

HEIGHTENED SCRUTINY PROCESS

Through the self-assessment surveys, the State was able to generate a preliminary report that identified settings that may limit access to the community or have qualities of an institution. The preliminary report placed these settings in a Category 4 of compliance. The questions that triggered further evaluation for providers that answered no or did not answer the question about access to stores, businesses, or transportation and the use of restraints and/or restrictive interventions. In addition to the surveys, the MCMW workgroup had identified settings that may have qualities of an institution or have the effect of isolation by service location or operational structure such as, the setting:

- Is privately or publicly owned facility that provides inpatient treatment.
- Is on the grounds of or adjacent to a public institution.
- Could have the effect of isolating individuals from the community.
- Has multiple co-located and operationally related that congregate a large number of people with disabilities and provide significant shared programming staff, such that the individuals' ability to interact with the broader community is limited.
- May isolate individuals, such as
 - Use of interventions or restrictions that are used in institutional settings (e.g. seclusions)
 - Multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social recreational activities provided only to individuals with disabilities.
 - Individuals in the setting have limited interaction with the broader community.

The State also referenced the CMS "Guidance on Settings that have the Effect of Isolating Individuals Receiving HCBS from the Broader Community".

After the analysis of the self-assessment surveys, the State developed a validation tool that helped determine if a setting is a true Category 4. About fifty reviewers were trained on:

- The different categories of compliance
- Teams of two (2) reviewers either self-advocates, families, or state staff
- Reviewers roles and responsibilities
- Review of the validation tool
- How to get the information needed through observation and interviews
- Interview techniques a "Let's Talk Story" approach

All reviewers had access to "Big Tent" website as communication platform during the validation period to post questions, ask for/share advice. The website served as a discussion board and tracking tool that reviewers can view validations that have been scheduled or already completed.

Hawaii Statewide Transition Plan
Approved November 7, 2019

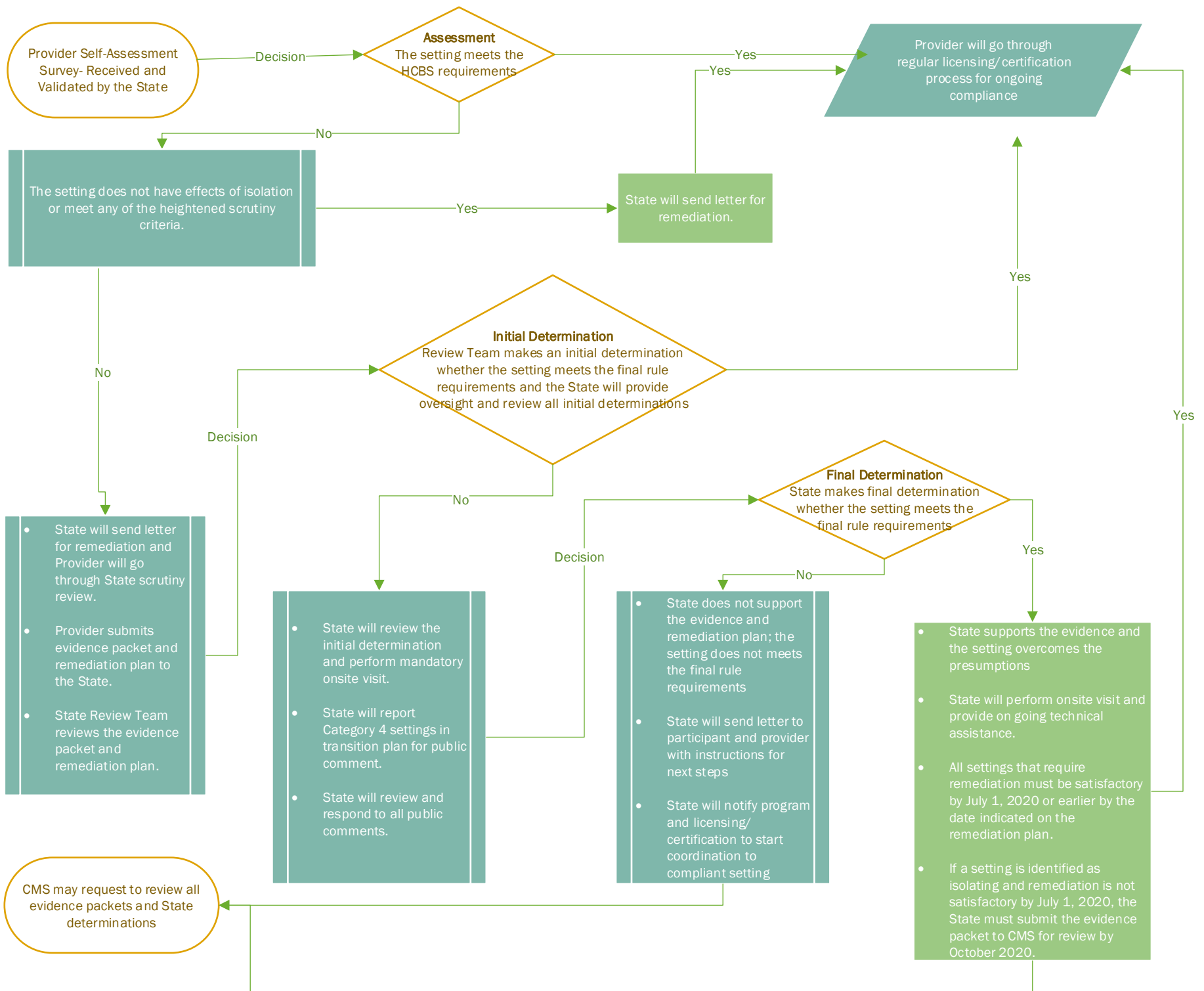
At the end of the validations, the reviewers confirmed the compliance of each setting. DHS/MQD then analyzed the validation tools submitted by the reviewers. A secondary validation was conducted by DHS/MQD of the settings that were identified as Category 4 setting. There was a total of three settings, one residential and two non-residential, that needed a secondary validation. DHS/MQD reviewed each validation tools and findings before coordinating another onsite visit. The providers were briefed on the initial validation findings and educated on the settings that may isolate or limit community integration by the CMS guidance. The MCMW work group reviewed and approved the findings. The providers were then notified and placed on the provider compliance list as a Category 4. The list was posted on the DHS/MQD website for public comment. The list included provider identification number and compliance Category.

