

# A PROVIDER'S GUIDE TO PUTTING THE HCBS RULE INTO PRACTICE

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This provider's guide contains informational guidance, best practices and examples to assist waiver service providers in understanding each of the new home and community-based services (HCBS) requirements and to help generate ideas of HCBS-compliant practices.

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## Introduction

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### Background

Since the creation of our current HCBS waiver system, Minnesota’s Department of Human Services (DHS) and providers have been working together to ensure older adults and people with disabilities have access to the highest-quality services. Providers like you play an important role in making sure people make choices and pursue opportunities, contribute to their community and are treated with dignity and respect.

This document is for Minnesota’s home and community-based services (HCBS) waiver providers. If you provide services to people whose services are funded by a waiver—alternative care (AC), brain injury (BI), community alternative care (CAC), community access for disability inclusion (CADL), developmental disabilities (DD) or elderly waiver (EW)—this guidebook will help you comply with relevant requirements.

In response to a new federal HCBS rule, DHS is partnering with providers to further expand choice and autonomy for people who receive HCBS. The HCBS rule raises expectations around what is possible for older adults and people with disabilities—and it will change the way some providers offer services. It aims to ensure HCBS waiver services do not isolate a person from the community.

### About this guidebook

This document contains frequently asked questions, guidance, best practices and examples to help you understand each of the new HCBS requirements. If you have to make changes to your setting to become HCBS-compliant, this document can also help you generate ideas on how you might meet the new HCBS requirements. Compliance with the requirements will probably look different from setting to setting, but the intention remains the same: to provide choices and protections to people and ensure they receive services in the most appropriate integrated setting. For more information, visit the [Minnesota DHS’ HCBS website](https://mn.gov/dhs/hcbs) (mn.gov/dhs/hcbs).

### How to use this guidebook

You will see each Centers for Medicare & Medicaid Services (CMS) requirement identified first. This is what providers are required to do. These requirements are numbered and in the same order as the attestation guidebooks and online form. Each requirement is then followed by DHS’ interpretation of what that requirement is trying to achieve, labeled “Provider expectations.”

We then provide examples to illustrate how the requirement may look in a particular setting or service type. Finally, we include some best practice suggestions for each requirement. Many of these were suggested by providers and through feedback from the HCBS Advisory Group as ways to meet the requirements. They are included as guidance, not required practices. DHS encourages providers to develop their own unique and creative ways of meeting the requirements that are designed to meet the needs of the people being served.

## **Additional guidance**

Minnesota statutes have been revised, effective July 1, 2017, to comply with the HCBS rule requirements. You can find more information regarding the statute revisions on the [MN HCBS website \(https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition\)](https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition).

## **Definitions**

### **What makes an activity “age-appropriate?”**

“Age appropriate” means something that corresponds with a person’s chronological age. Generally, the content and context of an activity are what make it age-appropriate. For example, people of all ages may enjoy working on puzzles. If this is an activity offered in an HCBS setting, then the image on the puzzle should be reflective of the interests of that age group. Children may prefer images of cartoon characters, while adults may prefer landscapes. Similarly, if a provider organizes a community outing to a movie theater, the provider should consider the interests of the people going when selecting the movie. A young adult may prefer to see the newest superhero action movie rather than an animated children’s film. Art and craft activities can also be age-appropriate. For example, crafts with materials like pipe cleaners, popsicle sticks and pom-poms are likely not age-appropriate for adults.

### **What is an integrated setting?**

Minnesota’s Olmstead Plan defines the most integrated setting as settings that provide people the opportunity to live, work and receive services in the greater community. They offer access to community activities when and with whom the person chooses. The most integrated settings offer people choices in daily life activities and encourage interaction with people who do not have disabilities or who do not receive HCBS to the fullest extent possible.

### **What is a segregated setting?**

Segregated settings often have qualities of an institutional nature. Segregated settings include, but are not limited to:

- (1) Congregate settings populated exclusively or primarily with people with disabilities
- (2) Congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on people’s ability to engage freely in community activities and to manage their own activities of daily living
- (3) Settings that provide for daytime activities primarily with other people with disabilities.

### **Why is integration important?**

In general, the more experience a person has with life in the community, the more likely he or she is to enhance his or her skills and be willing to try different activities. Staff should encourage and support the person to take part in the community in a way that is meaningful to the person. This will foster independence and provide a better quality of life.

### **What does “to the same degree as” mean?**

The Centers for Medicare and Medicaid Services (CMS), defines, “to the same degree as” to mean people who access Medicaid-funded HCBS have the same opportunities for inclusion, access, choices and integration as all members of their community. When you consider whether people share in the hallmarks of community living to the same degree as people who do not require services and supports, it is helpful to compare and contrast how you live your own life. How do you make day-to-day choices and compromises in your home, workplace and community? What negotiations are necessary to develop and pursue your own interests and important relationships? We can also consider the rights and responsibilities we experience every day (e.g., having consideration for people with whom we live, having a job and going to work, fulfilling a work or volunteer commitment, respecting coworkers, making choices within our income/budget) as we support people to navigate community life and consider benefits and consequences of their actions. The expectations for the people you serve should be the same as for any person living in the community. All people have the responsibility to consider the thoughts and needs of others while exercising their own rights, priorities and preferences. We also must consider the limitations people have that may restrict their choices (e.g., fiscal restrictions, physical restrictions, etc.).

**What is informed choice?**

- Informing people through appropriate modes of communication about the opportunities to exercise informed choice, including the availability of support services for people who require assistance in exercising informed choice
- Assisting people in exercising informed choice in making decisions
- Providing or assisting people in acquiring information that enables them to exercise informed choice in the development of their individualized plans with respect to the selection of outcomes, supports and services, service providers, the most integrated settings in which the supports and services will be provided and methods for obtaining services
- Developing and implementing flexible policies and methods that facilitate the provision of supports and services and afford people meaningful choices
- Ensuring the availability and scope of informed choice is consistent with the obligations of the respective agencies.

## Scope of services

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This guidebook incorporates recommendations from the HCBS advisory group, people with disabilities and their families, as well as what DHS has learned through the provider attestation process. This guidebook applies to provider owned and/or controlled residential settings and group-based day service settings. CMS presumes services provided in a person's private home have the qualities of HCBS.

### Provider owned and/or controlled residential settings

#### Definition

- The HCBS provider leases from a third party or owns the property
- The HCBS provider has a direct or indirect financial relationship with the property owner, unless the property owner or provider establishes that the nature of the relationship does not affect either the care provided or the financial conditions applicable to tenants.

#### Examples

- Housing with services establishment where customized living services are delivered by a comprehensive home care provider
- Family and corporate adult foster care homes
- Community residential settings.

### Non-residential service settings

#### Definition

Non-residential services are HCBS services that are often provided in settings where the majority of people have a disability

#### Examples

- Adult day
- Family adult day
- Structured day services
- Day training and habilitation (DT&H)
- Pre-vocational services.

## Being person-centered

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Minnesota is moving toward person-centered practices in all areas of service delivery. As a state, Minnesota strives to make sure everyone who receives long-term services and supports and mental health services can live, learn, work and enjoy life in the most integrated setting. The goal is for people to lead lives that are meaningful to them. To do this, we must have a person-centered support system that helps people:

- Build or maintain relationships with their families and friends
- Live as independently as possible
- Engage in productive activities, such as employment
- Participate in community life.

Our support system must reflect that we understand, respect and honor the things each person thinks are important.

Person-centered practices are essential to this effort. Person-centered practices are flexible and adaptable. They encourage informed choice and creativity. We use person-centered practices because they increase a person's quality of life.

