

HCBS Final Rules – Indicators for Compliance



Document Components:

- **Home and Community-Based Settings (HCBS) Federal Final Rule – Setting Requirements:** This includes all of the setting requirements for 1915(c) HCBS residential and non-residential waiver providers, as written in the federal regulation 42 CFR 441.301. HCBS waivers in Kentucky include the following waivers: Acquired Brain Injury (ABI), Acquired Brain Injury – Long Term Care (ABI-LTC), Home and Community Based (HCB), Michelle P. (MPW) and Supports for Community Living (SCL). Some of the requirements only apply to residential settings. For most of the setting requirements, Kentucky is including them in upcoming waiver regulations, but there are four setting requirements that will not be included in state waiver regulations until 2019.
- **Indicators:** The Cabinet for Health and Family Services (CHFS) is seeking your input on indicators of compliance with each of the setting requirements. Please include your responses in each of the ‘Indicators’ boxes – your response can be as long as you want and CHFS encourages you to include all of your thoughts.
- **Information to be Collected:** In addition to providing input on the indicators of compliance, CHFS would like your input on what we should look for in order for the provider to demonstrate compliance with each of the setting requirements. Please include your responses in each of the ‘Information to be Collected’ boxes – your response can be as long as you want and CHFS encourages you to include all of your thoughts.

Example:

The following is an example of two sample indicators and information to be collected to demonstrate that the provider is compliant with the rule.

HCBS Federal Final Rule – Setting Requirements	Indicators	Information to be Collected
Individual Choice: Facilitates individual choice regarding services and supports, and who provides them.	Indicators (EXAMPLE): Individuals at the setting receive services from their preferred direct service provider All individuals in a residential setting do not have the exact same provider for their other services	Information (EXAMPLE): Review the service plan for documentation that the individual had a choice of services and direct service provider Interview the individual to see if s/he had choice of both provider and direct service provider during interviews

Submitting Your Responses:

1. **Email:** Send this document as an attachment to the CMSFinalHCBRule@ky.gov
2. **In-person:** Bring them to the Kentucky HCBS Final Rules Input meeting/webinar on February 10th (1:30 PM) or February 11th (10:00 AM).

Please do not edit the text in ‘HCBS Federal Final Rule – Setting Requirements’ boxes, as this language is taken directly from the federal regulation.

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<p>Integration* : 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.</p> <p><i>*Anticipated effective date in KY regulations: 2019</i></p>	<p>What are the indicators that the setting is integrated in and supports full access of individuals to the greater community?</p> <p>Response:</p>	<p>What should be collected to demonstrate that the setting is integrated and supports full access of individuals to the greater community?</p> <p>Response:</p>
<p>Setting Selection: 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.</p>	<p>What are the indicators that the setting was selected by the individual from among setting options (including non-disability specific settings)?</p> <p>Response:</p>	<p>What should be collected to demonstrate that the individual selected the setting from among setting options (including non-disability specific settings)?</p> <p>Response:</p>
<p>Individual Choice: Facilitates individual choice regarding services and supports, and who provides them.</p>	<p>What are the indicators that the provider facilitates individual choice?</p> <p>Response:</p>	<p>What should be collected to demonstrate that the provider facilitates individual choice?</p> <p>Response:</p>
<p>Individual Autonomy: 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.</p>	<p>What are the indicators that the provider encourages individual initiative/independence in making life choices?</p> <p>Response:</p>	<p>What should be collected to demonstrate that the provider encourages individual initiative/independence?</p> <p>Response:</p>
<p>Schedule Control* : Individuals have the freedom and support to control their own schedules and activities and have access to food at any time. Residential Settings Only</p> <p><i>*Anticipated effective date in KY regulations: 2019</i></p>	<p>What are the indicators that the provider supports the individual having freedom to control their own schedules and activities?</p> <p>Response:</p>	<p>What should be collected to demonstrate that the provider supports the individual having the freedom to control their own schedules and activities?</p> <p>Response:</p>
<p>Physical Accessibility: The setting is physically accessible to the individual. Residential Settings Only</p>	<p>What are the indicators that the residential setting is physically accessible to the individual</p>	<p>What should be collected to demonstrate that the residential setting is physically</p>

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	(beyond ADA compliance)? Response:	accessible to the individual (beyond ADA compliance)? Response:
Visitors: Individuals are able to have visitors of their choosing at any time. <i>Residential Settings Only</i>	What are the indicators that the individual is able to have visitors at any time in his/her residential setting? Response:	What should be collected to demonstrate that the individual is able to have visitors at any time in his/her residential setting? Response:
Choice of Roommates: Individuals sharing units have a choice of roommates in that setting. <i>Residential Settings Only</i>	What are the indicators that the individual sharing a residential setting unit has a choice of roommates in that setting? Response:	What should be collected to demonstrate that individuals sharing units have a choice of roommates in that setting? Response:
Furnishing/Decorating: Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. <i>Residential Settings Only</i>	What are the indicators that the individual has the freedom to furnish and decorate their sleeping or living units? Response:	What should be collected to demonstrate that the individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement? Response:
Locks: Units have entrance doors lockable by the individual with only appropriate staff having keys to doors. <i>Residential Settings Only</i>	What are the indicators that the residential setting unit has entrance doors lockable with only appropriate staff having keys to doors? Response:	What should be collected to demonstrate that the residential setting unit has entrance doors lockable with only appropriate staff having keys to doors? Response:
Privacy: Each individual has privacy in their sleeping or living unit. <i>Residential Settings Only</i>	What are the indicators that the individual has privacy in their sleeping or living unit? Response:	What should be collected to demonstrate that the individual has privacy in their sleeping or living unit? Response:
Privacy, Dignity, and Respect: Ensures an individual's rights of privacy, dignity and respect, and freedom from	What are the indicators that the provider ensures privacy, dignity and respect, and	What should be collected to demonstrate that the provider ensures privacy, dignity

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coercion and restraint.	freedom from coercion and restraint? Response:	and respect, and freedom from coercion and restraint? Response:
Lease* : The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable 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. Residential Settings Only <i>*Anticipated effective date in KY regulations: 2019</i>	What are the indicators that the individual has the same responsibilities and protections from eviction that other non-Medicaid HCBS tenants have? Response:	What should be collected to demonstrate that the individual has the same responsibilities and protections from eviction that other non-Medicaid HCBS tenants have? Response:
Location* : Home and community-based settings do not include the following: <ul style="list-style-type: none"> i. A nursing facility ii. An institution for mental diseases iii. An intermediate care facility for individuals with intellectual disabilities iv. A hospital; or v. <u>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</u> 	<p>What are the indicators that the setting does not have the qualities of an institutional setting? Response:</p> <p>What are the indicators that the setting does not have the effect of isolating individuals receiving Medicaid HCBS from the broader community? Response:</p> <p>What are the indicators that the setting has</p>	<p>What should be collected to demonstrate that the setting does not have the qualities of an institutional setting? Response:</p> <p>What should be collected to demonstrate that the setting does have the effect of isolating individuals receiving Medicaid HCBS from the broader community? Response:</p> <p>What should be collected to demonstrate</p>

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<p><u>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.</u></p> <p><i>*Anticipated effective date in KY regulations: 2019</i></p>	<p>qualities of home and community-based settings? Response:</p>	<p>that the setting has the qualities of home and community-based settings? Response:</p>