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State of South Dakota

Department of Human Services  
Division of Developmental  
Disabilities

# **[HCBS SETTINGS GUIDE TO EXPECTATIONS AND COMPLIANCE]** VERSION 1-12.19

This guide outlines expectations of CHOICES Waiver Community Support Providers and Case Management Organizations to ensure compliance of the HCBS Setting requirements.

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## DEFINITIONS

The following definitions apply:

**“Advocate”** refers to any individual designated by a participant to support that participant by speaking or acting on the participant's behalf.

**“Community Support Provider”** or “CSP”, refers to a nonprofit provider of direct support services, as defined in the SDCL subdivision 27B-1-17(4).

**“Community Service Provider”** or “SP”, refers to a for-profit or not-for-profit provider of direct support services, as defined in SDCL 27B-1-17(4).

**“Case Management Organization”** refers to an organization that is responsible for providing ongoing monitoring of the participant's provision of services, health, welfare, and monitor the implementation of the participant's ISP at least quarterly. Case managers initiate a comprehensive assessment and periodic reassessment of individual needs to develop, revise and update the participant's ISP as well as advocate for the participant to exercise individual choice and independence.

**“Direct Home and community-based services”** or “direct HCB services” refers to any waiver service provided by a CSP, SP, or direct support in the community, except for case management.

**“Division”** refers to the Division of Developmental Disabilities, a division of the Department of Human Services.

**“Highly Restrictive Procedure”** refers to any restrictive procedures which include physical or chemical intervention, medications to manage behavior, time-out, or other techniques with similar degrees of restriction or intrusion.

**“Individualized Service Plan”** or “ISP,” refers to a single plan for the provision of services and supports to the participant that is person centered, directed by the

participant, oriented around personal outcomes measures, and is intended to specify all needed assessments, supports, and training.

**“ISP team”** refers to a team composed of the service coordinator, the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, and anyone else the participant desires.

**“Key Concept Areas”** refers to seven key categories requiring Provider compliance per the HCBS Settings Final Rule including: Concept Area 1: Location; Concept Area 2: Living Arrangements; Concept Area 3: Privacy; Concept Area 4: Dignity and Respect; Concept Area 5: Physical Accessibility; Concept Area 6: Autonomy; and Concept Area 7: Community Integration.

**“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 receiving services or supports under the CHOICES Waiver program.

**“Provider”** refers to a CSP or SP.

**“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.

**“Rights Assessment”** refers to the assessment that providers will complete in order to identify restrictions, changes, and limits to any of the STP concept areas and ensure that the participant is the one leading the change. If the participant is not leading the change, and change results in a restriction, then this needs to be approved as a highly restrictive service/procedure and go through the appropriate due process procedures.

**“Setting”** refers to a homelike, non-institutional setting 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.

**“HCB Setting”** refers to all provider owned and controlled settings. This includes all residential group home and supervised apartment settings and day settings (includes facility-based day and career exploration services) that are both owned and leased by the provider.

# 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, as opposed to previous definitions that were based solely on a setting's location, geography or physical characteristics. The intent of this is to ensure participants in 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 certain qualifications. These include:

- The setting is integrated in and supports full access to the greater community;
- Is selected by the participant from among setting options;
- Ensures participant rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.

The final rule also includes additional requirements for provider-owned or controlled home and community-based residential settings. These requirements include:

- The participant has a lease or other legally enforceable agreement providing similar protections;
- The participant has privacy in their unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit;
- The participant controls his/her own schedule including access to food at any time;
- The participant can have visitors at any time; and
- The setting is physically accessible.

For more information about the Final Rule, you are encouraged to visit the Department of Social Services' website, <http://dss.sd.gov/sdmedx/HCBS>. Case Management Organizations and Providers must be in full compliance with the HCBS Setting Final Rule by **March 17, 2022**.

## 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 Case Management Organizations and Provider compliance.

This document in no way reduces, diminishes or changes the obligation of the Case Management Organization and Provider to comply with all federal and state laws and regulations as well as the South Dakota's Statewide Transition Plan. This document is intended to provide guidance and is not intended to be comprehensive.

