

# Home and Community Based (HCBS) Final Settings Rule



Jennifer Cavallaro, CDP, MS, LNHA  
Director, Operations Team  
Community Options Unit  
Division of Health Services  
Connecticut Department of Social Services  
[Jennifer.Cavallaro@ct.gov](mailto:Jennifer.Cavallaro@ct.gov)

Melva Cooper, MSN, RN  
Medical Administration Manager  
Community Options Unit  
Division of Health Services  
Connecticut Department of Social Services  
[Melva.Cooper@ct.gov](mailto:Melva.Cooper@ct.gov)

# Agenda

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- Welcome
- Settings Rule Reminder
- Overview of DDS & DDS Medicaid Waivers
- HCBS Rule and Residency Agreements
- Questions

# Home and Community Based (HCBS) Final Settings Rule

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REMINDER

- Issued by the Centers for Medicare & Medicaid Services in 2014.
- Ensures that services delivered to seniors and people with disabilities living in the community meet minimum standards for integration, access to community life, choice and other important protections.
- It was created to expand the availability of community-based services that maximize autonomy and choice for individuals with disabilities and seniors.
- Intended to address the problem of institutional-like settings receiving HCBS dollars.
- Establishes a minimum set of requirements for HCBS funding.
- Effective Date: March 17, 2023 (date of compliance)

# Benefits of HCBS Final Rule

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## COMPLIANT...

- No change
- No discharges of residents
- Residents continue to receive supports and RCH will not have to fill gap regarding lost services
- Ability to potentially address occupancy issues by partnering with case managers who work with the HCBS waivers

## NOT COMPLIANT....

- Residents will have to either move or give up their waiver supports
- RCH can no longer move in residents who receive HCBS funding
- RCH may experience vacancies for residents who decide to move
- RCH will need to fill the gap for supports lost for residents who received waiver services and decided to remain at RCH
- RCH will have to provide the lost support for residents who choose to remain at RCH

**Reminder:** This applies to residents who receive 1915 (c) HCBS Waiver Programs (CT Home Care Program for Elders, Autism, Acquired Brain Injury, Personal Care Assistance, Katie Beckett, Mental Health, Comprehensive Supports, Individual & Family Supports, Employment Day Support), 1915 (i) State Plan Option (CT Home Care Program for Elders) and 1915 (k) Community First Choice.

## Additional Resources:

- [www.Medicaid.gov/Medicaid/home-community-basedservices/guidance/home-community-based-services-finalregulation/index.html](https://www.Medicaid.gov/Medicaid/home-community-basedservices/guidance/home-community-based-services-finalregulation/index.html)
- [www.Medicaid.gov/sites/default/files/2019-12/requirements-for-home-and-community-settings.pdf](https://www.Medicaid.gov/sites/default/files/2019-12/requirements-for-home-and-community-settings.pdf)
- [www.Medicaid.gov/Medicaid/home-community-basedservices/downloads/hcbs-settings-rules-imp.pdf](https://www.Medicaid.gov/Medicaid/home-community-basedservices/downloads/hcbs-settings-rules-imp.pdf)
- [www.cms.gov/newsroom/fact-sheets/home-andcommunity-based-services](https://www.cms.gov/newsroom/fact-sheets/home-andcommunity-based-services)

# Person Centered Service Plan Guide



<b>Demographics</b>	Name: _____ Marital status: _____ Preferred Name: _____ DOB: _____ Phone: _____ Emergency contact: _____ Emergency contact phone: _____ Insurance: _____ Religion: _____
<b>Healthcare info</b>	Diagnoses: _____ Allergies: _____ Advance Directives: _____ Mental status: _____  <b>ADL status - Independent/assist/supervision</b>  Bathing: _____ Dressing: _____ Toileting: _____ Transfer status: _____ Ambulation status: _____ Eating/Feeding: _____ Able to self-administer meds: _____

