State of South Dakota

Department of Human Services

Division of Long Term Services and Supports

# HCBS SETTINGS GUIDE TO EXPECTATIONS AND COMPLIANCE

This guide outlines expectations of Assisted Living, Community Living Home, and Adult Day Providers to ensure compliance with the HCBS Setting Final Rule requirements.

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# DISCLAIMER

This *HCBS Settings Guide to Expectations and Compliance* document is intended to be an easy-to-understand interpretation of the requirements under the Centers for Medicare and Medicaid Services regulations, and South Dakota's expectations within the seven key Concept Areas for Provider compliance.

This document does not reduce, replace, or otherwise modify a Provider's obligation to comply with all federal and state laws and regulations, as well as any Provider contractual requirements and South Dakota's Statewide Transition Plan. This document is exemplary in nature, is not exhaustive, and should not be interpreted as a substitute for applicable regulatory requirements. Providers remain responsible for understanding and complying with all applicable requirements, regardless of whether they are specifically addressed in this document.

# DEFINITIONS

"**Adult Day Services"** provide regular care, supervision, and structured activities in a non-institutional community-based setting. Adult day services include both health and social services needed to ensure the optimal functioning of the Resident for a period of less than 24 hours per day. Adult day services are provided to a Resident who lives at home. Nutritious meals/snacks are available but are billed as a separate service. Adult day services are integrated into the community. Although not required, nursing services are provided based on assessed need and include health screenings, blood pressure checks, medication management, and a general assessment of the Participant's condition. Adult Day settings are considered non-residential HCBS settings.

**"Assisted Living Centers"** include personal care and supportive services that are furnished to eligible Resident(s) who reside in a homelike, non-institutional setting that includes 24-hour on-site response capability to meet scheduled or unpredictable Resident(s) needs and to provide supervision, safety, and security. Services shall support full access to the greater community of Residents receiving Medicaid home and community-based services to the same degree of access as individuals not receiving Medicaid home and community-based services. The assisted living location promotes the health, treatment, comfort, safety, and well-being of Resident(s), with easy accessibility for visitors and others. Services also include social and recreational programming, and medication assistance (to the extent permitted under state law). Services that are provided by third parties must be coordinated with the Assisted Living Provider and the LTSS Case Management Specialist. Assisted Living settings are considered provider-owned or provider-controlled residential settings.

**"Community Living Home"** offers residents an opportunity to receive services and supports in a small, licensed home. The purpose of this service is to provide necessary care and supervision for the Resident and to provide an opportunity for the Resident to remain in the community in the most integrated setting. Resident needs shall be addressed in a manner that supports and enables the individual to maximize abilities to function at the highest level of independence possible. The service is designed to provide an alternative long-term care option to persons who meet the Nursing Facility level of care and whose needs can be met in a community living home setting. Community Living Home settings are considered provider-owned or provider-controlled residential settings.

**"LTSS Individual Support Plan (ISP)"** is an electronic person-centered plan within each Participant's record in the Therap case management system.

**“Key Concept Areas”** refers to seven key categories requiring Provider compliance per the HCBS Settings Final Rule**.**

**“Legal Representative”** refers to one who represents or stands in the place of another under authority recognized by law, especially with respect to the other’s property or interests; one acting under a power of attorney.

**“Participant”** refers to a person who has been determined eligible by DHS to receive Medicaid-funded HCBS services, regardless of the type of setting in which services are delivered. A Participant may receive HCBS in a residential setting (as a Resident) or in a non-residential setting, such as through Adult Day Services or other community-based services. All Residents are Participants, but not all Participants are Residents. Resident is used only when the HCBS participant lives in a provider-owned or provider-controlled residential setting.

The State, through the LTSS Case Management Specialist, provides ongoing case management for each Participant. Case management includes determining and assessing the Participant’s needs and eligibility at least annually; completing assessments of need; facilitating the development, approval, and revision of the LTSS Individual Support Plan (ISP); convening annual and as-needed person-centered planning meetings; authorizing covered HCBS services; and supporting the resolution of Participant concerns and other Participant-related matters.

**“Provider”** refers to the person who is responsible for managing the Assisted Living Center, Adult Day Center, or Community Living Home and/or staff employed at the Assisted Living Center, Adult Day Center, or Community Living Home.

**“Representative Payee”** refers to a Provider who acts as the receiver of income for a Participant who is not fully capable of managing his/her own benefits.

**“Resident”** refers to a person receiving Medicaid-funded HCBS supports and services who resides in a provider-owned or provider-controlled residential setting, including an Assisted Living Center or Community Living Home. A Resident is an eligible HCBS participant who has been determined eligible by the DHS. Throughout this guide, the term “Resident” is used only when the HCBS participant lives in a provider-owned or provider-controlled residential setting.

**“Setting”** refers to a homelike, non-institutional Assisted Living Center, Adult Day Center, or Community Living Home that is integrated in and supports full access to the greater community and

has been selected by the Participant from among setting options, including non-disability specific settings and an option for a private unit in a residential setting.

**"Therap"** is the online case management, documenting, and billing software.

# INTRODUCTION

On January 16, 2014, the Centers for Medicare and Medicaid Services (CMS) released a **Final Rule** regarding Home and Community-Based Services (HCBS) Setting requirements. The Final Rule establishes an outcome-oriented definition of home and community-based (HCBS) settings, rather than identifying compliance based solely on a setting's location, geography, or physical characteristics. The intent of the Final Rule is to ensure that individuals receiving services through South Dakota Medicaid's HCBS waiver programs receive services and supports in the most integrated setting and have full access to the benefits of community living.

The Final Rule requires that all home and community-based settings meet the following qualifications. In South Dakota, these are considered the Core HCBS Final Rule Requirements, and they apply to both provider-owned or provider-controlled residential settings and non-residential HCBS settings:

- The setting is integrated in and supports full access to the greater community;
- The setting is selected by the Participant from among the setting options;
- The setting ensures the Participant's rights of privacy, dignity, and respect, and freedom from coercion and restraint;
- The setting optimizes autonomy and independence in making life choices; and
- The setting facilitates individual choice regarding services and who provides them.

The Final Rule also establishes additional requirements for HCBS settings in which the provider owns or controls the residence where the Resident lives. These requirements apply only to provider-owned or provider-controlled residential settings:

- The Resident has a legally enforceable lease or other residency agreement providing the same protections as tenants in the broader community;
- The Resident has privacy in their unit, including a lockable door, the ability to choose their roommate, and freedom to furnish or decorate the unit;
- The Resident controls their own schedule, including access to food at any time;
- The Resident can have visitors at any time; and
- The setting is physically accessible to the Resident

# LTSS INDIVIDUAL SUPPORT PLAN (ISP)

## Person-Centered Plan

Each individual authorized to receive Medicaid-funded home and community-based services (HCBS) must have a person-centered Individual Support Plan (ISP). The LTSS ISP is the state-managed care plan for the individual's HCBS services. It is developed and maintained by the LTSS Case Management Specialist, in partnership with the individual and any others the individual chooses to include in planning. While the Provider may have their own Care Plan, the LTSS ISP is the Care Plan of record for the Final Rule, and all compliance requirements must be contained within this document.

The LTSS Case Management Specialist is responsible for creating, updating, and finalizing the LTSS ISP. The LTSS ISP must be finalized with informed consent, documented in writing, and signed by the individual and all providers and parties responsible for carrying out the plan. Provider participation in the LTSS ISP is highly encouraged to ensure it accurately reflects the participants' needs and preferences. Providers cannot create or modify the LTSS ISP directly. Any change in the individual's condition, service needs, or circumstances must be reported to the LTSS Case Management Specialist, who will determine whether the ISP requires revision.

During the person-centered planning process, initially and at least annually thereafter, the LTSS Case Management Specialist will ensure that the individual is given a choice of setting, including non-disability specific options, and discuss their goals for community access, employment, and participation.

