

Home and Community-Based Services Philosophy & HCBS Settings Rule A Guide For HCBS Case Managers

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OBJECTIVES:



1. Provide an overview of the history and philosophy of HCBS.
2. Provide an overview of the HCBS Settings Final Rule and key concepts of the rule.
3. Introduce Statewide Transition Plans (STP) and Iowa's STP journey.
4. Explore the important and unique role of case managers in ensuring HCBS members experience a fully integrated life, have opportunities to make informed choices about their lives, and are afforded rights and freedoms.
5. Identify case managers' responsibilities in ongoing monitoring of members' experiences in HCBS settings.

History and Philosophy of HCBS

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

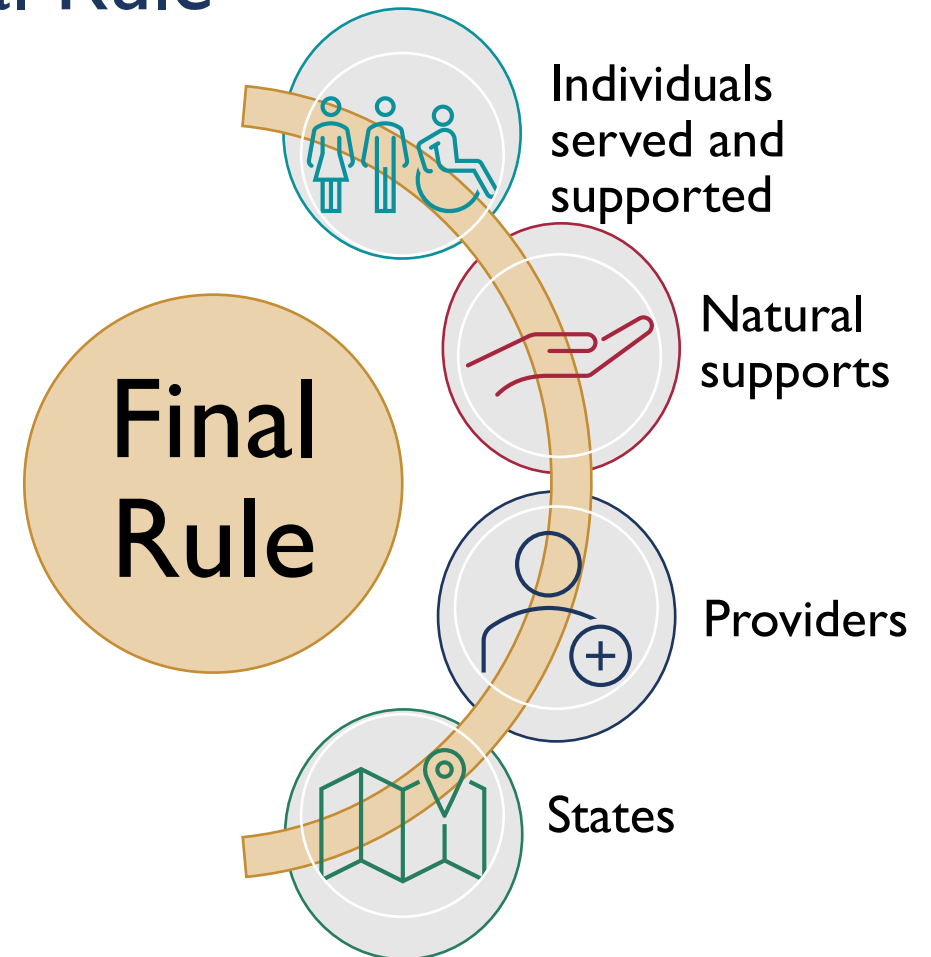
1973	The Rehabilitation Act
1975	Education for All Handicapped Children Act
1988	Fair Housing Amendments Act
1983	Social Security Act updated with 1915(c)
1990	Americans with Disabilities Act of 1990 (the ADA)
1999	Olmstead Decision
2001	The Individuals with Disabilities Education Act
2005	HCBS becomes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

