



Improving lives THROUGH
supports and services
THAT FOSTER self-determination.

Home and Community Based Services (HCBS)

Webinar for On-Going Compliance

Overview

- 👤 **HCBS Federal Rule**
- 👤 **On-Site Assessments in 2015/2016**
- 👤 **Initial CMS Approval of Statewide Transitional Plan (STP)**
- 👤 **Additional Guidance March 2017**

Federal HCBS Rule

- 📍 Effective March 17, 2014 (42 CFR 441.301)
- 📍 CMS Intent of the Final Rule
 - 📄 “To ensure that individuals receiving services and supports through the Medicaid’s home and community based service (HCBS) programs have full access to benefits of community living and are able to receive services in the most integrated setting”
 - 📄 “designed to improve the quality of services for individuals receiving HCBS”
- 📍 Requires states to submit a transition plan to ensure compliance of the final rule

On-Site HCBS Assessments

Self- Assessments

- Provider
- Waiver Participant

On-Site Assessments 2015/2016

- Identified through Random Sample
- Heightened Scrutiny Mapping

HCBS Statewide Transition Plan (STP) Approval



CMS Initial Approval of STP – March 2017

CMS Review of STP
Remediation
processes at the
state and provider
level.

Assurance that
CMS approves our
proposed process

[https://dmh.mo.gov/
dd/hcbs.html](https://dmh.mo.gov/dd/hcbs.html)

- 📍 Division sent further guidance through Provider Email Blast – March 2017 (<https://dmh.mo.gov/dd/docs/hcbsguidance.pdf>)

DIVISION OF DEVELOPMENTAL DISABILITIES GUIDANCE FOR ACHIEVING HOME AND COMMUNITY BASED SERVICES (HCBS) COMPLIANCE

Division of Developmental Disabilities is working to complete transition plans with providers to come into HCBS compliance. Division of Developmental Disabilities is currently in the phase of gathering systemic evidence of compliance from providers.

Centers for Medicare and Medicaid Services (CMS) has given states until March 17, 2019 to achieve compliance with requirements for home and community-based settings in transition plans for existing programs.

The following information is HCBS requirements from the federal rule along with guidance and examples of acceptable evidence of compliance. Providers must show evidence of how they meet and sustain compliance with the HCBS requirements when the state conducts ongoing assessments. In the near future, the division will be contacting those providers that had individual assessments to further discuss their remediation plans.

On-Going Compliance

- 👤 All HCBS requirements need to be addressed in provider system for on-going monitoring (L&C, PR, TCM TAC, QE)

- 👤 Guidance Review

HCBS Requirement	Guidance	Examples of Acceptable Evidence
<p>The setting is integrated in and supports full access to the greater community and engagement in community life. (42 CFR 441.301(4)(i))</p>	<p>The setting includes opportunities for persons to engage in community life. Individuals have the opportunity to access social and recreational activities in the community. Providers should consider these examples:</p> <ul style="list-style-type: none"> o Documented process for exploring an individual's interests: o What does the individual do for fun? o What hobbies or sports teams do they prefer? o Do they have cultural or religious traditions they want to follow? o Are there local events or clubs that would appeal to this person? o Train staff to encourage individuals to interact with members of the community. o Encourage individuals to attend public events including: social clubs, interest groups, parades or fairs. o Assist individuals in finding events to attend. o Provide space for individuals to have private interactions with a visitor. <p>The setting includes opportunities for individual access to their community. Providers should consider these examples:</p> <ul style="list-style-type: none"> o Teach individuals about their transportation options. o Help individuals plan modifications or accommodations in travel method or routes to ensure safety and access to the community. o Ensure that individuals know how to ask for rides, pay associated fees, schedule transportation. o Rural providers should consider maintaining regular transportation to the nearest town. 	<ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) <ul style="list-style-type: none"> o How will the provider ensure individuals have opportunities for activities in the community? o How will the provider ensure therapies and professional services are accessed in the community? • Transportation Policy (Participant Notification) • Proof of Staff Training • ISP Template (reference section within ISP where included) • Community Integration Policy (Participant Notification)

