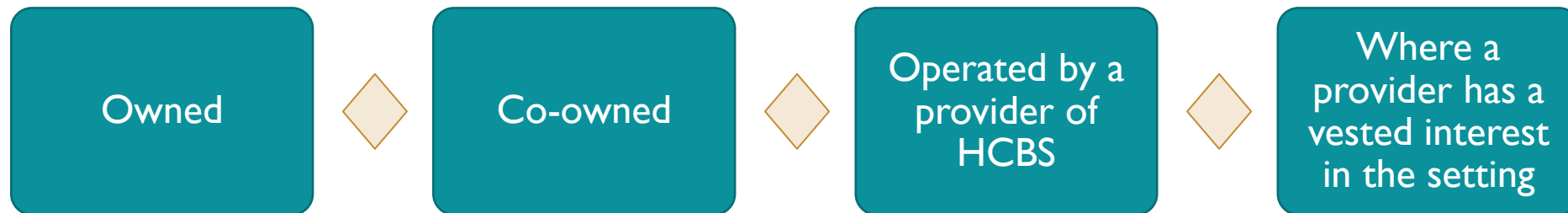
Category 3

- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

Understanding and Categorizing Iowa's Settings- *Provider Owned and Controlled Settings*



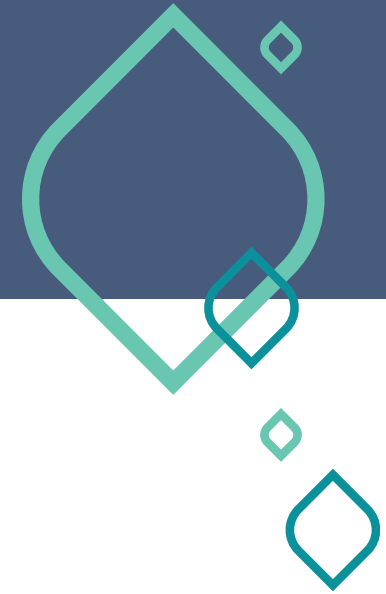
- 77.25(5) c. Residential and nonresidential settings provider owned or controlled
- A residential setting that is provider-owned or controlled is subject to additional requirements.
- A setting is “provider-owned or controlled” when the setting in which the individual resides is a specific physical place that is any one or combination of:



- Additional requirements relate to ensuring tenant protections, privacy, and autonomy for individuals receiving HCBS who do not reside in their own private (or family) home.

Key Pieces of Iowa's Implementation Path

Initial Settings Assessment Activities



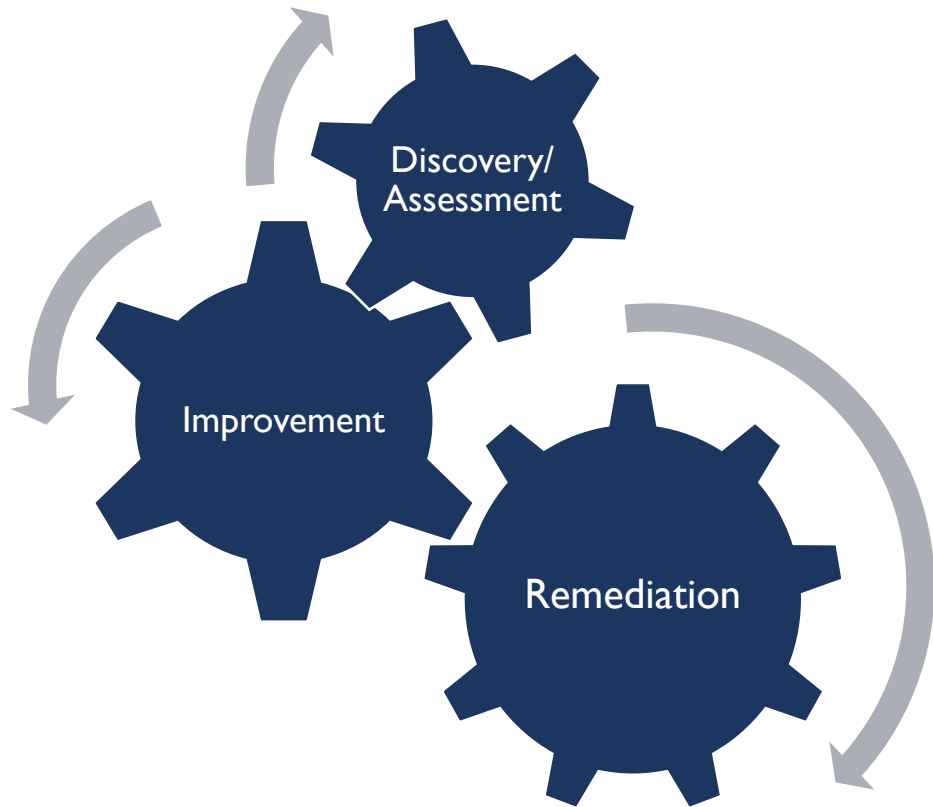
- For initial assessment, a process was developed to assess residential settings using the Residential Assessment tool completed with every HCBS member by their case manager. Starting in 2017, every HCBS member's residence was assessed for compliance. Ongoing this occurs at least annually, and within 30 days of a move.
- A process was developed to assess non-residential settings through the QIO HCBS Quality Oversight Focused Review process. Throughout 2017 and 2018, every non-residential setting where day services and employment services are provided were assessed for compliance. Ongoing, this occurs once per 5-year cycle.
- Additionally, quality oversight Periodic/Certification and applicable Focused Reviews now include a sampling of all HCBS settings operated by the provider under review. The selected setting is assessed for ongoing compliance.