Introduction to the HCBS Settings Final Rule

Understanding the Rule and Key Concepts

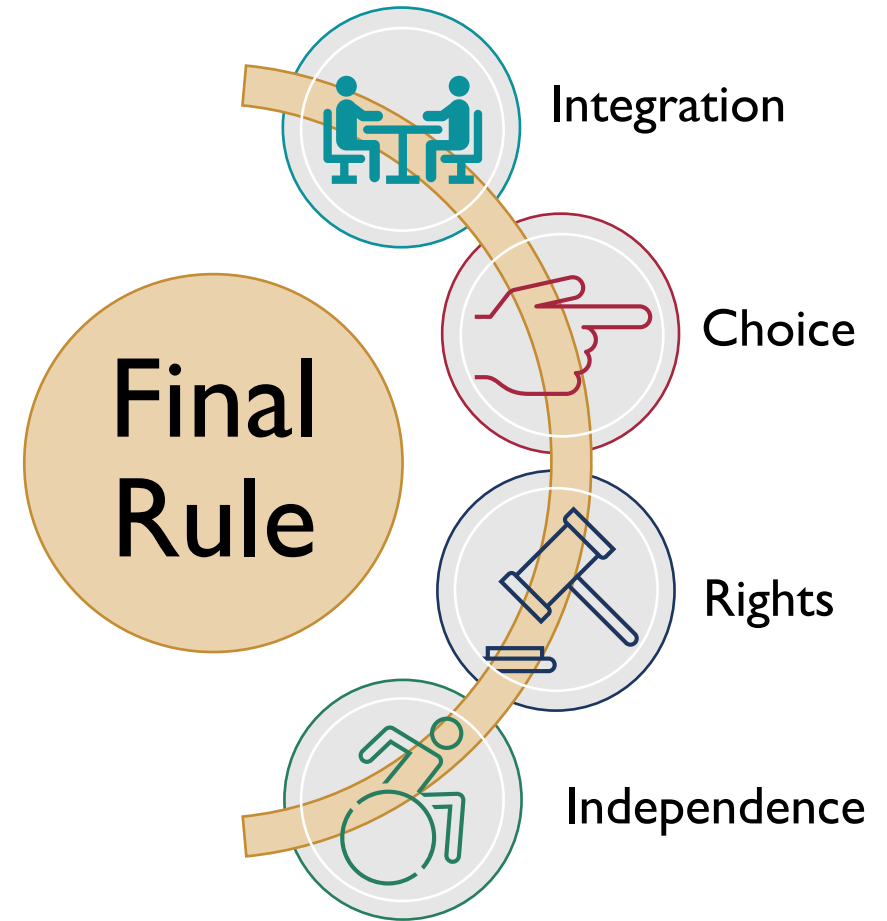
Introduction to HCBS Settings Final Rule

- The HCBS Settings “Final Rule” was published in the Federal Register on January 16, 2014, and became effective March 17, 2014.
- The final rule addresses several sections of Medicaid law under which states may use federal Medicaid funds to pay for HCBS.
- Designed to enhance the quality of HCBS, provide additional protections, and ensure full access to the benefits of community living.



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.



An Exploration of Key Concepts

Setting- a physical location (such as a house or day habilitation center); group of people (like an employment enclave/small group supported employment group).

Remediation, modification, mitigation, or corrective action- describes a change that occurs or needs to occur to comply

Presumptively institutional- the setting is presumed to have institutional setting characteristics.

- Further assessment, remediation, and potentially heightened scrutiny review are needed

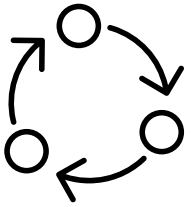
Heightened scrutiny- means the setting requires a closer look or further assessment from CMS.