HCBS Requirement	Guidance	Examples of Acceptable Evidence
<p>The setting provides the opportunity to seek employment and work in competitive integrated settings. (42 CFR 441.301(4)(i))</p>	<p>The setting includes opportunities to seek employment and work in competitive integrated settings.</p> <p>Providers should consider these examples:</p> <ul style="list-style-type: none"> o Talk to individuals about work, where they could work, and identification of their talents, skills, and abilities. o Offer assistance with interviewing, completing resumes, and developing potential jobs for those who express interest. o Help an individual who wants to work find a competitive integrated job in a field they want to work in (also a Support Coordinator function). o Accommodate an individual's transportation, mealtime, medication times or service schedule because of their job. o Provide assistance with on-the-job sites supports. <p>Providers cannot:</p> <ul style="list-style-type: none"> o Restrict or coerce an individual from seeking employment, a certain type of employment, or increasing hours at a job. o Offer unpaid, sub-minimum wage, or non-integrated employment options. <p>For Residential Providers:</p> <p>Providers should consider these examples:</p> <ul style="list-style-type: none"> o Talk to individuals about competitive integrated employment and where they could work. o Support individual efforts with accessing supports from contracted providers with interviewing, completing resumes, and developing potential jobs for those who express interest. o Accommodate an individual's transportation, mealtime, medication times or service schedule because of their job. <p>Providers cannot:</p> <ul style="list-style-type: none"> o Restrict or coerce an individual from seeking employment, a certain type of employment, or increasing hours at a job. 	<ul style="list-style-type: none"> • Employment Policy (Participant Notification) • ISP Template (reference section within ISP where included) • Proof of Staff Training

HCBS Requirement	Guidance	Examples of Acceptable Evidence
<p>The setting supports control of personal resources. (42 CFR 441.301(4)(i))</p>	<p>The setting includes opportunities for persons to control personal resources.</p> <ul style="list-style-type: none"> • Individuals will have control over their personal financial decisions to the extent the conservator, payee or guardian allows. <p>Providers should consider these examples:</p> <ul style="list-style-type: none"> ○ Budgeting ○ Online banking ○ Paying bills ○ Carrying and spending money <ul style="list-style-type: none"> • Individuals should not be restricted on the use of their personal resources by the provider, unless indicated in the ISP and it has gone through Due Process. • Providers will work with the Support Coordinators to help teach Individuals alternate methods of handling money. 	<ul style="list-style-type: none"> • Personal Resource Policy: Participant Notification <ul style="list-style-type: none"> ○ How will the provider ensure individuals rights to: <ul style="list-style-type: none"> ◇ Personal resources ◇ Honor existing payee, conservator, courts orders, or guardian ◇ Personal possessions ○ How will the provider individualize any required control of funds? • ISP Template (reference section within ISP where included) • Proof of Staff Training
<p>The setting supports individuals to receive services in the community to the same degree of access as person's not receiving Medicaid HCB services. (42 CFR 441.301(4)(i))</p>	<p>The setting includes opportunities to receive services in the community to the same degree as person not receiving HCBS.</p> <p>Providers should consider these examples:</p> <ul style="list-style-type: none"> • Individuals have the opportunity to access social and recreational activities in the community. • Medical, Behavioral, and Therapy services should be accessed in the community, as appropriate. • Providers with Support Coordinators should seek community options for resources and services. 	<ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) <ul style="list-style-type: none"> ○ How will the provider ensure individuals have opportunities for community activities? ○ How will the provider ensure therapies and professional services are accessed in the community? ○ How will the provider seek community options for individuals? ○ How will the provider give individuals information about community options? • ISP Template (reference section within ISP where included) • Proof of Staff Training
<p>The setting is selected by the individual from among setting options including non-disability specific settings. (42 CFR 441.301(4)(ii))</p>	<p>The setting is selected by the person from options including non-disability specific settings.</p> <p>Providers should consider these examples:</p> <ul style="list-style-type: none"> • The provider and Support Coordinator should review possible setting options with guardians and individuals. • The individual should choose what options they prefer. <p>The setting optimizes a person's independence in choosing his or her physical environment.</p> <ul style="list-style-type: none"> • Providers with the Support Coordinators should provide the individual the opportunity to change physical location if they want to. • Individuals should be shown different options of physical locations. 	<ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) <ul style="list-style-type: none"> ○ How will the provider with the Support Coordinator ensure the individual knows they can request changes in physical location? ○ How will the provider with the Support Coordinator, show and review different options? ○ How will the provider ensure individual choice and document? ○ Proof of Staff Training ○ ISP Template (reference section within ISP where included)