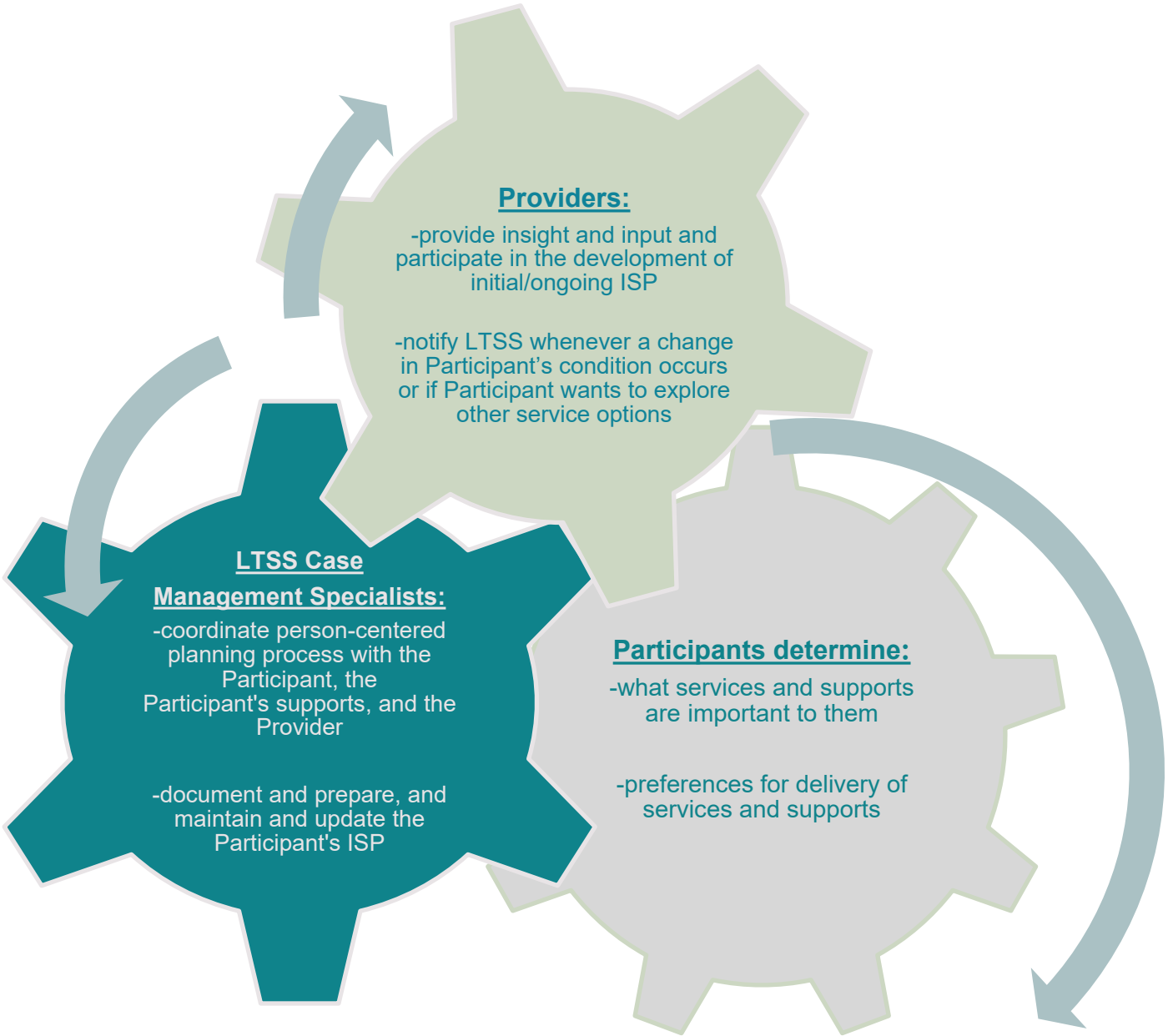
The LTSS ISP reflects the services and supports that are important for the individual to meet the needs identified through an assessment of need. It also reflects what is important to the Individual regarding preferences for the delivery of such services and supports.

The Provider must notify the LTSS Case Management Specialist whenever a change in the Participant's condition occurs and/or a modification may be necessary. The Provider is expected to provide input and otherwise participate in the development of the initial and ongoing LTSS Individual Support Plan.

**The LTSS ISP must:**

- Describe the services to be provided, including the scope, frequency, and anticipated cost;
- Be revised annually, or more often as the participant's needs change; and
- Be person-centered, reflecting the individual's goals, preferences, and direction.

## LTSS ISP Person-Centered Planning Process



## Modifications

Modifications of the federal regulations for the HCBS Settings Final Rule, as described at CFR 42 § 441.710(a)(1)(vi), must be individualized and addressed in the LTSS Individual Support Plan (ISP). If an individual receiving Medicaid-funded home and community-based services requires any modification or restriction of their rights under any of the seven Concept Areas, the LTSS Case Management Specialist must be contacted.

If a provider deems it necessary to implement any modification(s) to any of the federal home and community-based settings requirements, the modification(s) must be discussed with the Participant and the LTSS Case Management Specialist and documented in the LTSS Individual Support Plan (ISP). Each modification request must be submitted to the Department of Human Services and approved prior to the implementation of the restriction.

**The Modification request must include:**

- A description of the requested restriction to be imposed.
- Specific and individualized assessed need(s) related to the need for a restriction.
- The positive interventions and supports used prior to requesting a modification to the LTSS ISP.
- Less intrusive methods of meeting the need, and those that have been tried but did not work.
- A clear description of the condition that is directly proportionate to the specific assessed need.
- A plan for 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.
- The informed consent of the Participant.
- An assurance that interventions and supports will cause no harm to the Participant and that the interventions and supports will protect the health and safety of the Participant.

If the Department of Human Services determines that a modification or restriction of a Participant's rights is necessary to ensure the health and safety of the Participant, and all documentation is complete, the modification will be documented in the Participant's LTSS ISP.

The Provider may not implement a restriction until the LTSS ISP, including the modification, has been signed by all necessary parties.

## Common Setting-Wide Restrictions Not Permitted

Restrictions cannot be used to impose the preferences, opinions, or values of anyone when there is no real or immediate risk to the Participant's health or safety. Restrictions can only be implemented for the Participant who needs the restriction and cannot be implemented for a group of individuals or for the entire setting. Restrictions cannot be used as 'house rules' in any setting, for any population, and cannot be used for the convenience of staff.

The following are common restrictions that settings may describe as 'Facility Rules' imposed on all Residents. These restrictions **are not allowed**:

- Only staff have access to the kitchen area
- Participants cannot come and go from the setting independently
- The setting is locked, and staff have to let residents in and out of the setting
- Participants are required to leave their money in the business office
- Participants are required to smoke on a schedule and keep their tobacco products locked up until the scheduled time
- Rules that limit visiting hours for everyone
- Overnight guests are not allowed
- No one is allowed to have food or drinks in their living units
- Participants are required to have a doctor's note to consume alcohol or smoke
- All Participants are required to wake at the same time, eat at the same time, exercise at the same time, etc.
- Participants have automatic supervision imposed (i.e., nighttime checks at designated times, limited alone time in an individual's room during the day)
- Participants are not allowed to manage their own medications. All medications are locked up, and staff are required to distribute them

# HCBS STANDARD PROVIDER EVIDENCE

## Requirements

All Providers must establish and maintain language that supports each section of the seven Concept Areas that are applicable to their setting (residential or non-residential) and consistent with state and federal regulations, the Home and Community-Based Settings Final Rule, and any supplemental Provider guides.

The guidelines and Concept Areas were developed to enhance the quality of home and community-based services (HCBS) and provide additional protection to Participants who receive services.

All Providers must integrate each of the seven Concept Areas and topics covered, applicable to their setting, into their Resident or Participant Handbook and maintain additional Provider policies that support HCBS Settings Final Rule compliance, as outlined in the Provider Policy Expectations section below. The Resident/Participant Handbook and Lease/Admissions Agreement should complement, not conflict with each other.