## **POLICY REQUIREMENTS**

Case Management Organizations and Providers must establish policies that are consistent with state and federal regulations, including the Home and Community-Based Settings Final Rule. The policies and regulations will enhance the quality of home and community-based services (HCBS) and provide additional protections to Participants who receive services.

All Case Management Organizations and Providers must make policies accessible to all participants, parents if the participant is under 18 years of age, and guardians if requested.

Refer to the Policy Expectations section of this guide for more information.

# POLICY EXPECTATIONS

Each Case Management Organization and Provider must create a policy, or have within their existing policies, the following characteristics and criteria required by the Statewide Transition Plan. Case Management Organizations and Providers must outline which of their policies contain the identified concept areas and topics listed below:

1. Address each of the identified Concept Areas:
  - a. Concept Area 1: Location
    - i. Choice: Case Management and Provider Responsibility
    - ii. Equal Access: Provider Responsibility
    - iii. Visitors: Provider Responsibility
  - b. Concept Area 2: Living Arrangements
    - i. Immediate Access to Setting: Provider Responsibility
    - ii. Admissions Agreement: Case Management and Provider Responsibility
    - iii. Personal Effects: Provider Responsibility
    - iv. Access to Food: Provider Responsibility
    - v. Services: Case Management and Provider Responsibility
    - vi. Grievance Procedures: Case Management and Provider Responsibility
  - c. Concept Area 3: Privacy
    - i. Bedroom or Apartment Door Locks: Provider Responsibility
    - ii. Roommate Choice: Provider Responsibility
    - iii. Personal Hygiene: Provider Responsibility
    - iv. Health-Related Information: Provider Responsibility
    - v. Communication with Family and Friends: Provider Responsibility
  - d. Concept Area 4: Dignity and Respect
    - i. Participant Rights: Case Management and Provider Responsibility
  - e. Concept Area 5: Physical Accessibility
    - i. Access to Appliances: Provider Responsibility
    - ii. Mobility and Environmental Access: Provider Responsibility
  - f. Concept Area 6: Autonomy

- i. Life Decisions: Case Management and Provider Responsibility
  - g. Concept Area 7: Community Integration
    - i. Community Access and Activities: Case Management and Provider Responsibility
    - ii. Access to Financial Resources: Case Management and Provider Responsibility
    - iii. Work and Volunteer: Case Management and Provider Responsibility
  - h. Highly Restrictive Procedures policy must incorporate protocol for when a participant requires restrictions within any Concept Area
    - i. Any changes, limits or restrictions identified through the Rights Assessment process within any Concept Area must be documented in the participants ISP and identified as a highly restrictive procedure. The identified highly restrictive procedure must be in compliance with the CSP's Policy for highly restrictive procedure, and the CSP's Policy must be in compliance with ARSD 46:11:05:06.04.
2. Policies must be written in an understandable, and easy to read format.
  3. Be easily accessible.
  4. Be provided upon admission
  5. Apply equally to all participants, regardless of payment source, care needs, or type of disability.
  6. Address how the Provider will ensure that services are provided in a manner consistent with the ISP.
  7. Address how staff will be trained to ensure understanding of the requirements of the policy.
  8. State that the Provider, along with the participant and the Case Manager, must identify any known limits or restrictions of a participant relative to each topic within each Concept Area. Any limits or restrictions must be justified and documented in the ISP. Documentation must include a specific and individualized assessed need(s); the positive interventions and supports used prior to any modifications to the ISP; less intrusive methods of meeting the need that have been tried but did not work; a clear description of the condition that is directly proportionate to the specific

assessed need; 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; and an assurance that interventions and supports will cause no harm to the participant.

## PROVIDER EXPECTATIONS ON CONCEPT AREAS

All Provider owned and controlled group home and supervised apartments and day settings will be assessed for compliance with the HCBS Settings Final Rule based on seven Key Concept Areas including Location, Living Arrangements, Privacy, Dignity and Respect, Physical Accessibility, Autonomy, and Community Integration. The expectations for each of the Key Concept Areas are described in the following pages of the **HCBS Settings Guide to Expectations and Compliance**. These expectations are in addition to those listed in the **Policy Expectations** section of this guide.