Starting mid-2019, the State plans to work collaboratively with the Category 4 settings that been presumed institutional. The State is using the heightened scrutiny process to disprove the presumption that a setting has institutional qualities. See Attachment F for a flowchart of the heightened scrutiny process. Evidence will be collected to explain and document that the setting does not have qualities of an institution and is home and community based. Provider transition plan actions must include but are not limited to the setting to demonstrate:

- How the program will integrate individuals into the broader community with individual participation in activities that do not include those organized by the provider and only include paid staff
- How the program is not interrelated with the residential homes, including demonstrating how the program is a separate entity from the residential homes both physically and operationally
- How the program is not interrelated with the nursing facility, including demonstrating how the day health is a separate entity from the nursing facility/institution both physically and operationally.

The State will designate a team to review the evidence and seek public comment before the submission to CMS. Changes will be made based on public comments, any questions will be answered and posted on the DHS/MQD website. CMS will then formally review the evidence submitted by the State and will make a determination as to whether the evidence is sufficient to overcome the presumption. During this process, the State will continue to provide ongoing technical assistance and training in areas identified for remediation.

For all HCBS providers presumed to be isolating that have gone through necessary remediation activities and continues to demonstrate non-compliance with HCBS Final Rule federal requirements by July 1, 2020, the State will submit the list of provider settings with evidence packets to CMS for a heightened scrutiny review within 120 days (by the end of October 2020).





What to submit for the Heightened Scrutiny Evidence Packet?

Providers that have been identified as a category 4 must undergo a heightened scrutiny process. This requires a provider to submit an evidence packet. This evidence packet will be reviewed by the State Review Team. The evidence packet should include information that focus on the qualities of the setting and how the setting is integrated in and supports access of individuals receiving Home and Community-Based Services (HCBS) into the broader community via the provider policies, procedures, and practices as well as in how the setting supports individuals consistent with their person-centered service plans. Please note that the Centers for Medicare and Medicaid Services (CMS) may request to review a sample of evidence packets during this process.

The Evidence Packet should include:

1. Responses to plan of correction.
2. Description of the proximity to and scope of interactions in and with the broader community, which can be demonstrated through mechanisms such as:
 - Descriptions of daily activities or copies of scheduled activities;
 - Copies of policies and procedures (including, for example, the types of activities, transportation, and staffing that are in place) and services provided by the setting that indicate evidence of access to and demonstrated support for participant integration in activities in the broader community consistent with individuals' person-centered service plans;
 - Descriptions of processes in place or actions taken by direct support professionals to support, monitor, improve, and enhance individual beneficiary integration in and with the broader community over time;
 - A summary of examples of how schedules are varied according to individual participants' preferences and in recognition of the need to integrate into the local community at times when the general community attends an activity; and
 - Procedures in place to routinely monitor individual access to services and activities of the broader community to the extent identified in person centered service plans.
3. Description of how staff are trained and monitored on their understanding of the settings criteria and the role of person-centered planning, consistent with state standards.
4. Description of the setting's proximity to public transportation or how transportation is facilitated.
5. Other information and supporting documentation that is helpful to demonstrate that the setting overcomes its institutional presumption, e.g., photos of the setting, but not of participants or other identifying information, or an attestation that the setting has been selected by the individual from among settings options, including non-disability-specific settings.



Residential Exploratory Questions:

Is the setting surrounded by high walls/fences and/or have closed/locked gates?

Does the setting have institutional characteristics, such as cameras; participant's schedules or other personal information posted; lack of uniqueness in room décor; indicators of seclusion or restraint such as quiet rooms with locks, restraint chairs, or posters of restraint techniques; regimented meal times and other daily activities;

Is the setting among private settings/businesses and community resources?

Does the setting purposefully separate participants receiving Medicaid HCBS services from those who do not, or groups of participants from others?

Is the setting on the grounds of, or adjacent to, a public institution?

Is there an ADH program, or a licensed residential setting on the same or adjacent parcels of land?

How does the setting overcome its presumed institutional qualities?

Describe the qualities of the setting and how it is integrated in and supports full access of participants receiving home and community-based services into the greater community.

Describe the proximity to and scope of interactions with community settings used by participants not receiving Medicaid funded home and community-based services.

