

HOME AND COMMUNITY BASED SERVICES (HCBS) SETTINGS FINAL RULE BULLETIN

What is the HCBS Settings Final Rule?

It includes new federal regulations published in the Federal Register on January 16, 2014 that defines the qualities of settings that are eligible to receive HCBS funding. It aims to ensure that individuals receiving long-term services and supports through HCBS programs have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate. The federal regulation is 42 CFR 441.301(c)(4)-(5). Additional regulation information can be found on the CMS website at www.medicaid.gov/hcbs.

HCBS settings include non-residential settings, such as an adult day service center, as well as residential settings, like an assisted living facility. All HCBS settings are required to come into full compliance by the federal deadline of March 17, 2023.

Kansas has seven HCBS waivers that includes two that are widely used in the aging field, which are the Frail and Elderly (FE) program and the Physically Disability (PD) program. Additional state waiver program information can be viewed at [https://kdads.ks.gov/commissions/home-community-based-services-\(hcbs\)](https://kdads.ks.gov/commissions/home-community-based-services-(hcbs)).

What Should You Do if You Provide HCBS Services?

Your agency should have completed a self-assessment by February 29, 2020 of this year or received a presumed compliance status from the Kansas Department for Aging and Disability Services (KDADS). If a self-assessment was submitted by the deadline, you should have received a compliance or remediation status notification from KDADS' HCBS Team and should be actively working on remediation activities if needed, to meet the state deadline of July 1, 2021. The July deadline is to assure time for the state to work with Providers toward compliance to meet the federal deadline of March 17, 2023.

Do You Provide Services in a Setting Attached to, Adjacent to, on the Grounds of a Public/Private Facility that Provides Inpatient Institutional Treatment or Has a Potential to Isolate Individuals?

If so, you are still able to provider HCBS. However, KDADS must ensure that these services are separate from the institutional type services and/or allow individuals served access to the broader community.

CMS has identified 3 Categories that require Heightened Scrutiny reviews:

1. Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
2. Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution; and
3. Any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

Settings that fall into Category 1 and/or 2 will require further assessment by KDADS. The goal of the assessment is to determine the level of compliance the setting is currently at and prepare summaries for all settings who are willing and able to comply with Final Settings Rule requirements by March 17, 2023.

Settings that are Category 3 only can overcome Heightened Scrutiny if all remediation is implemented and the setting is deemed compliant by July 1, 2021. If Category 3 only settings are not deemed compliant by that time, assessments will have to be conducted and summaries submitted to CMS.

For additional information and guidance on Heightened Scrutiny, please visit

<https://communityconnectionsks.org/wp-content/uploads/2020/10/Community-Connections-Heightened-Scrutiny-Virtual-Process-Presentation.pdf>

Have Questions or Need Further Assistance?

Please contact the HCBS Team at hcbs.team@wichita.edu or utilize the chat function on the Community Connections website located at www.communityconnectionsks.org.

The Community Connections Team at KDADS is providing Final Rule Guidance Sessions to assist Providers during the remediation phase. If your group would like to schedule a guidance session, please contact LaTonia Wright, HCBS Project Manager at latonai1.wright@ks.gov.