## CONCEPT AREA 1: LOCATION

The HCBS Settings Final Rule requires all participants residing in an HCB Setting to be able to choose where they live and receive services from among setting options including non-disability specific settings, have visitors of their choosing at any time, and have access throughout the provider and the community, regardless of payment source, care needs, or type of disability.

### TOPIC: CHOICE

- All participants are given choice of available options regarding where to live and receive services.
- All participants are given an opportunity to visit other settings and make informed choices about where to live and where to receive services.
- The options considered by the participant, and the final choice of settings and services, are documented in the participant's ISP.
- All participants have a right to receive services in the most integrated setting appropriate to the participant's needs, including choosing from non-disability specific settings.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

### **Choice Policy Expectations:**

The Case Management Organization and Provider must show an existing policy that meets this Choice policy expectation requirements, update a policy to include these expectations, or create a new policy that meets these expectations.

- The Provider will make a referral to the Case Manager when:

- A participant makes a request to the provider for a change in services or setting;
  - A participant experiences a change in needs that is identified by the Provider; and/or
  - A participant makes a request to the provider for a person-centered planning meeting.
- The Case Manager will ensure the Setting reflects the participant’s needs and preferences.

## **TOPIC: EQUAL ACCESS**

Providers must ensure equal access throughout the HCB setting and the community for all participants, regardless of payment source, care needs, or type of disability.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant’s ISP. Refer to the “Policy Expectations” section of this guide for information on how to justify the restriction(s).

### **Equal Access Policy Expectations**

- All participants served by Medicaid have the same access to the broader community as participants who are not receiving Medicaid-funded home and community-based services.
- All participants served by Medicaid have the same access to the common areas of the Provider non-residential settings as participants who are not receiving Medicaid-funded home and community-based services.
- All participants served by Medicaid live and/or receive services in the same area as those participants not served by Medicaid.

## **TOPIC: VISITATION**

Providers must have policies and procedures that ensure a participant's right to have visitors as they choose.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

### **Visitation Policy Expectations**

- The Provider will allow visitors at any time unless the restriction is related to a health or safety risk which is clearly documented in the participant's ISP.
- The Provider will have a location where participants can visit privately with visitors to ensure privacy and confidentiality of the participant and visitors.
- The Provider will make the policy available to all participants and their guests that specifies:
  - Any limitations on the duration of stay the policy may require roommate consent for overnight visitors;
  - Any conditions in which visitors are prohibited and/or restricted due to a risk to the health and safety of participants;
  - Any restrictions on visitors who have caused or are causing a disturbance or who pose a health or safety risk to participants within the home.
    - The Provider will notify participants in writing if any visitor restrictions apply to their guests.

Questions to be asked to ensure compliance with the HCBS Rule on Concept Area Location:

1. Is the setting in the community and located among private residences and/or retail businesses that facilitates integration with the greater community?

2. The setting is not readily identifiable as specifically for individuals who are elderly/disabled?
3. Does the setting allow and encourage visitors?
  - a. If No, was due process afforded to all affected individuals?

## 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 participant receiving services, and the participant has, at a minimum, the same responsibilities and protections from eviction that non- HCBS 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 participant residing in the setting, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

Participants must be able to have immediate access to the setting, access to personal resources, be allowed to bring in personal belongings as space permits, have access to food at any time and have access to an array of services. Additionally, participants must know how to file a grievance or complaint.

### **TOPIC: IMMEDIATE ACCESS TO SETTING**

Participants must have immediate access to the provider setting.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

### **Immediate Access to Setting Expectations**

- All participants should be provided with keys or access codes to the building.
- Participants do not have a curfew and can come and go at any time.
- The Provider may have sign in/out processes that monitor safety and are appropriate as long as the process is not used to restrict a participant's access to the broader community.

## **TOPIC: LEASE OR RESIDENTIAL AGREEMENT**

Providers must have a lease or residential agreement that offers the same protections that address evictions processes and appeals comparable to those provided under South Dakota's landlord tenant laws. This agreement must also reflect that participants residing in the residential settings have the freedom to furnish and decorate his/her personal space.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

### **Lease or Residential Agreement Policy Expectations**

- The Case Manager and Provider will ensure participants have the same protections as South Dakota's landlord tenant laws.
- The Case Manager will explain the provisions of the lease or residential agreement to the participant.
- All participants will sign the lease or residential agreement which will be accessible for DDD review and all participants will receive a copy of the signed lease.
- The Provider will ensure that new policies do not alter the protections that the participant has agreed upon in their current lease or residential agreement.

