

Frequently Asked Questions

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Frequently Asked Questions

General

- **Are certifiers/licensing staff going to go out and do reviews for HCBS compliance of every facility statewide?**
 - *Yes, certifiers and licensing staff will be going to each site. Most of these visits will occur as part of their regularly scheduled licensing visits. They will be using information obtained from the Provider Self-Assessment survey, Individual Experience Assessments, and onsite inspection results to determine HCBS compliance and assist providers in the development of plans to come into compliance, if necessary.*
- **Is participation in the HCBS Survey required for all providers?**
 - *Survey participation is mandatory. There will not be a financial penalty levied against a provider for failing to complete a survey; however, failure to complete a survey does not exempt the provider from the requirement of achieving compliance with the HCBS regulations and will require more costly and intrusive efforts by DHS and OHA to gather the same information.*
- **Can Oregon request an exception from CMS so these regulations do not apply to all Oregonians, just to Medicaid-funded Oregonians?**
 - *CMS has not mandated that the regulations apply to private-pay Oregonians so it is not necessary to request an exception. Oregon has decided to hold all providers to the same standard so that there is no disparity of services depending on payment source. This decision follows long-standing policy that services for all Oregonians should be comparable regardless of payer source. The rights in the new federal regulations and state rules are rights that all individuals should enjoy.*
- **Why does Oregon have to implement these new rules?**
 - *The new rules apply to every state that accepts money from Medicaid for Home and Community Based services. Oregon is a leader in providing these services. Oregon wants to serve individuals in the most independent, integrated setting possible. Medicaid pays for more than 60 percent of the costs of these services. Without this funding, Oregon would not be able to serve individuals in HCBS settings.*

Frequently Asked Questions

- **To whom do these new regulations apply?**
 - *The HCBS rules and regulations apply to everyone receiving 1915(k); 1915(c); or 1915(i) funded services regardless of their age, disability, diagnosis, behaviors, etc. HCBS rules and regulations apply to every service site that provides Home and Community-Based services, regardless of funding source.*

- **How will we balance HCBS setting requirements (such as ensuring the individual receiving Medicaid HCBS has the same access to the greater community as individuals not receiving Medicaid HCBS) with safety concerns?**
 - *The Person Centered Planning process will look into the assessed needs of the individual taking into consideration health and safety concerns. The person-centered planning process could result in a proposed limitation to the requirements and any limitation must be agreed to by the individual and/or their legal representative.*

- **Do these new rule changes require that any setting accepting HCBS funding also admit every HCBS recipient who requests to reside there?**
 - *The setting, in accordance with fair housing standards and program rules, may or may not admit a prospective resident.*

- **Who is fiscally responsible for ensuring the HCBS regulations are met?**
 - *Any provider serving individuals through HCBS may incur costs to meet these regulations. Existing and new providers of HCBS services, as a cost of doing business, must meet the provider standards in place for that provider type, including HCBS standards beginning in January of 2016.*

- **What do I do if I think I my decisions and choices have not been honored?**
 - *If you feel your choices have not been honored you may do any of the following:*
 - *Follow the complaint or grievance process.*

Frequently Asked Questions

- *Ask for help from the person in charge of your person-centered planning process (i.e., case manager or service plan coordinator).*
- *Ask for a hearing or administrative review.*
- *Ask for help from Governor's Advocacy Office or Ombudsman.*
- *Ask for help from the licensing office.*
- *Contact your advocacy group.*

2. When are the new setting requirements for Home and Community-Based Services effective?

- *The Centers for Medicare and Medicaid Services (CMS) published the final rules on January 16, 2014. They went into effect on March 17, 2014. The new rules give States and existing providers time to implement the new rules through a transition process. CMS must approve Oregon's transition plan and the transition period. Oregon expects existing providers to be in compliance by September 30, 2018. New providers of HCBS will be required to be compliant with the HCBS rules and regulations at time of their licensure, certification or endorsement.*
- ***How do I know if where I live is part of these new rules?***
 - *Your own home or your family's home is Home and Community-Based and is presumed to already meet these rules.*
 - *Provider-owned, controlled or operated facilities are licensed, certified or endorsed and are subject to additional requirements under the new rules:*
 - *Assisted Living Facilities*
 - *Residential Care Facilities*
 - *Foster Homes*
 - *Group Homes*
 - *Mental Health Licensed Residential Treatment Homes*
 - *Mental Health Licensed Residential Treatment Facilities*
 - *Oregon is currently determining if all settings meet the new rules.*
- ***What kinds of service settings are funded by HCBS?***
 - *Some common examples of HCB service settings are:*
 - *Services received by an attendant in your own or a family home*
 - *Supported Living*
 - *Supported Housing*

