

## HOME AND COMMUNITY-BASED SETTINGS (HCBS)

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### APPLICABILITY

This policy applies to all services with the exception of the Community Transition Service during the period an individual resides in an institutional setting.

### PURPOSE

1915(i) supports and services are home and community-based services and must be delivered in HCBS-compliant settings. This policy helps care coordinators and service providers understand what HCBS-compliant settings are to ensure compliance.

### DEFINITIONS

*Care coordinator* – means the professional responsible for plan of care development and coordinating access to needed services.

*Heightened scrutiny* – means a close review of a setting that has institutional qualities to determine if it is a compliant HCBS service setting.

*Home and Community Based Setting (HCBS)* - means a member's private residence or non-residential community location rather than institutions or other isolated settings.

*Initial contact* - means the first call or contact between the member, or anyone assisting with the initial contact on behalf of the member, and the care coordination agency.

*Institution* – settings that include but are not limited to nursing facilities (NF), intermediate care facilities for individuals with intellectual disabilities (ICF/IID), Qualified Residential Treatment Programs (QRTPs), Psychiatric Residential Treatment Facilities (PRTF), IMDs, hospitals, and jails/prisons.

*Non-compliant setting* – means the setting where services are received is not a home and community-based setting.

*Person-centered planning* – means a planning technique emphasizing member preferences, strengths, and choices and opportunity to fully participate in the planning process.

*Plan of care* – means a document that identifies the supports and services provided to a member to address their needs.

*Provider-owned or controlled residential setting* – means a provider owns or controls the place where the member lives and the provider also renders the member's 1915(i) services.

*Remediation* – means the process of correcting a situation.

*Service setting* – means the setting where services are received.

**HOME AND COMMUNITY-BASED SETTING (HCBS) REQUIREMENT**

ND Medicaid must ensure 1915(i) services are delivered in home and community-based settings. This is the HCBS Setting Rule located at [42 CFR 441.710](#).

The HCBS Settings Rule establishes requirements for eligible 1915(i) service settings. It also ensures all members have personal choice and full access to their communities including opportunities to engage in community life, work, attend school in integrated environments, and control their own personal resources.

Service providers must verify service settings are HCBS-compliant prior to service delivery. Services rendered in non-compliant settings cannot be reimbursed.

**SERVICE SETTINGS**

Members should receive home and community-based services in their homes and communities. The service setting is where the service occurs. With the exception of Community Transition Services, the below requirements apply to all 1915(i) service settings.

Home and community-based service setting requirements:

- integrated in and supports member access to the greater community,
- selected by the member from options identified based on the member’s needs and preferences,
- right to privacy, dignity, and respect, and freedom from coercion and restraint,
- optimizes member autonomy and independence in making life choices, not limited to daily activities, physical environment, and who the member interacts with, and
- facilitates member choice regarding services and supports and who provides them.

**There are additional HCBS setting requirements for providers who own or control residential settings where 1915(i) members both live and receive services.**

- the member’s unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the member. The member, at minimum, has the same responsibilities and protections from eviction that tenants have under applicable North Dakota or local landlord/tenant laws,
- if landlord/tenant laws do not apply, a lease, residency agreement, or other form of written agreement must be in place for the member and that agreement or document must provide the member protections which address eviction processes and appeals similar to those provided under North Dakota or local landlord/tenant law.
- the member’s unit or dwelling must have a lockable door with only appropriate staff having keys to the door,

- choice of roommate, if applicable,
- control of their schedules and activities,
- access to food at anytime,
- privacy in sleeping or living unit,
- member can decorate sleeping or living unit,
- visitors are allowed at any time, and
- setting is physically accessible to the member.

NOTE: if any of the above provider-owned or controlled setting conditions are modified, the member's person-centered plan of care (POC) must include the following:

1. A specific and individualized assessed need for the modification.
2. Positive interventions and supports used prior to any modifications to the person-centered service plan.
3. Less intrusive methods of meeting the need that have been tried but did not work.
4. A clear description of the condition that is directly proportionate to the specific assessed need. For example, the member's diagnosis.
5. Regular collection and review of data to measure the ongoing effectiveness of the modification.
6. Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
7. Informed consent of the member.
8. An assurance that interventions and supports will cause no harm to the member.

### **SETTING COMPLIANCE VERIFICATION REQUIREMENTS**

Care coordinators must verify that a member's service settings are HCBS-compliant prior to service delivery. Verification is required within 15 calendar days from the date the member makes initial contact with the care coordination agency.

Verification must occur prior to plan of care development and service authorization submission. If setting non-compliance is discovered after the initial compliance verification, the care coordinator will immediately initiate the appropriate verification for that setting. The appropriate verification depends on what type of setting and is explained in further detail in this policy.

What kind of setting verification is needed depends on the service setting.

### **PLAN OF CARE SELF-ASSESSMENT IS REQUIRED FOR ALL SERVICE SETTINGS**

All settings require the Person-Centered Planning Process Self-Assessment.

The self-assessment is part of the plan of care development process. This assessment helps the care coordinator determine if the member's service setting is HCBS-compliant.

Verification of HCBS settings must be continually assessed by the care coordinator through face-to-face visits, person-centered planning, and plan of care self-assessment process. One way to assess this is to ask the person where they are meeting their service provider.

### Plan of Care Modifications

If modifications are required to any of the requirements outlined in the self-assessment, the HCBS Settings Modifications section of the plan of care must be completed by the care coordinator.

