



NJ Statewide Transition Plan “At a Glance”

What is the Home and Community Based Services Final Settings Rule?

The HCBS Final Settings Rule is a federal policy that was announced by the Centers for Medicare and Medicaid Services (CMS) in January 2014. The Final Rule dictates **where** and **how** Medicaid home and community based services (HCBS) are provided and ensures that people receiving services and supports through Medicaid’s HCBS programs have full access to the benefits of community living and are able to receive services in the most integrated setting.

The rule also supports enhanced quality in HCBS settings and adds protections for individuals receiving services. Every state is required to submit a Statewide Transition Plan to CMS that identifies how the state will come into compliance with the Final Rule. The deadline for HCBS compliance is March 17, 2023. For more information on the HCBS Final Rule please visit <https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-services-final-regulation/index.html>.

Who does the HCBS Final Settings Rule apply to?

The HCBS Final Settings Rule applies to **ALL** individuals who receive Medicaid HCBS, including those enrolled in the Community Care Program (CCP) or the Supports Program (SP). The Final Settings Rule applies to both **provider managed residential and day services settings**. It is important to note some settings are presumed to already be in compliance with the rule while others are presumed not to be in compliance as seen in the chart below.

Presumed Compliant	Presumed Non-Compliant	Settings Never HCBS Compliant
<ul style="list-style-type: none"> ✓ Person is living in a privately owned or rented home or apartment with family members, friends or roommates; and ✓ The home is integrated in typical community neighborhoods where people not receiving HCBS reside; and ✓ The home is <u>not</u> owned by an unrelated caregiver who is paid for providing HCBS to the person. ✓ Additionally, individuals who hire self-directed employees or direct support professionals to provide services in their own homes are presumed to already be in compliance with the settings rule. 	<ul style="list-style-type: none"> ⊗ Settings in privately owned facilities that provide inpatient treatment. ⊗ Settings on the ground of, or adjacent to, a public institution. ⊗ Settings that isolate individuals from the greater community not receiving HCBS services. 	<ul style="list-style-type: none"> ⊗ Nursing facilities. ⊗ Institutions for mental health. Intermediate care facilities for individuals with intellectual/developmental disabilities. ⊗ A hospital providing long-term care services.

What does the HCBS Settings Rule require?

The HCBS Final Settings Rule applies to all settings that receive HCBS funding and requires that:

- ✓ The setting is integrated in the greater community;
- ✓ The setting supports the individual's full access to the greater community, including opportunities to seek employment, work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community;
- ✓ The setting is selected by the individual from among different setting options, including non-disability specific options and an option for a private unit in a residential setting;
- ✓ The setting ensures an individual's rights to privacy, dignity, respect, and freedom from coercion and restraint;
- ✓ The setting optimizes individual initiative, autonomy, and independence in making life choices, including in daily activities, physical environment, and personal associations; and
- ✓ The setting facilitates individual choice and control over their own lives as those not receiving Medicaid HCBS funding.

In addition to the above requirements, individuals who reside in provider-owned or controlled settings must:

- ✓ Have a lease or other legally enforceable agreement providing similar protections;
- ✓ Have privacy in their unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit;
- ✓ Have the right to control their own resources and schedule, including access to food at any time;
- ✓ Have the right to visitors at any time; and
- ✓ Have a setting that is physically accessible.

What needs to be done to comply with the Settings Rule?

Settings that receive HCBS funding must be compliant with the rule by March 17, 2023. This means that providers not currently compliant must change how they operate to make sure that the people they support have the right to privacy, autonomy in making life choices, person centered planning, and full access to the greater community. Some providers may need to change policies, install door locks, update leases or residency agreements, and/or participate in planning team meetings to make sure that an individual's services are person centered.

Each State is required to submit a plan to CMS that outlines how the state will come into compliance with the Settings Rule and how it will ensure on-going compliance. New Jersey submitted an initial plan in 2015 and has since engaged in a number of activities to support compliance. Some of these activities are:

- Person-Centered Planning,
- Separation of housing and services,
- Conversion to fee-for-service,
- Providing opportunity for housing subsidies,
- Increasing service options to include self-direction.

The State submitted an updated plan to CMS that addressed questions from a previous submission and received initial approval in February of 2022. Since receiving [initial approval](#), the State also posted the Heightened Scrutiny process, assessment tools, and settings identified for heightened scrutiny for [public comment](#) in July 2022. The state concurrently completed an updated review of the sites through provider self-assessment verification activities to make sure that meaningful remediation efforts could occur where needed.

How does this rule consider the needs of all beneficiaries?

Person-Centered Planning is at the forefront of the HCBS Settings rule. Services, including both residential and day services, community activities, employment and other opportunities must always be based on the individual's unique person centered needs, preferences, and hopes/dreams. The Division recognizes that people have different needs, and that individuals and their planning teams are the experts on what those needs and preferences are.

If a condition of the settings rule needs to be modified in a provider managed setting (residential and/or day) based on an individual's person centered needs, then the person-centered planning process must be followed, documenting the modification in the individual's person centered plan.

Why should the public review the State's plan? What has changed?

Public feedback is important to make sure that the State is planning and making changes in a way that best supports the people who receive HCBS. Following receipt of public feedback, the state reviews the plan and makes changes where needed.

- ✓ In the original release, day program participants were required to spend the majority of their time engaging in activities in the community in order to interact with people who are not HCBS recipients, as well as those who are.
 - What Has Changed?
 - The Division has adjusted its approach recognizing that community integration for one individual may look different from that of another individual. As a result, there is no longer a standard requiring all day program participants to spend the majority of their time in the community. Instead, time in the community is now based on what is best for the participant based on their needs, interests, strengths, and hopes/dreams.
- ✓ In the original release, housing options for new sites were inflexible. There were density limits on new programs as well as a prohibition on certain housing models, including small campus based services and farmsteads.
 - What Has Changed?
 - All settings, existing and new, must still comply with the final rule. However, the size of the site, in and of itself, will no longer be the sole determinant of compliance with the rule. To support this, the previously proposed "State Density Review" has been replaced with a "Community Integration Review". The "Community Integration Review" looks at a variety of factors – including individual experiences – in determining whether the individual is integrated into the community based on their needs, interests, strengths, and hopes/dreams.

More DDD specific information on the Adaptations to the Statewide Transition Plan can be found on Page 17 of [Addendum #2](#).

Information related to regulatory changes may be found in [Appendix A - Systemic Assessment/Remediation Grid](#), dated January 6, 2022.

The most recently updated [Addendum #3](#) addresses feedback raised by CMS and discusses the outcome of the validation activities and plans for on-going monitoring.

How do I provide feedback?

Feedback is requested on the Statewide Transition Plan in its entirety. All feedback on the transition plan should be directed to the Division of Medical Assistance and Health Services HCBS help desk at DMAHS.HCBS-Settings-Rule@dhs.nj.gov.