# Person Centered Service Plan



<b>Personal Preferences</b>	Attend Religious Services: Sleep Schedule: Shower/Bath: Bathing Schedule: Transportation: Activities/Hobbies: Meal Preferences: Favorite music/movies/books: Others:
<b>Medication</b>	
<b>Providers</b>	PCP: Cardiologist: Dentist: Optometrist: Psychiatrist: Others:



# Person Centered Service Plan



<p><b>Goals</b> (Reviewed annually if met or unmet- may continue or create new goals)</p>	<p>Review Date: _____ Goals</p> <p>met/unmet</p> <p>Goal #1. _____</p> <p>Goal #2. _____</p>	
<p><b>Steps to Achieving Your Goals</b></p>	<p>Goal #1a. _____</p> <p>1b. _____</p> <p>Goal #2a. _____</p> <p>2b. _____</p>	
<p><b>Services Provided by The Home</b></p>	<p>ADL Assist__</p> <p>Housekeeping ____</p> <p>Laundry__</p> <p>Meals__</p> <p>Supervision__</p>	<p>Recreation__</p> <p>Training: ____</p> <p>Transportation__</p> <p>Medication Assist 24hr ____</p> <p>Others_____</p>
<p>Signature of Resident/Responsible Party</p>		

***To be completed upon admission by resident or responsible party. Updated for change in condition, resident's choice and annually.***

## # OF HOMES WITH WAIVER CLIENTS NOT IN COMPLIANCE WITH FEDERAL MANDATE

Locks - 20 homes

In progress - 12 homes

Residency Agreement/Lease - 3 homes

Person-Centered Service Plan - 6 homes

No computer Access - 1 home

# Thank You!

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# *Department of Developmental Services*

## *Overview of DDS & DDS Medicaid Waivers*

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# DDS Mission and Vision

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The mission of DDS is to partner with the individuals we support and their families, to support lifelong planning and to join with others to create and promote meaningful opportunities for individuals to fully participate as valued members of their communities.

All citizens supported by DDS are valued contributors to their communities as family members, friends, neighbors, students, employees, volunteers, members of civic and religious associations, voters and advocates.

DDS supports and services focus on person centered planning, independence and choice.

# Who Does DDS Support?

Pursuant to statute, DDS supports individuals with intellectual disability, developmental disability (IDD) and persons diagnosed with Prader-Willi Syndrome.

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To become eligible for DDS services an individual must:

- Be a CT resident
- Have a diagnosis of ID pursuant to CGS 1-1g or Prader- Willi Syndrome.
  - Statute defines ID as a significant limitation in intellectual functioning with deficits in adaptative behavior that had to originate during the developmental period before the age of 18.

As of Sept 2022, DDS had 17,206 individuals active with the department. Active, does not necessarily mean, receiving supports from DDS.

# What Happens Once a Person Is Found Eligible?

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The person is assessed for DDS supports and services (Level of Need assessment, PRAT etc.). What do they need to grow, be healthy, safe and successful?

DDS offers (pending resource availability) a continuum of supports that may include case management, residential services, employment and day options, clinical services, respite and family support.

**The person must also apply for Medicaid**

- Statutory requirement CGS 17a-218 (g)

# Why is Medicaid Important for DDS Supports & Services?

Most DDS services are provided through one of the three DDS Medicaid Home and Community Based Services (HCBS) waivers.

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The Department of Social Services (DSS) is the lead Medicaid agency for the state and therefore has authority over all Medicaid Waivers. DDS has operational oversight of the DDS specific waivers.

The state receives federal reimbursement (50%) for all eligible services rendered under a waiver.

Comprehensive Supports Waiver

Individual and Family Support Waiver

Employment and Day Supports Waiver

Out of the 17,206 individuals that were active with the department in Sept, DDS Medicaid Waiver enrollment is consistent around 10,000 participants.



# DDS Employment and Day Support Waiver (EDS)

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This waiver provides employment and day supports to DDS eligible individuals who require career development, supported employment or community-based day supports, respite services, or behavioral supports to remain in their own or their family home.