## Provider Policy Expectations

1. The Provider has a “Participant Care Plan” policy that addresses how the Provider will ensure services are provided in a manner consistent with the Participant’s Care Plan at the setting and the LTSS ISP.
2. The Provider has a “Grievance Procedures” policy that:
   - Specifies how to file a complaint or grievance;
   - Contains contact information for whom to contact to file an anonymous complaint;
   - Includes:
     - the Provider’s efforts to resolve the grievance and documentation of the grievance;
     - the names of the persons involved;
     - the disposition of the matter; and
     - the date of disposition.
3. The Provider has a “HCBS Settings Final Rule Staff Training” policy that addresses Provider agency staff and volunteer training about the HCBS Settings Final Rule. It is the expectation that staff training on the HCBS Settings Final Rule be conducted on an annual basis.

4. The Provider has a “Modifications” policy that the Provider, the Participant, and the Long Term Services and Supports Case Management Specialist will identify and address any known modifications or restrictions of a Participant’s rights relative to all sections within each Concept Area.

   All modifications or restrictions must be communicated to the Participant and the LTSS Case Manager and justified and documented in the LTSS ISP.

   See the Modifications section of this document for more detailed information regarding documentation of these restrictions.

5. The Provider has a “Services” policy that specifies:
   - How Participants are notified about all service options available in the Assisted Living Center, Adult Day Center, or Community Living Home;
   - How Participants can request a change in services as their needs change;
   - How Participants are made aware of services and supports that may be available in the broader community; and
   - How Participants’ preferences will be accommodated when possible.

6. The Provider has a “Cameras” policy that specifies:
   - Where cameras are placed within the setting;
   - Confirms that cameras are not used in private spaces;
   - That the use of cameras maintains Participant privacy and dignity;
   - That cameras are used solely for safety and security purposes;
   - That prohibits the use of cameras for routine monitoring of Participants’ daily activities, tracking comings and goings, or for staff performance monitoring, except when related to a documented incident.
   - Which staff roles have access to recorded footage;
   - Retention and deletion procedures; and
   - How participants are notified of the location of cameras
     - Ideally, visible signage is present, indicating the presence of cameras.

7. The Provider will have an “Access to Food” policy that specifies:
   - How Residents are notified of their right to eat where they want;
   - How Residents are notified of their right to eat when they want;
   - How Residents are notified of their right to eat what they want within their resources.
     - This Provider Policy Expectation applies to Residential Settings only.

8. The Provider has a “Visitation” policy available to all Residents and their guests, ensuring the Residents’ right to have visitors as they choose.
    - This Provider Policy Expectation applies to Residential Settings only.

9. The Provider has a “Bedroom or Apartment Door Lock” policy that specifies:
    - How Residents are notified of their right to lock their bedroom
    - How Residents are notified of their right to lock their bedroom or apartment doors when they leave their room; and
    - Identify appropriate staff who should have access to the Resident’s bedroom or apartment.

    - This Provider Policy Expectation applies to Residential Settings only.

10. The Provider has a “Roommate Choice” policy that specifies:
    - How residents are involved in the roommate assignment/selection process and how their preferences are considered;
    - How a Resident can request a change in roommate;
    - How Residents are notified of their right to choose a roommate; and
    - How the Provider will review each request with the Resident and explore options.

    - This Provider Policy Expectation applies to Residential Settings only.

## Participant Handbook Expectations

The Participant Handbook must include the following characteristics and criteria:

1. The Participant Handbook must be written in an understandable and easy-to-read format;
2. The Participant Handbook must be easily accessible;
3. The Participant Handbook must be presented to the Participant before or upon admission, and at the Participant's request at any time during their stay;
4. The Participant Handbook must be provided to the Department of Human Services at the Department's request;
5. The Participant Handbook must apply equally to all Participants, regardless of payment source, care needs, or type of disability; and
6. The Participant Handbook must address each section of the seven identified Concept Areas, applicable to their setting:

| | |
|---|---|
| **Concept Area 1: Location** | •Selection of Setting<br>•Choices of Services and Supports *<br>•Visitation |
| **Concept Area 2: Living Arrangements** | •Lease/Admission Agreements<br>•Furnishing Living Spaces<br>•Access to Food |
| **Concept Area 3: Privacy** | •Privacy in Living Units<br>•Door Locks<br>•Roommate Choice<br>•Health-Related Information *<br>•Communication with Family and Friends * |
| **Concept Area 4: Dignity and Respect** | •Participant Rights- Dignity and Respect *<br>•Personal Hygiene<br>•Grievances * |
| **Concept Area 5: Physical Accessibility** | •Immediate and Equal Access<br>•Access to Appliances<br>•Environmental Access |
| **Concept Area 6: Autonomy** | •Resident Schedules |
| **Concept Area 7: Community Integration** | •Opportunities to Work *<br>•Engaging in Community Life *<br>•Personal Resources *<br>•Services in the Community * |

- **Core HCBS Objectives are indicated with red asterisk (*)**
- **For Residential Settings, all Concept Areas and Topics must be addressed in Resident Handbooks.**
- **For Non-Residential Settings, Topics that address Core HCBS Objectives, indicated with a red asterisk (*), must be addressed in Participant Handbooks.**

## Lease/Admissions Agreement Checklist

**Applies to Residential Settings (Assisted Living and Community Living Home)**

- ❑ Includes signatures of the Provider and the Resident

- ❑ Includes termination and eviction protections
  - References ARSD 44:70:09:14 or has similar language
  - References to eviction laws SDCL 21-16 or have similar language

- ❑ Is current
  - Each HOPE Waiver tenant/resident has a current agreement on a compliant template.

**Best practice language:** "All admissions, discharges, and residents' rights to appeal these actions will be conducted according to the provisions of ARSD 44:70:09:14 and will comply with the due process protections outlined in South Dakota landlord-tenant laws (SDCL Chapters 21-16)."

**Note:** The Lease/Admissions Agreement must not include language that is not compliant with the HCBS Settings Rule.

# DHS LTSS REVIEW PROCESS

## Determining Compliance

DHS LTSS measures settings against all regulatory requirements for home and community-based settings defined in the federal regulations. HCBS Final Rule Reviews will be completed for routine monitoring and/or if any of the following methods for determining compliance deem a review necessary. Providers are expected to be continually compliant with the HCBS Settings Final Rule. DHS LTSS must ensure initial and ongoing provider compliance and adherence to the HCBS Settings Final Rule.

There are multiple methods used by the Department of Human Services to ensure continued Provider compliance with meeting the expectations of the Centers for Medicare and Medicaid Services (CMS) regarding the Final Rule.

**DHS LTSS's methods for determining compliance include, but are not limited to:**

| HCBS Settings Final Rule Provider Self-Assessment Survey |
|---|
| • The Provider Self-Assessment survey was prepared with guidance from the CMS's Exploratory Questions to Determine HCBS Compliance.<br>• The Provider Self-Assessment Survey incorporates provider responses that detail how compliance is in practice within the setting and how the setting ensures adherence to the HCBS Settings Final Rule. |
| **Review of Provider's HCBS Settings Final Rule Policies** |
| • Policies and provider documentation are determined to be compliant with the HCBS Settings Final Rule if they support and detail adherence to the HCBS Settings Final Rule and do not impose limits, unnecessary restrictions, or conflict with the Department's expectations in all identified areas. |
| **Review of Lease/Admission Agreements** |
| • DHS will review Lease/Admission Agreements for Participants receiving Medicaid-funded home and community-based services in each setting.<br>• Lease/Admissions Agreements are determined to be compliant if they ensure the same protections as South Dakota's landlord-tenant laws and are signed by the appropriate parties. |
| **Review of Participant Handbook** |
| • DHS will review each Provider's Participant Handbook to verify HCBS Settings Final Rule language and that each Concept Area is addressed and available to Participants. |
| **Review of Complaints and Critical Incidents** |
| • DHS will monitor all complaints received by Participants in each setting.<br>• The complaints that are reviewed may be made directly to the LTSS Case Management Specialist or to the Ombudsman Program. |
| **Onsite Observations and Staff Interviews** |
| • DHS will conduct onsite observations and assessments of each setting to verify that all policies and procedures are not only compliant with regulatory standards but are also being effectively implemented and followed in daily operations.<br>• DHS will interview staff at each setting to ensure they have been trained on the HCBS Settings Final Rule. |

