

## **Information Documenting State of Kansas and Provider Compliance with the HCBS Settings Rule Regulatory Criteria**

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Description of how the state's oversight systems (licensure and certification standards, provider manuals, person-centered plan monitoring by case managers, etc.) have been modified to embed the regulatory criteria into ongoing operations

The Kansas Department for Aging and Disability Services (KDADS) in conjunction with the Kansas Department of Health and Environment (KDHE) is in the process of implementing several different oversight processes which will embed the HCBS Settings rule regulatory criteria as described below:

- Revisions to regulations which add compliance with the settings Final Rule as a requirement for providers serving HCBS members is nearing completion. The following regulations are presently awaiting approval from the Kansas Attorney Generals office:
  - K.A.R. 26-41 Assisted Living Facilities and Residential Health Care Facilities
  - K.A.R. 26-42 Homes Plus
  - K.A.R. 26-43 Adult Day Care Facilities
  - Other current state regulations address most areas of the Rule as evidenced by the systemic assessment completed by KDADS and outlined in the submitted Statewide Transition Plan (STP).
- In 2021, KDADS began a partnership with Wichita State University's Training and Technology Team on the development of an HCBS Compliance Portal. This portal will replace the previous Community Connections website owned and operated by WSU's Community Engagement Institute (CEI), and will be utilized for both initial and ongoing monitoring of providers.
- Policy is currently being developed, and is anticipated to be finalized by 3/17/2023, where prior to enrollment in the Kansas Medical Assistance Program (KMAP), all providers who bill for services at settings that meet the definition of provider owned or controlled must demonstrate certification of compliance through the HCBS Compliance Portal.
  - Any provider billing the following codes shall be required to meet these additional certification requirements:
    - S5101 – Adult Day Care, half day
    - S5102 – Adult Day Care, full day
    - S5125 – Personal Services/Agency Directed

- T2016 – Adult and Children Residential
- T2021 – Day Supports and Prevocational Services
- Certification will be required on an annual basis for 100% of settings considered provider owned or controlled.
- The KDADS Survey, Certification and Credentialing Commission will check for a current HCBS Compliance Certificate as a part of the standard licensing process. Additionally, all three Managed Care Organizations (MCOs) shall check for a current HCBS Compliance Certificate as part of their Quarterly Provider Qualification audits.
- Waiver Program Managers will be meeting with MCO Care Coordinators on a frequent and regular basis in order to provide feedback on Person Centered Plan development, monitoring as it relates to the Rule, and network adequacy.

Description of how the state assesses providers for initial compliance and conducts ongoing monitoring for continued compliance.

KDADS shall assess providers for initial compliance, as well as conduct ongoing monitoring activities to ensure continued compliance with the Rule. The entire HCBS system will be involved in the ongoing monitoring process as summarized in the following:

- As described previously, all providers who bill for services at settings that meet the definition of provider owned or controlled must demonstrate certification of compliance through the HCBS Portal.
  - Monitoring of the HCBS Compliance Portal will be the responsibility of the KDADS Program Integrity Compliance (PIC) Unit.
  - Certification comprises of two screenings: Screening I: Provider Readiness Assessment, and Screening II: Settings Heightened Scrutiny Screening
    - First time providers that are yet to open an HCBS setting, shall complete and pass Screening I of the readiness assessment prior to enrolling in KMAP, and all providers shall complete Screening II every time a new HCBS setting is opened.
  - Certification will be required on an annual basis for 100% of settings considered provider owned or controlled by reconfirming that no changes have been made to the setting post initial compliance.
    - In the event there have been changes to the setting, the provider shall complete a new Screening II of the HCBS Readiness Assessment for Residential/Day Services for the setting.
  - The KDADS Survey, Certification and Credentialing Commission will check for a current HCBS Compliance Certificate as a part of the standard licensing process(es).
  - All three Managed Care Organizations (MCOs) shall check for a current HCBS Compliance Certificate as part of their Quarterly Provider Qualification audits.