Frequently Asked Questions

- *Mental Health Residential Treatment Facilities and Homes*
 - *Residential Care Facilities*
 - *Foster Homes*
 - *Adult Day Service Settings*
 - *Employment Service Settings*
 - *Group Care Homes*
 - *Assisted Living Facilities*
 - *Residential Memory Care Facilities*
- ***How do I know if I live in a provider-owned, controlled or operated setting?***
 - *If your landlord limits your choice in service providers then you reside in a provider-owned, controlled or operated setting.*
 - *If your provider has a financial interest in or a business relationship with the landlord, then you reside in a provider-owned, controlled or operated setting. Examples would include if your landlord is building owner, a partner in or on the board of a provider organization.*
 - ***I live in a house or apartment with a rental agreement. My landlord provides my services. I would need to move in order to choose a different service provider. Is this a provider-owned, controlled or operated setting?***
 - *Yes, if choosing a provider other than your landlord means you would have to move, then it is a provider-owned, controlled or operated setting.*
 - ***I rent or own my own home. My service provider is not my landlord. Is this a provider-owned, controlled or operated setting?***
 - *No, this would not be a provider-owned, controlled or operated setting.*
 - ***I live with a family member who owns or rents the home. I contribute to the rent by paying room and board. Home care, personal support workers, or agencies provide supports to me. The home is not licensed or certified. Is this considered a Home and Community-Based Setting?***
 - *Yes, these settings are presumed to have the qualities required under the HCBS rules but are not part of the state's transition plan.*

Frequently Asked Questions

- ***I reside in a foster home where the provider owns or rents the home and collects room and board. The foster provider, or their hired staff, provides direct support to me. Is this considered a provider-owned, controlled, or operated setting?***
 - *Yes. This setting is considered a provider-owned, controlled, or operated setting that must adhere to these rules.*

Frequently Asked Questions

Access to food

The Fact Sheet regarding access to food can be found:

<http://www.oregon.gov/dhs/seniors-disabilities/HCBS/Documents/Access%20to%20Food.pdf>

- **Can the new regulations regarding access to food be limited for individuals who require cueing for hand washing?**

Added 01/12/16

- *It is important for all household members to always practice universal precautions when handling food and providing personal care. However if there is a specific concern such as Hep C, the provider could look into different options in providing access to food. The options for addressing this vary, and depends on the individually assessed care needs of the individuals. Whenever behavior may place others at risk, options need to be addressed by the within the person-centered care plan.*
- **Do the new rules require including individuals in meal planning and shopping for groceries?**
 - *The new rules do not specifically require this. The rule requires that individuals have access to food at any time, unless there is a limitation to the rules in place for an individual. An individual should be able to have input into what they will eat and not be limited to narrow options. Including the individual in meal planning and shopping for groceries is encouraged and is a best practice.*
 - *It may be a person-centered goal of an individual to work on shopping and meal planning. In this case, the provider should support the individual to reach their goals.*
- **Do programs have to make changes to kitchen areas to allow for independent access to foods or food prep items?**
 - *This answer depends on how the program currently operates. Under the rules two concepts apply:*
 - *Individuals should always have access to the common parts of the house such as kitchens, bathrooms, living rooms; Individuals are supported in having access to food at any time.*
 - *Individuals should have access to kitchen areas to prepare personal foods or snacks. Personal foods may be best stored or kept in the kitchen area. Food storage may be set up in other locations to support easier access to food at any time.*

Frequently Asked Questions

- ***Does the provider have to aid the individual in obtaining a personal mini-fridge or identified storage area for personal food items?***
 - *No, if individuals have access to the kitchen, refrigerator, cupboards, or other home-like food storage areas, that is sufficient.*

Frequently Asked Questions

- ***I live in a household with other people but I like to eat alone or at different times than my housemates. Do I have to eat at the same time and place as everyone else?***
 - *You have a choice in when you eat your meals. You may need to communicate with your provider about your where, when and what you want to eat so that your needs and wants can be met.*

- ***I dislike certain foods that are served in my home. Can I make the provider buy me the foods that I want to eat?***
 - *Your preferences and wishes should be taken into account. You may want to participate in meal planning with your provider and housemates so that they know what you like and don't like. In a group setting not all individual preferences can be satisfied at each meal. Your provider should give you options and alternatives.*

- ***I prefer to eat my meals and/or snacks in my room but my provider requires that all food remain in the dining room. Do these new rules let me eat wherever I want to eat?***
 - *Yes, an important concept of HCBS is that you have the same access to food as the other people in the general community. Health and household cleanliness need to be maintained.*

- ***I would like to have my favorite snacks all day, every day. My provider says that I can't do this because they aren't healthy for me. Do these new rules let me eat whatever I want to?***
 - *Your provider should have three nutritious meals per day and two snacks. If you want more or different snacks, or your favorite snacks all day, every day, you may buy them with your personal resources.*