Find more information on [DHS' Person-Centered Practices website](https://mn.gov/dhs/partners-and-providers/program-overviews/long-term-services-and-supports/person-centered-practices/) (<https://mn.gov/dhs/partners-and-providers/program-overviews/long-term-services-and-supports/person-centered-practices/>).

## Rights modifications for health and safety

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Often, a caregiver and/or case manager may believe he/she knows what is best for the person or that the person will make a "bad" choice if given the freedoms required by the HCBS rule. You must remember that all community members, including people who receive waiver services, have the right to make choices, even when those choices result in poor outcomes. People learn by making mistakes. Providers and case managers must maximize a person's ability to make choices while minimizing the risk of endangering the person or others.

It is important to understand which rights can be modified. The HCBS rule specifies the following seven rights are rights that may be restricted under the rule:

- Each person has, at minimum the same responsibilities and protections from eviction that tenants have under the landlord/tenant law under a legally enforceable agreement
- Each person has privacy in their sleeping or living unit
- Units have entrance doors lockable by the person, with only appropriate staff having keys to doors
- People sharing units have a choice of roommates in that setting
- People have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement

- People have the freedom and support to control their own schedules and activities, and they have access to food at any time
- People are able to have visitors of their choosing at any time.

Providers licensed under Minn. Stat. Chapter 245D have [additional rights requirements \(https://www.revisor.mn.gov/statutes/?id=245D.04\)](https://www.revisor.mn.gov/statutes/?id=245D.04) and specific rights restriction processes that providers must follow.

When an HCBS setting requirement or the ability to make certain choices puts a person or others at risk for harm because of their specific health and safety or wellbeing, then the case manager, in collaboration with the provider and/or the person's interdisciplinary team, may restrict that choice. For example:

- If a person is diabetic and unable to make informed choices about their food, the case manager should document the need for a modification of this right and the provider should limit their intake of sugar based on the person-centered plan/Community Services and Support Plan (CSSP)

It is important to remember you should not restrict all people in your care just because one person in your setting needs to have a restriction put in place. Rights modifications should apply only to the person with the need for the modification.

Ultimately the provider and the case manager, with input from the person and his or her interdisciplinary team, will work together to implement necessary modifications of a person's rights. If the modification is determined necessary and appropriate, the case manager must document it in the person-centered plan/CSSP.

#### **What is a person-centered plan/Community Services and Support Plan (CSSP)?**

The person-centered/Coordinated Services and Support Plan (CSSP) is the plan developed by the lead agency (county, tribal nation, health plan).

#### **What is a service delivery plan?**

A service delivery plan is the plan the provider is required to develop based on their licensing requirements.

#### **Case manager responsibility**

Any modification of the rights specified in HCBS rule must be supported by a specific assessed need and documented in the person-centered plan/CSSP. The case manager is responsible to coordinate with the provider to support these needs in the person's specific environment and to ensure implementation of the modification occurs only after both the person and the case manager agree to the provider's plan.

DHS requires the case manager documents the following in the person-centered plan/CSSP:

- A specific and individualized assessed need

- A clear description of the condition that is directly proportionate to the specific assessed need.

### **Provider responsibility**

The provider must ensure all modifications are implemented in the least restrictive manner necessary to protect the person and provide support to reduce or eliminate the need for the modification in the most integrated setting and inclusive manner.

The provider is required to document the following and provide it to the case manager for inclusion in the person-centered plan/CSSP. The provider should also include this information in the service delivery plan:

- Positive interventions and supports used prior to any modifications to the service delivery plan
- Less intrusive methods of meeting the need that have been tried but did not work
- Regular collection and review of data to measure the ongoing effectiveness of the modification
- Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated
- An assurance that interventions and supports will cause no harm to the person.

### **Consent**

Prior to implementing the modification of a person's right, the case manager must fully inform the person of the assessed need for the modification and how it will be implemented.

The case manager should discuss modifications with the person at least annually (and more frequently as necessary) so providers, the person and his or her person-centered planning team can determine if the modification is still needed or if revisions need to be made.

### **Best practice suggestions**

- Follow the clear policies and procedures that outline how and when you pursue approval for a modification
- Maintain an open line of communication with the person and his or her guardian, when applicable.

### **Examples**

- Gemma has Alzheimer's disease and a history of wandering, so it can be dangerous for her to freely come and go from her customized living building. The registered nurse (RN) documents in Gemma's service plan that Gemma recently left the facility unattended and could not find her way back. The RN identifies with Gemma, Gemma's case manager and her person-centered planning team members that Gemma must only leave the facility with appropriate support. The team assists Gemma in understanding and following that modification.

- David has Prader-Willi syndrome, a condition that causes him to ingest large quantities of food. He and his physician are working together to manage the condition. In the meantime, David and his guardian have worked with his case manager and provider to determine that limiting his access to food items will help him remain healthy. David's adult foster care services provider will help David build his skill set to work toward the ability to manage his food intake independently.
- Marco was recently diagnosed with severe depression and has exhibited self-harming behaviors. He, his provider, his case manager and his person-centered planning team have agreed that having a lockable bedroom door puts Marco at risk for serious injury or death if he engages in self-harm and a staff person is not able to reach him immediately. Marco, along with his support team, has determined the provider will temporarily remove the lock from the door and implement a regular, three month schedule of staff checking on him while Marco and his psychiatrist work to identify a balance of medications that fits his needs. The provider, Marco and his case manager will revisit the issue in three months to determine if they can reduce staff checks and add the lock back onto his bedroom door.

In all of these examples, the provider must work with the person, his/her case manager and the person-centered planning team to address all requirements and steps necessary to implement a modification to a person's rights.

### **Additional guidance**

#### **How do I request a modification for a person in my care?**

If you are a residential services provider and have identified a health and safety risk to a person in your care, you need to collect documentation of the risk and contact the person's case manager/care coordinator. The case manager/care coordinator will work with the person, you and other members of the person-centered planning team to ensure the appropriate information is documented on the person's support plan and the person has been informed and consented to the modification.

#### **The following should not occur**

- Modifying a person's rights because it is convenient for the provider or guardian
- Implementing a modification without consent of the person and his/her guardian (when applicable)
- Implementing a modification for all people living in a setting, regardless of their individualized needs and abilities.

## Requirements that only apply to residential providers

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The federal requirements, expectations and best practices in standards 1-7 only apply to provider-owned or controlled residential providers, including family and corporate adult foster care, customized living, community residential settings and supported living supports:

- Lease or Residency Agreement
- Lockable door
- Roommates
- Decorations
- Daily schedule
- Visitors
- Accessibility.

See the [provider owned and/or controlled residential settings](#) section for more information.

## 1. Lease or Residency Agreement

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### Federal requirement

The unit or dwelling is a specific physical place that the person who receives services can own, rent or occupy under a legally enforceable agreement. The person must have, 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 provider must ensure a lease, Residency Agreement or other form of written agreement will be in place for each person and that the document provides protections and addresses eviction processes and appeals comparable to those provided under the jurisdiction's landlord-tenant law.

### Provider expectations

This requirement ensures that people who live in a provider-owned or controlled residential setting have the same rights and protections as other community members.

The lease, Residency Agreement or Individual Resident Placement Agreement should contain the HCBS-required resident rights and informs the people and providers of their responsibilities under the agreement, such as:

- Amount and due date for rent or room/board
- Person's responsibilities (i.e., maintaining his/her living space and not engaging in activities that disrupt or potentially cause harm to other residents)
- Provider's timeframe for giving the person a notice of service termination and/or eviction
- Conditions under which a provider could initiate an involuntarily termination the lease/agreement
- Person's appeal rights information.