Ongoing Monitoring- What to Expect

General quality oversight monitoring practices.

Ongoing Monitoring

What to Expect with General Quality Oversight Processes



- Iowa's approach to quality oversight and ensuring compliance with settings requirements.
- **Discovery** - identifying and assessing
- **Remediation** - addressing areas of concern and non-compliance.
- **Improvement** - Re-assessment and demonstration of compliance including ensuring ongoing implementation of corrective action and continuously perfecting processes.



Ongoing Monitoring

What to Expect with General Quality Oversight Processes

Iowa's approach to quality oversight and ensuring compliance with settings requirements.

Policies and procedures – written standards outline the organization's day-to-day operations, compliance with laws and regulations, and give guidance to staff.

Practice- application of policies and procedures.

Outcomes – Positive and negative affects of applying policies and procedures in practice.



Ongoing Monitoring

What to Expect Specific to HCBS Settings- Policies and Procedures

- The following evidence is considered when reviewing, assessing, and evaluating policies and procedures for compliance with HCBS Settings Final Rule.

Policy and Procedure

- Responses to related questions on the Provider Quality Self-Assessment.
- Any organization policies that might be related to HCBS settings standards.
- Related forms and documents.
- Written procedures.

Ongoing Monitoring

What to Expect Specific to HCBS Settings- Policies and Procedures

- The following evidence is considered when reviewing, assessing, and evaluating policies and procedures for compliance with HCBS Settings Final Rule.

Practice

- Member records, service documentation
- Employee records
- Onsite observations and site tours
- Residential Assessments
- Iowa Participant Experience Survey (IPES)
- Incident and complaint data

Ongoing Monitoring

What to Expect Specific to HCBS Settings- Policies and Procedures

- The following evidence is considered when reviewing, assessing, and evaluating policies and procedures for compliance with HCBS Settings Final Rule.



Outcomes

Could be positive or negative. Evidence might include:

- Member satisfaction or experience survey results
- Residential Assessment results
- Quality Improvement results
- Incidents and complaints
- Appeals or grievances
- Staff performance results

Ongoing Monitoring

What to expect for special settings

- Newly constructed facilities
- Newly purchased facilities
- Presumptively institutional settings
- Conversions
- IRSH
- Others

Ongoing Monitoring

What to expect for new settings

- Effective March 17, 2023, providers must report new residential and nonresidential settings in which they provide these services within thirty (30) days of the change. This ongoing process will replace the need to complete the annual address collection. The annual provider quality self-assessment will still be required
- Contact the HCBS specialist to report changes. Requirements of what to include are outlined in the Informational letter.
- Presumptively Institutional Settings and Newly Constructed Facilities For presumptively institutional settings and newly constructed facilities where HCBS will be provided, HCBS funding may not be used in the setting without prior approval from CMS. Technical assistance is available from your specialist.
- Failure to report and receive approval prior to accessing HCBS funding in a setting may result in recoupment of incorrectly paid funds.