- ***I like to eat out at restaurants and fast food places. Do these new rules let me choose to eat out for every meal?***
 - *You pay room and board to your provider for three nutritious meals and two snacks each day. You may choose to eat away from your residence for your meals, but you are responsible to pay for the meal with your personal funds.*

Frequently Asked Questions

- **Does a provider have to assist an individual with getting their favorite or chosen foods?**
 - *If the person-centered plan includes these supports then yes, the provider must offer assistance to the individual.*

- **Does the provider have to offer meal options when an individual does not want to eat the foods provided or chooses to eat at a non-standard mealtime?**
 - *Oregon Administrative Rule requires all residential settings to provide three meals per day. These new rules say that the provider should not place time limits on access to food or meal times. Alternative food choices must be provided by the provider as well as a meal-to-go or a reheatable meal if an individual is going to be out of the setting during a scheduled mealtime.*

- **Do the new rules require providers to develop a communication system for individuals who utilize non-traditional communication and need assistance in accessing or asking for food?**
 - *These new rules do not require providers to develop a communication system. However, there are existing rules that require the person-centered plan to address culturally and linguistically appropriate communication.*

- **Do the new rules require the provider to offer support, monitoring and skill-building related to safe food handling and proper food storage?**
 - *While the federal Rules do not require the provider to support, monitor and offer skill-building related to safe food handling and proper food storage, any skill-building activities a program provides, such as safe food handling and proper food storage, should be addressed on each individual's person-centered service plan. In addition, all programs will need to adhere to any applicable Oregon Administrative Rule requirements concerning food handling and storage.*

Frequently Asked Questions

Choice of setting

- **How can an HCBS provider balance the rights of the individual to maintain their own schedule with the rights of the residents of the setting?**
 - *The preferences and rights of all residences must be respected. Individuals in exercising their rights, may not infringe on the rights of others. When health or safety of others is potentially impacted, providers should seek solutions starting with the least restrictive approach to problem solving, such as discussing with the individual how their behavior impacts others or holding group conversations to solicit resident formed solutions to group living issues. When less restrictive methods have been attempted but have not worked a person-centered planning meeting for problem solving is an appropriate next step. Providers should work with residents to balance the needs and choices of one individual with the needs and choices of other residents. CMS and DHS/OHA envision robust discussions with residents to resolve these issues. If an individual cannot safely manage their choices, based on their individualized assessment, appropriate limitations may be put in place. If an individual cannot safely manage their choices, based on their individualized assessment, appropriate limitations may be proposed through the person-centered planning process.*

- **What do I do if I think I my decisions and choices about where to live have not been honored?**
 - *If an individual feels they have been denied an opportunity to live in the Medicaid setting of their choosing they may file a grievance, complaint or ask for a hearing depending on the circumstances of denial. When you ask for a hearing, an Administrative Law Judge who is employed by the Office of Administrative Hearings will determine if you have a right to a hearing. The Judge will determine whether the rules were applied correctly in denying your choice of setting.*

Frequently Asked Questions

- **Do the HCBS rules affect my choice of where I get to live?**
 - *These rules support your ability to choose where you live including non-disability specific settings. You may have the option to select living in your own home, a family home, a group home, foster home, a treatment home or facility, or an assisted living facility, among other options. Your ability to pay rent and the costs of independent housing for an apartment or home might impact whether you choose to live by yourself or in a residential services setting, in a shared or private room.*

- **Can the case management entity or their employees deny an individual the right to move into the setting of their choice if a provider accepts them?**
 - *Having Medicaid coverage does not take away an individual's right to choose where they live or receive services. However, Medicaid may not have the obligation to pay for that setting if the setting conflicts with Medicaid rules. For example, the Federal government has issued new rules defining what is home and community based for the purposes of Federal Medicaid reimbursement. If a setting is unable or unwilling to comply with those rules a person may choose to live there and the setting accept them, but Medicaid does not have to pay for the setting. That is just one example of where a rule would not allow payment. There may be other rules such as determining if the setting is the least restrictive setting appropriate for the individual, the setting has a special contract with specific criteria, the setting can meet the care needs, or some other criteria based on the individual's health and safety. Additionally, providers are allowed to decide to serve an individual or not. In summary, the individual can choose to live where they want (when accepted by a provider) but without income or other sources than Medicaid to pay for the services they need and want, practically speaking, the choices may be limited to those settings that comply with Medicaid rules and those that accept Medicaid.*

Frequently Asked Questions

- ***I want to live in a foster home in rural Oregon. Do these rules require a placement be developed to meet my goal?***
 - *HCBS rules do not change the landscape of available options in the state of Oregon. Your goal should be included as part of your person-centered plan. Your case manager and planning team should do their best effort in helping you identify the options including your own or family home in the community of your choice.*
 - *Home and Community-Based services allow you to choose where you would like your supports to be delivered. This might allow you to live in your own home and receive services or select a residential services setting. Depending on the area of the state you prefer to live, there may be more or less options available due to the number of providers in certain areas and openings in those residential settings. Capacity building is always occurring across the state to meet emerging needs.*

