



ND Developmental Disabilities Section

CMS Home and Community Based Settings Final Rule Requirements

The Centers for Medicare and Medicaid Services (CMS) established a Final Rule effective on March 17, 2014, for Waiver Home and Community Based Services (HCBS).

The Final Rule established requirements, which are based on characteristics and individual experiences that must be present for each Home and Community Based residential and non-residential setting (home, work, and day supports). The requirements are intended to assure that services promote community inclusion, choices, and quality of life.

CMS provided exploratory questions for states to utilize in their assessment in determining whether each residential and non-residential setting meets the setting requirements. The ND Developmental Disabilities Section combined all the CMS exploratory questions with the regulations into one document.

This information may be utilized as a tool to ensure initial compliance with new settings, to assist in maintaining setting compliance, or to understand the expectations within the requirements. Contents include:

- Quick Reference containing only the regulations
- Comprehensive version containing the regulations and the corresponding characteristics

More information regarding the regulations can be found on ND's Developmental Disabilities Services website.

<https://www.hhs.nd.gov/human-services/hcbs>

HCBS Requirements - Quick Reference

1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

2. The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

4. Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

5. Facilitates individual choice regarding services and supports, and who provides them.

Note: DD Section established the following standards for ALL residential settings unless otherwise noted.

6. In a provider-owned or controlled residential setting, in addition to the qualities specified above, the following additional conditions must be met:

- A. (Provider-owned only) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities, and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement, or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.**
- B. Each individual has privacy in their sleeping or living unit:**
- **(Provider-owned only) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.**
 - **Individuals sharing units have a choice of roommates in that**

- setting.**
- **Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.**
- C. Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.**
- D. Individuals are able to have visitors of their choosing at any time.**
- E. The setting is physically accessible to the individual.**

7. Any modification of the additional conditions specified above (A-E), must be supported by a specific assessed need, and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

- A. Identify a specific and individualized assessed need.**
- B. Document the positive interventions and supports used prior to any modifications to the person-centered service plan.**
- C. Document less intrusive methods of meeting the need that have been tried but did not work.**
- D. Include a clear description of the condition that is directly proportionate to the specific assessed need.**
- E. Include regular collection and review of data to measure the ongoing effectiveness of the modification.**
- F. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.**
- G. Include the informed consent of the individual.**
- H. Include an assurance that interventions and supports will cause no harm to the individual.**

Settings That are Not Home and Community-Based:

Cannot be authorized for waiver services:

- A nursing facility;
- An institution for mental diseases (IMD);
- An intermediate care facility for individuals with intellectual disabilities (ICF/IID);
- A hospital

Settings Presumed not to be Home and Community Based:

Assumed to have the qualities of an institution and heightened scrutiny review required:

- A setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment
- A setting that is located in a building on the grounds of, or immediately adjacent to, a public institution
- Any other setting that has the effect of isolating individuals from the broader community

HCBS Requirements – Expanded Reference

- The check marked (✓) areas represent the characteristics anticipated to be present and to provide suggested questions in determining the presence or absence of each requirement in a setting
- Not all questions may relate to every setting, or every individual served
- Residential questions can also be used additionally for the non-residential settings
- CQL completed a Toolkit for States, which cross walked CQL’s Basic Assurances and Personal Outcome Measures to the CMS Home and Community Based requirements. This information is also represented. For more detailed information and how they correlate, please visit CQL’s website for the complete document

1. *The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.*

CQL Basic Assurances Data-Factor 2d, 2e

Person Outcome Measure Data-POM 5, 10, 11, 12, 13, 14, 16, 19

Residential Settings:

- ✓ Does the individual regularly access the community, and as able to, and according to their desired frequency?
- ✓ Is the individual aware of or have access to materials to become aware of activities occurring outside of the setting?
- ✓ Does the individual shop, attend religious services, schedule appointments, have lunch with family and friends, etc., in the community, as the individual chooses?
- ✓ Does the individual work in an integrated community setting?
- ✓ If the individual would like to work, is there activity that ensures the option is pursued?
- ✓ Does the individual participate regularly in meaningful non-work activities in integrated community settings for the period of time desired by the individual?
- ✓ Does the individual have access to such things as a television, radio, and leisure activities of interest and can schedule such activities at their convenience?
- ✓ Does the individual have a checking or savings account or other means to control their funds?
- ✓ Does the individual have access to their funds?
- ✓ How is it made clear that the individual is not required to sign over their paychecks to the provider?
- ✓ Do individuals live/receive services in a different area of the setting separate from individuals not receiving Medicaid HCBS?

