

Innovation in Housing: Considerations and Requirements When Developing HCBS Compliant Settings

The Division of Developmental Disabilities (Division) values and supports innovative ideas for housing and services. This publication will explore Division policy, the Home and Community Based Services Final Settings Rule, and key considerations and requirements needed to support innovative, person-centered housing development.

I. What is the Home and Community Based Services (HCBS) 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 Settings 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.

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). Some settings, including a person's own home or family home, are presumed HCBS compliant. Settings that are provider-owned or controlled, where a singular service provider delivers all services in a setting, must meet additional criteria to be deemed compliant with the Final Settings Rule.

II. 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 for the persons that live there to the same extent available to 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.

*Any restrictions are to be based on a specific assessed need and noted in the Individualized Service Plan (ISP) and Person Centered Planning Tools (PCPT).

More information on the HCBS Final Settings Rule can be found on the [DDD HCBS Statewide Transition Plan Website](#).

III. What does this mean for developing new residential settings?

In 2022, the Division submitted [Statewide Transition Plan \(Addendum #2\)](#) to CMS that outlined how New Jersey would achieve compliance with the settings rule while allowing for innovative approaches to housing and services.

- a. In that submission, the Division clarified that the following settings will be generally approved:
 - Settings of one to four individuals, each with their own bedroom.
 - Settings of up to five or six individuals, each with their own bedroom, shall be considered on a case-by-case basis when it is established by the requestor that it is in the best interest of the target population for the program to be of this size. It is expected that the requestor shall have diversity in their service portfolio and not operate large numbers of this size program as its primary service model.
 - Settings with shared bedrooms shall not be approved outside of the express request of the individuals sharing the bedroom. When applicable, service providers will document this in the impacted individual's record.
 - All of the above residential settings must be located in the community, not have the tendency to isolate and not have day/employment services co-located.
 - Individuals must have a lease, residency agreement, or other written agreement in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord-tenant law.
- b. The Division recognizes that stakeholders have innovative ideas related to housing and services for individuals in NJ. For projects that fall outside of the standards indicated above, an additional level of review is required for approval.

The Division utilizes guidance released by CMS related to Heightened Scrutiny when reviewing these settings. The three categories of settings CMS presumed to have the qualities of an institution are:

- Settings that are located in a building that is also a publicly- or privately-operated facility that provides inpatient institutional treatment;
- Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution; and

- Any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

CMS also provided the following characteristics of settings that isolate HCBS beneficiaries from the broader community:

- Due to the design or model of service provision in the setting, individuals have limited, if any, opportunities for interaction in and with the broader community, including individuals not receiving Medicaid-funded HCBS;
 - The setting restricts beneficiary choice to receive services or to engage in activities outside of the setting; or
 - The setting is physically located separate and apart from the broader community and does not facilitate beneficiary opportunity to access the broader community and participate in community services, consistent with the beneficiary’s person centered service plan.
- c. Based on the above CMS guidance projects are subject to additional review if they fall outside of the generally approved sites if one or more of the following apply:
- The residential site is larger than six, each with their own bedroom;
 - The location has multiple residential sites in close proximity to one another;
 - The site has day/employment services co-located on the same property where residential services are provided.
 - Infrequently, the Division may consider programs with co-located day services. In these instances, approval shall only be considered if
 - Participation in the co-located day/employment service does not have the tendency to isolate the individual from the greater community;
 - The individual has a true option for day/employment services outside of the residential location should they elect to participate in one;
 - Electing a day/employment option outside of the setting will not jeopardize their living arrangement or otherwise necessitate that they move to another residential setting;
 - Any admissions to the program are not be predicated on the individual agreeing to attend on-site day/employment services.

In all circumstances, individuals must have a lease, residency agreement, or other written agreement in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord-tenant law.

At all times, the guidance provided by CMS will be used as the template for project approval.

Approval of new settings that fall outside of the generally approved sites are evaluated through a Community Integration Review. A Community Integration Review looks at a variety of factors – including individual experiences to determine whether the people who reside in the setting will be integrated into the community based on their needs, interests, strengths, and hopes/dreams.

New development sites seeking Medicaid HCBS funding for services or Division Housing Subsidies must be reviewed and approved by the Division. Settings that are not approved by the Division risk the ability to receive funding for housing and services.

IV. How does the Community Integration Review occur? How can I submit a proposed residential development for review?

Settings that receive HCBS funding must be compliant with the HCBS Final Settings Rule. To evaluate compliance with the rule before a setting is constructed, the Division provides the opportunity for the agency to submit a Community Integration Plan for review. A Community Integration Plan must include:

- Proposed site address.
- Description of the proposed residential program.
- Description of how the setting will be fully integrated and meet all HCBS requirements.

