

From: Kathryn Good BSN, RN
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To: HI Soaring Eagle Ranch
Mary Simonson, Executive Director
William Cook, President/Chair

Date: February 14, 2023

Re: Final Rule Compliance

The ND State Settings Rule Committee reviewed the new information provided following the site visit and technical assistance meeting.

Legal Reference/Authority

The legal references and authority for the HCBS programs (funding sources and services) administered by the HCBS Program Administration are as follows:

Home and community Based Services (Programs)

1. Medicaid Waivers

- a. The legal authority for the Medicaid Waiver is Section 1915(c) of the Social Security Act.
- b. The Medicaid Waiver is governed by the rules and regulations set forth in 42 CFR, Parts 431, 435, 440, and 441 as amended. For the Medicaid Waiver, see North Dakota Administrative Code ([N.D.A.C. 75-03-23](#)).

All waiver service settings and the delivery of services in those settings must:

1. Be 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.

AGING SERVICES

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2. Be selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
3. Ensure an individual's right of privacy, dignity, and respect. Coercion, and or seclusion, of waiver recipients is expressly prohibit in all service settings. Restraint of waiver recipients is also expressly prohibited with the exception of the limited use of adult residential service settings described in NDCC 50-10.2-02 (1).
4. Optimize but not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.
5. Facilitate individual choice regarding services and supports, and who provides them.

Provider owned or controlled residential settings must also:

1. Be a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities, and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.
2. Offer privacy in their sleeping or living unit. The unit must have entrance doors lockable by the individual with only appropriate staff having keys to the doors.
3. Offer a choice of roommates within the setting.
4. Allow the recipient the freedom to furnish and decorate their sleeping unit or living units within the lease or other agreement.
5. Allow the recipient freedom and support to control their schedule and activities and have access to food at any time.
6. Allow the recipient to have visitors of their choosing at any time.
7. Be physically accessible to the individual.

**Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established timelines for periodic review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.*

The Settings Review Committee has agreed to issue compliance, with the following in place effective February 13, 2023:

1. **All rights restrictions must be documented and reviewed every 90 days with the HCBS Case Manager.**
2. **Rights restrictions to food is documented daily and readdressed every 90 days with the HCBS Case Manager.**
3. **Restrictions must be documented ongoing to ensure the restriction is still needed by evidence provided at quarterly care plan meetings with HCBS Case Manager.**
4. **If a rights restriction is no longer deemed appropriate, the restriction must be removed timely and the HCBS Case Manager notified.**
5. **Ongoing compliance with the rights restrictions in place is subject to State approval and evidence must be provided promptly upon request.**

If you have any questions, please feel free to email or call me.

Thank you,

A handwritten signature in black ink that reads "Kathryn Good". The signature is written in a cursive, flowing style.

Kathryn Good BSN, RN
HCBS Nurse Administrator, Aging Services