Provider qualifications for support worker employed in the setting indicate training or certification in home and community-based services, and demonstrate the support worker is trained specifically for home and community-based support in a manner consistent with the HCB settings regulations.

Service definitions explicitly support the setting requirements. For example, definitions of employment supports that facilitate community-based integrated employment or, for setting-based programs, maximize autonomy and competitive employment opportunities.

Procedures in the setting that indicate support for activities in the greater community according to the participant's preferences and interests, support worker training materials speak of the need to support participants' chosen activities, and a discussion of how schedules are varied according to the typical flow of the local community (appropriate for weather, holidays, sports seasons, faith-based observation, cultural celebrations, employment, etc.).

Interconnectedness between the setting and the setting in question, including administrative or financial interconnectedness, does not exist or is minimal.

To the extent any setting support worker are assigned occasionally or on a limited basis to support or back up the HCBS support worker, the setting support worker are cross-trained to meet the same qualifications as the HCBS support worker;



Participants in the setting in question do not have to rely primarily on transportation or other services provided by the setting, to the exclusion of other options;

The proposed HCBS setting and setting have separate entrances and signage;

The setting is integrated in the community to the extent that a person or persons without disabilities in the same community would consider it a part of their community and would not associate the setting with the provision of services to persons with disabilities;

The participant participates regularly in typical community life activities outside of the setting to the extent the participant desires. Such activities do not include only those organized by the provider agency specifically for a group of participants with disabilities and/or involving only paid support worker; community activities foster relationships with community members unaffiliated with the setting; Services to the participant, and activities in which the participant participates, are engaged with the broader community.

Non-Residential Exploratory Questions:

Is the setting surrounded by high walls/fences and/or have closed/locked gates?

Does the setting have institutional characteristics, such as cameras; participant's schedules or other personal information posted; lack of uniqueness in room décor; indicators of seclusion or restraint such as quiet rooms with locks, restraint chairs, or posters of restraint techniques; regimented meal times and other daily activities;

Is the setting among private settings/businesses and community resources?

Does the setting purposefully separate participants receiving Medicaid HCBS services from those who do not, or groups of participants from others?

Is the setting on the grounds of, or adjacent to, a public institution?

Is there an ADH program, or a licensed residential setting on the same or adjacent parcels of land?

How does the setting overcome its presumed institutional qualities?

Describe the qualities of the setting and how it is integrated in and supports full access of participants receiving home and community-based services into the greater community.

Describe the proximity to and scope of interactions with community settings used by participants not receiving Medicaid funded home and community-based services.



Provider qualifications for staff employed in the setting indicate training or certification in home and community-based services, and demonstrate the staff is trained specifically for home and community-based support in a manner consistent with the HCB settings regulations.

Service definitions explicitly support the setting requirements. For example, definitions of employment supports that facilitate community-based integrated employment or, for setting-based programs, maximize autonomy and competitive employment opportunities.

Procedures in the setting that indicate support for activities in the greater community according to the participant's preferences and interests, staff training materials speak of the need to support participants' chosen activities, and a discussion of how schedules are varied according to the typical flow of the local community (appropriate for weather, holidays, sports seasons, faith-based observation, cultural celebrations, employment, etc.).

Interconnectedness between the setting and the setting in question, including administrative or financial interconnectedness, does not exist or is minimal.

To the extent any setting staff are assigned occasionally or on a limited basis to support or back up the HCBS staff, the setting staff are cross-trained to meet the same qualifications as the HCBS staff;

Participants in the setting in question do not have to rely primarily on transportation or other services provided by the setting, to the exclusion of other options;

The proposed HCBS setting and setting have separate entrances and signage;

The setting is integrated in the community to the extent that a person or persons without disabilities in the same community would consider it a part of their community and would not associate the setting with the provision of services to persons with disabilities;



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The participant participates regularly in typical community life activities outside of the setting to the extent the participant desires. Such activities do not include only those organized by the provider agency specifically for a group of participants with disabilities and/or involving only paid staff; community activities foster relationships with community members unaffiliated with the setting;

Services to the participant, and activities in which the participant participates, are engaged with the broader community.



Non-Residential Guidance for HCBS Final Rule Compliance

HCBS Requirements	Exploratory Questions
<p>1 42 CFR 441.301(c)(4)(i) 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.</p> <p>Expectation:</p> <ul style="list-style-type: none"> ➤ Non-residential service settings should offer services in settings that are fully accessible to Medicaid participants. HCB service provision should encourage Medicaid participants to engage in the larger community outside the program. ➤ Participants could seek and gain competitive employment in the community ➤ Participants have the option to keep their own money and to control their own finances/resources. 	<ul style="list-style-type: none"> • Is the location where the service is provided surrounded by high walls/fences and/or have closed/locked gates? • Is the setting where the service is provided among private settings/businesses and community resources? • Does the setting where the service is provided purposefully separate participants receiving Medicaid HCBS services from those who do not, or groups of participants from others? • Is the location where the service is provided on the grounds of, or adjacent to, a public institution? • Does the service provision provide opportunities for regular meaningful non-service-related activities in integrated community settings for the period of time desired by the participant? • Are visitors or other people encouraged 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 participants 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)? • How does the setting help participants who wish to pursue competitive employment in the community? • Do participants have the option of having personal bank accounts? • How can participants access their personal funds?
<p>2 42 CFR 441.301(c)(4)(ii) The setting is selected by the individual from among setting options including non-disability specific settings. The settings options are identified and documented in the person-centered plan and are based on the individual's needs, and preferences.</p>	<ul style="list-style-type: none"> • Is the service setting chosen by the participant from among several options including non-disability specific settings? • Was choice of setting made by participant alone or was guardian and/or family member(s) involved? • How many choices of settings were provided to the participant? • Was the participant given opportunities to visit other settings?