## **TOPIC: PERSONAL EFFECTS**

Participants will have the freedom to furnish and decorate their bedroom or apartment with their personal effects and belongings to make the residence their home.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those

restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

## **Personal Effects Policy Expectations**

- All participants may decorate their bedroom or apartment.
- The Provider will have a policy describing any personal effects limitations in place to protect the property and/or the health and safety of participants. Any limitations must apply to all participants within the residential settings.
- The Provider will allow participants to bring in their own furniture and other belongings, as long as personal effects do not compromise the health and safety of any participant and as space allows.

## **TOPIC: ACCESS TO FOOD**

Participants must have access to a variety of foods throughout the day in all HCB settings.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

## **Access to Food Policy Expectations**

- The Provider will offer a reasonable alternative to planned meals.
- All participants are able to make an alternative meal or snacks within their resources.
- All participants can elect to eat at an alternative time.
- All participants can elect to eat in their room or apartment.
- All participants choose with whom to eat or to eat alone.
- All participants can keep and eat foods/snacks in their room or apartment or with them during the day.

- The Provider will have access to food policy that specifies:
  - How participants are notified of their right to eat where they want;
  - How participants are notified of their right to eat when they want; and
  - How participants are notified of their right to eat what they want within their resources.

## **TOPIC: SERVICES**

Participants must have access to a variety of services and supports to meet their needs throughout the day.

CHOICES Providers offer Residential Habilitation, Group or Individual Supported Employment, Career Exploration, Day Services, Medical Equipment and Drugs, Other Medical Related Services- Speech, Hearing and Language, and Nursing. The Provider's location promotes the health, treatment, comfort, safety, and well-being of Participants, with easy accessibility for visitors and others. Services also include social and recreational programming, and medication assistance (to the extent permitted under State law). Federal financial participation is not available for room and board, items of comfort or convenience, or the costs of facility maintenance, upkeep and improvement. Costs of room and board are excluded from payments for residential services. Services are based on assessed need as identified in the ISP. The Case Manager may arrange transportation; the Provider may arrange or provide transportation to the community. Providers are not required to be the sole source of transportation. Case Managers and Providers can assist the participant in identifying natural supports.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

## **Services Policy Expectations**

- All participants know how to request a change in services and supports which require ISP Modification, i.e. change in type, scope, duration, frequency.
- All participants know how to request a change in services and supports which do not require ISP modification.
- Requests for reasonable services and supports are accommodated by both the Case Manager and Provider.
- All Case Managers must provide information on available services to participants.
- The Case Management Organization and Provider will have a Services policy that specifies:
  - How participants will be notified about all service options available
  - How participants can request a change in services as their needs change
  - How participants will be made aware of services and supports that may be available in the broader community.
  - How participants preferences will be accommodated when possible.

## **TOPIC: GRIEVANCE PROCEDURES**

Participants must know how to file a grievance or complaint. A participant at an HCB Setting should be able to voice grievances without discrimination or reprisal. A participant's grievance may be in writing or communicated another way and may relate to any decision or action by the Provider that affects the participant.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

## **Grievance Procedures Policy Expectations**

- The Case Management Organization and Provider will adopt a grievance process and make the process known to each participant and to the participant's parent/legal guardian.
- The Provider will ensure information on the grievance process is posted in an agreed upon location that is accessible to all participants in the home and at the day services setting.
- The Case Management Organization and Provider will ensure staff are knowledgeable about the process for filing a grievance.
- The Case Management Organization and Provider may not retaliate against a participant that utilizes the grievance procedure.
- The Case Management Organization and Provider will have a Grievance Procedures policy that complies with ARSD 46:11:03:06.

