

HCBS Settings Rule Compliance 101

For Level II Assisted Living Facilities



Agenda

HCBS Settings Rule Compliance 101- Living Choices

- Overview on the HCBS Settings Rule
- Mythbusters- Compliant vs. Non-Compliant Scenarios
- CMS feedback and updates on validation and ongoing compliance
- Additional resources

Historical Background

HCBS Settings Rule Compliance 101- Living Choices

1983: Congress added Section 1915(c) to the Social Security Act, allowing states to apply for waivers to offer Medicaid-funded services outside of institutional settings. This marked the birth of HCBS as a formal alternative to institutional care.

1990s-2000s: Landmark legislation like the Americans with Disabilities Act (1990) and the Olmstead v. L.C. Supreme Court decision (1999) reinforced the right of individuals with disabilities to live in the least restrictive setting possible.

2005: HCBS became a formal Medicaid State Plan option, expanding access and flexibility for states to support community-based care.

2014-2023: CMS finalized the HCBS Settings Rule (effective March 17, 2014) but due to COVID, was not fully implemented until March 2023.

Why It Matters

HCBS Settings Rule Compliance 101- Living Choices

The HCBS Settings Rule is a landmark in disability rights and Medicaid policy. It ensures people receiving HCBS are not just living outside of institutions- but are truly a part of their communities, with the same freedoms to make choices about their lives.

In Arkansas, each licensed Level II Assisted Living Facility is also concurrently enrolled as a Medicaid provider for the Living Choices Waiver.

- 24/7 supervision and emergency response
- Personal care assistance (bathing, dressing, eating, toileting)
- Limited nursing services (medication administration, health monitoring)
- Medication management
- Housekeeping and essential shopping help
- Transportation assistance (non-medical)
- Therapeutic, social and recreation activities



Core Criteria for ALL HCBS Settings

HCBS Settings Rule Compliance 101- Living Choices

1. Community Integration
 - Setting must be integrated into the broader community.
 - Individuals must have access to community activities, services, and resources just like anyone else.
2. Employment and Community Life
 - Individuals must have opportunities to seek employment in competitive, integrated settings.
 - They should be able to engage in community life and control their personal resources.
3. Access Comparable to Non-HCBS Individuals
 - People receiving HCBS must have the same degree of access to the community as those not receiving Medicaid services.
4. Choice of Setting
 - Individuals must choose their setting from a range of options, including non-disability specific settings.
 - Residential options must include the possibility of a private unit.



Core Criteria for ALL HCBS Settings

HCBS Settings Rule Compliance 101- Living Choices

5. Person-Centered Planning
 - Services must be based on a person-centered plan that reflects the individual's preferences, goals and needs.
 - The person directs the planning process.
6. Rights and Dignity
 - Settings must ensure privacy, dignity, respect, and freedom from coercion or restraint.
7. Autonomy and Independence
 - Individuals must be supported in making life choices, including daily schedules, activities, and service providers.
8. Choice in Services and Providers
 - Individuals must be able to choose their services and who provides them.



Additional Criteria for Residential Settings

HCBS Settings Rule Compliance 101- Living Choices

1. Legally Enforceable Lease or Agreement
 - Residents must have a lease or similar legal agreement that provides the same protections as those typical landlord-tenant arrangements.
2. Privacy in Living Unit
 - Each individual must have privacy in their unit.
 - This includes lockable doors, choice of roommates, and freedom to furnish or decorate their space.
3. Control of Schedule and Access
 - Residents must control their own schedules and have access to food at any time.
 - They must be able to have visitors of their choosing at any time.
4. Physical Accessibility
 - The setting must be physically accessible to the individual.
5. Modifications to These Criteria
 - Any modifications must be documented in the PCSP.
 - They must be based on assessed need, not convenience of the provider.



Additional Criteria for Residential Settings

HCBS Settings Rule Compliance 101- Living Choices

These criteria are designed to ensure that HCBS Settings are not just outside of an institution- but are truly **home-like, empowering, and integrated** into the community.