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	<p>Expectation:</p> <ul style="list-style-type: none"> ➤ Service setting should be chosen by the participant and detailed on the service plan. ➤ Participants should be given a choice of service settings that conform to their needs and the settings should appear on the service plan. 	<ul style="list-style-type: none"> • Were choices of settings provided by geographical area? • Does the service setting appear on the participant's service plan? • Does the service plan indicate the participant's choice of setting was selected? • Was selection of day program made because Program activities are provided that are of interest to participant?
3	<p>42 CFR 441.301(c)(4)(iii) The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.</p> <p>Expectation:</p> <ul style="list-style-type: none"> ➤ Information about the waiver participant's conditions and service plan should be maintained in a secure file with only appropriate staff provided access to this information. Staff should be trained in service provision without coercion or loss of the participant's privacy, dignity, respect or restraint. ➤ The participant's right to dignity and privacy is protected and respected. ➤ Participants have the right to exercise their right to choose and self-determination free from coercion. ➤ Information is available to participants on how to file an anonymous complaint. ➤ Staff treats participants in a dignified manner. 	<ul style="list-style-type: none"> • Are files containing waiver participant specific information maintained in a secure location and available only to appropriate staff for use in providing the authorized service? • Are providers' personnel trained to provide the authorized service with respect for the participant's privacy, dignity, and free from restraint and coercion? • Is personal information kept private? • Is information about filing complaints posted in obvious and accessible areas? • Are participants comfortable with discussing concerns? • Do participants greet and chat with staff? • Are participants aware of the Hawaii Disability Rights Center (HDRC) or Adult Protective Services (APS)? • Does staff converse with participants while providing assistance/services and during the course of the day? • Does staff talk to other staff in front of participants as if they are not there? • Does staff address participants in the manner they like to be addressed?



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<p>4</p>	<p>42 CFR 441.301(c)(4)(iv) The setting 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. <u>Expectation:</u></p> <ul style="list-style-type: none"> ➤ The service setting encourages participant autonomy and choice and is not regimented. ➤ Modifications to the HCB Characteristics requirements are supported by an assessed need and justified in the participant's person-centered plan. 	<ul style="list-style-type: none"> • Does the service setting optimize the participant's initiative, autonomy and independence in making choices about activities of daily living? • Is the service provided in a manner that encourages the participant to make choices or are choices made as part of a regimented response? • Does the service setting optimize the participant's initiative, autonomy and independence in making choices about activities of daily living? • Is the service provided in a manner that encourages the participant to make choices or are choices made as part of a regimented response? • Does documentation note if positive interventions and supports were used prior to any plan modifications and/or the restriction of an HCB Characteristic requirement? • Were less intrusive methods of meeting the need tried and documented first? • Does the plan include a description of condition that is directly proportional to the assessed need, data to support the ongoing need for modification, informed consent and an assurance the intervention will not cause harm to the participant?
<p>5</p>	<p>42 CFR 441.301(c)(4)(v) The setting facilitates individual choice regarding services and supports, and who provides them. <u>Expectation:</u></p> <ul style="list-style-type: none"> ➤ Participants should have a choice of service providers and locations where services are provided. ➤ Participants and/or their representatives are active participants in the person-centered planning process. ➤ Participant choices are accounted for and honored unless the participant's safety would be jeopardized and in accordance with the person-centered plan. 	<ul style="list-style-type: none"> • Is/are the participant/chosen representative(s) aware of how to schedule a person-centered planning meeting? • Can participants explain how they would initiate a person-centered plan meeting/update? • Was the participant/representative(s) present during the last person-centered plan meeting? • Do planning meeting occur at times convenient to the participant/representative(s) • Are participants satisfied with their service providers and service settings choices? • Does staff ask the participant about their needs/preferences? • Are participants aware of how to make service requests? • Are participants satisfied with the services/supports received and those who deliver them? • Are participant requests accommodated? • Is participant choice facilitating such that the participant feels empowered to make decisions? • Can the participant choose from whom they receive services and supports? • Do participants know how to request a change of service provider or support staff?