This waiver targets young adults transitioning from school to work but can include individuals as young as 3 years old.

Cost cap at \$75,000 per year

# Services provided under the EDS Waiver

## ➤ **Employment Supports**

- Prevocational Services
- Transitional Employment

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- Group Supported Employment
- Individual Supported Employment
- Customized Employment

## ➤ **Day Supports**

- Group Day
- Individualized Day

## ➤ **Ancillary Services**

- Respite
- Assistive Technology
- Transportation
- Vehicle Modifications
- Peer Supports

# DDS Individual and Family Support Waiver (IFS)

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This waiver is designed to provide day and/or residential supports that allow individuals to continue to live safe and productive lives in a family home or their own home.

The waiver encourages self-direction to maximize an individual's choice of services.

Cost cap at \$165,000 per year

# Services provided under the IFS Waiver

## ➤ **Residential Supports**

- Community Companion Homes
  - Live-in Companion
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- Continuous Residential Supports (CRS)
  - Individualized Home Supports (IHS)
  - Shared Living

## ➤ **Day Supports** –Same as EDS with the addition of...

- Senior Supports
- Personal Supports

## ➤ **Employment Supports-** Same as EDS

## ➤ **Ancillary Services-** Same as EDS with the addition of...

- Environmental Modifications
- Health Care Coordination

# DDS Comprehensive Supports Waiver (Comp)

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This waiver provides day and residential services to individuals who reside in licensed residential settings, or in a personal home and require a comprehensive array of services.

This waiver offers a broad range of supports, so that individuals with more complex behavioral or medical needs may choose a personalized package of supports necessary to live independently or remain in their family's home.

Largest cost cap of all three DDS waivers at 150% of the average institutional cost of care (Approximately \$300,000 per year).

# Services provided under the COMP Waiver

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- **Residential Supports** –Same as IFS with the addition of...
  - Community Living Arrangements (CLA aka group homes)
- **Day Supports-** Same as IFS
- **Employment Support-** Same as IFS
- **Ancillary Services-** Same as IFS

# Additional Information on Waivers

Each waiver must be renewed and approved by Centers for Medicare and Medicaid Services (CMS) every 5 years.

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State law requires that for any waiver renewal or amendment (change) to the waiver, the state must also hold a 30-day public comment period about the changes being sought, as well as a public hearing with the state legislature prior to submitting to CMS for review and approval.

DDS does not have a traditional waiting list for the DDS Waivers. However, we do have a waiting list for residential services.

As of September 2022:

- 972 individuals were on our waiting list for residential supports (categorized as emergency or urgent, receiving services already or not receiving services at all).

# Final Settings Rule

In 2014 CMS issued a final rule that establishes requirements for Home and Community Based Services (HCBS) settings that are eligible for reimbursement under Medicaid. The rule requires states to review and evaluate HCBS settings, including residential and non-residential settings, to determine that such Medicaid funded settings **allow for and facilitate community-based integration** that distinguish them from institutional settings.

CMS has communicated that states must be in compliance with the rule by **March 17, 2023**.

Specifically, the final settings rule requires that all HCBS settings funded through Medicaid meet certain qualifications. These qualifications include that the setting:

- Is **integrated** in and supports **full access to the greater community**;
- Is selected by the individual from among setting options;
- **Ensures individual 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.



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Krista Ostaszewski  
Health Management Administrator  
[Krista.Ostaszewski@ct.gov](mailto:Krista.Ostaszewski@ct.gov)

# Residency Agreements

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Presenter

Melanie A. Dillon  
Staff Attorney  
Department of Social Services  
Office of Legal Counsel, Regulations and Administrative Hearings  
Email: [Melanie.Dillon@ct.gov](mailto:Melanie.Dillon@ct.gov)

# Residency Agreements

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UNDER THE HOME AND COMMUNITY BASED SETTINGS RULE

42 C.F.R. § 441.301 (c)(4)

# 42 C.F.R. § 441.301 (c)(4)

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(4) Home and Community–Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

(i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

(ii) The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.