HCBS Settings Rule Compliance 101

Mythbusting HCBS Settings Rule Compliance



Compliant v. Non-Compliant

HCBS Settings Rule Compliance 101- Living Choices

Features:

- Lockable doors
- Control over their schedule
- Freedom to decorate
- Legally enforceable lease; choice of roommates
- Visitors at any time and of their choosing
- Meals at any time, not just fixed hours
- Participation in community activities outside of facility

Issues:

- No lockable doors/key access or private spaces
- Staff control when residents wake, eat, and participate in activities
- Visitors are only allowed during limited hours or have to be approved
- Residents discouraged or prevented from leaving/Reverse Integration activities only



Compliant v. Non-Compliant

HCBS Settings Rule Compliance 101- Living Choices

Why it is compliant:

The facility supports independence, respects privacy, and integrates residents into the broader community.

Why it is NOT compliant:

The setting limits autonomy, isolates residents, and fails to provide meaningful access to the community.



Privacy & Dignity

HCBS Settings Rule Compliance 101- Living Choices

Privacy and dignity are core components in everyone's life.

Best practices should be used not only with living space and personal boundaries, but in staff conduct and training.

- Knock before entering
- Private care delivery
- Confidential communication



Memory Care Units

HCBS Settings Rule Compliance 101- Living Choices

Setting: A secured memory care wing.

Features:

- Private rooms with lockable doors and personalized space
- Person-centered planning
- Freedom of movement within the unit, supervised outings
- Modified schedules to reflect individual routine
- Staff training emphasizing dignity, respect and communication for people with dementia.

Setting: A secured memory care wing where all residents follow the same rigid daily schedule.

Issues:

- Blanket policy of no lockable doors for anyone in the unit
- Not allowed outside the unit- even with supervision
- Activities are generic and not tailored to individual interests or cognitive abilities
- Use of coercive practices (restraints, forced participation)



Memory Care Units

HCBS Settings Rule Compliance 101- Living Choices

Why it is compliant:

Even with safety measures like secured doors, the setting promotes autonomy, community access, and individualized care.

Why it is NOT compliant:

The setting functions in a one-size-fits-all; restricts autonomy, isolates residents, and lacks individualized support.



Lease Agreements

HCBS Settings Rule Compliance 101- Living Choices

Agreement Type: A formal lease or residency agreement signed by both the resident and provider.

Features:

- Specifies rent amount, due date, and duration of tenancy.
- Includes eviction protections comparable to state landlord-tenant laws.
- Outlines resident rights, including privacy, autonomy, and appeal processes.
- Clearly defines provider responsibilities (e.g. maintenance, service provision)
- Resident receives a copy and its explained in accessible language.

Agreement Type: A vague “house rules” document or admission form with no legal standing.

Issues:

- No mention of eviction protections or appeal rights.
- Resident can be removed at the provider’s discretion without notice.
- No clear terms for rent, responsibilities, or duration.
- Agreement is not signed by both parties or not provided to the resident.
- Resident is unaware of their rights or how to challenge decisions.
- Charging more, or having discriminatory pricing, for the same unit and services of HCBS beneficiaries vs. non-HCBS beneficiaries.



Equity, Autonomy, & Non-Discrimination

HCBS Settings Rule Compliance 101- Living Choices

The HCBS Settings Rule is built on equity, autonomy, and non-discrimination. It ensures that individuals receiving Medicaid-funded HCBS:

- Have the same rights and protections as anyone else living in the community
- Are not treated differently simply because they receive Medicaid.
- Can access services in a non-institutional, person-centered way.



Scenario

HCBS Settings Rule Compliance 101- Living Choices

A facility charges:

Private-pay residents: \$1,500/month for rent and services.

Medicaid/HCBS residents: \$1,800/month for same unit and services.

Why is this a problem?

- **Discriminatory pricing:** charging more on payment source violates the principle of equal treatment.
- **Undermines community integration:** it creates a two-tier system that isolates Medicaid beneficiaries.
- **Potential violation of Medicaid rules:** reimbursement rates are set by the state, and providers cannot arbitrarily inflate costs.



Scenario

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Remember: The Living Choices waiver does not include rent or housing costs (room and board).

Living Choices waiver service costs should be clearly separated from rent and general services charged to all assisted living residents. This separation is not just best practice; it's essential for **compliance with Medicaid regulations** and the **HCBS Settings Rule**.



Employment Services

HCBS Settings Rule Compliance 101- Living Choices

Compliant Features:

- Residents are encouraged to pursue **competitive, integrated employment**.
- Staff assist with job searches, resume writing and interview prep.
- Transportation is arranged for work shifts and residents choose their own jobs.
- The PCSP includes employment goals tailored to each individual's interests and abilities.

