



Home and Community - Based Settings (HCBS) and The Settings Final Rule

This training module will provide a basic understanding of Medicaid Home and Community - Based Waiver Services (HCBS) and the HCBS Settings Final Rule in Kansas.

Those taking this training will:

- Acquire a basic understanding of Medicaid.
- Be able to describe differences between institutional and community – based services.
- Be able to name the 7 HCBS waivers in Kansas.
- Learn what the HCBS Settings Final Rule is.
- Become familiar with the qualities required to be in non-residential and residential HCBS settings.

Medicaid provides health coverage to millions of people who qualify for services. It is administered by states, according to federal requirements.

The program is funded jointly by states and the federal government primarily from taxes paid by individuals, employers and corporations.

Medicaid is an income eligible (low to or very low income) medical program.

Medicaid.gov

Many children and adults require supports because of disabling conditions or chronic illnesses.

Medicaid can pay for coverage of these services through institutional care or home and community - based care to those who qualify.

Medicaid.gov

Medicaid programs are known as Kancare in Kansas.

<https://www.kancare.ks.gov/consumers/program-fact-sheets>

Institutional care like services are within facilities that assume total care of the individual who is admitted.

Examples of these types of settings are hospitals, treatment centers, nursing homes, orphanages and psychiatric facilities.

Medicaid.gov

Frequently, institutional care provides a range of services to large groups in a one-size-fits all model. These facilities are often isolated from interacting with the broader community.

Institutions usually limit options for persons to exercise their personal choices, rights, autonomy, privacy, and to participate in inclusive community activities outside of the facility.

Over the years, as one of the responses to these limitations, the federal government introduced home and community-based waivers for Medicaid beneficiaries to receive services in their own home and community, rather than in institutions or other isolating settings.

The Medicaid Home and Community-Based Services waiver program was authorized under §1915(c) of the Social Security Act in 1983.

There are currently 7 HCBS Waiver Programs in Kansas:

1. Autism Waiver
2. Brain Injury Waiver
3. Frail and Elderly Waiver
4. Intellectual/Developmental Disability Waiver
5. Physical Disability Waiver
6. Serious Emotional Disturbance Waiver
7. Technology Assisted Waiver

Visit <https://kdads.ks.gov/> to learn more about each of these HCBS Waivers.

HCBS Settings Final Rule

On January 16, 2014, the Centers for Medicare and Medicaid Services (CMS) published new regulations (rules) to give more protections to HCBS waiver participants. This occurred because individuals were being treated as if they still received services in an institutional setting, instead of a home and/or community setting.

These regulations are often referred to as the “HCBS Settings Final Rule.” The federal regulation for Final Rule is 42 CFR 441.301(c)(4)-(5).

Medicaid.gov

In general terms, the HCBS Settings Final Rule seeks to assure waiver participants receive services in their private home or a home like setting; and are not be treated as if they are in an institution.

It monitors the individual's right to make choices and control decisions in their lives, while also having full access to the greater community to interact with those who do not receive HCBS Medicaid or have a disability.

The HCBS Settings Final Rule Compliance Team evaluates a provider's service delivery to assure the 6 required qualities of the regulation are present for waiver participants where their services are rendered (residential and non-residential settings).

Examples of residential and non-residential settings: private home, assisted living facility, home plus, adult day care, foster care locations, day services and group homes.

Qualities Required of HCBS Settings

42 CFR 441.301(c)(4)-(5)

HCBS Settings Quality #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.

HCBS Settings Quality #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.

HCBS Settings Quality #3:

Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

HCBS Settings Quality #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.

HCBS Settings Quality #5:

Facilitates individual choice regarding services and supports, and who provides them.

HCBS Settings Quality #6:

In a provider-owned or controlled residential setting, the following additional conditions must also be met:

(A) 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.

HCBS Settings Quality #6 continued:

- (B) Each individual has privacy in their sleeping or living unit:
 - (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
 - (2) Individuals sharing units have a choice of roommates in that setting.
 - (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
- (C) Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.
- (D) Individuals are able to have visitors of their choosing at any time.
- (E) The setting is physically accessible to the individual.

If a person's rights, choice, privacy, autonomy, integration and inclusion are being denied:

HCBS Settings Final Rule Compliance Team:

Phone: 1-800-432-3535 or 1-785-296-4983 (TTY: 1-711)

Email: kdads.finalrule@ks.gov

Mail: Kansas Department for Aging and Disability Services

Attn: HCBS Programs – HCBS Compliance Team

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Resources:

Medicaid.gov

42 CFR 441.301(c)(4)-(5).