Questions to be asked to ensure compliance with the HCBS Rule on Concept Area Living Arrangements:

1. Do individuals have a legally enforceable agreement for the unit where they reside and at a minimum have the same responsibilities and protections from eviction that all tenants have under the landlord/tenant law of the State?
2. Does the setting allow for individuals to have a meal or snack at the time and place of their choosing consistent with individuals in similar and/or same setting who are not receiving Medicaid-funded services and supports?
3. Does it appear that individuals are allowed to decorate their own living/sleeping area?
4. Is the settings grievance notice in an accessible location for all individuals?

## **CONCEPT AREA 3: PRIVACY**

The Provider ensures a participant's right to privacy. Each participant has privacy in their sleeping or living area. Bedrooms and apartment units must have entrance doors lockable by the participant, with only appropriate staff having keys to doors. Participants sharing bedrooms or apartments have a choice of roommates in that setting.

## **TOPIC: BEDROOM OR APARTMENT DOOR LOCKS**

Participants must be able to lock their bedroom or apartment doors to prevent entry when they choose.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

### **Bedroom or Apartment Door Lock Policy Expectations**

- All participants must be able to lock their bedroom or apartment door when they are in their room.
- All participants must be able to lock their bedroom or apartment door when they leave their room.
- Only appropriate staff has access to the participant's bedroom or apartment.
- The Provider will have a Bedroom or Apartment Door Lock policy that specifies:
  - How participants are notified of their right to lock their bedroom or apartment doors when they are in their room;
  - How participants are notified of their right to lock their bedroom or apartment doors when they leave their room; and
  - Identify appropriate staff that should have access to the participant's bedroom or apartment.
- The Bedroom or Apartment Door Lock policy may specify expectations, process and costs associated with lost keys.

## **TOPIC: ROOMMATE CHOICE**

When participants residing at the Provider's HCB setting share a bedroom or apartment, they will be able to choose their roommate(s).

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

## **Roommate Choice Policy Expectations**

- The Provider will have a Roommate Choice policy that specifies:
  - How participants are involved in the roommate assignment/selection process;
  - How participant preferences are considered;
  - When/how a participant can request a change in roommate; and
  - How participants are notified of their right to choose a roommate.
- The Department of Human Services expects the Roommate Choice policy to also meet the requirements described in ARSD 46:11:06.

## **TOPIC: PERSONAL HYGIENE**

The HCB Setting must respect the participant's preferences and recognize the participant's right to privacy when completing activities of daily living.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

## **Personal Hygiene Policy Expectations**

- A participant that needs assistance with grooming is groomed as he/she desires.
- All participants who are able to complete activities of daily living without assistance are able to do so privately.
- No unnecessary staff is in the bedroom or apartment and/or the private area of a day setting when participants are completing activities of daily living.

- If participants share a bedroom or apartment, each participant has the right to complete personal hygiene in private.
- The Provider will respect a participant's preferences to allow for choice of clothing and personal care products within resources.

## **TOPIC: HEALTH-RELATED INFORMATION**

The policies of the Provider respect each participant's right to privacy regarding medications and other health related information.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

### **Health-Related Information Policy Expectations**

- Health information including dietary needs, therapy schedules, and medication lists is not visible to the public or other participants.
- Staff is trained and understand requirements regarding protected healthcare information.
- If a participant requests to be accompanied by staff during medical appointments, reasonable arrangements should be identified by the ISP team.
- All participants are offered a choice regarding where to take and/or receive medications and may do so in private.
- All participants are able to consult with their healthcare Providers in private and choose their own physician.

## **TOPIC: COMMUNICATION WITH FAMILY AND FRIENDS**

Participants receiving services from a Provider are able to communicate with other individuals in private.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

## **Communication with Family and Friends Policy Expectations**

- All 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.
- The Setting will include a location where participants can visit privately with guests.

Questions to be asked to ensure compliance with the HCBS Rule on Concept Area Privacy:

1. Do individuals have their own bedroom?

If No, were they given a choice of a roommate?

2. Do individuals have privacy in their sleeping or living unit and have entrance doors that are lockable by the individual?
3. Do individuals have privacy in their sleeping or living unit and have entrance doors that are lockable by the individual?

## **CONCEPT AREA 4: DIGNITY AND RESPECT**

The Case Management Organization and Provider ensures a participant's rights of dignity and respect, and freedom from coercion and restraint.