| LTSS ISP Person-Centered Plan Reviews |
| --- |
| • DHS will review care plans to ensure the Participant's needs and goals are addressed.<br>• There are no unnecessary restrictions, and, if there are restrictions, all Modifications to protect the health and safety of the Participants on appropriately reported, on file, and still necessary.<br>• DHS will interview Participants receiving Medicaid-funded home and community-based services in each setting to ensure they are informed about the HCBS Settings Final Rule, are aware of their rights, and that the Provider's practices reflect compliance with the Rule. |
| **Participant Interviews and Surveys** |
| • DHS will interview Participants receiving Medicaid-funded home and community-based services in each setting to ensure they are informed about the HCBS Settings Final Rule, are aware of their rights, and that the Provider's practices reflect compliance with the Rule.<br>• Participants receiving Medicaid-funded home and community-based services will be surveyed each year on their experiences within the setting. |

## Corrective Action

If, at any point, a Provider is determined to be non-compliant in any of the Concept Areas, a Corrective Action Plan (CAP) will be issued. The CAP will include specific information regarding the issues that require remediation and the timeframe the Provider has to ensure compliance.

# CONCEPT AREA 1: LOCATION

*The HCBS Settings Final Rule requires all Participants residing in an Assisted Living Center, Adult Day Center or Community Living Home to be able to choose where they live from among setting options including non-disability specific settings, have visitors of their choosing at any time, and have access throughout the Setting and the community, regardless of payment source, care needs, or type of disability.*

## Selection of Setting

### Applies to Residential Settings

*The setting is selected by the Resident 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 Resident's needs, preferences, and, for residential settings, resources available for room and board.*

### Expectations for Compliance

- Residents requesting to move to a different setting are supported and acted on by the Provider.
- Residents know who to speak to within the setting to discuss a change in setting.
- Residents are referred to the Home Again Program and to their LTSS Case Management Specialist by the Provider when they voice interest in moving.
- Residents are given an opportunity to visit other settings and make informed choices about where to live and where to receive services.
- Residents have a right to receive services in the most integrated setting appropriate to the Resident’s needs, including choosing from non-disability specific settings.
- The options considered by the Resident, and the final choice of settings and services, are documented in the Resident’s LTSS ISP.

### Exploratory Questions

- Does the Resident know who to contact if they wish to move?

# Choices of Services and Supports

### Applies to all HCBS Settings

*The setting facilitates Participant choice regarding services and supports, and who provides them. Participants have access to a variety of services and supports to meet their needs throughout the day.*

### Expectations for Compliance

- Participant choices are incorporated into the services and supports received at the setting.
- The Participant knows how to access information on available services within the setting.
- Participants can participate in planning care and treatment of changes in care or treatment.
- Care planning meetings are scheduled at a time convenient for the Participant and/or representative to attend.
- The Participant's needs and preferences are reflected in the services received within the setting.
- Participants and chosen representatives are made aware of how to schedule a person-centered ISP meeting when their needs change.
- Participants are notified about all service options available in the Assisted Living Center, Adult Day Center, or Community Living Home.
- Participants can request a change in services as their needs change.
- Participants are made aware of services and supports that may be available in the broader community.
- Participants' preferences will be accommodated when possible.

### Exploratory Questions

- Do staff ask the Participant about his/her needs and preferences?
- Are Participants aware of how to make a service request?
- Does the Participant express satisfaction with the services being received?
- Are requests for services and supports accommodated as opposed to ignored or denied?
- Is Participant choice facilitated in a manner that leaves the Participant feeling empowered to make decisions?

# Visitation

### Applies to Residential Settings

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

### Expectations for Compliance

- Residents can have visitors at any time, 24/7.
- Residents have a location within the setting where they can visit privately with guests, ensuring privacy and confidentiality.
- Residents do not have to adhere to setting-wide restrictions on visitation.
- The Provider has a “Visitation” policy available to all Residents and their guests, ensuring the Residents’ right to have visitors as they choose.

### Exploratory Questions

- Is the furniture in the setting arranged to support small group conversations?
- Are visitors restricted to specified visiting hours?
- Are visiting hours posted?
- Is there evidence that visitors have been present at regular frequencies?
- Are there restricted visitor meeting areas?

# CONCEPT AREA 2: LIVING ARRANGEMENTS

*In a provider-owned or controlled residential setting, the unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the Resident receiving services, and the Resident has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.*

*For settings in which landlord-tenant laws do not apply, the State must ensure that a lease, residency agreement, or other form of written agreement will be in place for each Resident residing in the Assisted Living Center or Community Living Home, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord-tenant law.*

*Residents must have the freedom to furnish and decorate their living space, control their own schedule, access personal resources, and have access to food at any time.*

## Lease/Admissions Agreements

### Applies to Residential Settings

#### Expectations for Compliance

- Residents have the same protections as South Dakota's landlord-tenant laws.
- Residents have the Provisions of the Admissions Agreement explained to them upon admission and when necessary.
- All Residents sign the Admissions Agreement, which will be accessible for review.
- All admissions, discharges, and residents' rights to appeal these actions will be conducted according to the provisions of ARSD 44:70:09:14 and will comply with the due process protections outlined in South Dakota landlord-tenant laws (SDCL Chapters 21-16).
- New policies do not apply to Residents after they have signed the Admission Agreement.
- Once the Admissions Agreement is signed by a Resident, he/she is grandfathered in and not required to adhere to any new policies created after signing.

#### Exploratory Questions

- Does the Resident have a lease or, for settings in which landlord-tenant laws do not apply, a written residency agreement?
- Does the Resident know his/her rights regarding housing and when s/he could be required to relocate?

- Does the written agreement include language that provides protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord-tenant laws?

## Furnishing Living Spaces

### Applies to Residential Settings

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

#### Expectations for Compliance

- Residents can decorate their bedroom or apartment as they wish.
- The Admissions Agreement reflects that Residents residing in the Assisted Living Center or Community Living Home have the freedom to furnish and decorate his/her personal space.
- Residents are allowed to bring in their own furniture and other belongings.
- There are no setting-wide restrictions related to furnishing and decorating living spaces.

#### Exploratory Questions

- Are the Residents' personal items, such as pictures, books, and memorabilia present and arranged as the Resident desires?
- Do the furniture, linens, and other household items reflect the Resident's personal choices?
- Do Residents' living units reflect their interests and hobbies?

## Access to Food

### Applies to Residential Settings

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

#### Expectations for Compliance

- Residents have reasonable alternative meal options to choose from daily.
- All Residents can independently purchase their own food items for alternative meals or snacks.
- Residents can choose when to eat meals.
- Residents can elect to eat in their room or apartment.
- Residents choose with whom to eat or to eat alone.

- Residents can keep and eat foods/snacks in their room or apartment.
- There are no setting-wide restrictions on access to food.
- Residents are notified of their right to eat where they want.
- Residents are notified of their right to eat when they want.
- Residents are notified of their right to eat what they want within their resources.

### Exploratory Questions

- Does the Resident have a meal at the time and place of his/her choosing?
- Can the Resident request an alternative meal if desired?
- Are snacks accessible and available anytime?
- Does the Resident converse with others during mealtimes?
- If the Resident desires to eat privately, can s/he do so?