- ***What does it mean when the new rules say I have a “choice of setting”?***
 - *The goal of HCBS is to provide a range of options that allow you to live integrated into your community in non-disability specific settings. You have a choice in where you live and who provides supports to you in that setting.*
 - *Your choice may be based on your needs, preferences, and, for residential settings, resources available for room and board. You may also choose a private room.*

Frequently Asked Questions

Controlling personal resources

- ***If I am receiving Home and Community Based Services, can I still have a representative payee?***
 - *You may have a Social Security Representative Payee and still be eligible to receive Home and Community Based services. These new federal regulations do not override or change this relationship.*

- ***What are considered “personal financial resources”?***
 - *Personal financial resources include your money, personal accounts, personal belongings, real estate, and any other assets you own.*

- ***What does “manage my personal resources” mean?***
 - *Managing your personal resources means having access to your money and freedom over how you use your money. Unless legally restricted, such as being required to have a representative payee, you have the autonomy and responsibility to control your own resources. Depending on your preferences or needs the amount of support you need to manage your resources should be addressed in your person-centered plan. Your team and those that support you may help you in prioritizing how you spend your money and assuring that necessities such as room and board, or rent and groceries are addressed before other expenditures.*

- ***How can I get support in managing my personal financial resources?***
 - *Your person-centered plan should identify a goal for supporting you with managing your personal resources if you need help in this area.*

Frequently Asked Questions

Decorating and furnishing

- ***Do the new federal rules allow me to decorate or furnish my bedroom or living unit how I want to?***
 - *Yes, within the terms of your residency or other agreement. If you share a room, you may decorate your portion of your own bedroom. The HCBS regulations do not address the furnishing and decorating of common areas. Providers are encouraged to involve residents when decorating the shared parts of the home.*

Frequently Asked Questions

Doors lockable by individual

The Fact Sheet regarding lockable doors can be found:

<http://www.oregon.gov/dhs/seniors-disabilities/HCBS/Documents/Locks%20on%20Doors.pdf>

- **What are the new federal requirements about door locks?**
 - The new rules require that you have privacy in your bedroom or living unit. Each bedroom or living unit must have a door that you can lock, to support your personal privacy. Only staff identified as necessary will have keys to the unit's door.

- **What kind of door locks must Providers put on bedroom or living unit doors?**
 - Door locks must be single action/interactive with the lock, in compliance with current building codes, and must meet all applicable State requirements. The lock must allow for easy exit from the inside of the unit, and must meet safety standards. The lock must be keyed from the corridor side.

- **In the case of an emergency, can staff open a locked door?**
 - Yes. CMS allows you to help decide which staff are appropriate to have keys to your locked door and they may be used in an emergency situation to gain entry. The person-centered planning process must identify the instances that would constitute an emergency, thus allowing staff to open the locked door.

- **Can a provider remove a lock because the individual is constantly locking themselves out of their room and losing their key?**
 - No, unless the individual has an Individually Based Limitation to the Rule, a provider cannot remove a lock. This must be addressed through the person-centered planning process and must be consented to by the individual, or their legal representative.

Frequently Asked Questions

- **Can an individual choose not to lock their door for any reason?**
 - *Yes, an individual receiving HCBS has the right to privacy in their bedroom or living unit, under the new rules. Individuals also have the right to choose not to lock their doors. The individual's choice does not absolve the provider of the responsibility of providing locks on entrance doors to individual bedroom or living units; it merely allows the individual to exercise their right to privacy and personal choice.*
- **May all the staff at a provider-owned, controlled or operated residential setting have a key to each bedroom or living unit door?**
 - *The federal rules allow only the individual and staff they help decide are appropriate to have keys to access the individual's bedroom or living unit door.*
- **Can my bedroom or living unit lock be disabled if I have a serious health, behavioral, or cognitive condition that requires staff to have uninterrupted immediate access to address safety monitoring and/or instant intervention?**
 - *If an individual is making a request to have a lock disabled or removed can be easily addressed through the person-centered planning process. If the provider or the team is making this request it must be addressed through the individually-based limitations to rules process that follows the person-centered planning process. The rules require that appropriate staff have keys to meet the individual's needs. All less restrictive options must have been tried and failed prior to considering a limitation to this condition.*