HCBS Requirement	Guidance	Examples of Acceptable Evidence
<p>The setting options identified for an individual are supported by an assessed need and documented in the person centered service plans based on the individual's needs and preferences. (42 CFR 441.301(4)(ii))</p>	<p>The setting options identified are supported by an assessed need and documented in the ISP based on the individual's needs and preferences.</p> <p>Providers should consider these examples:</p> <ul style="list-style-type: none"> • Ensure the individual's needs and preferences are met. • Ensure the individual knows how to make a service request. • Ensure the individual's requests for services and supports are accommodated as opposed to ignored or denied. <p>If there is modifications:</p> <p>The ISP should indicate modifications (e.g. restriction interventions, restraints, and seclusion) to support the individual.</p> <ul style="list-style-type: none"> o Does documentation note if positive interventions and supports were used prior to any plan modification? o Does documentation note if less intrusive methods of meeting the need were tried initially? o Does documentation note that Due Process was followed? 	<p>Modification Policies must address the following:</p> <ul style="list-style-type: none"> ◊ How will the provider ensure they implement the ISP? ◊ How will the provider document positive interventions and supports being used before the modification? ◊ How will the provider document less intrusive methods used to meet the individual's needs but did not work before implementing the modification? ◊ How will the provider document the description of the condition that is directly proportional to the assessed need, data to support ongoing effectiveness of the intervention, time limits for periodic reviews to determine the ongoing necessity of the modification, informed individual consent, and assurance that the intervention will not cause the individual harm, per the ISP? ◊ How will the provider document implementation of Due Process procedures? ◊ How will the provider determine when staff retraining or disciplinary action is needed for improper use of modifications? <ul style="list-style-type: none"> o The following categories are rights and cannot be restricted without following the process: e.g., Privacy, Food, Visitors, community access, etc. o How will the provider handle modifications if one individual has a restriction and the other individuals do not? o How will the provider ensure that visitor policies do not restrict individuals' rights? • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) <ul style="list-style-type: none"> o How does the provider ensure the individual's needs and preferences are met? o How does the provider ensure the individual receives notification of how to make a service request? o How does the provider ensure the individual receives notification of their right and the procedures for due process? • Evidence of due process review • Proof of Staff Training • ISP Template (reference section within ISP where included)