# CONCEPT AREA 3: PRIVACY

*The Provider ensures a Resident's right to privacy. Each Resident has privacy in their sleeping or living unit. Units have entrance doors lockable by the Resident, with only appropriate staff having keys to the doors. Residents sharing units have a choice of roommates in that setting.*

## Privacy in Living Units

### Applies to Residential Settings

#### Expectations for Compliance

- Only appropriate staff have access to the Resident's bedroom or apartment.
- All Residents who are able to complete activities of daily living without assistance can do so privately.
- If Residents share a bedroom or apartment, each Resident has the right to complete personal hygiene tasks in private.
- If Residents share a bedroom or apartment, accommodations are made to ensure privacy. (Partitions, curtains, etc.)
- Staff knock on bedroom or apartment doors, and only enter when they have been invited in.
- Only necessary staff will be present in the bedroom or apartment when Residents are completing activities of daily living.

#### Exploratory Questions

- Is the furniture arranged as the Residents prefer, and does the arrangement assure privacy and comfort?
- Do staff or other residents always knock and receive permission before entering a bedroom or bathroom?
- Are cameras present in the living unit?

## Door Locks

### Applies to Residential Settings

#### Expectations for Compliance

- Residents are able to lock their bedroom or apartment door when they are in their room.
- Residents must be able to lock their bedroom or apartment door when they leave their room.
- Residents are able to lock their bathroom door.

- Residents are notified of their right to lock their bedroom.
- Residents are notified of their right to lock their bedroom or apartment doors when they leave their room.
- Only appropriate staff have access to the Resident's bedroom or apartment.

### Exploratory Questions

- Can the Resident close and lock the bedroom door?
- Can the Resident close and lock the bathroom door?
- Do staff or other residents always knock and receive permission prior to entering a Resident's living space?

  Does staff only use a key to enter a living area or privacy space under limited circumstances agreed upon with the Resident?

## Roommate Choice

**Applies to Residential Settings**

### Expectations for Compliance

- Residents have their choice of roommate within the setting.
- Resident requests for a new roommate are reviewed with the Resident, and all options are explored until the Resident is satisfied with the outcome.
- Residents are involved in the roommate assignment/selection process and how their preferences are considered.
- Resident can request a change in roommate.
- Residents are notified of their right to choose a roommate.
- The Provider will review each roommate request with the Resident and explore options.

### Exploratory Questions

- Was the Resident given a choice of a roommate?
- Does the Resident talk about his/her roommate(s) in a positive manner?
- Does the Resident express a desire to remain in a room with his/her roommate?
- Do married couples share or not share a room by choice?
- Does the Resident know s/he can request a roommate change?

## Health-Related Information

### Applies to all HCBS Settings

*The policies of the Assisted Living Center, Adult Day Center, or Community Living Home respect each Participant's right to privacy regarding medications and other health-related information.*

#### Expectations for Compliance

- Health information, including dietary needs, therapy schedules, and medication lists, is not visible to the public or other Participants.
- Staff are trained and understand requirements regarding protected healthcare information.
- Participants are offered a choice regarding where to take and/or receive medications and may do so in private.

#### Exploratory Questions

- Is health information about Participants kept private?
- Are schedules for PT, OT, medications, restricted diets, etc., posted in a general open area for all to view?

## Communication with Family and Friends

### Applies to all HCBS Settings

*Participants residing at the Assisted Living Center, Adult Day Center, or Community Living Home are able to communicate with other Individuals in private.*

#### Expectations for Compliance

- Participants have access to a telephone or computer, or other communication device, in a private area.
- Mail, email, texts, or other written communication to or from a Participant is kept private and confidential and is reviewed and/or opened by the Participant, unless the Participant provides informed consent to be reviewed or opened by someone else.

#### Exploratory Questions

- Does the Participant have a private cell phone, computer, or other personal communication device or have access to a telephone or other technology device to use for personal communication in private at any time?
- Is the telephone or other technology device in a location that has space around it to ensure privacy?
- Do Participants have access to the internet or wi-fi connectivity? If there is a password for the internet, do all Participants have access to it?

# CONCEPT AREA 4: DIGNITY AND RESPECT

## Participant Rights- Dignity and Respect

### Applies to all HCBS Settings

*The Provider ensures a Participant's rights of privacy, dignity, and respect, and freedom from coercion and restraint.*

### Expectations for Compliance

- Each Participant's right to dignity, respect, and privacy is ensured at all times.
- The dining area affords dignity to diners.
- Participants are dressed in clothes that fit, are clean, and are appropriate for the time of day, weather, and preferences.
- Participants are spoken to by staff in a dignified and respectful manner.
- Participants are addressed by staff in the manner in which they would like to be addressed.
- Participants are informed of their rights while residing at the Assisted Living Center, Adult Day Center, or Community Living Home.
- Participants receive their care in an environment that contributes to their quality of life.

### Exploratory Questions

- Does the dining area afford dignity to participants (i.e. Participants are not required to wear bibs)?
- Do the Participants in the setting have different haircuts/hairstyles and hair color?
- Are Participants wearing bathrobes all day long?
- Do Participants greet and chat with staff?
- Is the Participant required to sit at an assigned seat in a dining area?
- Do staff converse with Participants in the setting while providing assistance and during the regular course of daily activities?
- Does staff talk to other staff about a Participant(s) as if the Participant was not present or within earshot of other persons living in the setting?
- Does staff address Participants in the manner in which the person would like to be addressed, as opposed to routinely addressing Participants as 'hon' or 'sweetie'?

# Personal Hygiene

### Applies to Residential Settings

*The Setting respects Residents' preferences and recognizes Residents' right to privacy, dignity, and respect when completing activities of daily living.*

### Expectations for Compliance

- A Resident who needs assistance with grooming is groomed as he/she desires.
- The nails of Residents are kept trimmed and clean.
- Residents who are able to complete activities of daily living without assistance are able to do so privately.
- No unnecessary staff are in the bedroom or apartment when Residents are completing activities of daily living.
- If Residents share a bedroom or apartment, each Resident has the right to complete personal hygiene tasks in private.
- Residents' preferences regarding choice of clothing and personal care products are accommodated within their resources.

### Exploratory Questions

- Are Residents, who need assistance with grooming, groomed as they desire?
- Are Residents' nails trimmed and clean?

# Grievances

### Applies to all HCBS Settings

*Participants must know how to file a grievance or complaint. Participants are able to voice grievances without discrimination or reprisal.*

### Expectations for Compliance

- Participants know how to file a grievance in writing.
- Participants know how to file a grievance orally.
- A Participant's grievance may be related to treatment furnished, treatment that has not been furnished, the behavior of other Individuals, and/or infringement of the Participant's rights.
- Staff is knowledgeable about the process for filing a grievance.
- A grievance filed by a Participant does not affect Participant care.

- The Provider has information posted and available to Participants about how to file a complaint or grievance. This information contains contact information for whom to contact to file an anonymous complaint.

### Exploratory Questions

- Is information about filing a complaint posted in an obvious location and in an understandable format?
- Is the Participant comfortable discussing concerns?
- Does the Participant know the person to contact or the process to make an anonymous complaint?
- Can the Participant file an anonymous complaint?

# CONCEPT AREA 5: PHYSICAL ACCESSIBILITY

*The setting is physically accessible to the Participant. Providers ensure equal access throughout the Assisted Living Center or Community Living Home and the broader community for all Participants, regardless of payment source, care needs, or type of disability.*

## Immediate and Equal Access

**Applies to Residential Settings**

### Expectations for Compliance

- Residents are provided with keys or access codes to the building and can access the building without staff assistance at any time.
- Residents can access all areas of the setting without assistance.
- Residents served by Medicaid have the same access to the common areas of the Assisted Living Center or Community Living Home as those who are not receiving Medicaid-funded home and community-based services.
- Residents have the same access to the broader community as Residents who are not receiving Medicaid-funded home and community-based services.
- Residents served by Medicaid live and/or receive services in the same area as those not served by Medicaid.

### Exploratory Questions

- Do Residents receiving HCBS live/receive services in a different area of the setting, separate from Residents not receiving Medicaid HCBS?
- Is the setting in the community among other private participants and retail businesses?
- Is the community traffic pattern consistent around the setting (e.g., people do not cross the street when passing to avoid the setting)?
- Do Residents on the street greet/acknowledge Residents receiving services when they encounter them?
- Can Residents access the setting without having to wait for a staff member to open the door?
- Are Residents receiving Medicaid Home and Community-Based services facilitated in access to amenities such as a pool or gym used by others on-site?