The [NJ HCBS Site Review Tool](#) and/or [Heightened Scrutiny Review Tool](#) may be used as resources to self-assess a proposed development.

Providers who are approved to develop residential settings are assigned a Division staff called a Program Developer from the Division's Office of Housing and Resource Development. The Program Developer will work with the provider to review the proposed site, facilitate a state architect inspection, and as necessary will request/obtain the community integration plan for Division review.

Housing developers, providers, or others who are interested in developing housing but are not assigned a program developer can request a HCBS Community Integration Review through DDD.HCBShelpdesk@dhs.nj.gov.

More information on developing a licensed residential setting may be found in the [Community Care Program Manual](#) (See Section 17.9.4.3.2.).

V. What housing options are available? What considerations are important?

Housing options for people receiving Division services who reside outside of the family home are either provider-managed (provider-owned/controlled) or self-directed. Individuals in either circumstance generally rely solely on the funding available through their Division budget to purchase Community Care Program or Supports Program services and supports for their care. Regardless of the situation, they must work with their planning team to consider whether the services available through their assigned waiver program will appropriately and safely meet their needs in the proposed setting.

If a person enrolled in the Community Care Program resides in a provider-managed setting and requires personal guidance*, then the setting **must** be licensed. If a person on the Supports Program chooses to reside in a provider-managed setting and later seeks services from the Community Care Program, the individual and their planning team needs to understand that that the setting may need to become licensed. Lastly, should a person and their planning team decide that they would like to shift from a self-directed model to a provider-managed model, there may also be a need for licensure.

*Personal guidance is defined as the assistance provided to an individual with intellectual/developmental disabilities on a daily basis in activities of daily living because he or she requires help completing such activities of daily living and/or cannot direct someone to complete such activities when physical disabilities prevent self-completion; or there is a documented health or mental health problem requiring

supervision of the person for the protection of the individual or others. In the absence of a court determination, the Planning Team determines the need for personal guidance for each individual, in accordance with N.J.A.C. 10:44A-4.3(c).

VI. Will I be able to access DDD Housing Subsidies in a new residential development?

People who receive Division services may apply for a Division Housing Subsidy for use in an HCBS-compliant setting.

When a person resides in a provider-managed (provider-owned/controlled) setting, subsidy requests for tenants are typically coordinated by the service provider. If a person receives services from the Community Care Program or Supports Program and prefers to self-direct services in their own home, the support coordinator is responsible for submitting the application for a Division Housing Subsidy administered through the Supportive Housing Connection.

Prior to submitting a [Housing Subsidy Program Eligibility Request](#), the planning team must meet and consider whether a person's current/needed services and Division budget are sufficient to safely meet the needs of the person in the proposed setting. If a person cannot be safely supported, the team will be directed to review and revisit the request when planned supports can safely meet the needs of the person applying for a subsidy.

Providers, housing developers, and others who are planning to develop housing to support people with intellectual and/or developmental disabilities must take into consideration whether the proposed setting will be HCBS compliant. Settings that are not HCBS compliant will not be eligible to receive a Division Housing Subsidy or Medicaid funded HCBS services.

Use of Division Housing Subsidies must be in accordance with the terms of the [Housing Assistance Policy](#). In accordance with the policy, it should be considered that Division Housing Subsidies cannot be used to create arrangements where the owner of a unit is related to the individual, such as a parent, child, grandparent, grandchild, sister, or brother. Division subsidies also cannot be used in cases where the unit is owner-occupied or occupied by any person with interest in the unit. Utilization of a Limited Liability Corporation (LLC) or other construct by a singular family for the sole purpose of creating a rental arrangement for a related individual would not void this provision. Individuals/families interested in this type of arrangement must work with HUD, DCA, or another agency to achieve this outcome.

For more information on the Division Housing Subsidy Program and the Supportive Housing Connection, visit the [DDD Housing Assistance](#) website.

VII. What are some considerations and recommendations in housing development and innovation?

Considerations and recommendations for individuals, families, and planning teams include:

- Consider whether a self-directed or provider-managed model is best based on your personal needs and preferences. Keep in mind that your needs (Ex. accessibility) and preferences (Ex. Where you want to live) may change over time. Long-term planning related to housing should

consider this.