HCBS Requirement	Guidance	Examples of Acceptable Evidence
<p>The residential setting provided the individuals with the option for a private bedroom. (42 CFR 441.301(4)(ii))</p>	<p>Each person sharing a sleeping or living unit has a choice of roommates. Providers should consider these examples:</p> <ul style="list-style-type: none"> • Ensure individuals are provided a choice of roommate and sleeping arrangements. • Ensure individuals are provided information on how to request a roommate change. 	<ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) • ISP Template (reference section within ISP where included)
<p>The person centered service plan documents the options based on the individual's resources available for room and board. (42 CFR 441.301(4)(ii))</p>	<p>The ISP documents the options based on the participant's resources available for room and board. Providers should consider these examples:</p> <ul style="list-style-type: none"> • The individual's ISP documents the individual's resources such as SSI, housing vouchers and rental assistance options were considered when looking for a place to live. 	<ul style="list-style-type: none"> • ISP Template (reference section within ISP where included)
<p>The setting ensures the individual's rights of dignity and respect. (42 CFR 441.301(4)(iii))</p>	<p>The setting ensures a person's rights of dignity and respect. Providers should consider these examples:</p> <ul style="list-style-type: none"> • Standards for staff to have positive interactions with individuals and in a manner in which the person would like to be addressed. • Standards for staff not to talk to other staff about an individual(s) as if the individual was not present or within earshot of other persons living in the setting. • Provide training to staff to ensure that individuals are groomed as they desire and in a respectful manner. • Provide training to staff to ensure that individuals are dressed in their own clothes appropriate to the time of day and the individual's preferences. • The dining area should afford dignity to the diners. The individuals should not be required to wear bibs or use disposable cutlery, plates and cups. 	<ul style="list-style-type: none"> • ISP Template (reference section within ISP where included) • Proof of Staff Training
<p>The setting ensures freedom from coercion and/or restraint. (42 CFR 441.301(4)(iii))</p>	<p>The setting ensures a person's rights of freedom from coercion and restraint. Providers should consider these examples:</p> <ul style="list-style-type: none"> • Post information regarding filing a complaint in an obvious location and in an understandable format. • The provider and Support Coordinator provide the individual with information regarding who to contact or the process to make an anonymous complaint. • Ensure no types of coercion (intimidation) to compel the individual to do some act against his or her will. 	<ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) <ul style="list-style-type: none"> o How does the provider ensure the individuals are coercion and restraint free? • Proof of Staff Training • ISP Template (reference section within ISP where included)

HCBS Requirement	Guidance	Examples of Acceptable Evidence
<p>The setting optimizes, but does not regiment, individual initiative, autonomy and independence in making life choices. (42 CFR 441.301(4)(iv))</p>	<p>The setting optimizes a person's independence in choosing daily activities. Providers should consider these examples:</p> <ul style="list-style-type: none"> • Providers gather input from individuals on their daily schedules and planning activities. • Individuals give input and feedback on planned/unplanned activities. • Individuals should not be forced to participate • Individuals should not be punished for not participating <p>The person does not have to follow a regimented schedule during services in this setting.</p> <ul style="list-style-type: none"> • A policy and procedure to follow when an individual decides to decline services. • The individual will not be coerced or intimidated into services against their will. <p>Each person has the freedom and right to support and control his/her own schedule and activities.</p> <ul style="list-style-type: none"> • Individuals choose their own schedules. • Providers have a way of gathering input from each individual. 	<ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) <ul style="list-style-type: none"> o How will the provider ensure individual input and feedback on daily schedule? o How will the provider ensure individual will not be forced to participate in activities? o How often will the provider gather individual input? o How do individuals individualize their own schedules? o How do provider gather input from individuals for their schedules? o How do providers train staff to try and accommodate desired changes and choice in activities? • Choice Policy <ul style="list-style-type: none"> o What steps does the provider follow when an individual decides to decline services? o How does the provider train staff to follow the policy? • ISP Template (reference section within ISP where included) • Proof of Staff Training