### **TOPIC: PARTICIPANT RIGHTS**

Participants receiving services from a Case Management Organization and/or a

Community Support Provider will be treated with dignity and respect and free from coercion and restraint.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

## **Participant Rights Policy Expectations**

- A participant's right to dignity, respect and privacy is ensured at all times.
- Participants will be supported to make an informed choice in clothing that fits, are clean, and are appropriate for the time of day, weather, and preferences.
- Case Management and Provider staff will communicate with participants in a dignified and respectful manner.
  - Staff will address participants in the manner in which the participant would like to be addressed.
  - Staff will not curse or use profanity and will converse with participants in a respectful and appropriate manner.
  - Staff will not talk to other staff about a participant as if the participant was not present or within earshot of other persons
- The Case Manager will provide information on available services to Participants.
- The Case Manager and Provider will inform participants about their rights while at the Provider HCB setting.
- The Provider will provide care and an environment that contributes to the participant's quality of life at the HCB Setting.
- The Case Manager and Provider will support the participant's spiritual preferences, by assisting the participant to identify natural supports and opportunities to engage in spiritual activities in the broader community. The Provider may provide transportation or staff support for activities as chosen by the participant.

Questions to be asked to ensure compliance with the HCBS Rule on Concept Area Dignity and Respect:

1. Do individuals know how to request a new provider and/or change day services?
2. Is health information and schedules about PT, OT, medication administration, diet, etc. kept private?
3. Is the settings grievance notice in an accessible location for all individuals?

## **CONCEPT AREA 5: PHYSICAL ACCESSIBILITY**

The Setting must be physically accessible to the participant. The Provider must be fully accessible and compliant with the Americans with Disabilities Act (ADA).

### **TOPIC: ACCESS TO APPLIANCES**

Large and small appliances must be accessible to all participants in the HCB setting i.e. washer and dryer are front loading for a participant in a wheelchair if he/she chooses to do his/her own laundry or access to a microwave in the event a participant wishes to warm up a meal.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

### **Access to Appliances Policy Expectations**

- A food preparation area is available and accessible to participants in their apartment/room or a common area at the day setting.
- The Provider will seek approval for any modifications and/or restrictions by completing the Rights Assessment and working with the Case Manager to go through due process for those restrictions and create/update the participant's ISP.

### **TOPIC: MOBILITY AND ENVIRONMENTAL ACCESS**

The Setting should be fully accessible and compliant with the Americans with Disabilities Act (ADA). Participants must be able to move freely around the setting without assistance and have reasonable unrestricted access in the HCB setting.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those

restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

## **Mobility and Environmental Access Policy Expectations**

- The Provider will make modifications to meet a participant's mobility needs.
- Participants must be able to access all areas without assistance.
- When participants require supports to move about the HCB Setting as they choose, environmental accessibility features such as grab bars, seats in the bathroom, ramps for wheel chairs and walkers, viable exits for emergencies, etc. must be provided.

Questions to be asked to ensure compliance with the HCBS Rule on Concept Area Physical Accessibility:

1. Is the setting physically accessible with no obstructions that limit individuals' mobility? (Stairs, Uneven floors, furniture placement)
2. Do individuals have access to appliances and other household items to perform activities of daily living?

## CONCEPT AREA 6: AUTONOMY

The Case Management Organization and Provider must have policies that optimize but does not regiment participant initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. Policies must facilitate choice regarding services and supports and who provides them. Participants have the freedom and support to control their own schedules and activities.

### TOPIC: LIFE DECISIONS

The Case Manager and Provider will support participants to have independence in making life choices.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

### **Life Decisions Policy Expectations**

- Participants are not required to adhere to a set schedule for waking, sleeping, bathing, eating, exercising, participating in activities, etc.
- Participant choices are incorporated into the services and supports they receive.
- All Participants should be empowered to make decisions.
- All Participants must be free to choose a Case Manager and Provider:
  - The Case Manager will assist a participant in identifying appropriate resources that are available in the community to meet his/her specific needs.
  - The Case Manager will inform the participant how to make a request for a new Case Manager and/or Provider.
- All Participants must have an ISP signed by the participant or the participant's legal representative.