## Access to Appliances

### Applies to Residential Settings

#### Expectations for Compliance

- A food preparation area is available and accessible to Residents in their apartment/room or a common area.
- Residents can access the laundry facilities.

#### Exploratory Questions

- Do Residents have full access to typical facilities in a home, such as a kitchen with cooking facilities, dining area, laundry, and comfortable seating in the shared areas?

## Environmental Access

### Applies to Residential Settings

#### Expectations for Compliance

- Modifications, adjustments, and alterations to the setting have been made to meet Participants' mobility needs.
- Residents must be able to access all areas without assistance.
- The Assisted Living Center or Community Living Home is fully accessible and compliant with the Americans with Disabilities Act (ADA).
- When Residents require support to move about the Assisted Living Center or Community Living Home as they choose, environmental accessibility features are provided.

#### Exploratory Questions

- Are there gates, Velcro strips, locked doors, or other barriers preventing Participants' entrance to or exit from certain areas of the setting?
- Is the setting physically accessible, and are there no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting Residents' mobility in the setting, or if they are present, are there environmental adaptations such as a stair lift or elevator to ameliorate the obstruction?
- For those Residents who need support to move about the setting as they choose, are supports provided, such as grab bars, seats in the bathroom, ramps for wheelchairs, viable exits for emergencies, etc.?
- Are tables and chairs at a convenient height and location so that Residents can access and use the furniture comfortably?

# CONCEPT AREA 6: AUTONOMY

*The Provider optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. Residents are not required to adhere to a set schedule for waking, sleeping, bathing, eating, exercising, participating in activities, etc.*

## Resident Schedules

**Applies to Residential Settings**

### Expectations for Compliance

- Residents are not required to adhere to a set schedule for coming and going from the setting and are not required to sign in or out of the setting.
- Residents do not have a curfew.
- Residents are not required to provide advance notice for absences from the setting.
- Residents can choose when to go to sleep each night and when to wake up in the morning.
- Residents can bathe at a time convenient for them.
- Residents can exercise when they wish.
- Residents can choose whether to participate in facility-organized activities or not.
- Residents can participate in activities on their own outside of the setting and should be supported in doing so.

### Exploratory Questions

- How is it made clear that the Resident is not required to adhere to a set schedule for walking, bathing, eating, exercising, activities, etc.?
- Does the Resident's schedule vary from others in the same setting?
- Can Residents watch television, listen to the radio, and participate in other leisure activities at any time?
- Do Residents come and go at will?
- Are Residents moving about inside and outside the setting as opposed to sitting by the front door?
- Is there a curfew or other requirement for a scheduled return to the setting?

# CONCEPT AREA 7: COMMUNITY INTEGRATION

*The setting is integrated in and supports full access of Residents 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 Residents not receiving Medicaid HCBS.*

## Opportunities to Work

**Applies to all HCBS Settings**

### Expectations for Compliance

- Participants are informed of their choices for competitive, integrated employment.
- Participants are assisted by staff in arranging transportation or natural supports if they wish to work or volunteer.
- Participants are offered advertising materials for opportunities to work or volunteer.
- A participant may participate in meaningful non-work activities.

### Exploratory Questions

- Does the Participant work in an integrated community setting?
- If the Participant would like to work, is there an activity that ensures the option is pursued?
- Does the Participant participate regularly in meaningful non-work activities in integrated community settings for the period of time desired by the Participant?

## Engaging in Community Life

**Applies to all HCBS Settings**

### Expectations for Compliance

- Providers have partnerships with community resources.
- Providers leverage existing community transportation options.
- Providers promote, but do not require, participation in outside activities.
- Providers ensure that all residents are made aware of activities that are happening within the community.
- Participants may schedule activities at his/her own convenience and have access to non-group activities in the broader community.

- All Participants who wish to participate in community activities organized by the setting are allowed to go.
- The Provider offers activities in the Assisted Living Center, Adult Day Center, or Community Living Home.

### Exploratory Questions

- Does the Participant regularly access the community and is s/he able to describe how s/he accesses the community, who assists in facilitating the activity, and where s/he goes?
- Is the Participant aware of or does s/he have access to materials (i.e., a calendar of community events) to become aware of activities occurring outside of the setting?
- Does the Participant shop, attend religious services, schedule appointments, have lunch with family and friends, etc., in the community, as the Participant chooses?
- Does the Participant talk about activities occurring outside of the setting?

## Personal Resources

### Applies to all HCBS Settings

*Participants and, as applicable, the Participant's Representative Payee must be able to access personal resources.*

### Expectations for Compliance:

- Participants are informed of their ability to control their finances
- Participants can choose a community financial institution.
- Participants have the right to choose their banking and financial services.
- Participants have access to their funds and other personal resources.
- Participants can keep their personal needs allowance.
- Participants can manage their own personal finances unless they have a Representative Payee.
- Participants can shop and make purchases consistent with their choices and available resources.
- Participant resources are not combined.

### Exploratory Questions

- Does the Participant have a checking or savings account or other means to control his/her funds?
- Does the Participant have access to his/her funds?
- How is it made clear that the Participant is not required to sign over his/her paychecks to the provider?

## Services in the Community

**Applies to all HCBS Settings**

### Expectations for Compliance

- Participants are offered alternative meals or activities of daily living arrangements if they choose to participate in outside activities and events.
- Participants are offered alternative meals or activities of daily living arrangements if they choose to work or volunteer.
- Participants are assisted in identifying appropriate community Providers of services that are available in the community.
- Participants have the right to choose their healthcare provider and should be fully informed in advance about care and treatment of any changes in that care or treatment that may affect their well-being.
- Participants arrange or provide non-medical transportation to activities in the community.
    - Providers are not required to be the sole source of transportation.
- Reasonable arrangements should be made if a participant requests to be accompanied by staff during medical appointments.
- All Participants can consult with their healthcare Providers in private and choose their own physician.
- Participants can access services in the community, such as hairdressers, local coffee shops, and churches.

### Exploratory Questions

- Do Participants in the setting have access to public transportation?
- Are there bus stops nearby, or are taxis available in the area?
- Is an accessible van available to transport Participants to appointments, shopping, etc.?

- Are bus and other public transportation schedules and telephone numbers posted in a convenient location?
- Is training in the use of public transportation facilitated?
- Where public transportation is limited, are other resources provided for the Participant to access the broader community?
- Can the Participant choose their physician, pharmacist, hairdresser, etc., in the community?
- Are Participants informed that they have a choice of services they receive in the community?

# FREQUENTLY ASKED QUESTIONS

## Physical Setting Questions

### 1. What is considered a provider-owned or provider-controlled residential setting?

LTSS considers Community Living Homes and Assisted Living settings as provider-owned or provider-controlled residential settings. Provider-owned or controlled residential settings are subject to additional HCBS requirements, including tenancy protections and additional physical setting standards.

### 2. What is the difference between a residential and a non-residential setting?

LTSS considers Assisted Living and Community Living Homes as settings that are provider-owned or controlled residential settings. LTSS considers Adult Day settings as non-residential HCBS settings.

### 3. Can providers require participants to ask permission before leaving the setting?

No. Sign-in/out may support safety and coordination, but permission-based exit is a restriction unless individually authorized in the LTSS ISP.

### 4. What is the expectation for sharing information regarding community events?

LTSS expects that information regarding community events is made readily available and accessible for participants receiving services at the setting. LTSS expects settings to post a calendar of community events in an accessible location. Other ways of sharing information about community events could include announcements of local events or sharing a newsletter with a calendar of events, weekly or monthly.