Heightened scrutiny

- **What is Heightened Scrutiny?**
 - *Heightened scrutiny means that the State and possibly CMS need to take a closer look at a setting that may have the appearance of isolating individuals from access to the community. CMS has defined the qualities of an institution, settings that isolate, and the qualities of a Home and Community Based setting. Heightened scrutiny is the process through which potentially isolating sites and/or sites that appear to have the qualities of an institution will provide evidence to the State to rebut the appearance of being isolating or institution-like. If after reviewing the evidence, the State determines that the site has the qualities of a Home and Community Based setting the State will submit the evidence package to CMS for final review and approval. If the State's review of the evidence determines the site does isolate or have the qualities of an institution the State will work with those providers on an individual basis to help bring the setting into compliance by the deadline of September 2018.*

- **How does CMS define “settings that isolate”?**
 - *CMS defines settings that isolate people receiving HCBS from the broader community may have any of the following characteristics:*
 - *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.*
 - *People in the setting have limited, if any, interaction with the broader community.*
 - *Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).*

Frequently Asked Questions

- ***During the heightened scrutiny process, what types of supporting documents may providers make available that show how the facility or program is an HCBS setting, not institution-like?***
 - *Oregon expects CMS to provide clarity around the heightened scrutiny process.*
 - *Providers may give Oregon documents showing that they:*
 - *Support full access to the greater community, such as providing opportunities to seek employment, engage in community life and receive services in the community;*
 - *Ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint;*
 - *Support an individual's independence in making life choices, including daily activities, physical environment, people with whom to interact, etc.;*
 - *Have a setting that are physically accessible to the individual*
 - *(This is not an all-inclusive list.), you may send in any information you believe will help show that your setting meets the regulation.*

- ***My residential care facility is across the street from, but not operated by, the local community college. Will my facility require heightened scrutiny due to being adjacent to a public institution?***
 - *No. Colleges and other schools are not considered institutions for the purpose of this new federal HCBS regulation.*

Frequently Asked Questions

Individually-based limitations to the rules

The Fact Sheet explaining individually-based limitations to the rules can be found: <http://www.oregon.gov/dhs/seniors-disabilities/HCBS/Documents/Limitations%20to%20the%20Rules.pdf>

- **Can limitations be applied to an individual at the discretion of the provider?**
 - A limitation is only considered for health and safety reasons after all less restrictive alternates have been determined ineffective. All proposed limitations must go through the person-centered planning process, be based on a specific assessed need and consented to by the individual. A provider cannot apply an individually based limitation to the rule at their own discretion.

- **How are limitations documented?**
 - Limitations must be documented on the “Individual Consent to HCBS Limitations” form. The Individual Consent to HCBS Limitations form must be signed by the individual, or if applicable, the legal representative, of the individual and maintained in the individual’s case file. Designated Representatives may not consent to Individually Based Limitations.
 - For Medicaid individuals, the person-centered service plan coordinator is responsible for documenting the limitation discussion and outcome and providing copies to the individual and the team. For private-pay individuals, the same documentation may be prepared by the provider and must be witnessed by an independent third party.

- **What are “individually-based limitations to the rules”?**
 - There are new federal rules regarding Home and Community-Based Services and settings. The new rules explain what services must be provided in these settings. There may be times when the rule requirements can be limited, due to health and safety risks, as identified in your person-centered plan. These limitations will not be implemented without your (or your legal representative’s) informed consent.

- **When do the limitations apply?**
 - A limitation applies after you and your team has completed the individually-based limitations to the rules process.

Frequently Asked Questions

- ***What documentation must be included in my person-centered plan before a limitation to the rule is put in place?***
 - *The specific, assessed need for the limitation;*
 - *A clear description of why the limitation is needed;*
 - *Interventions and supports that have been tried and were not effective before considering this limitation, including less intrusive methods;*
 - *Data collection and review to measure the ongoing effectiveness of the limitation;*
 - *Timelines of scheduled periodic review of the limitation;*
 - *Your (or your legal representative's) informed consent;*
 - *An assurance that the interventions and supports will not cause harm.*

- ***In what areas can limitations be considered?***
 - *The following areas may be considered for limitations:*
 - *Protection to live under a legal landlord/tenant agreement, or its equivalent;*
 - *Privacy in your bedroom or living unit;*
 - *Lockable door on your bedroom or living unit, with only appropriate staff having keys to the doors;*
 - *Shared space and choice of roommate;*
 - *Furnishing or decorating your bedroom or living unit as you choose;*
 - *Freedom and support to control your schedule and activities;*
 - *Freedom and support to have access to food at any time;*
 - *Visitors of your choosing at any time.*

Frequently Asked Questions

Shared living units / Roommates

- ***Will HCBS providers be required to install privacy partitions in the sleeping area of shared rooms?***
 - *No, HCBS regulations do not require the installation of privacy partitions.*

- ***Who picks the roommates in shared bedroom/living units?***
 - *As a resident, you have a choice in who your roommate will be. If you are not satisfied with your roommate, you may request a new roommate or explore other living options. If your roommate leaves, you will have the opportunity to meet with or be given information about your potential new roommate. Your provider will inform you of how to request a roommate.*