<u>IL 2492-MC-FFS</u>	Reporting New Or Closing Hcbs Settings And Hcbs Settings Compliance	Issued 08/21/2023	Effective Upon Receipt
------------------------------	---	----------------------	---------------------------

Exploring Common Issues

Common settings-related issues and potential remediation efforts.

Common Issues

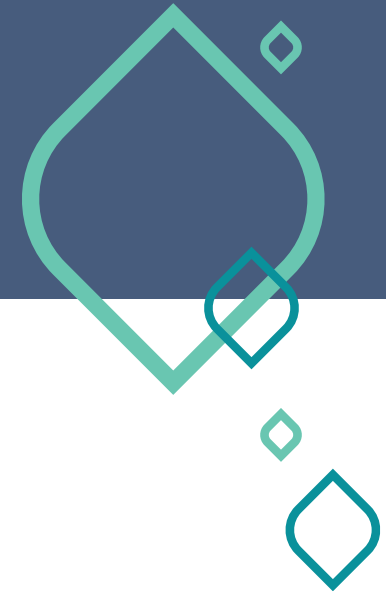
Misapplication of Limitations, Modifications, and Restrictions



- Any limitations, modifications, and restrictions to HCBS settings standards and basic rights must be **tied to an individual assessed need** and **justified in the person-centered plan.**
- Iowa also has IAC rules governing the use of restrictive interventions including the use of restraints, restrictions, and behavioral intervention. See 441—Chapter 77.25(4) and 441 —Chapter 78.41(16) as a starting point.
- HCBS settings requirements and IAC rules ensure that a member’s rights are protected by listing basic rights and freedoms and setting guidelines for ensuring any **NEEDED** limitations, modifications, and restrictions are **justifiable** and **afforded due process**.

Common Issues

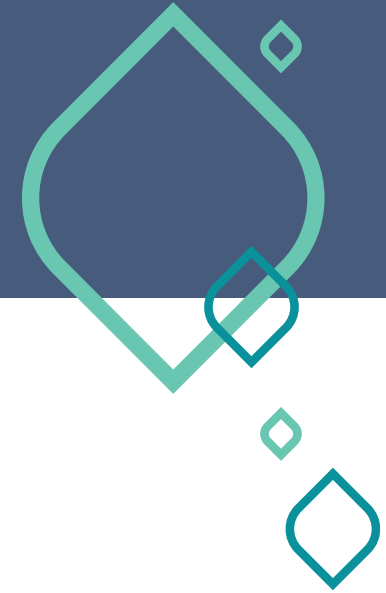
Misapplication of Limitations, Modifications, and Restrictions



- Blanket or standard restrictions
- Examples of common limitations, modifications, and restrictions that are often inappropriately implemented:
 - Privacy limitations/restrictions
 - Cameras
 - Limits to how much time a person may spend unsupervised
 - Limitations/restrictions to ability to control personal resources/possessions
 - Requiring medications to be locked.
 - Locking up or limiting access to food
 - Limiting access to preferred possessions
 - Limiting access to money
 - Choice limitations/restrictions
 - House rules
 - Restrictions to ability to come and go from the setting as desired
 - Restricting the use of home- visitors, entertaining family and friends, etc.

Common Issues

Misapplication of Limitations, Modifications, and Restrictions



- Behavioral intervention plans that set up a reward/punishment system
 - Rewarding the member with their own possessions or money.
 - Rewarding the member with "community time" or "alone time".
- Using the member's space as the organization's space
 - Have a bed for staff use in the middle of the member's living room.
 - Use of the member's house as their main office location.
 - Staff entering and exiting without knocking, asking, etc.

Remediation of Common Issues

- What do you do if you discover that there is an area of deficit?
- Figure out where the deficit originates.
- Gather data or input as a part of discovery.
- Write a plan to correct within the agency.
 - This needs to focus on one of the areas →
 - Be willing to adjust the plan to accommodate
 - Include how you will know that the plan works
 - Evidence of success built in
- Carry out the plan and review evidence to support improvement or adjust the plan if continued deficits are seen
- See continuous quality improvement trainings for additional information.