### 5. What does access to all home appliances mean?

CMS requires the setting to be physically accessible to all Residents in residential settings. This requirement includes access to appliances. This means that all general home appliances,

like stoves, refrigerators, washers and dryers, microwaves, are accessible and can be used by the Resident. This does not require independent use without support. Residents may access appliances independently or with assistance, adaptive equipment, or staff support, based on their preferences and abilities. If all general home appliances are not available to use, the Provider must facilitate access to the appliance if the Resident expresses interest.

### 6. Is it a requirement that all residents have a key to their bedroom door and the residential setting in which they live?

It is required that all Residents have a key to their bedroom and the residential setting in which they live. This requirement comes from the premise that everyone has a right to a lockable bedroom door and key to the setting in which they live. It is up to the Resident to decide whether or not they would like to use the lock on their door. Residents who live independently in their own apartment unit must have a lockable unit with a key. If a Resident shares a space with another person, each individual living unit and bedroom must have a lockable door with a key. The bathroom door must lock from the inside to ensure privacy while in use, but a key to the bathroom door is not required.

When a person has an assessed need for a modification to this requirement, the LTSS Case Management Specialist will document that restriction in the resident's ISP, and due process will be afforded to the resident. The LTSS ISP 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 that the resident 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 the assessed need of the person, the provider may reinstall the lock on the door.

## Rights Restrictions and Modifications Questions

### 1. What is a restriction versus a support?

Supporting a participant throughout their day is an ongoing aspect of HCBS waiver services. Supports help guide a participant to make informed decisions about their days, complete tasks necessary to remain successful in the community, and exercise autonomy. Supporting a participant does not limit or prohibit them from exercising autonomy to determine how they spend their day.

An example of support would be helping a participant who has a goal of losing weight with meal planning by educating them on healthy options. However, in supporting a participant, they are ultimately still able to make the final decision on what they eat.

A rights restriction is a limitation to a participant's autonomy due to a specific assessed need to ensure the health, safety, and well-being of the resident or the community. Restrictions limit or prohibit a resident from exercising their right to autonomy due to health and safety concerns.

In comparison to the example provided above, a restriction would prohibit a resident from making choices about what they can eat by setting specific meal plans that must be adhered to and limiting snacks.

A helpful way to distinguish between the two is that supports guide and educate, while restrictions limit or prohibit choice.

### 2. Are door chimes considered restrictive?

Door chimes on the exit to the setting alone are not considered restrictive. When utilized appropriately, door chimes alert staff when a guest or staff member has arrived at or left the setting. If door chimes are used in a way that tracks or limits a specific participant's movement, rather than general awareness of arrivals or departures, they are considered restrictive.

### 3. Are bed checks at night considered to be restrictive?

The intention or reason for the bed checks would determine if it was a restriction or not. Bed checks done to ensure that someone has gone to bed at a certain time or isn't on their phone would be examples of situations that are restrictive. However, if a Resident requests that someone check on him/her at night, that would not be considered restrictive but should be included in the Resident's Care Plan. Nightly bed checks cannot be a blanket requirement throughout the setting.

### 4. Can providers implement 'default' safety rules for certain populations (i.e., memory care, brain injury)?

No. Any rule that applies automatically based on diagnosis or program type is considered a blanket restriction and is not HCBS compliant.

### 5. How should new admissions, from another residential setting, with previous restrictions and modifications in their ISP, be viewed/implemented?

It should not be automatically assumed that a Resident transitioning from another residential setting or the community needs the same level of support and restrictions as they did in their previous environment. If the documentation requirements for modification are met, it can be appropriate for a restriction to remain in place at the time of transition. However, the provider should establish a limited timeframe to review the appropriateness of the rights restriction, as required by the HCBS Settings Final Rule, after the Resident transitions. Through ongoing monitoring, it may be determined that the restriction is no longer necessary or appropriate.

### 6. Can providers initiate a temporary restriction while waiting for LTSS ISP updates?

Temporary safety actions may be taken in urgent situations, but ongoing restrictions must be promptly reviewed and documented through the LTSS person-centered planning.

### 7. What if a resident's modification affects others in the setting?

In shared living settings, other residents must be unaffected to the greatest extent possible by the individualized restriction/modification. The provider must make reasonable efforts to decrease the impact of the modification on other residents. For those modifications that affect other residents in the setting, there must be a way for those residents to continue to exercise their rights and autonomy, which is accessible to all residents in the setting.

For example, when a resident in an Assisted Living needs the kitchen cabinets locked due to an identified safety risk, the provider could give keys to other residents in the setting so they may freely access the cabinets.

### 8. Where should restrictions be documented?

Restrictions must be documented in the LTSS Individual Support Plan (ISP), not in the participant handbook. The LTSS ISP must include:

- The assessed need
- Why less restrictive alternatives were unsuccessful
- How the restriction will be reviewed and reduced when possible

The handbook should only explain the process, not impose the restriction.

### 9. How often must modifications or restrictions be reviewed?

Any rights modification must be reviewed:

- At least annually
- Whenever there is a significant change in condition
- With the goal of reducing or eliminating the restriction when possible

## Memory Care Units and HCBS Expectations

### 1. Are memory care units exempt from the HCBS Setting Final Rule?

No, memory care units are not exempt from the HCBS Settings Final Rule. If a setting delivers Medicaid-funded home and community-based services (HCBS), it must meet HCBS requirements regardless of whether residents have dementia or cognitive impairments.

### 2. Can a memory care resident handbook include restrictive language for safety reasons?

Yes, but only in a limited and specific way. A handbook may describe *how* safety concerns are addressed, but it cannot impose blanket restrictions on all memory care participants. Any restriction of rights must be based on an individual assessment and documented in the participant's LTSS ISP.

Language that automatically applies restrictions to all memory care participants who are not compliant would be:

- “Memory care participants may not leave the unit.”
- “All memory care participants require constant supervision.”
- “Personal items are prohibited in memory care rooms.”

These statements replace individual decision-making with setting-level rules, which conflict with the HCBS principles.

### 3. How does community integration apply to memory care participants?

Community engagement must be meaningful and appropriate to the individual’s interests and abilities; it does not require identical activities for all participants.

### 4. Can house rules differ between memory care and non-memory care units?

House rules cannot impose diagnosis-based restrictions. Differences must be driven by individual assessed need and documented in the LTSS ISP.

## Handbook Language: HCBS Best Practices

### 1. How should sign-in/sign-out policies be described in a participant handbook?

**Best practice language:**

“Participants are supported to come and go freely from the setting. Sign-in and sign-out processes are designed to support participant safety and the coordination of services and are not intended to limit participant movement. Any individualized need for additional supervision or monitoring is determined through the person-centered planning process and documented in the LTSS ISP.”

**Avoid language like:**

- “Participants must sign in and out at all times to leave the building.”
- “Staff approval is required for participants to leave the setting.”

**Why this matters:**

Sign-in/out rules should not be used to control or restrict when residents can leave.

### 2. How should the choice of pharmacy be addressed in the handbook?

**Best practice language:**

“Residents have the right to choose their pharmacy and pharmacy provider. The setting may coordinate with the resident’s chosen pharmacy to support medication delivery and

administration. If the resident requests assistance in selecting a pharmacy, staff will provide information about available options."

**Avoid language like:**

- "All residents must use the facility's contracted pharmacy."
- "Outside pharmacies are not permitted."

**Why this matters:**

Mandating a single pharmacy limits freedom of choice and can be cited as an HCBS violation unless there is an individualized, documented reason.

### 3. How should smoking and alcohol be addressed?

**Best practice language:**

"Participants retain the right to make personal choices related to smoking and alcohol use, consistent with applicable laws and safety considerations. The setting identifies designated areas for smoking and establishes reasonable safety guidelines. Any individualized limitation related to smoking or alcohol use must be based on an assessed need and documented in the LTSS ISP."

**Avoid language like:**

- "Smoking is prohibited for all residents."
- "Participants may not possess or consume alcohol in the setting."
- "Participants require a doctor's order to consume alcohol or smoke."

**Why this matters:**
Blanket prohibitions on legal activities are considered rights restrictions under HCBS unless tied to individualized assessed need and documented in the LTSS ISP.