- ***Do the new federal rules allow me choose my housemates in a foster care or group home?***
 - *Providers may exercise discretion, congruent with rule, regarding whom they accept as a resident in a foster or group home. Providers are encouraged to engage existing housemates in the selection process. Housemates are considered individuals who share the home whereas roommates share a bedroom/living unit.*

- ***If I want a new roommate, but there are no open rooms or roommates available, what can I do?***
 - *You may stay with your current roommate until a change can be made, or you can choose to move to another living option.*

- ***As a provider who has exclusively shared units, do I have to convert all shared units to private rooms?***
 - *No, providers are not required to have private rooms at this time. Providers are not required to convert shared rooms to private rooms. If individuals who live in your setting want to move into private rooms, they can choose to move to another living option, or you may voluntarily choose to convert to private rooms.*

Frequently Asked Questions

Visitors

- **Will criminal background checks be required of visitors?**
 - *These new regulations do not alter the requirements for Criminal History Checks.*

Added 01/12/16

- **May residents who are felons have visitors at all hours?**
 - *Having a felony record is not a basis for limiting the resident's right to have visitors of their choosing when they wish. The provider must balance the rights of the residents with the safety of others and the security of the care home. The provider may put procedures in place, such as requiring visitors to sign in and sign out, and any individual concerns should be addressed in the person-centered care plan.*

Added 01/12/16

- **Can a provider state quiet time hours in lieu of visiting hours?**
 - *Stipulating quiet time hours could be in conflict with the resident's rights of managing their own schedule. A provider may not prohibit individuals from having visitors whenever they wish. However, a provider may have a policy, disclosed within the residency agreement, which identifies a reasonable quiet time. The quiet time must be consistent with the standards of the local community. With a quiet time policy, visitors would be expected to keep the noise level to a minimum so as not to interrupt the sleep or quiet time of other individuals.*

• Added 01/12/16

- **When an individual has visitors, is it the provider's responsibility to facilitate communication between residents in the home to help assure respect regarding the privacy and rights of others?**
 - *It is the responsibility of the provider to protect the safety and confidentiality of all individuals in residence. It would be in everyone's best interest for the provider to facilitate communication to protect the privacy and rights of all residents. If anyone has concerns about the privacy or rights of an individual, the person-centered planning process should be engaged.*

- **When barriers to an individual attaining his or her wishes for social goals are identified, is it the person-centered planning team's**

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responsibility to help develop strategies to help address such barriers?

- *Yes, it is a fundamental responsibility of the person-centered planning team to support the strengths and preferences of the individual and address barriers to achieving their social goals.*

- ***Is a provider responsible to conduct training in the use of assistive technology or strategies (for example phone apps or visual communication systems) for scheduling visits and appointments?***
 - *The provider of the training should be identified as part of the person-centered planning process. It may, or may not be the provider identified as the appropriate resource to provide this training.*

- ***Does the provider have to allow an individual to have friends, family, partners, and/or acquaintances to the home during non-traditional visiting hours?***
 - *The new rules support an individual's right to have visitors of their choosing at any time in their bedroom or living unit, or common areas of their residential setting. When there are safety or privacy concerns, providers may develop reasonable procedures for visitors such as a check-in process.*

Frequently Asked Questions

- ***If an individual wants to have a potentially unsafe person as a visitor is the provider required to allow this under the new rules?***
 - *The provider has a difficult responsibility to balance the safety and security of the home and the rights of the individual under this new rule. The provider should allow the visitation unless there are signs or information indicating that there is imminent harm to the individual or another resident. Ongoing concerns should be addressed through the person-centered planning process. Limitations can only be placed with the individual's informed consent and through the person-centered planning process.*

- ***Can a provider establish visiting hours to address the needs as well as the rights of the residents?***
 - *Established visiting hours are not permitted under the new rules. The preferences and rights of other residents must also be respected. There may need to be communication and coordination between all residents. A provider may define, in the residency agreement, what constitutes a visitor versus an occupant. Exceptions may be considered for longer stays in situations such as end-of-life visitation or out of state visitors. It is not a responsibility of the provider to offer meals to visitors.*

Frequently Asked Questions

Non-residential settings including employment and day services

- **Do the new setting requirements for Home and Community-Based Services apply to employment and day service settings?**
 - Yes. *The new setting requirements for Home and Community-Based Services (HCBS) apply to any setting in which HCBS is provided – both residential and non-residential.*