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6	<p>42 CFR 441.301(c)(4)(vi)(D) The participants have the right to visitors and access to family and friends. <u>Expectation:</u></p> <ul style="list-style-type: none"> ➤ Participants are able to receive visitors. Visitation is not restricted or hampered by setting policies or practices. ➤ Visitors must be allowed outside of visiting hours. ➤ There is a comfortable private setting for participants to have visitors. 	<ul style="list-style-type: none"> • Are visiting hours restricted? • Are visiting hours posted? • Are participants of visitors required to give advance notice or visitation? • Are there restricted visitor meeting areas?
7	<p>42 CFR 441.301(c)(4)(vi)(E) The setting is physically accessible to the participant. <u>Expectation:</u></p> <ul style="list-style-type: none"> ➤ Participants are able to maneuver though the hallways, doorways, and common areas with or without assistive devices. Supports are available to participants that require them. ➤ Participants are able to access all areas of the setting unless their safety would be jeopardized, e.g., participants do not have access to maintenance rooms, janitor's closets, etc. ➤ Participants have independent access to appliances and household amenities in order to complete standard household chores and activities of daily living as appropriate. ➤ Participants have full access to the community and are allowed to come 	<ul style="list-style-type: none"> • Are supports provided for participants who need them to move around the setting independently/at will (grab bars, ramps, viable emergency exits etc.)? • Are appliances/amenities accessible to participants with varying access needs? • Can participants make use of furniture and spaces conveniently and comfortably? • Are hallways/common areas accessible to participants of varying needs? • Are participants, or groups of participants, restricted from areas of the setting because it is inaccessible to participants with specific needs? • Which areas are participants restricted from entering? • How are participants prevented from entering restricted areas (gates, locked door, barriers etc.)? • Do participants have access to cooking/food preparation facilities? • Are participants able to come and go from the setting and its grounds at will with or without a service worker? • Can participants engage in community and social activities of their preference outside of the setting at will? • Are participants moving around inside and outside of the setting? • Do participants have access to public transportation; are transport options accessible to the participant? • Are public transport schedules and contact information readily accessible to participants? • Does the setting provide accessible transportation so participants may access the community?



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	<p>and go from the setting, as they desire, unless the participant's safety would be jeopardized. Reasons to restrict movement are documented in the setting's participant record. Attempts to mitigate safety issues prior to revoking a participant's right to freedom of movement are documented.</p> <ul style="list-style-type: none"> ➤ Participants have access to outside communications. 	<ul style="list-style-type: none"> • Does the setting offer training to participants on how to use public transportation? • Do participants have access to computers, radios and televisions? • Does the setting afford participants access to the internet for personal use and/or computers with internet access for communal use?
8	<p>42 CFR 441.301(c)(5)(v) The setting is in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment.</p>	<ul style="list-style-type: none"> ➤ Is the setting surrounded by high walls/fences and/or have closed/locked gates? ➤ Does the setting have institutional characteristics, such as cameras; participant's schedules or other personal information posted; lack of uniqueness in room décor; indicators of seclusion or restraint such as quiet rooms with locks, restraint chairs, or posters of restraint techniques; regimented meal times and other daily activities;
9	<p>42 CFR 441.301(c)(5)(v) The setting is in a building located on the grounds of, or immediately adjacent to, a public institution.</p>	<ul style="list-style-type: none"> ➤ Is the setting among private settings/businesses and community resources? ➤ Does the setting purposefully separate participants receive Medicaid HCBS services from those who do not, or groups of participants from others?
10	<p>42 CFR 441.301(c)(5)(v) The setting has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.</p> <p>Expectation for 8-10:</p> <ul style="list-style-type: none"> ➤ Participants are not in isolated compounds, or settings which limit their potential integration with the community at large. ➤ All participants in the setting are afforded the degree of community 	<ul style="list-style-type: none"> ➤ Is the setting on the grounds of, or adjacent to, a public institution? ➤ Is there an ADH program, or a licensed residential setting on the same or adjacent parcels of land? ➤ How does the setting overcome its presumed institutional qualities? ➤ Describe the qualities of the setting and how it is integrated in and supports full access of participants receiving home and community-based services into the greater community. ➤ Describe of the proximity to and scope of interactions with community settings used by participants not receiving Medicaid funded home and community-based services. ➤ Provider qualifications for staff employed in the setting indicate training or certification in home and community-based services, and demonstrate the staff is trained specifically for home and community-based support in a manner consistent with the HCB settings regulations.



Non-Residential Guidance for HCBS Final Rule Compliance

<p>integration required by the final rule and desired by the participant.</p>	<ul style="list-style-type: none"> ➤ Service definitions explicitly support the setting requirements. For example, definitions of employment support that facilitate community-based integrated employment or, for setting-based programs, maximize autonomy and competitive employment opportunities. ➤ Procedures in the setting that indicate support for activities in the greater community according to the participant's preferences and interests, staff training materials speak of the need to support participants' chosen activities, and a discussion of how schedules are varied according to the typical flow of the local community (appropriate for weather, holidays, sports seasons, faith-based observation, cultural celebrations, employment, etc.). ➤ Interconnectedness between the setting and the setting in question, including administrative or financial interconnectedness, does not exist or is minimal. ➤ To the extent any setting staff are assigned occasionally or on a limited basis to support or back up the HCBS staff, the setting staff are cross-trained to meet the same qualifications as the HCBS staff; ➤ Participants in the setting in question do not have to rely primarily on transportation or other services provided by the setting, to the exclusion of other options; ➤ The proposed HCBS setting and setting have separate entrances and signage; ➤ The setting is integrated in the community to the extent that a person or persons without disabilities in the same community would consider it a part of their community and would not associate the setting with the provision of services to persons with disabilities; ➤ The participant participates regularly in typical community life activities outside of the setting to the extent the participant desires. Such activities do not include only those organized by the provider agency specifically for a group of participants with disabilities and/or involving only paid staff; community activities foster relationships with community members unaffiliated with the setting; ➤ Services to the participant, and activities in which the participant participates, are engaged with the broader community.
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Residential Guidance for HCBS Final Rule Compliance