- Network with other individuals, families, and professionals. Ask questions and consider all options. Remember that what works for one person may not work for another.
- Effective service planning must be person-centered and consider a person's needs, interests, strengths, and hope/dreams for the future. This is true even if a person has a court-appointed guardian.
- Consider possibilities and don't be afraid to ask questions.
- Utilize the [DDD Provider Search](#) features and consider the information available in the [DHS Licensed Provider Report Card](#) when considering options.

Requirements in housing development for providers, developers, or others seeking to create housing include:

- Work with a Division Program Developer to review proposed development while it is in the initial phases of planning and continued collaboration through the project opening.
- When developing a new housing site, providers must consider the population they intend to support and what safety and accessibility considerations are needed.
- Review technology in the home and consider if any advancements can be used to support independence.

Where can I find more information?

The Rutgers University [Community Living Education Project](#) developed a video that explores person-centered approaches to community living. This video explores how people utilize their individual budgets and planning team to consider possibilities in community living. [From Possibility to Reality – Person-Centered Approaches to Community Living](#)

The Rutgers University [Boggs Center on Disability and Human Development](#) developed a [Community Life Video Series](#) that considers aspects of the settings rule and what it means to the person served.

Regulatory requirements associated with opening a home can be found in [N.J.A.C. 30:11B-4](#) and [N.J.A.C. 10:44A](#). The Office of Licensing [website](#) also contains valuable information that is available for review.

Some areas of suggested research related to funding are:

- Accessing financing and support programs from [NJHMFA's Multifamily Supportive Housing and Lending Division](#).
- The development of special needs set aside units in [Low Income Housing Tax Credit](#) affordable housing.
- Leveraging funding from local towns and municipalities to develop housing. A helpful resource for municipal funding data is the [Affordable Housing Data Project](#) that was developed by the [Supportive Housing Association of NJ](#) in partnership with the Fair Share Housing Center.
- Providers interested in becoming DDD/Medicaid approved providers should review the comprehensive information available on the [DDD Apply to Become a Provider Website](#).

Links in this Document

CMS HCBS Final Settings Rule	https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-services-final-regulation/index.html
DDD HCBS Transition Plan Website (Includes helpful webinar shorts)	https://www.nj.gov/humanservices/ddd/providers/federalrequirements/hcbsplan/
Statewide Transition Plan (Addendum #2)	https://www.nj.gov/humanservices/dmahs/info/STP_Addendum_Update.pdf
NJ HCBS Site Review	https://www.nj.gov/humanservices/dmahs/info/NJ_Statewide_HCBS_Verification_Tool.pdf
Heightened Scrutiny Review Tool	https://www.nj.gov/humanservices/dmahs/info/Attachment-B_NJ_HS_Template.pdf
Community Care Program Manual	https://www.nj.gov/humanservices/ddd/assets/documents/community-care-program-policy-manual.pdf
Housing Subsidy Program Eligibility Request	https://www.nj.gov/humanservices/ddd/assets/documents/housing-subsidy-program-eligibility-determination-form.docx
DDD Housing Assistance Website	https://www.nj.gov/humanservices/ddd/individuals/housing/
DDD Provider Search	https://irecord.dhs.state.nj.us/providersearch
DDD Licensed Provider Report Card	https://www.nj.gov/humanservices/staff/opia/reports.html
Low Income Housing Tax Credit	https://www.nj.gov/dca/hmfa/developers/lihtc/
NJHMFA's Multifamily Supportive Housing and Lending Division	https://www.nj.gov/dca/hmfa/developers/supportivehousing/
Affordable Housing Data Project	https://www.shanj.org/municipal-funding-data/
Supportive Housing Association of NJ	https://www.shanj.org/
DDD Apply to Become a Provider Website	https://www.nj.gov/humanservices/ddd/providers/apply/
Community Living Education Project	https://clep.rutgers.edu/
From Possibility to Reality – Person Centered Approaches to Community Living	https://www.youtube.com/watch?v=QqD7Zrj3NGU
Boggs Center on Developmental Disabilities	https://boggscenter.rwjms.rutgers.edu/
Community Life Video Series	https://boggscenter.rwjms.rutgers.edu/resources/video-library
Office of Licensing Website	https://www.nj.gov/humanservices/ool/home/
N.J.A.C. 30:11B-4; Licenses; regulations	https://law.justia.com/codes/new-jersey/title-30/section-30-11b-4/
N.J.A.C.10:44A; Standards for Community residences for Individuals with Developmental Disabilities	https://www.nj.gov/humanservices/providers/rulefees/regs/rulesfiles/NJAC%2010_44A%20STANDARDS%20FOR%20COMMUNITY%20RESIDENCES%20FOR%20INDIVIDUALS%20WITH%20DEVELOPMENTAL%20DISABILITIES.PDF