The provider must give a signed copy of the lease/Residency Agreement to the person.

Licensed programs must also refer to their applicable licensing/registration requirements regarding admission criteria/Residency Agreement requirements.

### Best practice suggestions

- The provider can include information about rights in the resident handbook, but the lease/agreement must explicitly reference that the resident's rights are outlined in the handbook
- The provider should explain the terms of the lease/agreement in a format the person can easily understand.

### Example

The XYZ Customized Living provider meets with Michelle and her case manager to review the terms of the lease/agreement including her rights and responsibilities before Michelle moves in so she can make an informed decision about where she wants to live.

**Does the lease agreement or Residency Agreement need to be completed annually, or just once with a review of rights annually?**

- For AFC settings licensed under Minn. Stat. 245A, the Individual Resident Placement Agreement and Residency Agreements must be reviewed and signed, along with the Recipient Rights, upon admission and on an annual basis
- For community residential settings licensed under Minn. Stat. 245D, the person/legal representative must review and sign the [Residency Agreement, DHS- 7176B](https://edocs.dhs.state.mn.us/lfserver/Public/DHS-7176B) (<https://edocs.dhs.state.mn.us/lfserver/Public/DHS-7176B-ENG>) and the recipient rights upon admission and on an annual basis
- For customized living licensed as home care under Minn. Stat. 144A and registered as housing with services (HWS) under Minn. Stat. 144D, each person/legal representative must review and sign the lease, along with the recipient rights, upon admission. The provider must give the person a copy of the recipient rights before the person receives services.

**The following should not occur**

- A provider forces a person to move out without due process, including adequate notice
- A provider discharges/evicts a person for an issue that was not included or described in the admission agreement that was signed by the person or his/her legal representative
- A provider inappropriately uses a lease/Residency Agreement to force a person to waive/modify certain rights under “house rules” (e.g., a lease/Residency Agreement cannot prohibit a person from having any visitors).

## 2. Lockable door

## 3. Roommates

## 4. Decorations

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### Federal requirements

- Each person has privacy in his/her sleeping or living unit:
  - Units have entrance doors lockable by the person, with only appropriate staff having keys to doors as needed
  - People sharing units have a choice of roommates in that setting
- People have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

### Provider expectations

People who receive residential waiver services have the same rights as any of us in our own homes, rental or otherwise. These requirements ensure people have the privacy they desire. A person should be able to lock his/her door, and he/she should come and go as he/she chooses. No one wants to share a room with a stranger, so providers must have a process for people to choose their own roommates. Finally, these requirements ensure the person's living space feels like home and can be furnished or decorated as they choose, within the boundaries of the lease/Residency Agreement.

To comply with these requirements, providers will ensure:

- People have lockable bedroom doors or a lockable front door to their unit (if shared unit, lockable bedroom door)
- People have control over their privacy and the option to lock their bedroom or unit door from the inside and outside
- People have their own key/fob to their bedroom or unit
- If there are circumstances that would prevent an individual from having a locked bedroom/unit door these are discussed during the person-centered planning process and described and documented in the person-centered plan and provider service delivery plan
- The staff person(s) allowed to have keys/fob to a person's room is determined by the provider and the person and should be documented in the person-centered plan and provider service delivery plan.
- Staff respect the person's privacy by requesting entry to the bedroom or unit (e.g., staff will knock or request to enter a room and receive the person's permission prior to entering)
- Staff only access a person's bedroom or unit as needed to address health and safety concerns
- People are offered their own bedroom, when available

- Staff consider roommate compatibility and give the person an opportunity to provide input in the decision
- Staff inform people how they can request a choice of or change in roommates
- People receive written notice when the provider plans to add a roommate or move the person to a different unit
- People can decorate their room as desired by choosing decorations or furnishing their room within their budget.
- There are clear policies and procedures in place to support these requirements

Licensed programs must also refer to their applicable licensing/registration requirements regarding lockable doors, roommates and decorations.

### Best practice suggestions

- Locks are standard on all bedroom unit doors, and a person can choose whether to use them
- Staff or other residents knock and receive permission before entering a person's room
- People who live in the home can come and go from the residence even if the front door is locked (e.g., ring a bell, have their own key or request a key prior to leaving)
- People can state their rights when asked or know where to find a copy of their rights
- Staff are trained on a safety plan for use in an emergency situation if a person's bedroom or bathroom door is locked
- People are allowed to bring their own furniture to this setting, such as a favorite chair or comfortable bed
- The provider creates a process that allows people to meet potential roommates.

### Examples

- Joseph lives in an adult foster home and has a lock on his bedroom door. Only Joseph and appropriate staff have a key to his lock.
- Bashar and Jim share a unit in a customized living setting. They do not get along. The provider reminds Bashar and Jim of the policy for requesting a new living situation and helps them follow the process to request new roommates.
- Sally really enjoys the Minnesota Twins. She chooses to decorate her room with Twins curtains, pillows and throw rugs she has purchased.
- Maria enjoys seeing pictures of her grandchildren. She is able to hang pictures of her family on her walls as desired.
- Samuel has a seizure disorder that requires frequent checks. Samuel's person-centered plan clearly instructs staff to knock on his door before entering to allow privacy, except during sleep times. The plan maximizes Samuel's right to privacy while supporting his health need for uninterrupted sleep.

### Additional guidance

**Where do individual rights intersect with health and safety under this regulation?**

Providers have a responsibility to protect the health and safety of the people in their care. When there is a medical issue or an identified health or safety concern, the provider needs to share their concern with the person's case manager. The case manager must document the modification of rights in the person-centered plan/Community Services and Support Plan (CSSP).

All people have the right to privacy unless that privacy creates an identified and documented health and safety concern. People may have differing values, religious orientations, sexual orientations or political beliefs. The provider must respect those differences because they most likely will not pose a health or safety risk.

**Can we have a policy for secured memory care that covers everyone in that setting?**

No, providers cannot have a blanket policy that covers everyone in a setting. Every person in the setting must have an assessment that shows his or her need for a secure environment. The case manager must document the modification in every person's support plan. If a person is living in a secure unit but able to come and go safely, he or she needs a method to move freely about the building.

**What type of lock needs to be available to the person?**

There is no CMS guidance on type of lock. The person needs to have control over his or her privacy by locking the door from the inside or outside. The provider should choose a lock that will respect the person's need for privacy and fit the needs of the residence.

**If a person has never had a lock on their door, do we need to install a lock on his/her door?**

This requirement starts with the expectation that everyone is capable of having a lockable bedroom door. When a person has an assessed need for a modification to this requirement, the case manager will document that restriction in the person's support plan. The support plan will follow the rights restrictions process (i.e., documentation of how other less restrictive options could not meet the assessed need, objective measures and regular evaluations).

When the assessed need identifies the person should not have a lock installed on his/her bedroom door, the provider may uninstall the lock until a future time when the rights restriction is lessened or lifted through the rights restriction process. If the restrictions are lessened or lifted based on assessed need of the person, the provider may (re)install the lock on the door.