	HCBS Requirements	Exploratory Questions
1	<p>42 CFR 441.301(c)(4)(i) 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.</p> <p>Expectation:</p> <ul style="list-style-type: none"> ➤ Residential service settings should offer services in settings that are fully accessible to Medicaid participants. HCB service provision should encourage Medicaid participants to engage in the larger community outside the program. ➤ Transportation is provided or arranged to community activities such as shopping, restaurants, religious institutions, senior centers, etc. ➤ The setting should have a policy for requesting transportation and participants should be made aware of the policy. Observe sign-up sheets, instructions on how to request transportation, etc. ➤ Participants have the ability to seek and gain competitive employment in the community ➤ Participants have the option to keep their own money and to control their own finances/resources. 	<ul style="list-style-type: none"> • Is the location where the service is provided surrounded by high walls/fences and/or have closed/locked gates? • Is the setting where the service is provided among private settings/businesses and community resources? • How are participants accommodated to go into the community? • Is transportation provided? If yes, what kind and how is it arranged? • Do participants have an attendant when out in the community? • Do participants participate in a Day Program? If yes, how is participant accommodated to get there and back? • Do participants work? If yes, how is participant accommodated to get there and back? • Does participant's living schedule accommodate day program or work schedule? • Does participant choose his/her activities when out in community? • How does the setting aid participants who wish to pursue competitive employment in the community? • Do participants have the option of having personal bank accounts? • How can participants access their personal funds?



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2	<p>42 CFR 441.301(c)(4)(ii) Setting is selected by the participant from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered plan and are based on the individual's needs, and preferences.</p> <p>Expectation:</p> <ul style="list-style-type: none"> ➤ The participant should be given a choice of service settings that meet their needs. ➤ Service setting should be chosen by the participant and detailed on the service plan. 	<ul style="list-style-type: none"> • Is the service setting chosen by the participant from among several options including non-disability specific settings? • Was the participant given opportunities to visit other settings? • Was choice of setting made by participant alone or was guardian and/or family member(s) involved? • How many choices of settings were provided to the participant? • Were choices of settings provided by geographical area? • Does the service setting appear on the participant's service plan? • Does the service plan indicate the participant's choice of setting was selected? • Does the setting reflect the individual's needs and preferences?
3	<p>42 CFR 441.301(c)(4)(iii) The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.</p> <p>Expectation:</p> <ul style="list-style-type: none"> ➤ Information about the participant's conditions and service plan should be maintained in a secure file with only appropriate staff provided access to this information. Staff should be trained in service provision without coercion or loss of the participant's privacy, dignity, respect or restraint. ➤ The participant's right to dignity and privacy is protected and respected. ➤ Participants have the right to live in an environment and exercise their right to choose and self-determination free from coercion. ➤ Information is available to participants on how to file an anonymous complaint. ➤ Staff treats participants in a dignified manner. 	<ul style="list-style-type: none"> • Are files containing participant specific information maintained in a secure location and available only to appropriate staff for use in providing the authorized service? • Are providers' personnel trained to provide the authorized service with respect for the participant's privacy, dignity, and free from restraint and coercion? • Is personal information kept private? • Is information about filing complaints posted in obvious and accessible areas? • Are participants comfortable with discussing concerns? • Do participants greet and chat with staff? • Are participants aware of the Hawaii Disability Rights Center (HDRC) or Adult Protective Services (APS)? • Does staff converse with participants while providing assistance/services and during the course of the day? • Does staff talk to other staff in front of participants as if they are not there? • Does staff address participants in the manner they like to be addressed?



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<p>4</p>	<p>42 CFR 441.301(c)(4)(iv) The setting 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. Expectation:</p> <ul style="list-style-type: none"> ➤ The service setting encourages participant autonomy and choice and is not regimented. ➤ Modifications to the HCB Characteristics requirements are supported by an assessed need and justified in the participant's person- centered plan. 	<ul style="list-style-type: none"> • Does the service setting optimize the participant's initiative, autonomy and independence in making choices about activities of daily living? • Is the service provided in a manner that encourages the participant to make choices or are choices made as part of a regimented response? • Does documentation note if positive interventions and supports were used prior to any plan modifications and/or the restriction of an HCB Characteristic requirement? • Were less intrusive methods of meeting the need tried and documented first? • Does the plan include a description of condition that is directly proportional to the assessed need, data to support the ongoing need for modification, informed consent and an assurance the intervention will not cause harm to the participant?
<p>5</p>	<p>42 CFR 441.301(c)(4)(v) The setting facilitates individual choice regarding services and supports, and who provides them. Expectation:</p> <ul style="list-style-type: none"> ➤ Participants should have a choice of service provider and location where services are provided. ➤ Participants and/or their representatives are active participants in the person-centered planning process. ➤ Participant choices are accounted for and honored unless the participant's safety would be jeopardized and in accordance with the person-centered plan. 	<ul style="list-style-type: none"> • Is/are the participant/chosen representative(s) aware of how to schedule a person-centered planning meeting? • Can participants explain how they would initiate a person-centered plan meeting/update? • Was the participant/representative(s) present during the last person-centered plan meeting? • Do planning meeting occur at times convenient to the participant/representative(s) • Are participants satisfied with their service providers and service settings choices? • Does staff ask the participant about their needs/preferences? • Are participants aware of how to make service requests? • Are participants satisfied with the services/supports received and those who deliver them? • Are participant requests accommodated? • Is participant choice facilitating such that the participant feels empowered to make decisions? • Can the participant choose from whom they receive services and supports? • Do participants know how to request a change of service provider or support staff?



