

HCBS and the Settings Rule

- Home and Community-Based Services are services that people can use to help them be healthy and reach their personal goals.
- Home and Community-Based Services are provided by the federal Medicaid program in a person's home or in their community instead of an institution.
- In New York State, the Office for People With Developmental Disabilities (OPWDD) provides Home and Community-Based Services for people with developmental disabilities.
- Home and Community-Based Services include things like helping people to get ready for and find a job, take part in their community, manage money and learn new things.
- The federal government and OPWDD have rules that describe the rights of people who receive Home and Community-Based Services. Rights include the right to choose where they live, what they do and who provides their services.
- In 2014, the federal Centers for Medicare & Medicaid Services issued rules about the rights of people who get Home and Community-Based Services and where they get them. These rules are called **the HCBS Settings Rule**.
- The HCBS Settings Rule requires people to receive Home and Community-Based Services in places that are part of the community.
- The federal Centers for Medicare & Medicaid Services gave States time to get ready to follow the rule.

What the HCBS Settings Rule Says About People's Rights

- The HCBS Settings Rule states that Home and Community-Based Services must:
 - take place in the community and help people be part of the community
 - help people find a job and work in the community, control their own money and get services in the community
 - be chosen by the person receiving services from options including non-disability related homes, a private home or a private bedroom
 - provide a right to privacy, dignity and respect
 - provide freedom from people trying to convince them to do something
 - provide freedom from restraint
 - support people to have control over their lives and independence in making life choices, including making decisions about how, where and with whom they spend their time
 - provide a choice of services and who provides them
- Also, the rule states that people who get Home and Community-Based Services must be able to:

- Have food at any time
- Have visitors at any time
- Have a home that is accessible to them
- People who live in a certified group home or Family Care Home must have:
 - Privacy in their bedroom including:
 - Door locks
 - Choice of roommates
 - Freedom to decorate their room as they wish
 - The ability to control their schedule
 - The ability to lock and unlock the door of the residence.
- These rights must be explained to the person, their family or people who help them make decisions.
- Providers and Care Managers must speak often with the people they support about their rights and how they can use their rights.
- How someone uses their rights can change over time. The Life Plan should describe how someone chooses to use their rights.

Rights Changes

- The HCBS Settings Rule allows changes to restrict a person's rights if the changes are needed to help the person stay safe and healthy.
 - Before changing or restricting anyone's rights in any way, a service provider must: explain why the change is needed
 - explain how the service provider tried to avoid needing to restrict the person's rights
 - explain how and when the provider will check to see if the rights restriction can be ended and the person's rights restored
 - get the person's informed consent for the change
 - be sure the change will not harm the person
- Any changes to a person's rights must be written into the person's Life Plan or other documents such as their behavioral support plan or staff action plan.
- If a rights restriction affects another person living in the home (other than the person who is subject to the rights restriction), the service provider must:
 - Describe how it affects the other person
 - Describe how the provider has helped to support the other person
 - Get the informed consent of the other person

Occupancy Agreement

- The HCBS Settings Rule says that a person getting Home and Community-Based Services should have a home that they can own, rent or live in under a legal agreement and have the same responsibilities and protections from eviction that people who rent have under the law.
- For OPWDD group homes or Family Care Homes, there must be a written **Occupancy Agreement** between the service provider and the resident.
- The Occupancy Agreement says how residents are protected from being evicted just like landlord/tenant laws would protect them in a non-OPWDD rental.
- The service provider and the resident will sign the Occupancy Agreement. A resident's legal guardian or representative may sign for them.
- Service providers may not end or change someone's services because they do not sign an Occupancy Agreement.
- A copy of the signed Occupancy Agreement will be provided to the resident.

Heightened Scrutiny

- The HCBS Settings Rule says that there are some places that might seem like an institution because of where they are located. These places needed to prove that they give people all the HCBS Settings rights and that they are not at all like an institution.
- The state and federal governments take a closer look at these places to make sure they meet the rule and are not like an institution. This closer look is called Heightened Scrutiny.

OPWDD and the HCBS Settings Rule

- OPWDD has checked to see if group homes, Family Care Homes, Day Habilitation programs and Prevocational Services programs within the OPWDD service system are following the HCBS Settings Rule.
- In October 2021, OPWDD published HCBS regulations for New York so that the HCBS Settings Rule would be followed for people with developmental disabilities in New York State.
- OPWDD trained service providers on what the rule requires and looked at service providers' plans for making changes so they can meet the rule in their HCBS programs.

- The COVID-19 pandemic impacted New York State’s developmental disabilities service system, worsening the shortage of direct support professionals to provide services. In 2022, OPWDD worked with the New York State Department of Health to request that the federal government allow more time for service providers in the OPWDD service system to meet two parts of the HCBS Settings Rule:
 - Helping people get out into the community as they want
 - Helping people have a job
- In 2022, CMS told states they would need to have all their Home and Community-Based Services meet the HCBS Settings Rule by March 17, 2023.
- OPWDD is working with providers who operate locations that require Heightened Scrutiny to make sure they have good plans for meeting the HCBS Settings Rule.

What to Expect Going Forward

- OPWDD’s Division of Quality Improvement will continue to watch OPWDD’s service providers for how they are following the rule.
- OPWDD will continue to check on service providers who were not able to follow the rule by March 17, 2023 to make sure they are making changes to be able to follow it.