**The following should not occur:**

- A provider says, "I can't let this person lock his door because he may watch something inappropriate on his TV." Everyone has the right to privacy unless there is an identified and documented health and safety concern
- The setting has a policy that bedroom locks are not allowed for anyone living there
- The setting locks the front doors at a certain time each night and everyone must be inside before that time

- People living in the residence meet a new roommate the day that person is moving in, and there is no process in place to make changes if that relationship does not work out
- A person's bedroom is furnished by the provider with no input from the person, and decorations are restricted beyond normal landlord-tenant norms
- Bedrooms are pre-furnished, and all rooms look identical. People do not have the option to personalize the space
- Staff enters a person's bedroom without knocking and receiving permission (unless there is an emergency or health and safety concern)
- Staff shows another staff member a person's room without that person's permission.

## 5. Daily schedule

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### Federal requirement

People have the freedom and support to control their own schedules and activities, and they have access to food at any time.

### Provider expectations

People control their day-to-day lives in the same way other community members do. This includes control over when they like to wake up and get ready, as well as when and what they eat.

To comply with this requirement, providers will ensure:

- People have freedom to control their own schedule and activities (e.g., they do not have to adhere to a set schedule of waking, bathing, exercising or participating in activities)
- Support activities are flexible and work around the person's preferred schedule
- People do not have to follow one "set schedule" for all living in the setting
- People have access to food (meals or snacks) and a place to store snacks (e.g., bedroom, kitchen), if desired
- People have choices of when, where and with whom they would like to eat (e.g., no set "meal times" or assigned seats, a person can request alternative meals if desired, etc.)
- People can eat a meal or snack at any time (e.g., if they miss a meal due to an activity, they do not have to wait for the next meal to eat; the provider can set aside a plate for them to reheat later or provide an alternate meal when they return)
- People have the right to refuse to participate in activities the rest of the people in the setting want to experience.

Licensed programs must also refer to their applicable licensing/registration requirements regarding control of schedules.

### Best practice suggestions

- People are supported in planning their day-to-day activities and schedules (i.e., when to wake up, eat and go to bed)
- Providers are flexible when planning meetings and other activities so people can coordinate their schedules
- People can ask for assistance if they would like to schedule appointments for services in the community or arrange for transportation
- The provider creates an activity calendar each week so people can make decisions about activities in which they would like to participate
- People can help develop the week's grocery list for the week or activity options
- People are encouraged to share ideas and make choices about setting activities based on their own personal preferences and interests

- People who work have access to food through typical workplace rules that all employees follow
- The provider creates a process for how and to whom a person can request a change to current services, transition to other services or request a change of staff.

### Examples

- Erik lives in a corporate adult foster home/community residential setting and has a part-time job early in the morning a few days a week. He has to wake up very early and misses breakfast on those days. The provider accommodates Erik's schedule by helping him set his alarm clock and creating flexible mealtimes.
- Keasha lives in a customized living setting, and she has a number of medical appointments each week. Some of the other people living in the setting enjoy going to the library and the community center often. The provider sits down with the group each Sunday to plan their weekly activities so Keasha and the other people in the group can attend the activities that are important to them.
- A large customized living building does not keep its commercial kitchen operating 24-hours a day. To ensure people have 24-hour access to food, the provider permits people to have a small refrigerator in their living quarters for keeping snacks they have purchased with their own monies. People also have access to a kitchen facility (with plates, utensils and microwave) if they would like to prepare their own snacks between meals.

### Additional guidance

#### **Does this requirement mean I have to leave the kitchen open 24 hours a day?**

Not necessarily. You may opt to leave the kitchen accessible to residents who would like to prepare a snack or small meal between regular meal times. Alternatively, you can allow residents to keep their own food items in their living quarters or in designated cupboards/ spaces in the pantry that they can access whenever they want.

#### **I provide services to a person who makes poor food choices. Do they have to have 24-hour access to food?**

A provider may not limit a person's access to food unless there is an identified and documented risk to the person's health or safety that requires rights modification. A provider may not limit a person's access to food items solely based on:

- Whether the food is deemed "junk food"
- The provider's personal beliefs
- The provider's assumption that a person is not a healthy weight.

The provider should focus instead on helping the person learn to make better food choices if that is an agreed upon goal in his/her service plan.

There may be instances in which 24-hour access to food poses a health or safety risk to a person. In that case, the provider may need to limit access to food. A modification to this right must be implemented and documented in agreement with the person and his/her case manager.

**The following should not occur**

- The provider requires people to participate in activities
- The provider restricts a person's access to food because of the provider's personal belief that the food choice is not appropriate or healthy
- The provider only makes food available or accessible to people when the provider prepares regular meals or supplies a snack
- The provider places restrictions on whether a person eats dessert based on whether he/she finishes dinner
- The provider requires people to be awake and dressed at the same time as others
- The provider requires "lights out" or "bedtime" at a certain time.

## 6. Visitors

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### Federal requirement

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

### Provider expectations

People should have the opportunity to develop close, private and personal relationships without unnecessary barriers or obstacles imposed on them. HCBS federal rules require that people be able to have visitors at any time without restriction, just as anyone would have in their own home or rental unit. Providers should also not screen the person's visitors. This requirement does not mean people can be inconsiderate of others' rights or the need for quiet and safety in the residence. It is intended to ensure people who live in adult foster homes/community residential settings and customized living settings have the same freedoms with relationships and visitors in their homes.

To comply with this requirement, providers will ensure:

- People can choose their visitors and have no restrictions on visit times
- People may have overnight guests
- People have access to unrestricted visitor areas
- People have the right to privacy during visits.

Licensed programs must also refer to their applicable licensing/registration requirements regarding visitors.

### Best practice suggestions

- The policy and procedures for visits should include the person's right to:
  - Have visitors of their choosing at any time
  - Request privacy during the visit
- The person's right to have visitors of their choosing at any time must be contained in the resident rights document, the resident handbook or the lease/Residency Agreement
- The provider directly addresses health and safety concerns with the person and shares them with the person's case manager. If the case manager implements visit modifications, the modifications are documented and implemented in collaboration with the person and the provider

### Example

Sonia lives in an adult foster care home. Sonia's friend Jasmine likes to stop by at random times to visit when she is in the area. The setting allows visitors at any time. If Jasmine visits after a certain time and the doors to the home are locked, Jasmine must use the doorbell and sign in and out on the visitor log by the front door. If Jasmine comes to visit and other people are sleeping, the provider expects Jasmine to be quiet and respectful of all people who live in the home.

### **Additional guidance**

Visitors should have access to all appropriate areas when visiting and should not be denied entry to common areas or the person's room. The setting may require visitors to sign in and/or notify the provider that they are in the residence. The setting may also require visitors to complete other procedures to ensure the safety and welfare of the people who live and work there. However, the procedures should not restrict visitors unnecessarily for the convenience of staff or restrict the person from freedom of association with those they choose.

It is understood that in a shared living situation, the needs of other people living in the home must also be respected. If there are concerns from other people living in the home about a visitor(s), the provider should facilitate communication between the affected parties.

**At times during the day, there are no staff members in the home because of appointments, shopping, meetings, etc. Must I allow anyone to visit this home when staff is not present? If so, how can we protect the safety, security and privacy of the people present and the security of the home? Is there a way to limit visitation to times when staff members are present and still comply with the new rule?**

People should have the opportunity to develop close, private and personal relationships without unnecessary barriers or obstacles imposed on them. HCBS federal rules require people be able to have visitors at any time without restriction, just like anyone else would have in their own home or rental unit. Providers should not screen the person's visitors. This does not mean that people may be inconsiderate of others' rights or the need for quiet and safety in the residence.

A case manager, in collaboration with a provider, may modify the person's right to have visitors at any time basis based on the person's assessed needs. This right should be modified on an individual basis, not throughout the entire setting.

#### **The following should not occur**

- The provider determines who may or may not visit based on their own feelings about the visitor's character
- The setting has scheduled visitation hours.