Non Compliant Issues:

- Residents are **discouraged or prohibited** from working outside the facility.
- No support is provided for job-seeking or skill-building.
- Employment options are limited to **in-house chores/volunteering** or token tasks with no pay or community interaction.



Transportation Access

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Compliant Features:

- Facility provides, or assists the individual in accessing, **flexible transportation options** (e.g., shuttle, public transit passes, rideshare coordination).
- Residents can schedule rides independently or with minimal assistance.
- Transportation is available not just for medical appointments- but also for work, errands, and social outings.

Non Compliant Issues:

- Transportation is only available for **pre-approved medical appointments or scheduled outings/facility-sponsored activities.**
- Residents cannot schedule their own rides and must rely on **staff availability.**
- No access to public transit or community- based transportation options.



Meal & Food Access

HCBS Settings Rule Compliance 101- Living Choices

Compliant Features:

- Residents choose **when, where, & with whom** they eat.
- No rigid mealtimes- meals & snacks are available throughout the day.
- If someone misses a meal due to an outing/activity/employment, staff save a plate or offer alternative.
- Residents can **store personal snacks** in rooms or designated kitchen area.
- **Accessible** kitchen and pantry areas.

Non Compliant Issues:

- Strictly scheduled mealtimes with **no flexibility**.
- Residents must eat in assigned seats and cannot choose dining companions.
- No food available outside of designated meal periods.
- Food or snacks that are available outside of meal periods are not individual preferences.
- Kitchen and food storage area **locked** and off-limits.



Meal & Food Access

HCBS Settings Rule Compliance 101- Living Choices

Compliant Features:

- Staff assist with **grocery shopping**, budgeting, and meal planning if requested.
- Residents can request **alterative meals** if they don't like what is served or on the menu.
- Dietary choices are respected- even if the staff disagree with them.
- Nutrition education is offered, but decisions remain with the resident.

Non Compliant Issues:

- Residents cannot keep personal snacks and beverages in room.
- Staff control what food is appropriate based on personal beliefs or assumptions about health.



Visitation

HCBS Settings Rule Compliance 101- Living Choices

Compliant Features:

- Residents can have **visitors at any time**, including evenings and weekends.
- Overnight guests are allowed based on the resident's preferences and lease agreement.
- No need for staff approval or scheduled visitation windows.
- Residents choose **who visits, when and where**- including private areas like their rooms.
- Staff respect the resident's wishes and do not interfere unless there is a safety concern.

Non Compliant Issues:

- Visitors are only allowed during **strictly scheduled hours** (e.g., 2-4pm on weekdays).
- No overnight guests are permitted under any circumstances.
- Residents must **request permission** for visitors.
- Staff may deny visits based on arbitrary rules or facility convenience.
- Visits must occur in **common areas** only; residents cannot host guests in their rooms.
- Staff may monitor or interrupt conversations **without cause**.



Supporting Resident Choice

HCBS Settings Rule Compliance 101- Living Choices

Area	Compliant Example
Meal Times	Residents choose when and where to eat, with flexible dining hours and multiple options.
Wake/Sleep Schedule	Residents wake up and go to bed on their own schedule, not dictated by staff routines.
Activities	Residents opt in or out of group activities freely, with access to solo or quiet alternatives.
Personal Care	Bathing, dressing, and grooming are scheduled based on resident preferences- not staff convenience.
Medication	Medication is administered at times that align with the resident's daily routine, when clinically appropriate.
Visitors	Residents can receive visitors at any time, unless there's a documented health or safety concern.



Supporting Resident Choice

HCBS Settings Rule Compliance 101- Living Choices

Area	Non-Compliant Example
Meal Times	Meals served only at fixed times; residents must eat in the dining hall or miss the meal.
Wake/Sleep Schedule	Staff wake residents early for convenience or shift changes, regardless of their personal preference.
Activities	Mandatory participation in group activities; residents are penalized for opting out and not given alternative options.
Personal Care	Staff bathe residents on a rigid schedule without regard for their comfort or preferred routine.
Medication	Medications administered strictly by staff schedule, even if it disrupts the resident's day.
Visitors	Visiting hours are limited or require staff approval, without individualized justification.