### Timing

The self-assessment is completed initially and at least on an annual basis to capture the member's experiences to ensure on-going compliance.

## **SERVICE SETTINGS WHICH ARE PRESUMED HCBS-COMPLIANT**

It is presumed that if a member receives 1915(i) services at the following locations, they are HCBS-compliant.

- A private home or apartment the member lives in which is rented or owned by the member or their legal guardian
  - Respite homes are included in this category
- Non-residential community settings
  - these could be a public park, library, or at provider's non-residential business location

The above settings are presumed HCBS-compliant. A HCBS Initial Settings Review and site visit are only required if there are concerns about the service setting.

## **SETTINGS WHICH REQUIRE A SITE VISIT AND AN INITIAL HCBS SETTINGS REVIEW FORM TO DETERMINE HCBS COMPLIANCE**

- Provider-owned or controlled residential setting where the member is also receiving services
  - This would be a setting where a member is living with an unrelated caregiver in a provider-owned or controlled residential setting (i.e. sober living/recovery homes, group homes, foster homes, treatment foster homes, transitional living homes).

If services are going to be **rendered** in any of these locations, the member's care coordinator must conduct a site visit and complete the [Initial Settings Review form](#). Results of the initial settings review must show that the provider-owned or controlled residential service setting is HCBS-compliant.

## **RESIDENTIAL SERVICE SETTINGS PRESUMED TO HAVE THE QUALITIES OF AN INSTITUTION**

If a member is going to receive services in any of the following locations, the care coordinator must conduct a [heightened scrutiny review](#) of the service setting. These settings are presumed to have qualities of an institution. 1915(i) services **cannot be**

**rendered in an institutional setting** without successfully identifying and proving remediation that overcomes the presumption that the setting is an institutional setting.

- A setting that is in a building which is also a publicly or privately operated facility that provides inpatient institutional treatment.
- A setting that is in a building on the grounds of, or immediately adjacent to, a public institution.
- Any other setting that has the effect of isolating members from the broader community.

The [heightened scrutiny review form](#) must be completed during an on-site visit. The care coordinator will conduct a review, identify any areas of non-compliance, and implement remediation efforts.

The heightened scrutiny material will be reviewed by the 1915(i) Administrator and HCBS Settings Committee for a compliance determination. If the committee determines a setting compliant, the evidence package will be submitted for public comment for 30 days. After the public comment period, it will be submitted to CMS for a final determination.

### **HCBS SETTINGS COMMITTEE**

The Department's HCBS Settings Committee is comprised of a representative from the Department's Aging Services Division, Developmental Disabilities Division, Medical Services Division, and the State Risk Manager. The heightened scrutiny material is reviewed by the committee for a HCBS compliance determination.

### **REMEDIATING A NON-COMPLIANT SETTING**

If remediation of a setting is possible, the care coordinator will implement remediation efforts with the setting to address any non-compliance, work with the setting to complete timelines for completion, and confirm remediation and compliance. The material will be reviewed by the 1915(i) Administrator for a compliance determination.

### **RESPONSIBILITY TO ENSURE INITIAL & ON-GOING HCBS SETTING COMPLIANCE**

Care coordinator responsibilities:

- Implement person-centered service planning practices and develop plan of care according to regulations, which includes documentation of settings compliance.
- Assess and monitor the physical environment of the member's home and settings where services are received?
- Monitor service satisfaction and service plan implementation.
- Conduct onsite visits and heightened scrutiny reviews as needed.
- Remediate non-compliance issues.
- Develop and implement agency policies and procedures that are aligned with the HCBS Settings Rule.
- Provide initial and annual training on the HCBS Settings Rule to staff who are responsible for service delivery. Training includes review of the following:
  - [HCBS Settings policy](#) 510-08-25

- [HCBS Settings Rule training](#)
- [HCBS Settings Assessment Guide](#)
- [Initial Settings Review form](#)
- [Heightened Scrutiny Visit form](#)

### Service provider responsibilities:

- Collaborate with the care coordinator during person-centered planning process, site visits, remediation efforts as needed, and heightened scrutiny.
- Develop and implement agency policies and procedures that are aligned with the HCBS Settings Rule.
- Provide initial and annual training on the HCBS Settings Rule to staff who are responsible for service delivery. Training requirements are listed above under care coordinator responsibilities.

## REFERENCES

### *Centers for Medicare & Medicaid Services (CMS)*

- [CMS HCBS Toolkit](#)
- [CMS Training Resources](#)

### *Forms*

- [Initial 1915\(i\) HCBS Settings Review form](#)
- [HCBS 1915\(i\) Heightened Scrutiny Visit Form](#)

### *Training*

- [1915\(i\) HCBS Settings Rule Training](#)
- [ND Department of Health and Human Services HCBS Settings Training](#)

### *Other*

- [Adult Residential Services Facility Compliance](#)
- [HCBS Settings Assessment Guide](#)
- [The Council on Quality and Leadership \(CQL\) Toolkit for States](#)

## FAQs

Q: Do you have examples of institutional settings?

A: Yes, see this policy's definition of "institution" for general examples. See the [ND Medicaid Policy for Institutions of Mental Disease \(IMD\)](#) for more information on IMDs. ND Medicaid maintains a list of IMDs [here](#).

Q: What if a member moves into an institution as defined in this policy?

A: The member's 1915(i) eligibility will be suspended. See the [Eligibility](#) policy for more information.