## 7. Accessibility

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### Federal requirement

The setting is physically accessible to the person.

### Provider expectations

To comply with this requirement, providers must ensure a person's physical environment meets his or her needs. For example, people must be able to use common areas in the home, such as the kitchen, dining area, laundry area and shared living space, to the extent they desire.

People must have the right to move about the setting and not be confined to any one defined area. They should have unobstructed access to all areas of the common living space they wish to access.

Licensed programs must also refer to their applicable licensing/registration requirements regarding accessibility.

### Best practice suggestions

- Have a conversation with a person about accessibility needs upon move-in
- Ensure the physical environment meets the needs of people who live in the setting (e.g., people can use common areas in the home such as the kitchen, dining area, laundry and shared living areas to the extent desired)
- People are notified that they may request a reasonable accommodation, and the provider explains how to make such a request
- Regularly check for fall or trip hazards (loose rugs, uneven surfaces, etc.)
- As needed, the provider installs grab bars, ramps, adapted furniture, etc., to ensure access to desired areas and household items.

### Examples

- Greg lives in a customized living setting. His home has wheelchair-accessible doorways in the common areas and a wheelchair-accessible bathroom so Greg can easily wheel in and out of it
- Bekah wants to move to a corporate adult foster home. She completed a walkthrough of the common areas and living quarters with her case manager. This helps her identify any potential issues and needs for environmental accessibility adaptations to meet her mobility needs if she chose that home as her new residence
- Jodell lives in a customized living apartment. She reported the placement of the dresser in her bedroom prevents her from getting close to the head of her bed with her walker. The customized living provider helped Jodell rearrange her bedroom furniture to make sure she can safely maneuver independently in and out of her bed as desired.

### **Additional guidance**

#### **Does this requirement apply differently to customized living settings, adult/child foster care homes or community residential settings (CRS)?**

No, this requirement applies equally to customized living settings, adult foster care homes and community residential settings. Common areas in both types of homes should be accessible to the people that live there.

#### **The following should not occur**

- The provider limits people who require the use of a wheelchair or walker to only their bedroom and the dining hall because the doorways to the kitchen and activity room are too narrow
- People living in the home are not able to maintain independence as desired due to physical accessibility issues in the home
- The provider uses gates or other barriers to rooms to prevent access to common areas.

## Standards that apply to all HCBS providers

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The federal requirements, expectations and best practices in standards 8-16 below apply to all providers of HCBS services:

- Employment
- Community life
- Control of money
- Privacy
- Dignity and respect
- No coercion/restraint
- Independent choices
- Setting choice
- Choice of services and supports.

## 8. Employment

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### Federal requirement

The setting is integrated and supports full access to the greater community for people who receive HCBS services. This includes 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 people who do not receive HCBS.

### Provider expectations

To comply with this requirement, the provider must engage with the person and his/her support team by using person-centered thinking to ensure:

- A person's needs, desires and choice to work is assessed and the person is able to make decisions through an informed choice process, which includes having actual community experiences on which to base decisions
- People have opportunities to explore, seek and experience employment, including work in a competitive integrated setting if desired.

Licensed programs must also refer to their applicable licensing/registration requirements regarding access to the community, including employment.

### Best practice suggestions

- If the person receives services in a residential setting, the lease/Residency Agreement or recipient rights document notes a person's right to hold a job, engage in community life, control personal resources, and receive services in the community
- Providers inform people of the potential impact earnings could have on public benefits and resources
- The provider identifies employment resources (e.g., training programs and educational programming opportunities)
- For people who choose employment, the first and expected option is competitive, integrated employment
- People know how to request support to pursue a job change if interested.

### Examples

- Staff helps Mai explore her skills and interests to help her identify potential job opportunities in the community. Then, they research the wages and benefits for those opportunities and conduct a benefit analysis to see if there would be any negative impacts on the public benefits she receives. Through this process, she can make an informed decision.
- Jackson is not sure whether he would like to work in the community because he previously only has participated in center-based work. His employment provider coordinates opportunities for Jackson to sample some community job sites and visit

businesses that are of interest to Jackson. This way, he has some real-life experiences on which he can base his decision.

- Arthur lives in a customized living setting and has a part-time job. Arthur discusses his work schedule with the customized living provider, and the provider schedules services and supports in a way that complements his schedule.

### **Additional guidance**

#### **What does competitive, integrated employment mean?**

- The Olmstead Plan defines competitive, integrated employment as work:
  - (1) Performed on a full-time or part-time basis, with or without supports, including self-employment
  - (2) Paying at least minimum wage, as defined by the Fair Labor Standards Act, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by workers without a disability
  - (3) Paid for by an employer who is not the person's service provider
  - (4) Performed in an integrated setting typically found in the competitive labor market where people with disabilities have the opportunity to interact with non-disabled co-workers during the course of performing their work duties to the same extent that non-disabled co-workers have to interact with each other when performing the same work
  - (5) Provides the employee with a disability with the same opportunities for advancement as employees without disabilities in similar positions.

#### **What happens if a person decides through the Workforce Innovation and Opportunity Act (WIOA) process that he or she does not want competitive employment? What should providers should do, and how often should they check in – monthly, quarterly or at scheduled team meetings?**

- Document the information and experiences provided that resulted in the informed choice, as well as the stated reason(s) the person did not want to pursue work at this time
- Effectively address with the person any potential myths about employment or barriers to achieving employment
- Continue to help the person identify additional experience-based opportunities of interest for further growth and exposure, to be included into service planning
- Schedule check-ins about the person's interest in competitive integrated employment during service planning and support team meetings
- For a person who receives intensive support services (which includes day training and habilitation), schedule a meeting within 30 days of a written request by the person, his or her legal representative or the case manager at a minimum of once per year.

According to Minn. Stat. 245D.07 and 245D.071, providers must participate in service planning and support team meetings for the person after the stated timelines established in the person's

coordinated service and support plan or as requested by the person or the person's legal representative, the support team or the expanded support team

**What are the expectations for residential and adult day service providers to support people who work?**

You must provide flexible scheduling and activities during times that complement a person's work schedule. The requirement states that people who want to work must be supported in their choice, and that no barriers are in place if they choose to work. Many older adults choose to retire or not seek employment, but some older adults are interested in work. It is important to provide work opportunities to anyone who is interested.

**What happens if a DT&H program serves people who do not want competitive employment?**

Lead agencies must ensure informed choice by using the [Person-Centered, Informed Choice and Transition Protocol, DHS-3825](https://edocs.dhs.state.mn.us/lfsrserver/Public/DHS-3825-ENG) (https://edocs.dhs.state.mn.us/lfsrserver/Public/DHS-3825-ENG). Providers must offer the person options and opportunities to try new things on an ongoing basis. Policies should reflect that providers are supporting people as requested and regularly checking in with them about the opportunity to explore employment.

## 9. Community life

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### Federal requirement

The setting is integrated in and supports full access to the greater community for people who receive HCBS. This includes providing 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 people who do not receive HCBS.

### Provider expectations

People who receive HCBS must have equal access to the same community resources and activities as the greater community. Providers should not have rules that restrict or obstruct community access. It is critical to ensure service and support delivery practices do not isolate older adults and people with disabilities from the community. Providers must also ensure service and support practices do not create an environment that is institutional in nature. Providers must support people in their desires to participate in community.

To engage with the person and the support team, the provider should use person-centered thinking to:

- Ensure people have opportunities and supports they need to be fully included in their community, individually and in groups, as desired
- Identify, develop and make available information on transportation options for community access
- Assist people with developing meaningful relationships with other members of the community
- Ensure people have services, resources and supports to help them explore or maintain meaningful activities.