HCBS Requirement	Guidance	Examples of Acceptable Evidence
<p>The setting optimizes autonomy and independence in making choices regarding with whom the individual interacts. (42 CFR 441.301(4)(iv))</p>	<p>Individuals in this setting interact with members of the community whenever they please. Providers should consider these examples :</p> <ul style="list-style-type: none"> • Training for staff <ul style="list-style-type: none"> o How to teach individuals to communicate and interact with people in the community. o How to support individuals while in the community. • Individuals should drive the choices in events and community activities. <p>The setting optimizes an individual's ability to choose with whom to interact. Providers should consider these examples :</p> <ul style="list-style-type: none"> • Individuals can choose who they want to interact with. • Ensure individuals interact with people of the individual's choosing. • Staff should help individuals make decisions about how to choose who to interact with. • Staff should work with individuals on how to resolve conflicts with others. • Staff should work with individuals on safe use of social media. • Training for staff <ul style="list-style-type: none"> o How to train staff and individuals for conflict resolution. o How to teach individuals to use social media. <p>The setting integrates non-disabled persons who are not paid staff. Providers should consider these examples :</p> <ul style="list-style-type: none"> • Encourage individuals to host friends and families in their home setting. <p>The setting supports full access to the greater community. Providers should consider these examples :</p> <ul style="list-style-type: none"> o Be welcoming to visitors. o Aim to increase the involvement of the general community in activities with individuals. <p>Providers should not:</p> <ul style="list-style-type: none"> o Restrict the right to access the community. o Restrict the right to meet with a visitor. <p>Each person may have visitors at any time. Providers should consider these examples:</p> <ul style="list-style-type: none"> o Encourages friends, family, and community members to visit individuals. o Provide space for individuals to have private interactions with a visitor. o Does not restrict individuals' rights. o Encourages individuals living together to agree on any visitor guidelines. (i.e. individuals agree on visiting hours.) 	<ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) <ul style="list-style-type: none"> o Does this include a visitor policy? o Does the policy cover how the provider will accommodate multiple individual requests? o What will an individual do if they do not want to attend an event, but other individuals do? • Proof of staff training

HCBS Requirement	Guidance	Examples of Acceptable Evidence
<p>The setting facilitates choice regarding services and supports and who provides them. (42 CFR 441.301(4)(v))</p>	<p>The setting facilitates person choice regarding services and supports. Providers should consider these examples:</p> <ul style="list-style-type: none"> • The provider and the Support Coordinator work in collaboration to gather individual and guardian input on services and supports. • The individual knows how and to whom to make a request for new services, supports and/or provider. <p>The setting offers individual choice regarding who provides services.</p> <ul style="list-style-type: none"> • Individuals will have input on which staff work with them. 	<ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) <ul style="list-style-type: none"> o How will the provider with the Support Coordinator gather individual and guardian input on services and supports they want? o How often does this happen? o How will the provider gather input from individual on what staff they want to work with? o How often will the provider gather input from the individual on what staff they want to work with? o How will the provider accommodate individuals requests? • ISP Template (reference section within ISP where included)
<p>The setting ensures the individual's rights of privacy. (42 CFR 441.301(4)(iii))</p>	<p>The setting ensures a person's rights of privacy. Providers should consider these examples:</p> <ul style="list-style-type: none"> • Staff training: <ul style="list-style-type: none"> o Respecting an individual's privacy. o Appropriate assistance for individuals who need help with activities of daily living (ADL). • Cameras or similar monitoring devices should only be used if: <ul style="list-style-type: none"> o Medically or functionally necessary; AND o Approved by the guardian and the Division; AND o Reviewed by the Division's Due Process Committee. • Confidential information is shared on an as needed basis only. • Information about individuals is kept private including schedules, medications, restricted diet, etc. and should not be posted in a general open area for all to view. 	<ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) • Proof of staff training <ul style="list-style-type: none"> o How will the provider train staff on what information should be shared with potential employers? o How will the provider train staff on respecting an individual privacy and on assisting of ADLs?

HCBS Requirement	Guidance	Examples of Acceptable Evidence
Provider-Owned and Controlled		
<p>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 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; (42 CFR 441.301(4)(vi)(A))</p>	<p>Each person in the residential setting has a signed lease or written residency agreement. Providers should consider these examples:</p> <ul style="list-style-type: none"> • Providers must ensure a lease (or written agreement) is in place for each individual. <ul style="list-style-type: none"> ◦ The lease must give the same eviction protections as a lease for the general public. • Providers must ensure the lease (or written agreement) is provided in a format the individual is able to understand and/or assisted in reading and understanding the terms of the agreement. • Does documentation note that Due Process was followed? 	<ul style="list-style-type: none"> • Lease agreement or written residency agreement.