- ✓ Is the setting in the community among other private residences, retail businesses?
- ✓ Is the community traffic pattern consistent around the setting (e.g., individuals do not cross the street when passing to avoid the setting)?
- ✓ Do individuals on the street greet/acknowledge individuals receiving services when they encounter them?
- ✓ Do individuals come and go at will?
- ✓ Are individuals moving about inside and outside the setting as opposed to sitting by the front door?
- ✓ Do individuals in the setting have access to public transportation?
- ✓ Are there bus stops nearby or taxis available in the area?
- ✓ Is an accessible van available to transport individuals to appointments, shopping, etc.?
- ✓ Are bus and other public transportation schedules and telephone numbers posted in a convenient location?
- ✓ Is training in the use of public transportation facilitated?
- ✓ Where public transportation is limited, are other resources provided for the individual to access the broader community?
- ✓ Are visitors present?
- ✓ Are visitors restricted to specified visiting hours?
- ✓ Are visiting hours posted?
- ✓ Is there evidence that visitors have been present at regular frequencies?
- ✓ Are there restricted visitor's meeting area?
- ✓ Do individuals have full access to typical facilities in a home such as a kitchen with cooking facilities, dining area, laundry, and comfortable seating in the shared areas?
- ✓ Are individuals facilitated in accessing amenities such as a pool or gym used by others on-site?
- ✓ Is the setting physically accessible and there are no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting individuals' mobility in the setting or if they are present are there environmental adaptations such as a stair lift or elevator to ameliorate the obstruction?
- ✓ For those individuals who need supports to move about the setting as they choose, are supports provided, such as grab bars, seats in the bathroom, ramps for wheelchairs, viable exits for emergencies, etc.?
- ✓ Are appliances accessible to individuals (e.g., the washer/dryer are front loading for individuals in wheelchairs)?
- ✓ Are tables and chairs at a convenient height and location so that individuals can access and use the furniture comfortably?

Non-Residential Settings:

- ✓ Does the setting provide opportunities for regular meaningful non-work activities in integrated community settings for the period of time desired by the individual?
- ✓ Does the setting afford opportunities for individuals to have knowledge of or access to information regarding age-appropriate activities including competitive work, shopping, attending religious services, medical appointments, dining out, etc., outside of the setting, and who in the

- setting will facilitate and support access to these activities?
- ✓ Does the setting assure that tasks and activities are comparable to tasks and activities for people of similar ages who do not receive HCB services?
 - ✓ Do employment settings provide individuals with the opportunity to participate in negotiating his/her work schedule, break/lunch times, and leave and medical benefits with his/her employer to the same extent as individuals not receiving Medicaid funded HCBS?
 - ✓ Does the setting afford opportunities for individual schedules that focus on the needs and desires of an individual and an opportunity for individual growth?
 - ✓ Does the setting allow individuals the freedom to move about inside and outside of the setting as opposed to one restricted room or area within the setting? For example, do individuals receive HCBS in an area of the setting that is fully integrated with individuals not receiving Medicaid HCBS?
 - ✓ Is the setting in the community/building located among other residential buildings, private businesses, retail businesses, restaurants, doctor's offices, etc., that facilitates integration with the greater community?
 - ✓ Does the setting encourage visitors or other people from the greater community (aside from paid staff) to be present, and is there evidence that visitors have been present at regular frequencies? For example, do visitors greet/acknowledge individuals receiving services with familiarity when they encounter them, are visiting hours unrestricted, or does the setting otherwise encourage interaction with the public (for example, as customers in a pre-vocational setting)?
 - ✓ In settings where money management is part of the service, does the setting facilitate the opportunity for individuals to have a checking or savings account or other means to have access to and control his/her funds. For example, is it clear that the individual is not required to sign over his/her paychecks to the provider?
 - ✓ Does the setting provide individuals with contact information, access to and training on the use of public transportation, such as buses, taxis, etc., and are these public transportation schedules and telephone numbers available in a convenient location?
 - ✓ Alternatively, where public transportation is limited, does the setting provide information about resources for the individual to access the broader community, including accessible transportation for individuals who use wheelchairs?
 - ✓ Is the setting physically accessible, including access to bathrooms and break rooms, and are appliances, equipment, and tables/desks and chairs at a convenient height and location, with no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting individuals' mobility in the setting? If obstructions are present, are there environmental adaptations such as a stair lift or elevator to ameliorate the obstructions?