Contains 3 categories for review:

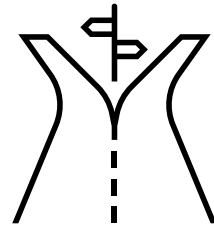
- Category 1: Located in a building that is also a publicly or privately operated facility providing inpatient treatment.
- Category 2: In a building on the grounds of, or immediately adjacent to a public institution.
- Category 3: Any other setting that has the effect of isolation for those receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS because the setting:
 - Is physically located separate and apart from the broader community
 - Limits individuals' opportunities for interaction in and with the broader community due to the design or model of service provision.
 - Restricts members' choices to receive services or to engage in activities outside of the setting.

Key Concepts from the HCBS Settings Final Rule

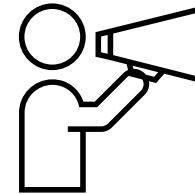
Integration



Choice



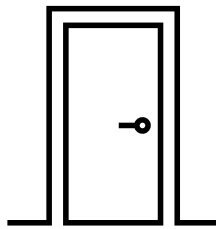
Individual
Rights



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 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...

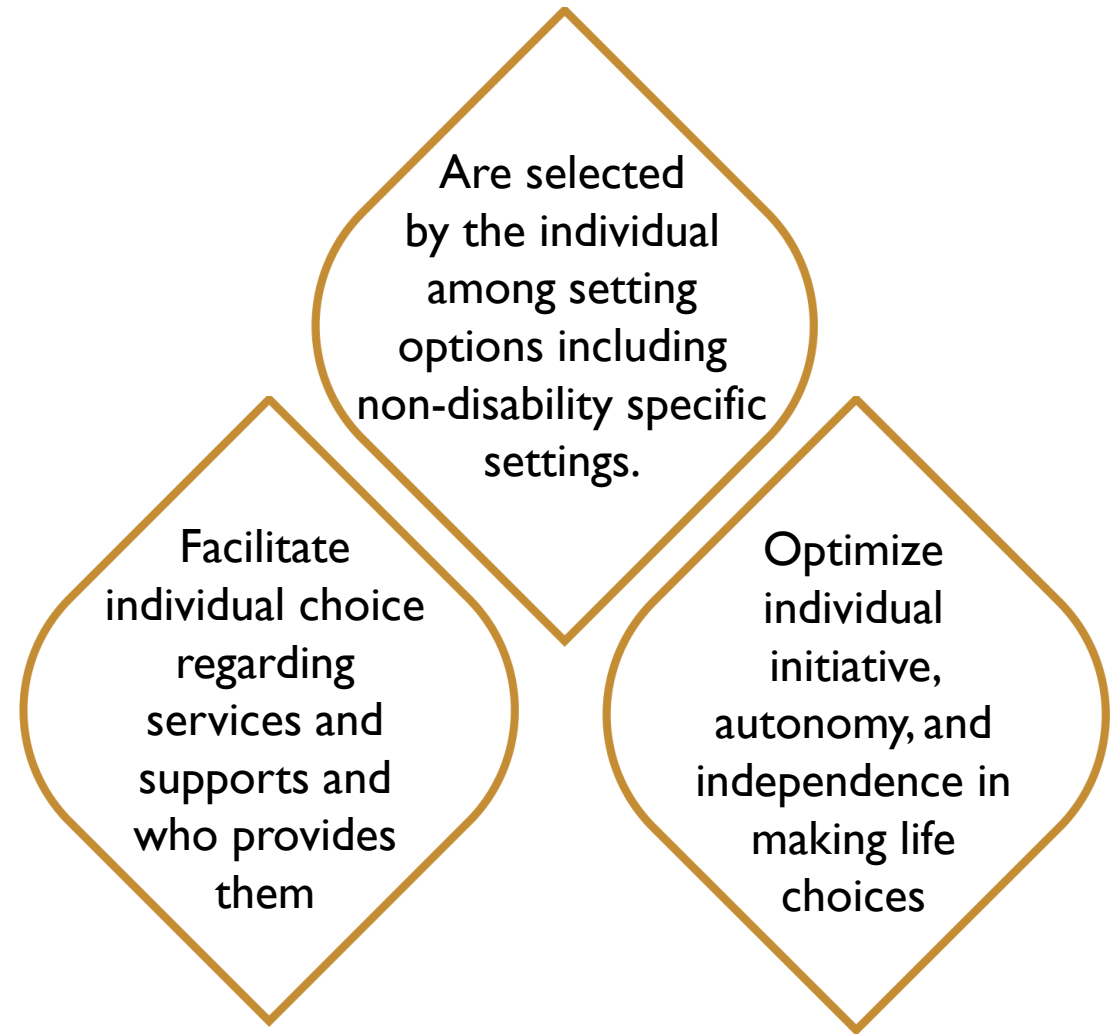
- Is the setting integrated into the greater community, allowing members full access to community resources and amenities such as but not limited to essential and non-essential shopping, recreation, restaurants, religious services, exercise, healthcare, personal grooming services, and opportunities for 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