Licensed programs must also refer to their applicable licensing/registration requirements regarding access to the community, including engagement in community life.

### Best practice suggestions

- If the person receives services in a residential setting, the lease/Residency Agreement or recipient rights document includes a person's right to engage in community life and receive services in the community
- The provider creates written policies and procedures regarding a person's access to and utilization of transportation to access the community
- The direct care staff adhere to a clear expectation about the services and activities identified in the person's support plan and honor his/her rights under the HCBS requirement

- The provider organizes a variety of age-appropriate activities with input from the people each week to take place both inside and outside of the setting. Age-appropriate activities are activities that correspond with an individual's chronological age.
- If applicable to the service the provider delivers, people have opportunities for recreation or physical activity, creative activities (e.g., to cook, craft, paint and play musical instruments) as well as learning and education (e.g., learn to use a computer, sew or knit)
- Staff document community engagement activities with progress notes, activity and transportation logs, calendars or implementation plans
- The provider holds planning meetings with people to discuss strategies for the coming weeks to ensure and support community integration (e.g., plan trips into the community)
- People can come and go from the setting at any time
- Transportation options are available (e.g., city bus, volunteer drivers, Metro Mobility, etc.)
- People interact with members of the community through religious services, shopping, appointments, etc., to build community relationships
- People have opportunities to attend religious activities of their choice
- Staff encourage people to try new things and share information with them about opportunities in which the person may be interested.

### Examples

- An adult day provider in Wadena plans a trip the county fair. The provider arranges for interested staff and family members or natural supports of the people to come as well. The provider transports the people to the county fair and tells everyone when and where they will be picked up. The provider assigns staff and/or natural supports as needed to individual people or small groups so the people can pursue their own interests/activities while at the fair.
- Kia lives in an adult foster home in St. Cloud. She enjoys playing volleyball as one of her preferred activities. Kia does not require constant supervision, and her support plan documents that Kia is able to walk to a nearby community center independently to join in an open volleyball session. During the session, she will have an opportunity to play and interact with other community members.
- Raymond attends an adult day program. He is working on a goal to increase his social interactions with peers, so he and an adult day staff member go to the park where Raymond is encouraged to join others in conversation.
- Becca and Lou live in a customized living setting in Mankato. The activities coordinator asks Becca and Lou which activities they would be interested in for the following month. Becca and Lou are not sure, so they go to the commons area and look through the latest newspaper, the posted community calendar of events, area newsletters with

community event information and the “What’s Happening” page on the internet to see what piques their interest. After viewing their options, Becca and Lou tell the activities coordinator they would like to see a new movie in the theater next week. The activities coordinator adds the movie to the list of upcoming activities in which all can participate.

### **Additional guidance**

#### **How can a rural setting meet this requirement?**

Integration into the community will look very different in Mahanomen than it will in St. Paul or Duluth. A very rural setting may have fewer opportunities for people to participate in community events or gatherings, but this is also true for the general public. The key is to be sure people have the same access to the community as others who live in that rural setting.

#### **Is integration different for everyone?**

Yes, each person may have different needs and different desires. Providers are trained to address individual needs and desires and find a way to help every person meet those needs and desires to the greatest possible extent. Also, keep in mind that one person’s needs should not limit another person’s freedoms. For example, if one person cannot use automated doors, the provider should not avoid group outings to places where there are automated doors. That limits everyone’s options for community engagement.

#### **What are the expectations for day providers regarding “individual community opportunities?” Do you expect us to provide one-on-one community activities?**

Day services (adult day, DT&H, prevocational and structured day services) are not required to support a person with one-on-one community access. However, the provider should talk to people about their likes, dislikes and interests and make sure they have opportunities to participate in activities that match their preferences. Providers should also share community activity information to raise awareness of and access to the broadest array of activities that may occur inside and outside the setting. It is not acceptable for providers to offer only on-site activities or only bring community members into the facility.

#### **A note to providers**

To support full community integration, providers must facilitate regular age-appropriate activities for people with others who do not receive HCBS (not including paid staff). In residential settings, if access to the community is limited due to geography or location, the provider should facilitate access to transportation however possible. For example:

- The person can contact a natural support for transportation
- The provider can post information about bus schedules or phone numbers for taxi services
- The provider can help the person use community transportation.

Ideally, there should also be some community activities at which a person can choose to spend their own money, as well as provider-sponsored or no-cost activities. The provider should share

community activity information to encourage awareness and access to the broadest array of activities inside and outside of the setting.

**The following should not occur**

- The provider creates physical barriers or obstructions that isolate the person from full access to the community
- The setting lacks staffing to support opportunities for community access, or the staff does not work to find and use creative and effective solutions to barriers. (e.g., identifying people in the community or natural supports who might be willing to assist)
- For residential settings, the provider creates an admission agreement that imposes limitations on integration and community access (e.g., a prohibition on being employed or a requirement that residents must receive other services on-site as a condition of residing there)
- People have separate options (e.g., certain activities, living spaces or opportunities) based on their funding source.

## 10. Control of money

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### Federal requirement

The setting is integrated in and supports full access of people 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 people who do not receive Medicaid HCBS.

### Provider expectations

Provider expectations (if money management is a provider duty):

- People have control over their personal funds and access to information about their income
- The provider identifies roles and responsible parties as they relate to money management
- Staff are trained to safeguard funds and follow the person's plan with respect to funds, if such a plan is in place.

Licensed programs must also refer to their applicable licensing/registration requirements regarding control of personal resources/management of funds.

### Best practice suggestions

- The lease/Residency Agreement or recipient rights document includes a person's right to control his/her personal resources
- People have a way to access their money when they choose, not just during a set timeframe or business office hours.

### Examples

- Gino lives in an adult foster home in Eagan. One evening, his friend Mark shows up unexpectedly. Gino has not seen Mark in six months and is excited to be able to spend time with him to catch up. Gino and Mark decide it would be fun to go to the 7:00 p.m. movie. Gino has access to his funds when needed and spontaneously is able to go to the movie with his friend Mark.
- Monica lives in a small four bedroom customized living setting in Grand Marais. Monica is concerned that her monthly check was deposited correctly into her bank account. The customized living provider informs Monica she is going into town to get groceries the next day and offers to take Monica to the bank to verify whether her deposit was made accurately and to check on the status of her funds.

### Additional guidance

**The following should not occur**

- The provider requires people to sign over their paycheck or another form of payment/income as a condition of receiving services (unless required by a state-funded program)
- People have limited access to their funds for provider convenience.

## 11. Privacy

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### Federal requirement

Ensure a person's rights of privacy, dignity and respect and freedom from coercion and restraint.

### Provider expectations

Provider expectations are to ensure people:

- Have the right to privacy
- Have the right to have their information kept private
- Have the right to have personal care provided in private.

The provider must respect the privacy of a person in all aspects of life. Preservation of a person's right to privacy is a basic human dignity. Staff must ensure the person's need for privacy is respected and protected. This includes being able to have private conversations, having a say in who has access to his/her personal possessions and living space and having privacy during activities of daily living such as bathing, grooming and dressing.

Licensed programs must also refer to their applicable licensing/registration requirements regarding a person's privacy rights.