- **What are non – residential settings that isolate?**
 - *The HCBS settings rules identify certain settings that are presumed to have institutional qualities and do not meet the requirements for home and community-based settings. These settings include those that have the effect of isolating individuals using Medicaid-funded HCBS from the broader community of individuals not using Medicaid-funded HCBS. Settings that isolate may have some or all of the following characteristics:*
 - *Settings designed specifically for people with disabilities, and often even for people with a certain type of disability.*
 - *The individuals in the setting are primarily or exclusively people with disabilities and staff that provide services to them.*
 - *People in the setting have limited, if any, interaction with the broader community.*
 - *See also the questions below regarding facility based, non-residential services.*

CMS has determined that the following typically have the effect of isolating

- *Farmstead or disability-specific farm community*
- *Gated/secured “community” for people with disabilities*
- *Residential Schools*
- *Multiple settings co-located and operationally related*
- *For more information available: [Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community](#).*

Frequently Asked Questions

- **Do the new setting requirements for Home and Community-Based Services prohibit facility-based day programs?**
 - *Not generally. If services are provided in a setting designed specifically for people with disabilities, and/or individuals in the setting are primarily or exclusively people with disabilities (and on-site staff provides many services to them), the setting may be isolating unless the setting facilitates people going out into the broader community. CMS has made clear that states have the authority to decide whether and when to offer facility-based day programs. For more information about non-residential settings, see [Questions and Answers Regarding Home and Community-Based Settings](#)*

- **Do the new setting requirements for Home and Community-Based Services prohibit facility-based pre-vocational programs, including Employment Path Services?**
 - *Pre-vocational services may be furnished in a variety of locations in the community. Outlined in sub-regulatory guidance, prevocational service settings must at a minimum “encourage interaction with the general public (for example, through interaction with customers in a retail setting).” Oregon may establish additional policy that may go beyond the Federal minimum standards.*

- **What are the benefits of an integrated workplace?**
 - *The interests, talents, skills, and contributions of each individual are recognized as valuable assets in an integrated workplace. An integrated workplace provides each individual with the greatest opportunities to make contributions that enhance the workplace, the overall job market, and the greater community. Business research has documented many advantages of a diverse workforce, including, an increase in productivity and creativity , as well as a more positive business reputation.*

- **How does the “choice of setting” requirement apply to employment and day services?**
 - *The goal of HCBS is to provide a range of options that allow an individual to enjoy all the benefits and responsibilities typical to living in the community regardless of whether a person has a disability. Oregon must offer you an option to seek employment or other non-residential day services in a non-disability-specific setting.*

Frequently Asked Questions

- **What is the meaning of “non-disability-specific settings”?**
 - *In the context of this regulation, this means that, among the options presented, the individual must have the option to select a setting that is not limited to people who have disabilities. People may use services in a provider- owned, controlled, or operated setting, or in a setting that supports other people who also have or experience a disability; however, the individual must have the option to be served in a setting that is not exclusive to people with disabilities. For additional information: [Questions and Answers Regarding Home and Community-Based Settings](#).*
- **Should the Employment Services provider be part of the person-centered planning process?**
 - *The individual can choose to include others in the person-centered planning process and this may include the Employment Services provider. The expectations set forth in the rule emphasize that individuals are most knowledgeable about their services needs and the best way in which services are delivered. The individual choose who participates in the person-centered planning process.*

Community integration/Settings that isolate

- **What are the benefits of integration?**
 - *It is commonly accepted that bigotry, discrimination and hatred cannot be tolerated. Everyone should have the benefits of equal access to the community at large and should have the benefits of each of its citizens. The entire community benefits when all of its citizens can contribute and fully participate.*

- **What are settings that isolate?**
 - *The HCBS settings rules identify certain settings that are presumed to have institutional qualities and do not meet the requirements for home and community-based settings. These settings include those that have the effect of isolating individuals using Medicaid-funded HCBS from the broader community of individuals not using Medicaid-funded HCBS. Settings that isolate may have some or all of the following characteristics:*
 - *Settings designed specifically for people with disabilities, and often even for people with a certain type of disability.*
 - *The individuals in the setting are primarily or exclusively people with disabilities and staff that provide services to them.*
 - *People in the setting have limited, if any, interaction with the broader community.*
 - CMS has determined that the following typically have the effect of isolating*
 - *Farmstead or disability-specific farm community*
 - *Gated/secured “community” for people with disabilities*
 - *Residential Schools*
 - *Multiple settings co-located and operationally related*
 - *For more information available: [Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community](#).*

Frequently Asked Questions

- **What is the meaning of “non-disability-specific settings”?**
 - *In the context of this regulation, this means that, among the options presented, the individual must have the option to select a setting that is not limited to people who have disabilities. People may use services in a provider-controlled setting, or in a setting that supports other people who also have or experience a disability; however, the individual must have the option to be served in a setting that is not exclusive to people with disabilities. For additional information: [Questions and Answers Regarding Home and Community-Based Settings](#)*

Frequently Asked Questions

Person-centered planning

- **What is the Person-Centered Service Plan?**

The Person Centered Service Plan is built on a foundation of understanding a person's strengths, desires and aspirations. The plan also identifies the amount, duration and scope of services an that support an individual based on a functional needs assessment. For Medicaid-eligible individuals the Person-Centered Service Plan is the justification and foundation to bill Medicaid for needed services. This is also called the Individual Support Plan (ISP); Support Plan; The Client Assessment and Planning System (CAPS); or Person-Centered Plan.