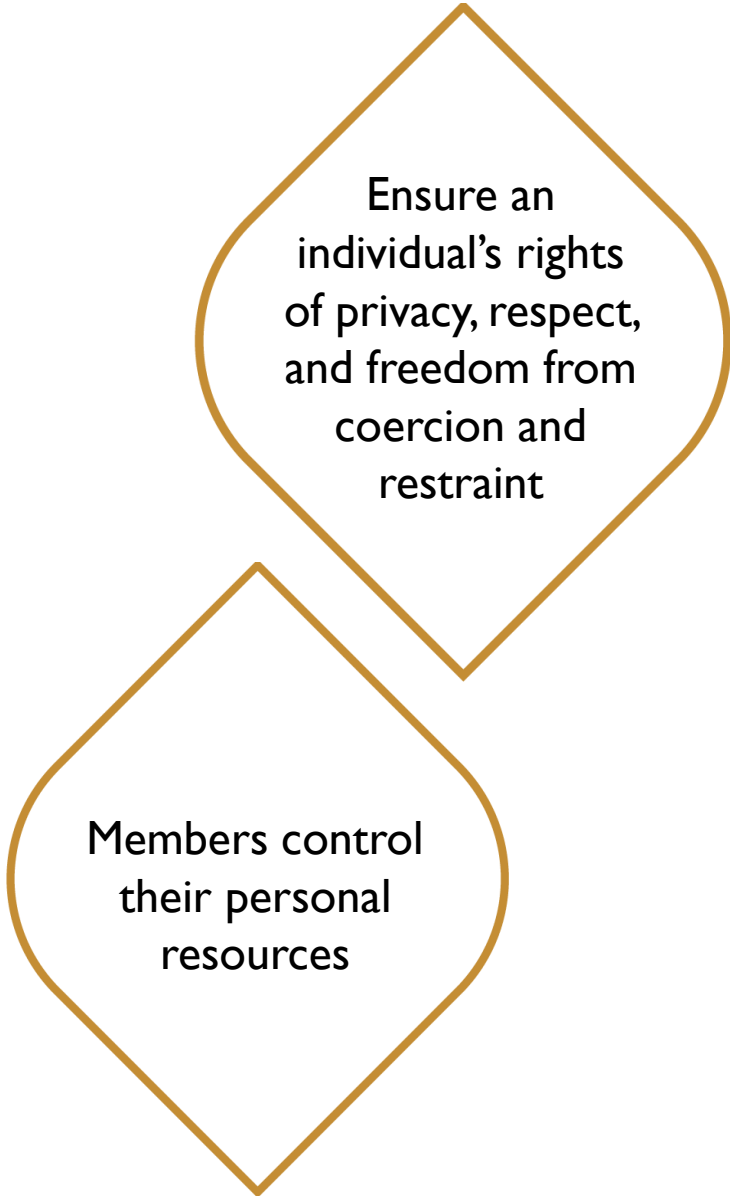
Key Concepts: Choice

- 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




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


Members control their personal resources

Key Concepts: Individual Rights

- Coercion
 - Persuading someone to do something, by threat of some negative consequence
- Restraint
 - An act, measure, or condition that keeps someone or something under control without limits
- Controlling Personal Resources
 - Members have the right to control their own possessions and 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