(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.

(iv) 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.

(v) Facilitates individual choice regarding services and supports, and who provides them.

# Section 441.301 (c)(4)(vi) – Provider-owned or Controlled Residential Settings

(vi) In a provider-owned or controlled residential setting, in addition to the qualities at § 441.301(c)(4)(i) through (v), the following additional conditions must be met:

(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. **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 HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.**

(B) Each individual has privacy in their sleeping or living unit:

- (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
- (2) Individuals sharing units have a choice of roommates in that setting.
- (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

(D) Individuals are able to have visitors of their choosing at any time.

(E) The setting is physically accessible to the individual.

# Connecticut General Statutes § 19a-535a

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The legislature amended section 19a-535a in 2022 to ensure compliance with the Home and Community Based Settings Rule. Per § 19a-535a (b), an RCH shall not transfer or discharge a resident from the facility unless:

- (1) The transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility,
- (2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility,
- (3) the health or safety of individuals in the facility is endangered,
- (4) the resident has failed, after reasonable and appropriate notice, to pay for a stay or requested service at the facility, or
- (5) the facility ceases to operate

# Requirements for an Involuntary Transfer or Discharge

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Written notice to the resident, and if known, the resident's legally liable relative, guardian or conservator, not less than thirty days prior to the proposed transfer or discharge date unless the facility has requested an immediate transfer or discharge in accordance with subsection (e)

# The Written Notice shall include the following:

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The reason for the transfer or the discharge

The effective date of the transfer or discharge

The right of the resident to appeal the transfer or discharge

The Resident's right to represent himself or herself or be represented by legal counsel

Name, mailing address and telephone number of the State Long-Term Care Ombudsman

If the individual has a mental illness or intellectual disability, the notice shall also include the name, mailing address and telephone number of Disability Rights Connecticut



# LTCOP Involuntary Discharge Portal

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RCHs are required to report each involuntary transfer or discharge in a manner prescribed by the State Ombudsman and on the LTCOP Involuntary Discharge Portal maintained by the State Ombudsman.

More information can be found regarding the discharge portal at the following link:

[Involuntary Discharges \(ct.gov\)](https://www.ct.gov/ombudsman/Involuntary-Discharges)

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If the resident appeals the involuntary transfer or discharge, the transfer or discharge is stayed pending the final determination by the Commissioner of DPH

Any facility or resident who is aggrieved by a final decision of the commissioner may appeal to the Superior Court

# What is the Department of Social Services (DSS) looking for in a residency agreement?

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Generally, DSS is looking for an agreement that delineates the (1) requirements for Home and Community Based Settings in 42 CFR § 441.301 (c)(4) and (2) the discharge process under section 19a-535a. DSS prepared a template with instructions for Residential Care Homes (RCHs) to follow in drafting agreements with individuals residing in the RCH

*Disclaimer: The residency agreement template is intended for informational purposes only and should not be considered legal advice. All parties should consult legal counsel prior to the development and execution of any legally binding agreement.*

## RESIDENCY AGREEMENT TEMPLATE

### RESIDENTIAL CARE HOMES

#### Instructions

Pursuant to 42 C.F.R. § 441.301(c)(4)(vi), the State is responsible for ensuring Residential Care Homes (RCHs) have written agreements with their residents. A residency agreement is used to outline the respective rights and responsibilities of the RCH and its residents and to document that residents have been informed of and agree to the process the RCH must follow before discharging or transferring a resident in accordance with Connecticut General Statutes § 19a-535a.

Once signed by all parties:

- The RCH must provide the resident with a copy of the signed agreement.
- The RCH must maintain a copy in the resident's record.