### 4. How should providers that offer alcohol-free settings for recovery-based care address this in their handbook?

**Best practice language:**

"Residents may choose to reside in an alcohol-free recovery setting as part of their personal goals. This choice must be voluntary and documented in the person-centered plan and the LTSS ISP. Residents are informed of alternative housing or service options and may request a change in setting at any time. The care team reviews this choice regularly to ensure the setting continues to align with the resident's preferences and goals."

**Avoid language like:**

- "Alcohol is not allowed for any residents in this setting."

- “All residents must live in an alcohol-free environment.”
- “Residents who drink alcohol cannot live here.”
- “Residents who drink alcohol must first have a signed doctor’s order to do so.”

**Why this matters:**

Alcohol-free campuses can appear institutional if they impose blanket restrictions. HCBS requires that limits on personal choice be voluntary, informed, and individualized. Documenting that a participant chose an alcohol-free recovery setting and that alternatives were offered shows the decision was person-centered and not imposed by the provider. This protects residents’ rights to autonomy and dignity and helps demonstrate that the setting is supporting recovery goals rather than enforcing blanket restrictions.

## 5. How can access to food be described in the handbook?

**Best practice language:**

“Residents have access to food at any time and are supported to make choices about what and when they eat. Residents may access community kitchen areas, snacks, and beverages independently or with support, based on their preferences and abilities. Any individualized limits related to food access must be documented in the LTSS ISP.”

**Avoid language like:**

- “Residents may only eat at scheduled meal times.”
- “The kitchen is closed outside of meal service.”
- “Snacks are only available with staff permission.”

**Why this matters:**

Limiting food access by schedule or staff permission can be interpreted as institutional and non-HCBS compliant.

## 6. What are some common memory care topics, and how can I address them correctly in our participant handbook?

This guidance outlines best practices for writing participant handbook language for common memory care topics. Handbook language should describe processes and resident rights, not impose blanket restrictions. Any limitation to rights must be individualized and documented in the LTSS Individual Support Plan (ISP).

**Secured Doors**

**Best practice language:**

“The setting is designed to support participant safety and independence. Any use of secured areas or supervised access is determined individually and documented in the LTSS ISP.”

**Avoid language like:**

- “The memory care unit is locked for safety.”

**Why this matters:**

Blanket statements about locked units create setting-wide restrictions and remove individualized decision-making. Under HCBS, secured access must be based on assessed need and documented in the LTSS ISP.

## Supervision

**Best practice language:**

“Support levels are tailored to each resident’s needs and preferences as identified in the LTSS ISP.”

**Avoid language like:**

- “Memory care participants require constant supervision.”

**Why this matters:**

Assuming the same level of supervision for all memory care participants is diagnosis-based and conflicts with HCBS requirements for individualized, person-centered supports.

## Personal Belongings

**Best practice language:**

“Residents are encouraged to personalize their living space. If an item presents a documented safety concern, the care team will work with the participant and/or representative to identify alternatives.”

**Avoid language like:**

- “Certain items are prohibited in memory care.”

**Why this matters:**

Prohibiting personal items at the setting level limits autonomy and privacy. HCBS requires that any limitations on personal belongings be individualized and tied to a documented safety need.

# RESOURCES

**AMERICANS WITH DISABILITIES ACT (ADA)**
The ADA prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications. To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such impairment, or a person who is perceived by others as having such impairment. Link directly to **https://www.ada.gov/**.

**ARTICLE 44:70 - ASSISTED LIVING CENTERS**
To review the Administrative Rules of South Dakota (ARSD) that pertain to Assisted Living Centers, visit: **https://sdlegislature.gov/Rules/Administrative/44:70**.

**ARTICLE 44:70:09 – RESIDENTS' RIGHTS AND SUPPORTIVE SERVICES**
To review the Administrative Rules of South Dakota (ARSD) that pertain to licensed settings and Residents' Rights, to include admission, readmission, transfer, and discharge policy requirements (44:70:09:14), visit: **https://sdlegislature.gov/Rules/Administrative/44:70:09**.

**ARTICLE 44:82 – COMMUNITY LIVING HOMES**
To review the Administrative Rules of South Dakota (ARSD) that pertain to Community Living Homes, visit: **https://sdlegislature.gov/Rules/Administrative/44:82**.

**CHAPTER 21-16 – FORCIBLE ENTRY AND DETAINER**
To review the South Dakota Codified Law (SDCL) that pertains to South Dakota's Legal framework for eviction proceedings, visit: **https://sdlegislature.gov/Statutes/21-16.**

**CHAPTER 22-46 – ABUSE, NEGLECT, OR EXPLOITATION OF ELDERS OR ADULTS WITH DISABILITIES**
To review South Dakota Codified Law (SDCL) that pertains to abuse, neglect, or exploitation of elders or adults with disabilities (including mandatory reporting of abuse or neglect by staff and by person in charge of the Assisted Living Center), visit: **https://sdlegislature.gov/statutes/22-46**.

**CHAPTER 34-12 – REGULATION OF HOSPITALS AND RELATED INSTITUTIONS**
To review South Dakota Codified Law (SDCL) that pertains to regulations for Healthcare Facilities, to include Assisted Living Centers and Community Living Homes, visit: **https://sdlegislature.gov/Statutes/34-12**

**CHAPTER 43-32 – LEASE OF REAL PROPERTY**
To review South Dakota Codified Law (SDCL) that pertains to the lease of real property, visit: **https://sdlegislature.gov/Statutes/43-32.**

## DEPARTMENT OF HUMAN SERVICES HCBS SETTINGS RULE RESOURCES

The Department of Human Services (DHS) hosts and maintains the HCBS Settings Rule page on the South Dakota Department of Human Services (DHS) Provider Portal, which serves as a centralized resource hub for Medicaid Home and Community-Based Services (HCBS) providers who must comply with the federal HCBS Settings Final Rule. Its primary purpose is to provide tools, materials, and guidance that help providers understand and meet the requirements of the rule and to support full compliance in day-to-day operations. This page also includes information about the South Dakota Statewide Transition Plan approved in 2019. To review these resources, visit: **https://dhs.sd.gov/en/provider-portal/HCBS-Settings-Rule**

## HOME & COMMUNITY-BASED SETTINGS FINAL RULE

Home and community-based services (HCBS) provide opportunities for Medicaid beneficiaries to receive services in their home or community. The final Home and Community-Based Services regulations set forth new requirements for several Medicaid authorities under which states may provide home and community-based long-term services and supports. The regulations enhance the quality of HCBS and provide additional protections to individuals who receive services under these Medicaid authorities. To review Fact Sheets regarding the final settings regulation, visit: **https://www.medicaid.gov/medicaid/home-community-based-services/home-community-based-services-guidance-additional-resources/home-community-based-services-final-regulation**.

## HOME AND COMMUNITY-BASED SERVICES HOPE WAIVER PROGRAM

The Home and Community Based Services HOPE Waiver, operated by the Division of Long Term Services and Supports, allows the Department to use Title XIX Medicaid to provide home and community-based services to individuals who are at risk for institutionalization. Visit: **https://dhs.sd.gov/en/ltss/hope-waiver**.

## SOUTH DAKOTA MEDICAID HOME AND COMMUNITY BASED SERVICES

The Department of Social Services (DSS) is the designated State Medicaid Agency for South Dakota. South Dakota has four Medicaid 1915(c) waivers operated by the Departments of Social Services and Human Services. Each Waiver targets a specific population and provides a menu of services to meet the needs of the target population. Visit: **https://dss.sd.gov/medicaid/hcbs.aspx**.

## SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES MEDICAID

The Department of Social Services (DSS) is the designated State Medicaid Agency for South Dakota. Other State agencies also administer programs funded by Medicaid in South Dakota, including the Departments of Human Services, Corrections, Education, and Health. South Dakota Medicaid is funded jointly by the State and Federal government. Visit: **https://dss.sd.gov/medicaid/.**