Promoting Full Access

HCBS Settings Rule Compliance 101- Living Choices

Area	Compliant Example
Entrances & Exits	All main entrances are wheelchair accessible with automatic doors and no steps.
Hallways & Doorways	Hallways are wide enough for wheelchairs; doorways meet ADA width standards.
Bathrooms	Equipped with grab bars, roll-in showers, and accessible sinks and toilets.
Elevators	Elevators are available and large enough for wheelchairs, with tactile and audible signals.
Outdoor Areas	Paths are paved, level, and free of tripping hazards; ramps are provided where needed.
Signage	Includes braille or high-contrast text for residents with visual impairments.
Emergency Systems	Visual and auditory alarms installed for residents with hearing or vision loss.



Promoting Full Access

HCBS Settings Rule Compliance 101- Living Choices

Area	Non-Compliant Example
Entrances & Exits	Main entrance has stairs with no ramp or lift; side entrance is the only accessible option.
Hallways & Doorways	Narrow hallways or doorways that prevent wheelchair access.
Bathrooms	No grab bars or inaccessible shower/tub combinations.
Elevators	No elevator in multi-story buildings, or elevator buttons lack braille/tactile markings.
Outdoor Areas	Gravel paths, uneven surfaces, or steps without handrails.
Signage	No braille or poor contrast, making navigation difficult for visually impaired residents.
Emergency Systems	Only auditory alarms, leaving deaf or hard of hearing residents at risk.



True Community Integration

HCBS Settings Rule Compliance 101- Living Choices

Area	Compliant Example
Social Activities	Residents attend local events, church services, volunteer opportunities, and clubs of their choosing.
Employment	Facility supports residents in finding competitive jobs in the community, with transportation and coaching if needed.
Shopping & Errands	Residents go to grocery stores, pharmacies, & banks in town- not just use in-house services.
Healthcare access	Residents choose their own doctors and attend appointments in community clinics.
Transportation	Facility provides or coordinates access to public transit, rideshare or community shuttles.
Civic Engagement	Residents vote, attend town hall meetings, and participate in advocacy or local organizations.
Spiritual Life	Residents attend religious services in community, not just on-site offerings.



True Community Integration

HCBS Settings Rule Compliance 101- Living Choices

Area	Non-Compliant Example
Social Activities	All activities are held on-site; residents rarely leave the facility.
Employment	Residents are only offered facility-based chores or “employment” or sheltered workshops.
Shopping & Errands	Residents must use in-house store or staff-run errands; no access to community stores.
Healthcare access	Residents are required to use the facility’s nurse or doctor, with no outside options.
Transportation	Transportation is only available for medical appointments, not social or personal outings.
Civic Engagement	Residents are discouraged or prevented from voting or attending community events.
Spiritual Life	Religious services are only offered on-site, with no option to attend outside services.



Reverse Integration

HCBS Settings Rule Compliance 101- Living Choices

Issue	Why It's Not Compliant
Simulated Inclusion	It creates a façade of community life without offering real-world experiences.
Limited Autonomy	Individuals aren't making choices about where to go or who to interact with- they're passive recipients.
Institutional Feel	The setting remains disability-specific and segregated, reinforcing isolation.
Fails True Integration	HCBS requires individuals to engage in competitive employment, community activities, and civic life outside the facility.
No Equal Access	People with disabilities must have the same access to community resources as anyone else- not just visits from outsiders.

CMS guidance emphasizes that reverse integration does not meet the standard for community integration under the HCBS Settings Rule.



Modifications

HCBS Settings Rule Compliance 101- Living Choices

CMS recognizes that there may be individuals that require **modifications** for safety, but those must be justified in the person-centered plan and **not applied universally**. The goal is to ensure that even residents with cognitive impairments experience their environment as **home-like, respectful and empowering**.



Modifications

HCBS Settings Rule Compliance 101- Living Choices

Example Scenario: A resident with dementia has a history of unsafe wandering.

Modification Needed: Their unit has a secure door with staff-controlled access.

Compliance:

- ✓ The individual was assessed on his/her own situations and documented in the person-centered plan.
- ✓ Less restrictive options were tried first (e.g., motion sensors, supervision)
- ✓ The resident's rights are still respected (e.g., access to outdoor areas with staff support)



Modifications

HCBS Settings Rule Compliance 101- Living Choices

Example Scenario: A resident has a medical condition requiring strict dietary control.

Modification Needed: Access to snacks is limited and monitored.