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<p>6</p>	<p>42 CFR 441.301 (c)(4)(vi)(A) The participants have a lease or other legally enforceable agreement providing the same responsibilities and protections from eviction that tenants have under state or local landlord/tenant laws. Expectation: ➤ The participant has the same landlord/tenant protections, is protected from eviction and afforded appeal rights as persons not receiving Medicaid HCBS services.</p>	<ul style="list-style-type: none"> • Do participants have a lease, or for setting in which landlord/tenant laws do not apply to a residency agreement? • Does the lease/agreement include protections to address eviction processes and appeals comparable to Hawaii's landlord tenant laws? • Does participant know her/his housing rights in regard to this agreement? • How and by whom were these rights explained? • Was there a written list of rights shown and explained? In native language? • Do participants know how to relocate and request new housing? • Are married or cohabitating couples as allowable by state law live in the same house?
<p>7</p>	<p>42 CFR 441.301 (c)(4)(vi)(B) The participants have privacy in their unit including lockable doors, choice of roommates, and have the freedom to furnish or decorate unit. Expectation: ➤ Participants are given the option to change rooms and/or change roommate. ➤ The participant's right to dignity and privacy is protected and respected. ➤ Participants have the right to privacy including lockable doors to their living areas unless the participant's physical or cognitive condition means their safety could be compromised if afforded privacy. Reasons to impede a person's right to privacy are fully and accurately documented. ➤ Participants' living area does not resemble an institutional setting. ➤ Participants have the ability to maintain their personal space according to their preferences, and living areas are the appropriate size for the number of residents.</p>	<ul style="list-style-type: none"> • Do participants have the option to choose a private room? • How can participants choose their roommate (identify character requirements, nominate a specific person, personality/needs matching etc.)? • Do participants talk positively about their roommate? • Do participants know how to request a roommate change? • Can married couples elect to share, or not to share, a room? • Does the participant's room and bathroom have a locking door? • Do participants have a right to close/lock bedroom door if s/he chooses? • Who has keys to access participant's rooms? • Do staff, other residents and visitors knock, and receive permission prior to entering a participant's room or bathroom? • Are cameras present in the setting? • How many beds are in the bedroom? • Do furniture arrangements ensure privacy? • Can participants decorate their personal space? • Are participants allowed visitors in their personal space? • Do participants have right to have overnight guest(s) if s/he chooses?



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<p>8</p>	<p>42 CFR 441.301 (c)(4)(vi)(C) The participants have the freedom and support to control their schedules and activities and have access to food anytime. <u>Expectation:</u></p> <ul style="list-style-type: none"> ➤ Participants are allowed to choose how to spend their day including sleeping schedule ➤ Participants are allowed to vary their schedule at will in accordance with their person-centered plan. ➤ Participants have the choice of when to eat. ➤ Participants have access to a kitchenette (microwave, refrigerator and sink), a food preparation area (a place to prepare and reheat foods) that are accessible at any time. ➤ Participants are given the option to eat in areas other than the dining room, including their private living areas, and may choose to eat with persons of their choosing, or alone. ➤ Participants have a choice of what to eat and are offered a substitute meal if they prefer. Posted menus state that alternate meals are available or list the alternate menu selections. 	<ul style="list-style-type: none"> • How does the setting ensure a participant knows they do not have to conform to a prescribed schedule for activities of daily living and social activities? • Do participants' schedules vary from others? • Do participants choose what time to get out of bed and what time to go to bed each day? • Do participants choose when they bathe, including the day, time of day and how often during the week? • Do participants choose when to watch TV? • Is a TV available in participant's room to watch when s/he chooses? • Do the participants choose when to use a telephone? • Do participants have their own phone? • Can participants eat at times of their choosing? • Do participants have access to food/snacks outside of prescribed meal times? • If a participant misses a meal, can they eat at another time? • Can participants choose from a variety of menu options? • Can participants make special menu/meal requests? • Can participants request an alternate meal? • Are participants required to sit in an assigned seat for meals? • May participants eat alone, or with people of their choosing? • Do participants have access to microwave? • If the participant works, attends school or day program, does the living environment accommodate the participant's needs- schedule, meals, travel time, etc.? • Does the participant shop, attend religious services, scheduled appointments, have lunch with friends, etc. in the community as the participant chooses?
<p>9</p>	<p>42 CFR 441.301(c)(4)(vi)(D) The participants have the right to visitors and access to family and friends. <u>Expectation:</u></p> <ul style="list-style-type: none"> ➤ Participants are able to receive visitors. Visitation is not restricted or hampered by setting policies or practices. 	<ul style="list-style-type: none"> • Are visiting hours restricted? • Are visiting hours posted? • Are participants or visitors required to give advance notice of visitation? • Are there restricted visitor meeting areas? • Are there restrictions to accommodate other residents, such as limiting visitors to certain areas of the setting and observing "quiet hours"?