HCBS Requirement	Guidance	Examples of Acceptable Evidence
Provider-Owned and Controlled		
<p>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; and (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. (42 CFR 441.301(4)(vi)(B))</p>	<p>The individual must be able to lock the entrance door to their unit or dwelling, the individual has a key to the door, and only appropriate staff have keys. Providers should consider these examples:</p> <ul style="list-style-type: none"> • The intent is that individuals have privacy in their homes. • If an individual requests a lock on their bedroom door to ensure privacy, the provider will accommodate this preference or need. If the provider does not accommodate, due process would need to be followed. • Keys can be key pads and other types of key related mechanisms as long as the individual has knowledge and the ability to use the mechanisms. <p>The setting optimizes a person's independence in customizing his/her physical environment including furnishing and decorating. Providers should consider these examples:</p> <ul style="list-style-type: none"> • Individuals should have the opportunity to decorate their setting. • Providers should have a method for getting individuals input on Decoration preferences. <p>Each person has privacy in their sleeping or living unit. Providers should consider these examples:</p> <ul style="list-style-type: none"> • Support Coordinators and providers should work together to ensure individuals are given the option of having their own bedroom. <ul style="list-style-type: none"> ◦ Choices offered should be documented in the plan of care. ◦ If individuals share a bedroom, individuals should be afforded privacy as requested or needed. • Provider staff should be trained to knock before entering a bedroom or bathroom. • Monitoring (i.e., door alarms, video and audio monitoring, GPS tracking) should only occur if medically or functionally necessary and follow the process for restricting a right. • Staff should provide assistance in private, when needed. • Schedules of individuals for PT, OT, medications, restricted diet, etc. should not be posted in a general open area for all to view. • Does documentation note that Due Process was followed? 	<ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) <ul style="list-style-type: none"> ◦ How does the provider provide keys to locks on bedroom doors and entrances (Front door/back door)? • Proof of staff training <ul style="list-style-type: none"> ◦ How does the provider ensure staff is trained in providing individuals privacy based on their individual preferences? (i.e. knocking and receiving permission prior to entering an individual's bedroom, bathroom, or living space) ◦ How does the provider ensure staff is trained on the privacy of health information? ◦ How does the provider ensure staff is trained on the privacy of individuals' schedules for PT, OT, medications, restricted diet, etc.? • ISP Template (reference section within ISP where included)

HCBS Requirement	Guidance	Examples of Acceptable Evidence
Provider-Owned and Controlled		
<p>Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time. (42 CFR 441.301(4)(vi)(C))</p>	<p>Each person has the freedom and right to support and control his/her own schedule and activities. Providers should consider these examples:</p> <ul style="list-style-type: none"> • Ensure activities are individualized. • Ensure individuals can arrange their daily schedules and vary from one housemate to another. <p>Each person has the freedom and right to access food at any time. Providers should consider these examples:</p> <ul style="list-style-type: none"> • Ensure the individuals have access to the food they've purchased. • Ensure individuals' mealtimes are personalized. • Ensure individuals have the option to cook their own meals and receive support to do so. • Does documentation note that Due Process was followed? 	<ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) • Proof of staff training <ul style="list-style-type: none"> ◦ How does the provider ensure staff is trained on individuals' rights? • ISP Template (reference section within ISP where included)
<p>Individuals are able to have visitors of their choosing at any time. (42 CFR 441.301(4)(vi)(D))</p>	<p>Each individual may have visitors at any time. Providers should consider these examples:</p> <ul style="list-style-type: none"> • Encourages friends, family, and community members to visit individuals. • Provide space for individuals to have private interactions with a visitor. • Does not restrict individuals' rights. • Encourages individuals living together to agree on any visitor guidelines. (i.e. individuals agree on visiting hours.) • Does documentation note that Due Process was followed? 	<ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) <ul style="list-style-type: none"> ◦ Does this include a visitor policy? ◦ Does the policy cover how the provider will accommodate multiple individual requests? • Proof of staff training
<p>The setting is physically accessible to the individual. (42 CFR 441.301(4)(vi)(E))</p>	<p>The setting is physically accessible to each person in it. Providers should consider these examples:</p> <ul style="list-style-type: none"> • Ensure the setting is accessible to the individual's mobility device and needs. • Ensure bathrooms and breakrooms are physically accessible. • Does documentation note that Due Process was followed? 	<ul style="list-style-type: none"> • As applicable, the provider will show evidence of standard operating practices that all settings will be physically accessible to the individual. • Participant Notification (e.g. participant handbook, policies, procedures)