- Performance goals related to the PIC Units ongoing monitoring activities include:
  - Visiting 1% of settings on a monthly basis (12%/approx. 360 settings annually).
  - Visiting 100% of Critical Heightened Scrutiny Settings on an annual basis.
    - Onsite visits to providers may result in findings of non-compliance, which would require a corrective action plan or a remediation plan.
      - If an HCBS participant is active and receiving services in such a setting, a transition process must be immediately initiated following the KDADS HCBS Transition Policy.
- KDADS will require the MCOs to survey persons served on their settings features, to ensure they experience the core characteristics of HCBS in compliance with the Final Rule. This survey will be required as part of the annual person-centered service planning meeting with individuals served.
  - The MCOs shall share survey data to the KDADS HCBS Program Integrity and Compliance (PIC) Unit for analysis and system compliance reporting.
  - A percentage of participants served in provider owned or controlled settings shall be conducted at the setting.
  - To ensure that the entire HCBS system operates congruently with the federal regulation, the survey will be administered to all HCBS participants regardless of their setting, services, or waiver program.
- KDADS will provide monthly, quarterly, and annual training opportunities on the essential characteristics (rights, choice, privacy, autonomy, and integration) of HCBS beyond the Settings Final Rule project implementation in Kansas. KDADS will be offering ongoing training in general and to specific targeted groups of state staff (administrators, program managers, licensing staff, monitoring staff, quality oversight staff), providers, participants (and their guardians and supports), case managers, managed care organizations (administrators and care coordinators), advocacy groups and others.
  - Training courses will cover all Kansas HCBS waiver programs. Training will be conducted both in person and virtually, and materials and/or recordings will be available for download on demand both on the KDADS website and HCBS Compliance Portal.

Description of a beneficiary's recourse to notify the state of provider non-compliance (grievance process, notification of case manager, etc.) and how the state will address beneficiary feedback.

KDADS understands the importance of ensuring beneficiaries are aware of their ability to notify the state of provider non-compliance. Additionally, the state recognizes the need to partner with stakeholders when it comes to educating participants and their guardians of the Settings Rule, as well as to ensure that any invested party is aware of the process and has the capability to report a concern.

- The state recognizes that many waiver beneficiaries have strong pre-existing relationships and regular contact with other stakeholders (CDDOs, ADRCs, Targeted Case Managers, Administrative Case Managers, Care Coordinators, etc.). As such, they will be trained to monitor for violations of Final Rule

characteristics and to report violations either through pre-existing reporting mechanisms, or through one of the methods described below.

- In addition to training efforts, the State will partner with the three MCOs and assessing entities on disseminating a Settings Rule infographic to all HCBS participants which outlines in plain language the essential characteristics of the Rule and the methods for lodging a complaint.
  - The infographic will be made available in various formats such as post card size, posters and magnets to allow for ease of display in all settings where participants receive services.
  - Versions of this infographic will be made available for download on the KDADS website and HCBS compliance portal.
- The methods for anyone to submit complaints will include a toll-free number: 800-432-3535 and an email address: [kdads.finalrule@ks.gov](mailto:kdads.finalrule@ks.gov). Grievances received will be triaged to a PIC Unit staff member who will further investigate the matter.
  - All grievances received will be acknowledged and logged through the HCBS Compliance Portal under the appropriate provider where tracking of the results and outcomes will be made.
  - The PIC Unit staff member will review the grievance and investigate as necessary to determine the facts of the case. This may involve gathering additional information from the complainant, reviewing relevant documents, speaking with any relevant parties, and/or flagging the setting for an onsite visit.
  - In the event of a complaint received by an HCBS participant or guardian, KDADS will include the participants' MCO in the investigation process
  - Based on the results of the review and investigation, the agency will make a determination as to the merit of the complaint and decide on a course of action which may involve taking corrective action against the provider or setting, providing a written explanation of the agency's actions, or routing the complaint to a more appropriate entity.
  - If the complainant is not satisfied with the resolution, they may have the right to appeal the decision to the Kansas Office of Administrative Hearings.