### Best practice suggestions

- Providers do not discuss a person in the open or within earshot of those who do not need to hear the discussion
- The person has access to make and receive private telephone calls and access to personal communication via text, email or other personal communication method
- In any setting, people's full names or personal or health information are not left in public for others to see
- People can perform/receive personal cares in a private area and with discretion and dignity
- Staff are trained on confidentiality policies and practices
- The provider keeps personal information private and does not share it with others without the person's expressed consent
- People have access to spaces for private conversations or quiet time (e.g., a place to be alone if someone is upset or wants to relax in a quiet area).

### Examples

- Anna lives in an adult foster home in Brainerd. She has many friends all over the world with whom she likes to keep in contact via text, email and social media. Anna uses her cell phone or computer to communicate daily with her friends and family without being required to have staff present.

- Jerome lives in a customized living setting and chooses to eat his lunch in the main dining area so he can visit with Fred. After Jerome finishes eating, he is scheduled to take his noon medications. The provider asks Jerome if he would like to take his noon medications in the privacy of his unit, or if he prefers to take them at the dining table. Jerome reports that he prefers to take them at the dining table because he and Fred plan to play their daily card game.
- Lila receives services at a setting in Pipestone. Lila and her staff run into Lila's cousin, Sue, while walking to the library. Sue asks the staff about Lila's medication and if it is helping her. Lila's guardian has not signed a release of information allowing staff to share this information with Sue. The staff respects Lila's privacy by informing Sue that the information she requested is private and confidential. The staff tells Sue to contact Lila's guardian if she would like information about her medications.

### **Additional guidance**

#### **The following should not occur**

- People have to perform/receive personal cares outside of a private space without the expressed consent of the person
- Staff open mail or other forms of communication without the consent of the person or his/her guardian
- Staff share a person's private information without the consent of the person or his/her guardian.

## 12. Dignity and respect

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### Federal requirement

Ensure a person's rights of privacy, dignity and respect, and freedom from coercion and restraint.

### Provider expectations

The provider should treat people with respect and dignity in all aspects of life. Respecting a person for who they are is a basic human dignity. The provider must ensure the people they serve are treated with dignity and respect at all times. This includes respecting people's likes and dislikes, talking with people in a way that makes them feel respected and heard and assisting people with personal cares in a compassionate manner that preserves their dignity.

Licensed programs must also refer to their applicable licensing/registration requirements regarding a person's right to be treated with dignity and respect.

### Best practice suggestions

- Staff assist people with all personal cares in a dignified manner
- During mealtimes, staff do not require people wear bibs or use disposable cutlery, plates and cups
- People can choose clothes and hairstyles that meet their personal preferences
- People are dressed in clothes that their meet personal preferences, fit and are clean and appropriate for the time of day and weather
- People are addressed by their preferred name, not "hon," "sweetie" or similar name
- Staff do not discuss a person who is present like he/she is not there. They include the person in conversation
- Staff converse respectfully with people while providing care and assistance, regardless of the person's ability to vocalize a response
- Staff use written, verbal and non-verbal communication that demonstrates the values of respect and dignity.

### Examples

- Robin receives adult day services in Pelican Rapids. Robin has a very creative personality and enjoys expressing herself in her choice of clothing and the color(s) of her hair. The staff at Robin's adult day services enjoy her expressive personality and compliment her on outfit combinations and the new hairstyles she chooses
- Jerald lives in an adult foster home in Minneapolis. He is non-vocal and hard of hearing. Jerald is often times overstimulated in a busy or loud environment. To respect Jerald and include him in group activities, Jerald's adult foster home provider includes quiet time with relaxing music as a group activity in which everyone can participate, if they

desire. This is relaxing for Jerald and allows him to participate in a group activity. The other people living in the house find this activity beneficial as well.

- LuAnn receives prevocational services in Walker. LuAnn's favorite place to eat lunch on her break is the local spaghetti restaurant a block from the prevocational center. LuAnn has limited small motor dexterity that often causes her to spill or drop her fork of spaghetti on her shirt. The staff planned with LuAnn and had her bring a few extra shirts to have on hand at the center. When LuAnn returns to the prevocational center after lunch, the staff ask LuAnn if she would like to put on a clean shirt before she resumes her activities.

## 13. No coercion/restraint

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### Federal requirement

Ensure a person's rights of privacy, dignity and respect and freedom from coercion and restraint.

### For license holders serving a person with a developmental disability or any person receiving a 245D-licensed service:

#### Provider expectations

The Minnesota Department of Human Services (DHS) developed [Guidelines for Positive Supports in DHS-Licensed Settings, DHS-6810C \(PDF\)](#)

(<https://edocs.dhs.state.mn.us/lfs/Server/Public/DHS-6810C-ENG>) for DHS-licensed providers to explain their duties under Minn. R. 9544, known as the Positive Supports Rule (PSR). The PSR governs the use of positive support strategies and restrictive interventions for DHS-license holders serving a person with a developmental disability or any person receiving a 245D-licensed service. You can find more information about positive support strategies on the [DHS Positive Supports webpage](#) (<https://mn.gov/dhs/partners-and-providers/program-overviews/long-term-services-and-supports/positive-supports/>). You can find definitions, best practice suggestions and examples in the Guidelines for Positive Supports document.

### For services licensed under 245A or 144A serving a person without developmental disabilities

#### Provider expectations

The provider does not allow practices that include coercion or restraint interventions of people in their care. The provider informs people that they have the right to live in an environment free from coercion or restraint. The provider must show people that they account for and honor their choices according to their person-centered plan. The provider also informs people of their rights and provides them with instructions on how to file a complaint if their rights are violated by a peer, staff or any other person present at the setting.

#### Best practice suggestions

- The provider posts a recipient rights document in a public area where people or guardians are likely to see it
- If a residential setting, the provider includes the person's rights as part of the lease/Residency Agreement and keeps record of giving individual rights to each person
- The provider makes a point to periodically inform people of their rights
- The provider posts information about who to contact to file a complaint or grievance (including an anonymous complaint) in a public location and in a manner or format people can understand
- The provider gives people and/or their guardians information about filing a complaint upon service initiation and upon request thereafter

- The complaint policy includes a statement that no retaliation will occur if a complaint is filed
- Staff receives training on the setting’s complaint and grievance policies.

### **Example**

Angie lives in a customized living setting. Angie would like to file a complaint with the customized living provider because she feels that the fitness room is locked every time she wants to use the treadmill. She can find information easily about filing a complaint because her provider posted it in an obvious location and in a format she easily understands. Angie informs her case manager that she understands she has the right to file a complaint. She is able to complete the process on her own, or she can ask for assistance if needed.

### **Additional guidance**

#### **What does DHS mean by coercion for services licensed under Minn. Stat, 245A or 144A serving a person without developmental disabilities?**

To coerce someone is to use threats, intimidation and/or authority to influence the behavior of another making the person choose to comply, even when it is against the person’s best interest, rather than directly forcing compliance.

For example, a provider says, “If you do not finish all of your lunch, you will not be allowed to go to the store with us later.” Instead, the provider could say, “If you are interested in making your own menus, let’s do some research together to see what options might interest you.”

#### **What are restraints for services licensed under Minn. Stat. 245A or 144A serving a person without developmental disabilities?**

Restraints include chemical, mechanical or physical mechanisms. Restraints also include the use of seclusion to modify or prevent a person’s behavior.

#### **The following should not occur**

- Staff gives people over-the-counter drugs to make people sleepy for the convenience of the provider.

## 14. Independent choices

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### Federal requirement

The setting optimizes but does not regiment individual initiative, autonomy and independence in making life choices. This includes but not limited to daily activities, physical environment and with whom a person interacts.

### Provider expectations

People retain the ability to make choices about how they spend their time in any given setting and have opportunities to participate in age-appropriate activities.

