

Choices for Care: Application of Federal Rules Home-Based Settings Reference Table

<https://www.federalregister.gov/articles/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider>

✓ = Rule applies, NA = Rule Does Not Apply, ☆ = VT Needs to Strengthen Requirements

CMS Settings Requirements	Adult Family Care	Adult Day	Home-based Case Management
1. <u>Commensurate with a persons individualized plan, needs and abilities</u> - The setting is integrated in and supports full access to 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 HCBS.	✓	✓	N/A
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	✓	✓	N/A
3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint	✓	✓	N/A
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	✓	✓	N/A
5. Facilitates individual choice regarding services and supports, <u>and who provides them</u>	✓	✓	N/A
6. (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. (b) For settings in which landlord tenant laws do not apply, the State must ensure that a	✓	N/A	N/A

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lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document <u>provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</u>			
7. Each individual has privacy in their sleeping or living unit	✓	N/A	N/A
8. Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors	✓ ☆	N/A	N/A
9. Individuals sharing units have a choice of roommates in that setting	✓	N/A	N/A
10. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement	✓ ☆	N/A	N/A
11. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time	✓ ☆	✓	N/A
12. Individuals are able to have visitors of their choosing <u>at any time</u>	✓ ☆	✓ ☆	N/A
13. The setting is physically accessible to the individual	✓	✓	N/A
14. Modification to HCBS Settings Requirements	✓ ☆	✓ ☆	N/A

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CMS Person-Centered Planning Requirements	Adult Family Care	Adult Day	Home-Based Case Management
1. Includes people chosen by the individual and led by person or legal rep where possible	✓	✓	✓
2. Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions	✓	✓	✓
3. Is timely, occurs at times and locations of convenience to the individual	✓ ☆	✓	✓ ☆
4. Reflects cultural considerations of the individual and is conducted by providing information in plain language and accessible to individuals with disabilities and persons who are limited English proficient	✓	✓	✓
5. Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants	✓	✓	✓
6. Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the person-centered service plan, <u>except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS.</u> In these cases, the State must <u>devise conflict of interest protections including separation of entity and provider functions within provider entities</u> , which must be approved by CMS. Individuals must be provided with <u>a clear and accessible alternative dispute resolution process</u>	✓ ☆	✓ ☆	✓ ☆
7. Offers informed choices to the individual regarding the services and supports they receive and from whom	✓	✓	✓
8. Includes a method for the individual to request updates to the plan as needed	✓	✓	✓
9. Records the alternative home- and community-based settings that were considered by the individual	✓	N/A	✓

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CMS Person-Centered Planning Requirements	Adult Family Care	Adult Day	Home-Based Case Management
10. Reflect that the setting in which the individual resides is chosen by the individual.	✓ ☆	✓	✓ ☆
11. Reflect the individual's strengths and preferences	✓	✓	✓
12. Reflect needs identified through functional assessments	✓	✓	✓
13. Include individually identified goals and desired outcomes	✓	✓	✓
14. Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports	✓	✓	✓
15. Reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies when needed.	✓	✓	✓
16. Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her (written in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient)	✓	✓	✓
17. Identify the individual and/or entity responsible for monitoring the plan	✓	✓	✓
18. Be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation	✓	✓	✓
19. Be distributed to the individual and other people involved in the plan	✓	✓	✓
20. Include those services, the purpose or control of which the individual elects to self-direct	✓	✓	✓
21. Prevent the provision of unnecessary or inappropriate services and supports	✓	✓	✓
22. The person-centered service plan must be reviewed, and revised upon reassessment, at least every 12 months, when the individual's circumstances or needs change significantly, or	✓	✓	✓

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CMS Person-Centered Planning Requirements	Adult Family Care	Adult Day	Home-Based Case Management
at the request of the individual			
23. Modifications to the Person-Centered Plan	✓ ⚡	✓ ⚡	✓ ⚡

NOTE: Per CMS Regulations 42 CFR Section 441:

(2) Home and community-based settings do not include the following:

- (i) A nursing facility.
- (ii) An institution for mental diseases.
- (iii) An intermediate care facility for individuals with intellectual disabilities.
- (iv) A hospital.
- (v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.