

# HCBS Settings Rule & Heightened Scrutiny Process

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## What is the Home and Community Based Services (HCBS) Settings Rule?

In 2014, the Centers for Medicare and Medicaid Services (CMS) issued the HCBS Settings Rule to require that every state ensure that services delivered to seniors and people with disabilities living in the community – outside of institutions – meet minimum standards for integration, access to community life, choice, autonomy, and other important consumer protections.

**Source:** ACLU: [https://www.aclu.org/sites/default/files/field\\_document/aclu\\_faq\\_-\\_hcbs\\_settings\\_rule-final-\\_1-10-18.pdf](https://www.aclu.org/sites/default/files/field_document/aclu_faq_-_hcbs_settings_rule-final-_1-10-18.pdf)

# HCBS Settings Rule

## What is the Home and Community Based Services (HCBS) Settings Rule?

Maximizes the opportunities for HCBS program participants to have access to the benefits of community living and to receive services in the most integrated setting

➤ **Full compliance with all requirements by March 17, 2023.**

CMS: <https://www.cms.gov/newsroom/fact-sheets/home-and-community-based-services>



Choices  
about their  
Life



Live with non-  
disabled peers



Remain in Their  
Community

**Medicaid: Pays for  
Institutional Settings**

# Medicaid Waiver

*Waives the Medicaid Requirement for Institutional Services*

Same services provided in their home and/or community



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Picture: New York Times, 2021

# The Problem

## Concern: “Mini Institutions”

Choice

Where they live  
How much they pay  
Decide who they live with  
Decide what is on their walls  
Who comes and when  
Have control over their residence  
Have control over their money



Des Enano

Not isolated  
from their

community

Accommodated with  
abilities

Accommodated  
with disabilities

of or  
condition

# The HCBS Settings Rule



## Protecting the Rights of People with Disabilities

# Significance to UCEDDs

**An opportunity to translate our work into practice**

- **Creates a Pathway Self-Determination**
  - Opens a pathway for individuals with disabilities to articulate their wishes hopes and desires and have these reinforced.
- **Protections and Rights**
  - Sets forth very specific requirements for Waiver-funded settings



## An opportunity to translate our work into practice

- **Quality Improvements**

- Opportunity to ensure person-centeredness
- CMS has processes in place to appeal denial of services, but how do participants submit their concerns about service delivery?

- **Stakeholder Engagement**

- CMS requires states to take public comments, submit these to CMS and respond to each comment
- Allows for a counter-check of agreement with compliance on Settings between state leadership and stakeholders

- **Services**
  - Participate in stakeholder calls
  - Monitor waiver renewals and make public comment
- **Dissemination/Technical Assistance**
  - **Best Practices**
    - Person-Centered Plans
    - Increasing number and training for direct care providers

- **Training/Education**
  - Teach individuals receiving services about their rights
  - Educate families
  - Train provider staff/agencies on how to implement rule
- **Research**
  - Evaluate impact of rule (Quality of life improvements?)
  - Identify trends on violations

# The Heightened Scrutiny Process

## 1. CMS schedules Heightened Scrutiny Visits

➔ Reach out to you to identify UCEDD staff, self-advocate, family leader

## 2. ACL hosts stakeholder calls prior to visit

➔ UCEDD representation

## 3. Stakeholder Call with CMS

➔ What settings need heightened scrutiny-even if they aren't in State Transition Plans?

## 4. CMS leadership has Heightened Scrutiny visit

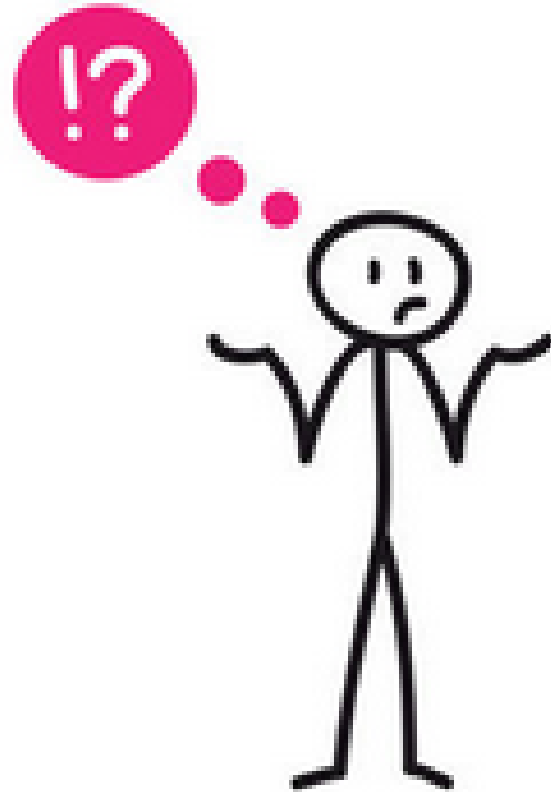
## 5. Stakeholder Recap Call after Heightened Scrutiny visits

➔ UCEDD representation

# Next Steps

- **Help me identify faculty/staff, self advocate, and family leaders that I should contact**
- **Participate in follow up meetings we have scheduled**
- **Participate in HCBS Settings Special Interest Group**
- **Council on Leadership Advocacy (COLA)**

# Questions



## **ACLU**

[https://www.aclu.org/sites/default/files/field\\_document/aclu\\_faq\\_-\\_hcbs\\_settings\\_rule-final-\\_1-10-18.pdf](https://www.aclu.org/sites/default/files/field_document/aclu_faq_-_hcbs_settings_rule-final-_1-10-18.pdf)

## **CMS**

<https://www.cms.gov/newsroom/fact-sheets/home-and-community-based-services>

## **CMS**

<https://www.medicaid.gov/resources-for-states/downloads/covid19allstatecall05242022.pdf>

## **CMS**

<https://www.medicaid.gov/medicaid/home-community-based-services/home-community-based-services-authorities/index.html#:~:text=Home%20and%20Community%20Based%20Services,formal%20Medicaid%20State%20plan%20option.>

## **New York Times**

<https://www.nytimes.com/2021/07/24/opinion/letters/disability-homes.html>