2. The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in

the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

CQL Basic Assurances Date-Factor 2d, 2e, 2b, 2c, 6a, 8a, 9b

Person Outcome Measure Data-POM 10, 11, 16

Residential Settings:

- ✓ Was the individual given a choice of available options regarding where to live/receive services?
- ✓ Was the individual given opportunities to visit other settings?
- ✓ Does the setting reflect the individual's needs and preferences?
- ✓ Was the individual given a choice of a roommate?
- ✓ Does the individual talk about their roommate(s) in a positive manner?
- ✓ Does the individual express a desire to remain in a room with their roommate?
- ✓ Do married couples share or not share a room by choice?
- ✓ Does the individual know how to request a roommate change?

Non-Residential Settings:

- ✓ Does the setting reflect individual needs and preferences and do its policies ensure the informed choice of the individual?
- ✓ Do the setting options offered include non-disability-specific settings, such as competitive employment in an integrated public setting, volunteering in the community, or engaging in general non-disabled community activities such as those available at a YMCA?
- ✓ Do the setting options include the opportunity for the individual to choose to combine more than one service delivery setting or type of HCBS in any given day/week (e.g., combine competitive employment with community habilitation)?

3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

CQL Basic Assurances Date-Factor 2c, 2a, 1a, 1b, 1c, 3d, 8a, 8d, 8e

Person Outcome Measure Data-POM 5, 7, 21

Residential Settings:

- ✓ Does the individual have a private cell phone, computer, or other personal communication device or have access to a telephone or other technology device to use for personal communication in private at any time?
- ✓ Is the telephone or other technology device in a location that has space around it to ensure privacy?
- ✓ Do individuals' rooms have a telephone jack, WI-FI, or ETHERNET jack?
- ✓ Are cameras present in the setting?
- ✓ Do staff or other residents always knock and receive permission prior to entering an individual's living space?
- ✓ Can the individual close and lock the bathroom door?
- ✓ Is the furniture arranged to support small group conversations?
- ✓ Is information about filing a complaint posted in an obvious location and in an understandable format?

- ✓ Is the individual comfortable discussing concerns?
- ✓ Does the individual know the person to contact or the process to make an anonymous complaint?
- ✓ Can the individual file an anonymous complaint?
- ✓ Is informal (written and oral) communication conducted in a language that the individual understands?
- ✓ Is health information about individuals kept private?
- ✓ Are schedules of individuals for PT, OT, medications, restricted diet, etc., posted in a general open area for all to view?
- ✓ Are individuals, who need assistance with grooming, groomed as they desire?
- ✓ Is assistance provided in private, as appropriate, when needed?
- ✓ Are individuals dressed in clothes that fit, are clean, and are appropriate for the time of day, weather, and preferences?
- ✓ Do individuals greet and chat with staff?
- ✓ Do staff converse with individuals in the setting while providing assistance and during the regular course of daily activities?
- ✓ Does staff talk to other staff about an individual(s), as if the individual was not present or within earshot of other persons living in the setting?
- ✓ Does staff address individuals in the manner in which the person would like to be addressed as opposed to routinely addressing individuals as 'hon' or 'sweetie'?

Non-Residential Settings:

- ✓ Is all information about individuals kept private? For instance, do paid staff/providers follow confidentiality policy/practices and does staff within the setting ensure that, for example, there are no posted schedules of individuals for PT, OT, medications, restricted diet, etc., in a general open area?
- ✓ Does the setting support individuals who need assistance with their personal appearance to appear as they desire, and is personal assistance, provided in private, as appropriate?
- ✓ Does the setting assure that staff interact and communicate with individuals respectfully and in a manner in which the person would like to be addressed, while providing assistance during the regular course of daily activities?
- ✓ Do setting requirements assure that staff do not talk to other staff about an individual(s) in the presence of other persons or in the presence of the individual as if s/he were not present?
- ✓ Does the setting policy require that the individual and/or representative grant informed consent prior to the use of restraints and/or restrictive interventions and document these interventions in the person-centered plan?
- ✓ Does the setting policy ensure that each individual's supports and plans to address behavioral needs are specific to the individual and not the same as everyone else in the setting and/or restrictive to the rights of every individual receiving support within the setting?
- ✓ Does the setting offer a secure place for the individual to store personal belongings?

4. Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

CQL Basic Assurances Date-Factor 2d, 1e

Person Outcome Measure Data-POM 5, 16

Residential Settings:

- ✓ Does the individual have a meal at the time and place of their choosing?
- ✓ Can the individual request an alternative meal if desired, choosing when and what to eat?
- ✓ Are snacks accessible and available anytime?
- ✓ Does the dining area afford dignity and are individuals not required to wear bibs or use disposable cutlery, plates, and cups?
- ✓ Is the individual required to sit at an assigned seat in a dining area?
- ✓ Does the individual converse with others during mealtimes?
- ✓ If the individual desires to eat privately, can s/he do so? (choose with whom to eat or alone)
- ✓ Is the furniture arranged as individuals prefer and does the arrangement assure privacy and comfort?
- ✓ Are the individuals' personal items, such as pictures, books, and memorabilia present and arranged as the individual desires?
- ✓ Do the living areas, furniture, linens, and other household items reflect the individual's personal choices, interests, and hobbies?
- ✓ Do facility protocols or practices limit individuals' choices?
- ✓ Are there house rules?
- ✓ Are individuals prohibited from engaging in legal activities?
- ✓ Are there gates, Velcro strips, locked doors, or other barriers preventing individuals' entrance to or exit from certain areas of the setting?
- ✓ How is it made clear that the individual is not required to adhere to a set schedule for waking, bathing, eating, exercising, activities, etc.?
- ✓ Does the individual's schedule vary from others in the same setting? (chooses and controls a schedule that meets their wishes/needs)
- ✓ Is there a curfew or other requirement for a scheduled return to the setting?

Non-Residential Settings:

- ✓ Are there gates, Velcro strips, locked doors, fences, or other barriers preventing individuals' entrance to or exit from certain areas of the setting?
- ✓ Does the setting afford a variety of meaningful non-work activities that are responsive to the goals, interests, and needs of individuals? Does the physical environment support a variety of individual goals and needs (for example, does the setting provide indoor and outdoor gathering spaces; does the setting provide for larger group activities as well as solitary activities; does the setting provide for stimulating as well as calming activities)?
- ✓ Does the setting afford opportunities for individuals to choose with whom to do activities in the setting or outside the setting or are individuals

- assigned only to be with a certain group of people?
- ✓ Does the setting allow for individuals to have a meal/snack at the time and place of their choosing? For instance, does the setting afford individuals full access to a dining area with comfortable seating and opportunity to converse with others during break or mealtimes, afford dignity to the diners (i.e., individuals are treated age-appropriately and not required to wear bibs)? Does the setting provide for an alternative meal and/or private dining, if requested by the individual? Do individuals' have access to food at any time consistent with individuals in similar and/or the same setting who are not receiving Medicaid-funded services and supports?
 - ✓ Does the setting post or provide information on individual rights?
 - ✓ Does the setting prohibit individuals from engaging in legal activities (ex., voting when 18 or older, consuming alcohol when 21 or older) in a manner different from individuals in similar and/or the same setting who are not receiving Medicaid funded services and supports?
 - ✓ Does the setting afford the opportunity for tasks and activities matched to individuals' skills, abilities, and desires?

5. Facilitates individual choice regarding services and supports, and who provides them.

CQL Basic Assurances Date-Factor 7d

Person Outcome Measure Data-POM 10, 11, 16

Residential Settings:

- ✓ Do Staff ask the individual about their needs and preferences?
- ✓ Are individuals aware of how to make a service request?
- ✓ Does the individual express satisfaction with the services being received?
- ✓ Are requests for services and supports accommodated as opposed to ignored or denied?
- ✓ Is individual choice facilitated in a manner that leaves the individual feeling empowered to make decisions?
- ✓ Can the individual identify other providers who render the services they receives?
- ✓ Does the individual expresses satisfaction with the provider selected or have they asked for a meeting to discuss a change?
- ✓ Does the individual know how and to whom to make a request for a new provider?
- ✓ Is the individual/chosen representative(s) aware of how to schedule Person-Centered Planning meetings?
- ✓ Can the individual explain the process to develop and update their plan? (have an active role in developing and updating their plan)
- ✓ Was the individual present during the last planning meeting?
- ✓ Does the planning meeting occur at a time and place convenient for the individual to attend?

Non-Residential Settings:

- ✓ Was the individual provided a choice regarding the services, provider, and settings and the opportunity to visit/understand the options?