#### Agreement

In this section, document the parties to the agreement and the location of the RCH. The following is an example:

This Residency Agreement is between resident/tenant \_\_\_\_\_ (**enter resident's name**) \_\_\_\_\_ and \_\_\_\_\_ (**enter name of RCH**) \_\_\_\_\_ located at \_\_\_\_\_ (**enter RCH's address**) \_\_\_\_\_.

#### Rent/Room and Board

In this section, document the monthly rent or room and board amount, the due date for rent or room and board and the method of payment. Designate the resident's specific unit (including a description of the specific bedroom).

## **Provider Policies and House Rules**

In this section, document the RCH's policies and house rules. Below is a list of items that the RCH may want to consider including in a residency agreement:

1. List available services and supports to be provided in exchange for payment of room and board or rent.

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2. The conditions under which the RCH may change the rates.
3. The RCH's refund policies in the event of the Resident's hospitalization, death, transfer to a nursing facility or other care facility.
4. RCH polices regarding scheduling of meal times.
5. Any house rules or social covenants required by the RCH and allowed for by licensing rules.

## **Resident Rights and Responsibilities**

In this section, list the rights and responsibilities of the RCH resident.

1. Outline the resident's responsibilities (i.e., maintaining his/her living space and not engaging in activities that disrupt or potentially cause harm to other residents).
2. Outline the resident's rights as required under the HCBS Settings Rule 42 C.F.R. § 441.301(c)(4) including:
  - Residents have access to the community, including opportunities to work, engage in community life, control personal resources and receive services.
  - Residents have the right to privacy, dignity and respect, and freedom from coercion and restraint.
  - Residents have independence in making life choices, including daily activities, physical environment and the individuals with whom they interact.

- Residents have the right to make choices about services and supports and who provides them.
- Residents have the right to live under a legally enforceable agreement with protections comparable to landlord/tenant law.
- Each resident has privacy in their sleeping and living unit:
  - a. Units have entrance doors lockable by the resident, with only appropriate staff having keys to doors.
  - b. Residents sharing units and/or bedrooms have a choice of roommates.
  - c. Residents have the freedom to furnish and decorate their sleeping and living units as long as decorations do not damage the unit. In the case of common areas within a shared living unit, residents are expected to collaborate with housemates/roommates. The RCH will facilitate this process, as needed.
- Residents have the freedom and support to control their own schedules and activities.
- Residents have access to food at any time.
- Residents may have visitors of their choosing at any time. (Supports may be needed to protect the rights and privacy of others living in the home.)
- Any modification of the conditions above must be supported by a specific assessed need and justified in the Person-Centered Service Plan.

## Individual ending a residency agreement

In this section, document what is required if a resident chooses to move:

The Residency Agreement should indicate whether the RCH requires written notice of a resident's intent to move and the time frame for providing notice.

The RCH will support the resident's move to another setting and ensure a coordinated transition to the new setting.

## RCH requirements for Transfer or Discharge of a Resident

In this section, document the requirements the RCH must follow to transfer or discharge the resident from the RCH in accordance with Connecticut General Statutes § 19a-535a. If the RCH transfers or discharges a resident, the facility is required to provide the resident with written notice and the right to appeal the decision. The facility shall comply with Connecticut General Statutes § 19a-535a as follows:

The facility shall provide written notice to the resident and, if known, the resident's legally liable relative, guardian or conservator **not less than thirty days prior to the proposed transfer or discharge date.**

The written notice of a proposed transfer or discharge shall include all of the following elements:

- a. The reason for the transfer or discharge;
- b. The effective date of the transfer or discharge;
- c. The resident's right to appeal the transfer or discharge under Conn. Gen. Stat. § 19a-535a; and
- d. The resident's right to represent himself or herself or be represented by legal counsel.

Any involuntary transfer or discharge that is appealed under Conn. Gen. Stat. § 19a-535a shall be stayed pending a final determination by the commissioner.

The RCH or resident may appeal the final decision to Superior Court.

## Signatures

# QUESTIONS?

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**Thank You!**

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