- The ISP must:
  - Describe the service to be provided, the extent and frequency of the service
  - Be revised annually or as the participant's needs change; and
  - Be person-centered.
- All participants must have an active role in the development and updating of the ISP.
- ISP meetings should be scheduled at a time convenient for the participant and guardian to attend.
- Participants and guardians should be made aware of how to schedule a team meeting at any time.
- The Case Management Organization and Provider will establish policies to protect and promote the rights of each participant.
  - Prior to or at time of admission, the Case Manager and Provider must inform the participant, *both* verbally and in writing, of the participant's rights
    - The participant must acknowledge receipt of the information in writing; and
    - Any changes to the policy must be given by the Case Manager and/or Provider to the participant both verbally and in writing.
  - All participants should be made aware, both verbally and in writing, of how to make a service request.
  - The Case Manager *will document reasons* why a specific service request cannot be accommodated in the ISP. If a specific service request is made to the Provider, the Provider will notify the Case Manager in writing.

Questions to be asked to ensure compliance with the HCBS Rule on Concept Area Autonomy:

1. Does it appear that individuals have control over their daily activities?
2. Do individuals appear to have access to information regarding activities outside of the setting?
3. Is the settings grievance notice in an accessible location for all individuals?

4. Are individuals who are interested in working provided with the opportunity and supports to pursue employment?
5. If the individual is not interested in working, do they participate in meaningful non-work activities in integrated community settings?
6. Do individuals know how to request a new provider and/or change day services?

## **CONCEPT AREA 7: COMMUNITY INTEGRATION**

The setting must be integrated in and support full access of participants 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.

### **TOPIC: COMMUNITY ACCESS AND ACTIVITIES**

The Provider offers activities in the HCB setting and takes steps to educate participants about activities in the broader community. The Case Manager and Provider encourages and facilitates access to these activities consistent with the participant's preferences and needs.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

### **Community Access and Activities Policy Expectations**

- The Case Manager and Provider will promote engagement in community life.
- The Case Manager and/or the Provider may arrange transportation to the community. Providers are not required to be the sole source of transportation. Case Managers and Providers can assist the participant in identifying natural supports.
- All Participants have access to information and resources about outside activities and community events.
- A Participant may schedule activities at his/her convenience and have access to non-group activities in the broader community.

## **TOPIC: ACCESS TO FINANCIAL RESOURCES**

Participants and the participant's legal representative, if applicable, must be able to access personal resources.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

### **Access to Financial Resources Policy Expectations**

- All Participants have the right to choose their banking and financial services.
- All Participants have access to their funds and other personal resources.
- Only the participant or their legal representative may authorize the Provider to manage the participants personal finances.
- All participants have the opportunity to shop and make purchases consistent with their choices and available personal resources.
- The Provider, if acting as representative payee and/or authorized to manage personal finances and Social Security benefits, will ensure that co-mingling of these funds does not occur.

## **TOPIC: WORK AND VOLUNTEER**

Participants are able to work and volunteer in the community as they choose.

The Case Manager is responsible to ensure that any modifications and/or restrictions are identified through the completion of the Rights Assessment. Any identified modifications and/or restrictions are required to go through due process for those restrictions and should be reflected in the participant's ISP. Refer to the "Policy Expectations" section of this guide for information on how to justify the restriction(s).

## Work and Volunteer Policy Expectations

- The Case Manager and/or the Provider may arrange transportation to work and/or volunteer. Providers are not required to be the sole source of transportation. Case Managers and Providers can assist the participant in identifying natural supports.
- The Case Manager and Provider will facilitate opportunities to work or volunteer.
- A participant may engage in meaningful non-work activities in an integrated community setting.

Questions to be asked to ensure compliance with the HCBS Rule on Concept Area Community Integration:

1. Is the setting in the community and located among private residences and/or retail businesses that facilitates integration with the greater community?
2. Does it appear that individuals have control over their daily activities?
3. Do individuals appear to have access to information regarding activities outside of the setting?
4. Are individuals who are interested in working provided with the opportunity and supports to pursue employment?
5. If the individual is not interested in working, do they participate in meaningful non-work activities in integrated community settings?