- ✓ Does the setting afford individuals the opportunity to regularly and periodically update or change their preferences?
- ✓ Does the setting ensure individuals are supported to make decisions and exercise autonomy to the greatest extent possible? Does the setting afford the individual with the opportunity to participate in meaningful non-work activities in integrated community settings in a manner consistent with the individual's needs and preferences?
- ✓ Does setting policy ensure the individual is supported in developing plans to support her/his needs and preferences? Is setting staff knowledgeable about the capabilities, interests, preference, and needs of individuals?
- ✓ Does the setting post or provide information to individuals about how to make a request for additional HCBS, or changes to their current HCBS?

Note: DD Section established the following standards for ALL residential settings unless otherwise noted.

6. In a provider-owned or controlled residential setting, in addition to the qualities specified above, the following additional conditions must be met:

- A. (Provider-owned only) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities, and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement, or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.**

CQL Basic Assurances Date-Factor 1b, 1a

Person Outcome Measure Data-POM 10

- ✓ Does the individual have a lease or, for settings in which landlord tenant laws do not apply, a written residency agreement?
- ✓ Does the individual know their rights regarding housing and when they could be required to relocate?
- ✓ Do individuals know how to relocate and request new housing?
- ✓ Does the written agreement include language that provides protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant laws?

B. Each individual has privacy in their sleeping or living unit:

- **(Provider-owned only) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.**

CQL Basic Assurances Date-Factor 2c

Person Outcome Measure Data-POM 5

- ✓ Can the individual close and lock the bedroom door?
- ✓ Does staff only use a key to enter a living area or privacy space

under limited circumstances agreed upon with the individual?

- **Individuals sharing units have a choice of roommates in that setting.**

CQL Basic Assurances Date-Factor 2c, 8a

Person Outcome Measure Data-POM 10

- ✓ Was the individual given a choice of a roommate?
- ✓ Does the individual talk about their roommate(s) in a positive manner?
- ✓ Does the individual express a desire to remain in a room with their roommate?
- ✓ Does the individual know how to request a roommate change?

- **Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.**

CQL Basic Assurances Date-Factor 2d

Person Outcome Measure Data-POM 10

- ✓ Is the furniture arranged as individuals prefer and does the arrangement assure privacy and comfort?
- ✓ Are the individuals' personal items, such as pictures, books, and memorabilia present and arranged as the individual desires?
- ✓ Do the living areas, furniture, linens, and other household items reflect the individual's personal choices, interests, and hobbies?

C. Individuals have the freedom and support to control their own schedules and activities and have access to food at any time.

CQL Basic Assurances Date-Factor 2d, 2e, 9c

Person Outcome Measure Data-POM 5, 16

- ✓ How is it made clear that the individual is not required to adhere to a set schedule for waking, bathing, eating, exercising, activities, etc.?
- ✓ Does the individual's schedule vary from others in the same setting? (chooses and controls a schedule that meets their wishes/needs)
- ✓ Is there a curfew or other requirement for a scheduled return to the setting?
- ✓ Does the individual have a meal at the time and place of their choosing?
- ✓ Can the individual request an alternative meal if desired, choosing when and what to eat?
- ✓ Are snacks accessible and available anytime?

D. Individuals are able to have visitors of their choosing at any time.

CQL Basic Assurances Date-Factor 1b, 3a

Person Outcome Measure Data-POM 5, 20

- ✓ Are visitors present?
- ✓ Are visitors restricted to specified visiting hours?
- ✓ Are visiting hours posted?
- ✓ Is there evidence that visitors have been present at regular frequencies?
- ✓ Are there restricted visitor's meeting area?

E. The setting is physically accessible to the individual.

CQL Basic Assurances Date-Factor 6a, 6b

Person Outcome Measure Data-POM 12

7. Any modification of the additional conditions specified in items A through E above, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

A. Identify a specific and individualized assessed need.

CQL Basic Assurances Date-Factor 1b

B. Document the positive interventions and supports used prior to any modifications to the person-centered service plan.

CQL Basic Assurances Date-Factor 8e

C. Document less intrusive methods of meeting the need that have been tried but did not work.

CQL Basic Assurances Date-Factor 8e

D. Include a clear description of the condition that is directly proportionate to the specific assessed need.

CQL Basic Assurances Date-Factor 1b

E. Include regular collection and review of data to measure the ongoing effectiveness of the modification.

CQL Basic Assurances Date-Factor 8a

F. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

CQL Basic Assurances Date-Factor 1b, 8a

G. Include the informed consent of the individual.

CQL Basic Assurances Date-Factor 8a, 8e

H. Include an assurance that interventions and supports will cause no harm to the individual.

CQL Basic Assurances Date-Factor 8e