Example Restrictions and Remediation

Example Restriction

Person receives daily SCL services. Staff just told a member that they couldn't have a visitor because they cannot supervise another person in the home today.

Which level is this issue at? →

What exploratory questions could be asked to assist in remediation?



Remediation

Ensure there are no policies that prohibit guests from visiting a member.

Review house mate expectations.

Discuss boundaries.

Example Restrictions and Remediation

Example Restriction

An individual accesses the internet on a regular basis for leisure/fun. It was discovered that the member has been on dating sites and was exchanging his debit card information with someone he had a romantic interest with.

Which level is this issue at? →

What exploratory questions could be asked to assist in remediation?



Remediation

Are there internet safety lessons from the public library?

Do the local police have educational materials or sessions for internet safety?

Is there something online that you can monitor, but help them to learn from?

Example Restrictions and Remediation

Example Restriction

An agency does not allow smoking anywhere on the grounds of their provider owned and controlled locations, so they have eliminated smoke breaks as options in services.

Which level is this issue at? →

What exploratory questions could be asked to assist in remediation?



Remediation

Are there Iowa laws to follow?

Are breaks needed? Is this a work environment or a living environment?

Can members come and go as they please?

Create policies for each location rather than one blanket policy.

Example Restrictions and Remediation

Example Restriction

The agency has purchased homes and will re-distribute clients among the new homes. This will allow for clients to have more space and privacy. They have created a move schedule to assist in the process and will start moving next week.

- Which level is this issue at? →
- What exploratory questions could be asked to assist in remediation?



Remediation

Ensure clients have a choice in the move.

Ensure ample notification for this choice to be made.

Process for new roommate selection.

Determine how and when to get the IDT involved.

Example Restrictions and Remediation

Example Restriction

An individual works in a supported employment site. The agency has some affiliation with the site and has rules in place that “encourage attendance.” These policies and procedures include a member losing work time in the schedule if they have absences from work and rewarding attendance at work with social activities.

Which level is this issue at? →

What exploratory questions could be asked to assist in remediation?



Remediation

Review policies. Are these policies consistent for all employees in the agency?

Is this a reasonable rule for employment?

What is the purpose of this policy, and can it be met at the individual level of person-centered planning rather than be a blanket policy?

Proactive Strategies

Examples:

Assist the individual to build new skills.

- Communication / Self-Advocacy
- Delayed Gratification
- Relaxation / Emotion Regulation
- What I Can/Cannot Control
- Getting Unstuck
- Self-Compassion
- Desensitization to Medical Procedures
- Replacement Behavior

Restraint, Restriction, & Behavioral Intervention Frequently Missed Opportunities

- Policy does not match or align with procedure
 - Do you have separate policies and procedures? Review them in themes or together as a pair.
 - Schedule periodic or routine reviews of policy and procedure as a part of quality oversight activities
- Procedure is not what is seen or practiced on site
 - Schedule observations of common procedures with an observation checklist to make sure of consistency
 - Use training checklists for any observable training tasks
- Direct supports are not understanding the philosophy of HCBS services. This may be experienced more with a staff who has worked in an institutional setting.
 - Incorporate HCBS philosophy training in orientation and periodically after hire
 - Highlight agency strengths or moments that you see the philosophy in action at regular team meetings

Questions

Resources

- [Federal Regulations: eCFR :: 42 CFR 441.301 -- Contents of request for a waiver.](#)
- [HCBS Initiatives.](#) Historical and current settings information has its own page on the IHH website.
- [Federal Register](#) with the new rule and public comment from 2014
- [IL 2492-MC-FFS](#) – Informational Letter outlining the process for new and closing HCBS settings.
- [CMS FAQ for wandering and exit-seeking behavior.](#)
- [Exploratory questions residential.pdf \(iowa.gov\)](#)
- [Exploratory questions non residential.pdf \(iowa.gov\)](#)
- [Know Your Rights | Disability Rights | ACLU](#)
- [Just-Like-Home -An-Advocates-Guide-for-State-Transitions-Under-the-New-Medicaid-HCBS-Rules.pdf \(nadsa.org\)](#)