HCBS Requirement	Guidance	Examples of Acceptable Evidence
Provider-Owned and Controlled		
<p>Any modification of the additional conditions, under § 441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. (42 CFR 441.301(4)(vi)(F))</p>	<p>The setting options identified are supported by an assessed need and documented in the ISP based on the individual's needs and preferences.</p> <p>Providers should consider these examples:</p> <ul style="list-style-type: none"> • Ensure the individual's needs and preferences are met. • Ensure the individual knows how to make a service request. • Ensure the individual's requests for services and supports are accommodated as opposed to ignored or denied. <p>Does the ISP indicate modifications (e.g. restriction interventions, restraints, and seclusion) to support the individual.</p> <ul style="list-style-type: none"> o Does documentation note if positive interventions and supports were used prior to any plan modification? o Does documentation note if less intrusive methods of meeting the need were tried initially? o Does the ISP include a description of the condition that is directly proportional to the assessed need, data to support ongoing effectiveness of the intervention, time limits for periodic reviews to determine the ongoing necessity of the modification, informed individual consent, and assurance that the intervention will not cause the individual harm? o Does documentation note that Due Process was followed? 	<ul style="list-style-type: none"> • Modification Policies must address the following: <ul style="list-style-type: none"> ◊ How will the provider ensure they implement the ISP? ◊ How will the provider document positive interventions and supports being used before the modification? ◊ How will the provider document less intrusive methods used to meet the individual's needs but did not work before implementing the modification? ◊ How will the provider document the description of the condition that is directly proportional to the assessed need, data to support ongoing effectiveness of the intervention, time limits for periodic reviews to determine the ongoing necessity of the modification, informed individual consent, and assurance that the intervention will not cause the individual harm, per the ISP? ◊ How will the provider document implementation of Due Process procedures? ◊ How will the provider determine when staff retraining or disciplinary action is needed for improper use of modifications ? o The following categories are rights and cannot be restricted without following the process: e.g., Privacy, Food, Visitors, community access, etc. o How will the provider handle modifications if one individual has a restriction and the other individuals do not? o How will the provider ensure that visitor policies do not restrict individuals' rights? <ul style="list-style-type: none"> • Participant Notification (e.g. participant handbook, policies, procedures, operating practices) <ul style="list-style-type: none"> o How does the provider ensure the individual's needs and preferences are met? o How does the provider ensure the individual receives notification of how to make a service request? o How does the provider ensure the individual receives notification of their right and the procedures for due process? • Proof of Staff Training • ISP Template (reference section within ISP where included)

HCBS Requirement	Guidance	Examples of Acceptable Evidence
Heightened Scrutiny		
<p>The setting is located in or adjacent to a publicly or privately owned-owned facility that provides inpatient treatment. (42 CFR 441.301(5)(v))</p>	<p>Settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.</p>	<ul style="list-style-type: none"> • Evidence of how a setting overcomes its presumed institutional qualities should focus on the qualities of the setting and how it is integrated in and supports full access of individuals receiving home and community-based services into the greater community, not on the aspects and/or severity of the disabilities of the individuals served in the setting. • Licensure requirements or other state regulations for the setting that clearly distinguish it from institutional licensure or regulations, to demonstrate how the setting is integrated in and supports full access to the greater community. • Residential housing or zoning requirements that demonstrate how the setting is integrated in and supports full access to the greater community. • Procedures in place by the setting that indicate support for activities in the greater community according to the individual's preferences and interests, staff training materials that speak of the need to support individuals' chosen activities, and a discussion of how schedules are varied according to the typical flow of the local community (appropriate for weather, holidays, sports seasons, faith-based observation, cultural celebrations, employment, etc.).