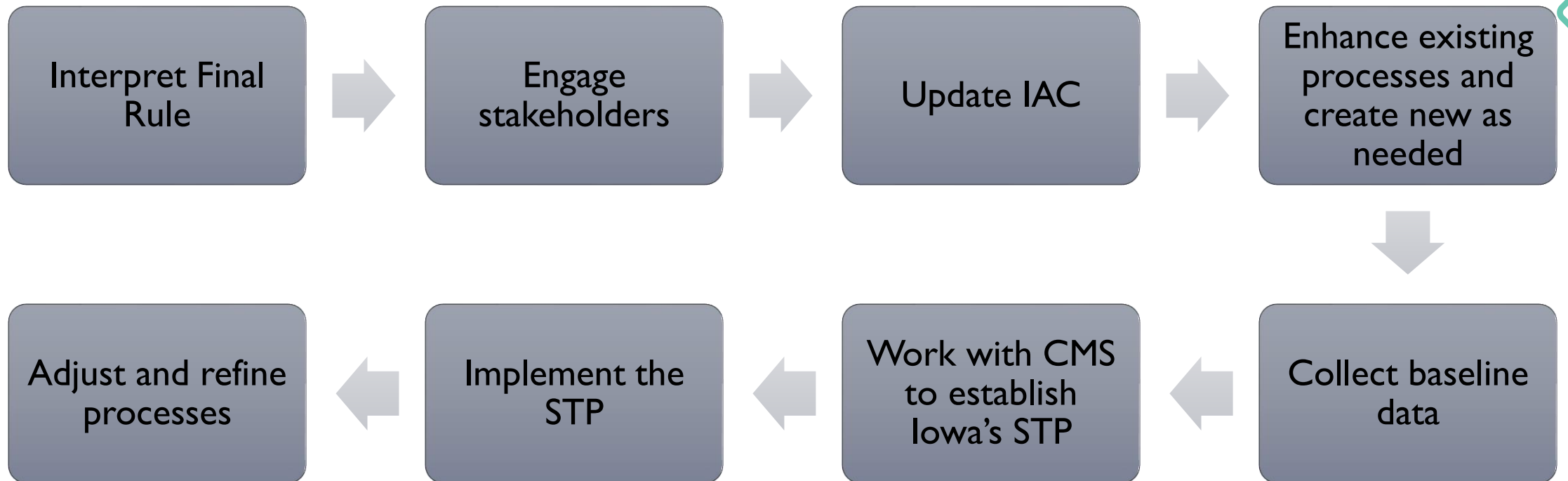
Individual rights are the rights needed by everyone to pursue their lives and goals without interference from others or the government. The rights to life, liberty, and the pursuit of happiness as stated in the United States Declaration of Independence are typical examples of individual rights. Additional 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