Compliance:

- ✓ The restriction is based on documented clinical need, not facility convenience, and noted in the person-centered plan.
- ✓ The plan includes education and alternatives to support their autonomy.
- ✓ Other residents retain full food access.



Modifications

HCBS Settings Rule Compliance 101- Living Choices

Example Scenario: A resident uses their phone to contact individuals who exploit them financially.

Modification Needed: Phone use is restricted during certain hours or monitored.

Compliance:

- ✓ The restriction is based on a documented safety concern and noted in the person-centered plan.
- ✓ Positive interventions (e.g., financial counseling) was attempted first before restriction put in place and documented in the person-centered plan.
- ✓ The plan includes regular review and a goal to restore full access.



Modifications

HCBS Settings Rule Compliance 101- Living Choices

Example Scenario: A resident has a seizure disorder and requires overnight monitoring.

Modification Needed: Staff perform hourly bed checks.

Compliance:

- ✓ The need is medically documented and noted in the person-centered plan.
- ✓ The resident consents to the checks, in writing.
- ✓ Other residents are not subject to the same practice.



Non-Compliant Modifications

HCBS Settings Rule Compliance 101- Living Choices

The following would not be considered appropriate modifications and are not allowed under the HCBS Settings Rule:

- X All residents have food locked up regardless of dietary needs.
- X No overnight visitors allowed for anyone.
- X Mandatory bed checks for all residents (either whole facility or certain wings/sections).
- X Set visiting hours that apply to everyone.
- X No alcohol or smoking policies applied universally without individual justification.



What to Expect

HCBS Settings Rule Compliance 101- Living Choices

In 2023, DHS conducted the initial HCBS Settings Rule visits to all Assisted Living Facilities. After internal review and additional guidance from CMS, DHS will begin conducting the next phase in the HCBS Setting Rule compliance.

In August 2025:

- Released Advisory Memo with Updates and Expectations
- Released an FAQ for ALF II Providers
- Conducting Webinars



What to Expect

HCBS Settings Rule Compliance 101- Living Choices

Beginning in September 2025, we will start unannounced visits specifically designed for HCBS Settings Rule. This gives us the opportunity to work with you and assist you in making sure you have reached full compliance.

- Record audits
- Staff trainings
- Facility observation
- Interviews with residents and staff
- Administrator debrief to share preliminary findings



What to Expect

HCBS Settings Rule Compliance 101- Living Choices

NOTE: On-site surveyors will not make the final determination.

Following the visits, the surveyor documentation will be evaluated by the HCBS Quality Assurance Team using the CMS- recommended practices.

If any setting criteria is found to be out of compliance, the HCBS QA Team will notify the facility and work with you on a corrective action plan to remedy anything outstanding.



What to Expect

HCBS Settings Rule Compliance 101- Living Choices

It is important to note that any provider identified as a Heightened Scrutiny setting will also be reviewed by CMS prior to DHS issuing final decisions.

What is Heightened Scrutiny? (See FAQ)

Certain setting that has institutional or isolating characteristics. For example:

- Located in the same building, on the same grounds, or adjacent to a public or private institution
- Gated communities, farmsteads, campus-style
- Rural location which unintentionally isolates from the broader community or limited choice in receiving services



What to Expect

HCBS Settings Rule Compliance 101- Living Choices

Once a facility has completed the HCBS Settings Rule visit and has corrected any outstanding concerns, all HCBS Settings criteria will be incorporated into annual licensing surveys and any complaint investigation conducted.

We anticipate all formal HCBS Settings Rule visits and determinations will be completed by January 2026.

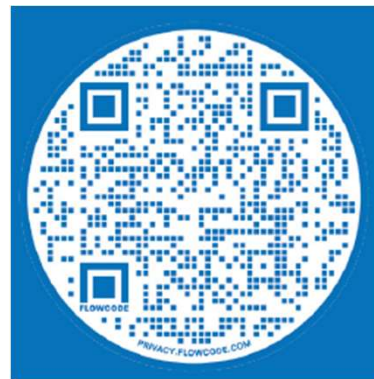


Online Resources

HCBS Settings Rule Compliance 101- Living Choices

DHS is committed to continued guidance and education for providers on the HCBS Settings Rule. We have created a direct link to information on our website for you to refer to and we will continue to update this page with new information and resources when available.

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