- **Who maintains the Person-Centered Service Plan?**

- *For individuals who are Medicaid eligible the responsibility for maintenance of the Person-Centered Service plan is the Person-Centered Service Plan Coordinator (Service Coordinator, Personal Agent, Case manager).*
- *For individuals who are not eligible for Medicaid, they can choose to have a Person-Centered Service plan. If the individual is a private pay then the providers can assist the individual in developing the person-centered service plan so long as there are no alternative resources available. If private pay, the individual or their designee may write the Person-Centered Service plan.*

- **Who maintains the APD care plan for adult foster home residents?**

- *APD licensed providers are required to write and complete the resident's care plan within the initial 14-day period. The care plan must describe the resident's needs, preferences and what assistance is required for each task as stated in 411-050-0655(4). The care plan is maintained by the provider in the resident's record. The care plan should not be confused with the Person Centered Care Plan which is completed but using a person-centered planning process involving the individual, the case manager, the legal guardian (if applicable). The individual's case manager is responsible for writing and maintaining this document.*

Frequently Asked Questions

- **What is Person-centered Planning?**
 - *A person-centered planning process identifies that which is important to a person in their daily life, desired outcomes, goals and aspirations for the future. The process captures assessed needs of the individual, and preferences on how supports are provided to meet those needs. Person-centered planning is an ongoing process that supports the individual in identifying the people important to participate in planning. A written plan is a product of the planning process.*

- **Who leads the person-centered planning process?**
 - *The individual to the maximum extent possible or if applicable their legal guardian designated representative lead the process.*

- **Who is involved in the Person-centered Planning process?**
 - *At a minimum, the individual, the Case Manager/Services Coordinator/Personal Agent, and a Legal Guardian (if one exists) are required to participate in the planning process and plan development. The Individual's designated representative plays a participatory role as needed and defined by the individual. The individual freely chooses others (should s/he so desire) to contribute to the gathering of person-centered information and/or the planning meeting. The person who writes and authorizes the plan is the person-centered plan Case Manager/Services Coordinator/Personal Agent/AMH Contracted Entity not employed by the provider.*

- **Does person-centered planning require a team approach?**
 - *Person-centered planning is rooted in the concept that the individual and if applicable, their designated representative and/or legal guardian drive the planning process, which includes gathering information about what is important to and for the individual. The individual freely chooses who participates in the process. Potential team members include paid providers such as residential, employment and community based service; family members, friends, neighbors, members of a faith community and others. Beyond the minimally required participants, there is no set number of how people participate in the person-centered process or plan*

Frequently Asked Questions

- **What are the requirements of the person-centered planning process?**
 - *The “Person-Centered planning process is driven by the individual. The process –*
 - *Includes people chosen by the individual.*
 - *Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions.*
 - *Is timely and occurs at times and locations of convenience to the individual.*
 - *Reflects cultural considerations of the individual.*
 - *Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants.*
 - *Offers choices to the individual regarding the services and supports they receive and from whom.*
 - *Includes a method for the individual to request updates to the plan.*
 - *Records the alternative home and community-based settings that were considered by the individual.*

- **What are the federal requirements of a person-centered plan?**
 - *The federal regulation states “The person – centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual, and the scope of services and supports available under Community First Choice, the plan must:*
 - *Reflect that the setting in which the individual resides is chosen by the individual.*
 - *Reflect the individual's strengths and preferences.*
 - *Reflect clinical and support needs as identified through an assessment of functional need.*
 - *Include individually identified goals and desired outcomes.*
 - *Reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports. Natural supports cannot supplant needed paid*

Frequently Asked Questions

services unless the natural supports are unpaid supports that are provided voluntarily to the individual in lieu of an attendant.

- *Reflect risk factors and measures in place to minimize them, including individualized backup plans.*
 - *Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her.*
 - *Identify the individual and/or entity responsible for monitoring the plan.*
 - *Be finalized and agreed to in writing by the individual and signed by all individuals and providers responsible for its implementation.*
 - *Be distributed to the individual and other people involved in the plan.*
 - *Incorporate the service plan requirements for the self-directed model with service budget, when applicable.*
 - *Prevent the provision of unnecessary or inappropriate care.*
 - *Other requirements as determined by the Secretary.*
- ***What is the difference between the person-centered plan and the person-centered planning process?***
 - *The written person-centered plan is the outcome of the person-centered planning process.*