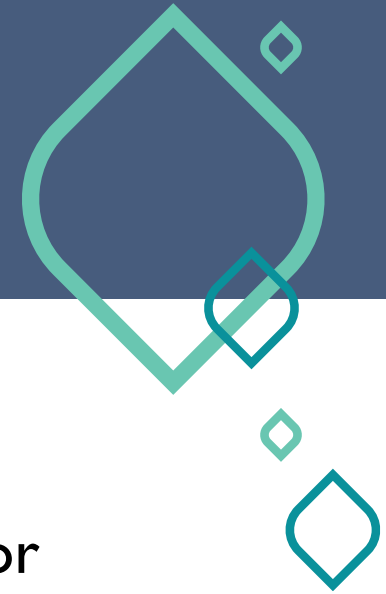
Iowa's Implementation Path

Introduce Statewide Transition Plans (STP) and Iowa's STP journey

Key Steps of Iowa's Implementation Path



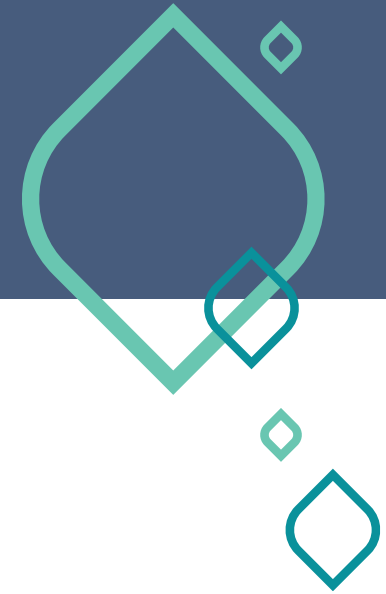
State Transition Plan History and Current



- 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.

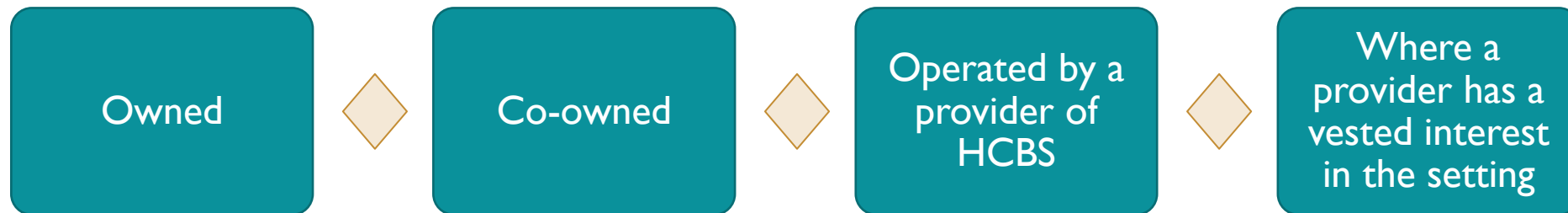
Category 3

- 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 or Controlled Settings*



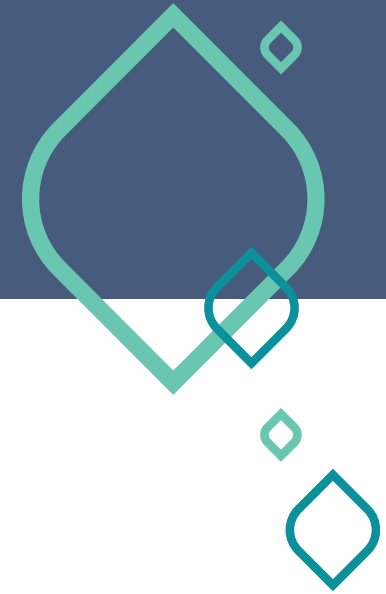
- 77.25(5) c. Residential and nonresidential settings provider owned or controlled
- A residential setting that is provider-owned or controlled is subject to additional requirements.
- A setting is “provider-owned or controlled” when the setting in which the individual resides is a specific physical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

The Role of Case Managers

Explore the important and unique role of case managers in ensuring HCBS members experience a fully integrated life, have opportunities to make informed choices about their lives, and are afforded rights and freedoms.

Person-Centered Planning

What is Person-Centered Planning?

- An approach to service and support planning.
 - A process that is directed by the member.
 - Using this approach, the member's team supports and empowers the member to articulate their desires, needs and preferences, make choices about their life, and engage in decision-making.
 - Facilitates and supports individual responsibility, including taking appropriate risks.
 - These elements are included in a written plan for supporting the member, which is developed based on those considerations.
- May include a representative who was freely chosen by the member, and who may or may not be authorized to make personal or health decisions for the member. The member should be involved to the maximum extent possible, even if the member has a legal representative.
 - The member's team includes formal (paid) and informal (natural) supports.
 - The team supports and empowers the member to identify and access the services they need and to provide support during planning.

CM Responsibilities: Person-Centered Planning

Facilitates the member's team.

- Help the member schedule meetings.
- Advocate for the person-centered process during team meetings.
- Empower the member to lead their meeting.
- Coordinate correspondence and planning that occurs outside of a meeting.