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	<ul style="list-style-type: none"> ➤ Visitors must be allowed outside of visiting hours. ➤ There is a comfortable private place for participants to have visitors. 	
10	<p>42 CFR 441.301(c)(4)(vi)(E) The setting is physically accessible to the participant. <u>Expectation:</u></p> <ul style="list-style-type: none"> ➤ Participants are able to maneuver through the hallways, doorways, and common areas with or without assistive devices. Supports are available to participants that require them. ➤ Participants are able to access all areas of the setting unless their safety would be jeopardized, e.g., participants do not have access to maintenance rooms, janitor's closets, etc. ➤ Participants have independent access to appliances and household amenities in order to complete standard household chores and activities of daily living as appropriate. ➤ Participants have full access to the community and are allowed to come and go from the setting, as they desire, unless the participant's safety would be jeopardized. Reasons to restrict movement are documented in the setting's participant record. Attempts to mitigate safety issues prior to revoking a participant's right to freedom of movement are documented. ➤ Participants have access to outside communications. 	<ul style="list-style-type: none"> • Are supports provided for participants who need them to move around the setting independently/at will (grab bars, ramps, viable emergency exits etc.)? • Are appliances/amenities accessible to participants with varying access needs? • Can participants make use of furniture and spaces conveniently and comfortably? • Are hallways/common areas accessible to participants of varying needs? • Are participants, or groups of participants, restricted from areas of the setting because it is inaccessible to participants with specific needs? • How are participants prevented from entering restricted areas (gates, locked door, barriers etc.)? • Do participants have access to cooking/food preparation facilities? • Are participants able to come and go from the setting with or without a service worker? • Can participants engage in community and social activities of their preference outside of the setting at will? • Are participants moving around inside and outside of the setting? • Do participants have access to public transportation; are transport options accessible to the participant? • Are public transport schedules and contact information readily accessible to participants? • Does the setting provide accessible transportation so participants may access the community? • Does the setting offer training to participants on how to use public transportation? • Do participants have access to radios and televisions? • Does the setting afford participants access to the internet for personal use and/or computers with internet access for communal use? • Do participants have access to laundry facilities? • Do participants have access to cooking/food preparation facilities? • Are participants able to do personal chores/housekeeping if necessary?



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		<ul style="list-style-type: none"> Does the setting impose a curfew, or otherwise restrict participants' ability to enter or leave the setting at will?
11	<p>42 CFR 441.301(c)(5)(v) The setting is in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment.</p>	<ul style="list-style-type: none"> Is the setting surrounded by high walls/fences and/or have closed/locked gates? Does the setting have institutional characteristics, such as cameras; participant's schedules or other personal information posted; lack of uniqueness in room décor; indicators of seclusion or restraint such as quiet rooms with locks, restraint chairs, or posters of restraint techniques; regimented meal times and other daily activities; Is the setting among private settings/businesses and community resources? Does the setting purposefully separate participants receive Medicaid HCBS services from those who do not, or groups of participants from others? Is the setting on the grounds of, or adjacent to, a public institution? Is there an ADH program, or a licensed residential setting on the same or adjacent parcels of land? How does the setting overcome its presumed institutional qualities? Describe the qualities of the setting and how it is integrated in and supports full access of participants receiving home and community-based services into the greater community. Describe of the proximity to and scope of interactions with community settings used by participants not receiving Medicaid funded home and community-based services. Provider qualifications for staff employed in the setting indicate training or certification in home and community-based services, and demonstrate the staff is trained specifically for home and community-based support in a manner consistent with the HCB settings regulations. Service definitions explicitly support the setting requirements. For example, definitions of employment support that facilitate community-based integrated employment or, for setting-based programs, maximize autonomy and competitive employment opportunities. Procedures in the setting that indicate support for activities in the greater community according to the participant's preferences and interests, staff training materials speak of the need to support participants' chosen activities, and a discussion of how schedules are varied according to the typical flow of the local
12	<p>42 CFR 441.301(c)(5)(v) The setting is in a building located on the grounds of, or immediately adjacent to, a public institution.</p>	
13	<p>42 CFR 441.301(c)(5)(v) The setting has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.</p> <p>Expectation for 11-13:</p> <ul style="list-style-type: none"> Participants are not in isolated compounds, or settings which limit their potential integration with the community at large. All participants in the setting are afforded the degree of community integration required by the final rule and desired by the participant. 	



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- community (appropriate for weather, holidays, sports seasons, faith-based observation, cultural celebrations, employment, etc.).
- Interconnectedness between the setting and the setting in question, including administrative or financial interconnectedness, does not exist or is minimal.
 - To the extent any setting staff are assigned occasionally or on a limited basis to support or back up the HCBS staff, the setting staff are cross-trained to meet the same qualifications as the HCBS staff;
 - Participants in the setting in question do not have to rely primarily on transportation or other services provided by the setting, to the exclusion of other options;
 - The proposed HCBS setting and setting have separate entrances and signage;
 - The setting is integrated in the community to the extent that a person or persons without disabilities in the same community would consider it a part of their community and would not associate the setting with the provision of services to persons with disabilities;
 - The participant participates regularly in typical community life activities outside of the setting to the extent the participant desires. Such activities do not include only those organized by the provider agency specifically for a group of participants with disabilities and/or involving only paid staff; community activities foster relationships with community members unaffiliated with the setting;
 - Services to the participant, and activities in which the participant participates, are engaged with the broader community.