Providers should engage with the person and the team using person-centered thinking to ensure:

- The provider supports people in life-informed “real” choices and autonomy
- The provider offers people actual experiences on which they can base future choices
- The provider creates plans for the appropriate balance between autonomy and safety
- The provider gives the person’s personal preferences priority over a guardian’s or provider’s preferences (unless for a documented health and safety reason)
- People feel supported and inspired to work toward their goals, dreams and priorities.

### Best practice suggestions

- The provider supports people to participate in age-appropriate activities of their choice that are consistent with the goals and objectives identified in their plan of service. This includes activities within the setting, as well as provider-organized activities in the community
- The provider is encouraged to use the natural environment as frequently as possible to help people learn new skills. Learning a skill in the natural environment is often more effective than “classroom” training
- The provider creates a decision-making process that supports people in making activity choices freely and fairly
- People can access things like a radio or television, and they can choose other leisure activities if desired
- The physical setting can support a variety of individual goals and needs, such as having space for people to move about and accommodating individual and group activities
- People can choose with whom they would like to do activities
- People can provide suggestions about activities through a comment box, small group sessions or by meeting with the activities coordinator.

### Examples

- Amy has a goal of learning how to use money to shop. Amy’s day training and habilitation provider brings her to a store to shop instead of always using pretend money or a toy cash register in the center setting
- Marcus has played guitar in a band for 25 years prior to his car accident that caused his brain injury. Marcus recently moved into an adult foster home, but he misses meeting his friends every Friday at the local pub for live music. Marcus, his provider and his case manager come to an agreement, which includes a safety plan that supports Marcus to see his friends at the pub on Friday nights. Marcus’s agreement includes text messaging the provider at scheduled intervals to say he is fine or request support, returning to the residence by an agreed upon time and planning transportation options to and from the pub.

**The following should not occur**

- The provider forces or coerces a person to participate when he/she does not wish to participate in an activity
- The provider punishes a person for not participating in an activity
- The provider makes activity schedules without input from the people in the setting.

## 15. Setting choice

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### Federal requirement

The person selects the setting from options including non-disability specific settings and private units in residential settings. The case manager identifies and documents setting options in the person-centered service plan. These options are based on the person's needs, preferences and, for residential settings, resources available for room and board.

### Provider expectations

This requirement applies to service plan development and to those entities responsible for person-centered planning such as case managers and care coordinators. Providers are expected to deliver services in accordance with the person-centered plan/Community Services and Support Plan (CSSP).

This requirement ensures people are aware of and have an opportunity to select where they would like to receive their HCBS services from the variety of setting options available, and that their case manager documents their choices as part of their service plan.

People can make an informed choice of where they live, work and receive services based on needs, preferences, financial resources and availability of settings, services and service providers. The case manager should give priority to the person's preferences, not the provider or guardian's preferences (unless for health and safety reasons).

### Best practice suggestions

- People know how to make a request for a new setting and/or changes to current services and supports
- People and their support team have opportunities for feedback and input regarding settings, services and service providers
- The case manager provides people with information about identifying, choosing and changing settings in a manner or format they can understand
- People are encouraged to ask questions about their setting options
- People are able to visit or view a setting as part of their informed decision-making process
- If a person wants to change their setting choice(s), their case manager supports them in that process.

### Example

Maisy is ready to move into a new setting that provides residential waiver services. She shares her setting preferences with her case manager. Maisy and her case manager gather a list of possible settings that meet Maisy's needs based on her assessment and preferences. They schedule a time to visit Maisy's top three choices so Maisy can meet the providers, see the home and make an informed decision.

## **Additional guidance**

### **What is a non-disability specific setting?**

A non-disability specific setting is not exclusive to people with one type of disability. For example, a memory-care unit is disability-specific because it is designed to support people with cognitive impairments (e.g., Alzheimer's disease). This regulation does not mean memory care or other disability-specific settings cannot continue to operate under HCBS. It means a person with Alzheimer's disease cannot be required to select a disability-specific setting due to his/her diagnosis.

### **What does it mean for someone to have an option for a private unit?**

This means residential setting options should include settings that offer private units. It does not mean all residential providers are required to offer private units. In some cases, a person may not be able to afford a private unit. A person must consider his/her income and resources in deciding where to live, just as any community member would. The case manager should support people and/or their guardians in identifying residential settings that meet their needs.

### **The following should not occur**

- People are required to select a particular disability-specific setting solely based on their diagnosis. The case manager should offer choices for service settings that best meet the needs and preferences of the person during the person-centered planning meeting.

## 16. Choice of services and supports

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### Federal requirement

Providers facilitate individual choice regarding services and supports and who provides them.

### Provider expectations

People are free to choose who provides the services they receive and where they receive those services. People are not coerced or forced to obtain services in a particular setting. They may instead choose to go out into the community for the same services.

If a person's assessed needs allow for him or her to receive services one-on-one with a provider, that choice should always be available and not modified to suit the provider's need.

It is important for people and/or their guardians to know the person-centered plan is in place to address their needs. If people are not happy with their current services for any reason, the provider should direct them to the right person (e.g., case manager) who can help them make changes to the plan.

### Best practice suggestions

- People have opportunities to choose whether they want to receive services, and they can choose from available alternatives when appropriate
- The case manager encourages people to make individual choices whenever possible, but especially in relationship to services and supports and who provides them
- Staff takes the time to understand fully what services or supports the person would like to receive off-site and provide the support needed to ensure that can happen when feasible.

### Examples

- Loretta requires physical therapy for an injured knee. A physical therapist comes to the customized living setting where Loretta lives to provide physical therapy. Loretta can choose to access the therapist for physical therapy on-site, or she may choose to see a different therapist in the community with whom she is familiar.
- Rick receives services at a day training and habilitation setting in St. Paul. He prefers to work with male staff. The setting has a process in place to respect Rick's preference as staffing allows.
- Janice lives in an adult foster home/community residential setting in Little Falls. The provider supports Janice's need to see her long-time family doctor by offering transportation directly or by working with Janice and her support team to identify resources to assist with transportation to her doctor of choice.

### Additional guidance

**If someone is unhappy with my service, what should I do?**

First, the provider should try to understand why the person is unhappy. If the issue is something that the provider can correct or easily address, the provider's first step should be to do so. If the provider cannot correct or address the issue, the provider should acknowledge that sometimes a service or service provider is not the best fit for a person. The provider should then encourage the person to contact his/her case manager to discuss possible changes.

**What role does the person-centered service plan have in meeting this requirement?**

The service plan is the central place where the case manager should document and honor the person's choices for services, supports and who provides them. If a person is unhappy with his/her services and supports, the provider should encourage the person to contact his/her case manager to discuss possible changes.

**The following should not occur**

- The provider creates policy and/or procedures that say a person must obtain a particular service in-house or on-site and that he/she cannot utilize external providers for those services (e.g., people are pressured to use the provider's onsite salon and therapy services instead of being given options for community service providers).

## Learn more

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### More information online

Find more information online at [DHS' transition plan for home and community-based services webpage](https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition/#13) (https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/hcbs-transition/#13).

### Contact DHS

There are three ways to send us your questions, give us your feedback or request a paper copy of the statewide transition plan:

1. Email [hcbs.settings@state.mn.us](mailto:hcbs.settings@state.mn.us)
2. Call 651-431-4300
3. Send a letter to:  
Minnesota Department of Human Services, Disability Services Division  
Attention: HCBS Rule Transition Plan  
P.O. Box 64967, St. Paul, MN 55164-0967

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