## NEW PROVIDER SETTINGS

All new HCB Settings are required to be fully compliant with the HCBS Rule prior to any services being delivered in the setting. Below are the following steps required to open a new residential or day setting:

1. Providers will complete the DHS-DDD 617 form which is to include:
  - a. The address of the setting
  - b. The date services are expected to begin
  - c. The number of participants expected to be served in the setting
  - d. How the provider intends to ensure that the setting is in compliance with the HCBS settings rule as the Expectations Guide once they begin serving individuals
2. Providers will also be required to complete the Provider HCBS Settings Assessment
  - a. All answers must be optimal prior to the setting being opened
  - b. Provider will send assessment results to the assigned program specialist
  - c. Assessment needs to anticipate how individuals will receive services in the setting
3. Providers will submit the DHS-DDD 617 form and the Provider HCBS Settings Assessment
4. DD staff will validate the assessment prior to the setting being operational by completing the DD Staff HCBS Settings Assessment
  - a. If issues are found, Medicaid funding will not be provided for the setting.
5. Setting Assessment results will be documented in SMART

DD staff will enter the HCBS Settings Assessment documentation into the SMART system. Each residential and day setting will have the same list of questions that are on the HCBS Settings Assessment in SMART. The assigned agency program specialist will enter the answers based on their completed assessments. If the setting is 100% compliant with the HCBS Settings rule the results will be submitted to reports. For any setting that has a non-optimal response remediation will be required prior to the setting being operational. If remediation needs to occur the agency will have 10 days to respond to the remediation. Assuming that the area (s) that need to be remediated are to take more than 10 days to become fully compliant, the agency needs to submit a plan within SMART or DD within the 10 days.

## Biennial Assessment Process

All HCBS Settings will be reviewed on a biennial basis by the Division. The assigned agency program specialist will set up a visit with their agency in order to complete the HCBS Settings Assessment on all agency owned or controlled day settings, group homes, and supervised apartments.

For all settings reviewed prior to June 2021, DD staff will enter HCBS Settings Assessment documentation into the SMART system. Each residential and day setting will have the same list of questions that are on the HCBS Settings Assessment in SMART. The assigned agency program specialist will enter the answers based on their completed assessments. If the setting is 100% compliant with the HCBS Settings rule the results will be submitted to reports. For any setting that has a non-optimal response remediation will be required. If remediation needs to occur the agency will have 10 days to respond to the remediation. Assuming that the area (s) that need to be remediated are to take more than 10 days to become fully compliant, the agency needs to submit a plan within SMART or DD within the 10 days.

All initial setting assessments to determine HCBS compliance will be completed by June 2021, in order for agencies to come into full compliance by March 2022.

## **Decertification Process**

All HCB Settings must be 100% compliant with the HCBS Settings Rule prior to March 17, 2022. DDD is currently developing a process to decertify a setting found to not be in compliance after March 17, 2022.

## 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 46:11 - Developmental Disabilities**

To review Administrative Rules of South Dakota (ARSD) that pertain to Developmental Disabilities, log onto <http://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=46:11>

### **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), log onto [http://www.sdlegislature.gov/Statutes/Codified\\_Laws/DisplayStatute.aspx?Type=Statute&Statute=22-46](http://www.sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=22-46).

### **CHAPTER 43-32 – LEASE OF REAL PROPERTY**

To review South Dakota Codified Law (SDCL) that pertains to lease of real property, log onto <http://www.sdlegislature.gov/Statutes/PrinterStatute.aspx?Type=Statute&Statute=43-32>.

### **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 that receive services under these Medicaid authorities. To review Fact Sheets regarding the final settings regulation, visit <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/home-and-community-based-services.html>.

### **HOME AND COMMUNITY-BASED SERVICES WAIVER PROGRAM**

The Home and Community Based Services Waiver operated by the Department of Human Services, allows the Department to use Title XIX Medicaid to provide home and community based services to Participants that are risk for institutionalization. Link directly to <https://dhs.sd.gov/developmentaldisabilities/default.aspx>

Code of Federal Regulations (CFR) Title 42 Public Health

### **SOUTH DAKOTA 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. Link directly to <http://dss.sd.gov/medicaid/>.