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# **Home and Community- Based Services Settings Overview**

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# Purpose

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- This webinar will provide an overview of:
  - The federal Home and Community-Based Services (HCBS) Settings Rule
  - HCBS settings requirements for provider-owned or controlled settings
  - Status update on implementation



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# Background

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- In 2014, the Centers for Medicare and Medicaid Services (CMS) issued federal regulations for settings where Medicaid home and community-based services (HCBS) are provided.
  - These regulations are referred to as the HCBS Settings Rule.
- CMS required states to submit a transition plan describing how they will achieve compliance with the HCBS Settings Rule.



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# Purpose of the Settings Rule

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- Enhance the quality of HCBS.
- Provide protections to all Medicaid recipients.
- Ensure access to the benefits of community living.
- Medicaid HCBS recipients must have the same rights as individuals not receiving HCBS.
- Any modifications to a person-centered service plan must be based on individual needs and assessments.



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# Background

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- The statewide transition plan (STP) must include:
  - An assessment of settings where Medicaid HCBS are provided.
  - Remediation strategies for settings that do not meet the rule requirements.
  - Description of the state's site-specific assessments and heightened scrutiny review processes.
  - Summary of public comments received on the transition plan and any revisions made to the plan based on comments.
  - Compliance reports.



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# Impacted Programs

Fee-for-Service (FFS)	Managed LTSS
Community First Choice (CFC)	Community First Choice (CFC)
Home and Community-based Services (HCS)	Medically Dependent Children Program (MDCP)
Texas Home Living (TxHmL)	STAR+PLUS HCBS
Community Living Assistance and Support Services (CLASS)	
Deafblind with Multiple Disabilities (DBMD)	
Youth Empowerment Services (YES)	



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# Background

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- HHSC's STP was approved July 20, 2023.
- HCBS Settings Rule compliance deadline was March 17, 2023.
- CMS has allowed states to submit a corrective action plan (CAP) for compliance activities that will go past March 17, 2023.
- HHSC's CAP was approved by CMS on October 6, 2023.



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# Requirements for All Settings

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# Requirements – All Settings

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- The HCBS settings rules require all settings where Medicaid HCBS are delivered to support a person's full access to the community.
- This includes opportunities to:
  - Engage in community life
  - Work in competitive integrated settings
  - Control personal resources



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# Requirements - All Settings

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- All settings where Medicaid HCBS is delivered must:
  - Ensure an individual's rights to privacy, dignity and respect, and freedom from coercion and restraint.
  - Optimize, and does not regiment, individual initiative, autonomy, and independence in making life choices.
  - Facilitate individual choice regarding services and supports, and who provides them.



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# Provider Owned or Controlled Settings

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# Provider Owned or Controlled Settings

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- The individual must have a residential agreement with the program provider that offers the same protections against eviction that tenants have under state landlord/tenant law.
- The individual must have privacy in their sleeping or living unit, including:
  - Lockable doors
  - Choice of room or roommate
  - Freedom to furnish and decorate their room



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# Provider Owned & Controlled Settings

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- The individual has freedom and support to control their own schedules and activities.
- The individual can access to food at any time.
- The individual can have visitors of their choosing at any time.
- The setting is physically accessible to the individual.

**Any modifications to these criteria must be supported by a specific need and justified in the individual's person-centered plan.**



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# Requirements for Modifications

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- The individual's service plan must include:
  - The specific and individualized assessed need that justifies the modification
  - The positive interventions and supports that were tried but did not work
  - The less intrusive methods of meeting the need that were tried but did not work
  - The condition that is directly proportionate to the specific assessed need



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# Requirements for Modifications

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- How data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification.
- Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- Individual's or legally authorized representative's (LAR's) signature.
- Program provider assurance that the modification will cause no harm to the individual.



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# Heightened Scrutiny

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## **CMS presumes certain settings are institutional:**

Prong 1: Settings located on the grounds of, or immediately adjacent to a public institution.

Prong 2: Settings located in a building that is a public or private inpatient facility.

Prong 3: Any setting that has the effect of isolating individuals from the broader community.

**The heightened scrutiny process gives states the chance to show a setting can overcome the institutional presumption.**



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# Heightened Scrutiny

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- Heightened scrutiny is a review process to determine whether the setting has the qualities of a home and community-based setting.
- Provider must submit proof that the service setting does not isolate individuals from the larger community and that it does not have characteristics of an institutional setting.
- HHSC posts documentation for public review.
- If the state ultimately agrees the setting meets requirements, it submits the evidence to CMS for final approval.



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# Heightened Scrutiny

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- CMS conducted a site visit from February 13-16, 2023 to a sample of settings identified by the state or stakeholders as having qualities of an institution that required a heightened scrutiny review for compliance with the Settings rule.
- The sample included STAR+PLUS assisted living facilities, a fee-for-service intentional community, and a individualized skills and socialization setting.



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# Corrective Action Plan

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- Site-specific assessment, validation, and remediation of employment services in CLASS, DBMD, HCS, and TxHmL.
- Site-specific remediation for the STAR+PLUS HCBS residential settings.
- Site-specific assessment, validation, and remediation of individualized skills and socialization settings compliance in DBMD, HCS, and TxHmL.



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# Current Activities

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## Employment Services

- HHSC is contracting with a vendor to conduct the employment services onsite assessments. These assessments will include:
  - prevocational services (available only in the CLASS waiver)
  - employment assistance and supported employment (across multiple waiver programs)
- **Deadline: March 31, 2025**



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# Current Activities

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## STAR+PLUS HCBS

- All assisted living facilities have had an on-site assessment.
- All ALFs with a remediation plan have completed their remediation, with the exception of one provider is no longer providing STAR+PLUS HCBS.
- HHSC is developing a person-centered planning remediation plan.
- **Deadline: September 1, 2025**



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# Current Activities

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## Individualized Skills and Socialization

- The initial assessments for individualized skills and socialization providers in the DBMD, HCS, and TxHmL waiver programs are complete.
- All providers must offer offsite individualized skills and socialization.
- **Deadline: March 17, 2024**



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# Thank You

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