HCBS Requirement	Guidance	Examples of Acceptable Evidence
Heightened Scrutiny		
<p>The setting is on the grounds of, or immediately adjacent to, public institution. (42 CFR 441.301(5)(v))</p>	<p>Settings in a building on the grounds of, or immediately adjacent to, a public institution (public institution is a facility that is owned or operated by a government such as city, county, or state).</p>	<ul style="list-style-type: none"> • Evidence of how a setting overcomes its presumed institutional qualities should focus on the qualities of the setting and how it is integrated in and supports full access of individuals receiving home and community-based services into the greater community, not on the aspects and/or severity of the disabilities of the individuals served in the setting. • Licensure requirements or other state regulations for the setting that clearly distinguish it from institutional licensure or regulations, to demonstrate how the setting is integrated in and supports full access to the greater community. • Residential housing or zoning requirements that demonstrate how the setting is integrated in and supports full access to the greater community. • Procedures in place by the setting that indicate support for activities in the greater community according to the individual's preferences and interests, staff training materials that speak of the need to support individuals' chosen activities, and a discussion of how schedules are varied according to the typical flow of the local community (appropriate for weather, holidays, sports seasons, faith-based observation, cultural celebrations, employment, etc.).
<p>The setting has the effect of isolating individuals receiving Medicaid-funded HCBS from the broader community of individuals not receiving Medicaid-funded HCBS. (42 CFR 441.301(5)(v))</p>	<p>The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities.</p> <ul style="list-style-type: none"> ○ People in the setting have limited, if any, interaction with the broader community. ○ Settings that use/authorize interventions or restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion). ○ Multiple settings co-located and operationally related (i.e., operated and controlled by the same provider) that congregate a large number of people with disabilities together and provide for significant shared programming and staff, such that people's ability to interact with the broader community is limited. 	<ul style="list-style-type: none"> • Evidence of how a setting overcomes its presumed institutional qualities should focus on the qualities of the setting and how it is integrated in and supports full access of individuals receiving home and community-based services into the greater community, not on the aspects and/or severity of the disabilities of the individuals served in the setting. • Licensure requirements or other state regulations for the setting that clearly distinguish it from institutional licensure or regulations, to demonstrate how the setting is integrated in and supports full access to the greater community. • Residential housing or zoning requirements that demonstrate how the setting is integrated in and supports full access to the greater community. • Procedures in place by the setting that indicate support for activities in the greater community according to the individual's preferences and interests, staff training materials that speak of the need to support individuals'

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		<p>chosen activities, and a discussion of how schedules are varied according to the typical flow of the local community (appropriate for weather, holidays, sports seasons, faith-based observation, cultural celebrations, employment, etc.).</p>
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If you have additional questions for the HCBS team, there is a HCBS mailbox available at DMH.MHHCBS@dmh.mo.gov.

Website Links

- 📍 CMS Guidance “House Rules” and Heightened Scrutiny Settings:
<https://www.medicaid.gov/medicaid/hcbs/downloads/faq-planned-construction.pdf>
- 📍 Department of Mental Health Office of
Constituent Services: <https://dmh.mo.gov/constituentservices/>
- 📍 Missouri Attorney General Landlord Tenant Law Brochure:
<https://www.ago.mo.gov/docs/default-source/publications/landlord-tenantlaw.pdf?sfvrsn=4>



Improving lives THROUGH
supports and services
THAT FOSTER self-determination.

Thank You