Writes and maintains the person-centered plan document based on the outcomes of person-centered planning process.

- The plan must include specific components.
- Justification of restrictions, ensuring restrictions are based on the member's individual assessed needs.
- Ensuring the PCP is kept up-to-date, is monitored, and made available to all parties playing a part in implementation of the plan.

Ensures the implementation of the person-centered plan.

Restrictive Interventions



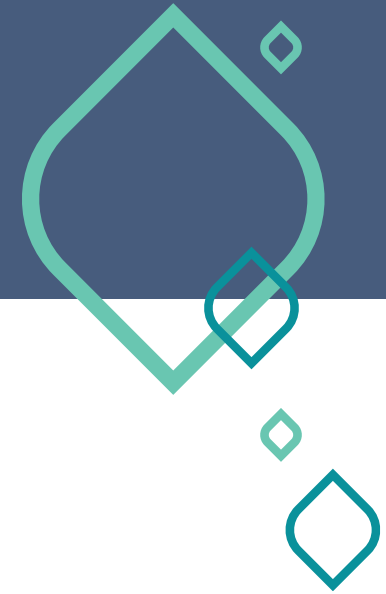
- Any limitations, modifications, and restrictions to HCBS settings standards and basic rights must be **tied to an individual assessed need** and **justified in the person-centered plan.**
- Iowa also has IAC rules governing the use of restrictive interventions including the use of restraints, restrictions, 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**.

Misapplication of Limitations, Modifications, and Restrictions



- Blanket or standard restrictions
- Examples of other 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.

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.

CM Responsibilities: Ongoing Monitoring Through Residential Assessment



Case managers play an important role in assessing and remediating HCBS residential settings through the administration of Residential Assessments.



For residential settings, the Residential Assessment tool was created and has been used to assess all residential settings against HCBS settings standards since 2017.



The Residential Assessment is completed with every HCBS member by their case manager.



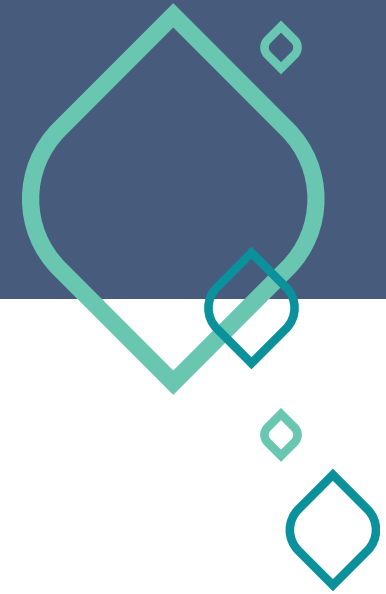
Residential Assessments should be completed at least annually, and within 30 days of admission to an HCBS waiver or Habilitation program or a move in residences.



A new application is in development to replace the PDF tool.

Residential Assessment

- The purpose of the Residential Assessment is to identify whether key HCBS settings requirements are present in the individual homes and lives of each member.
- Residential Assessments are completed by case managers because case managers have direct access to individual members and their homes, have a requirement to see members in their home environments, and have relationships with the members to allow for the best understanding of members' experiences in HCBS residential settings.
- The Residential Assessment data is used to report to CMS compliance in HCBS residential settings.



What to expect with the new Residential Assessment

Web-based form/application rather than a PDF form.

Accessed through IMPA.

More intuitive design.

Removal of free-text fields for key data elements.

Automatically tells you if you must complete the entire assessments based on your responses to the first section.

Auto-tracking of created and completion dates.

Enhanced remediation section.

Requires annual submission and within 30 days of admission to HCBS waiver or Habilitation services or within 30 days of a move.

Must complete one in the new application with every HCBS waiver or Habilitation member between January 1, 2024, and March 31, 2024.

Requires training before administration of the Residential Assessment.

Questions

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**](#)

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 \(nadsa.org\)](#)