

KNOW YOUR RIGHTS

THE HOME AND COMMUNITY-BASED SETTINGS RULE: WHAT DOES IT MEAN FOR YOU?

The Developmental Disabilities Supports Division (DDSD) is sending you this letter to provide information on the Centers for Medicare and Medicaid (CMS) Final Rule, issued in January of 2014, which applies to everyone on the DD Waiver, Mi Via Waiver, the Medically Fragile Waiver, and Centennial Care. This Rule applies to home and community-based services (HCBS) settings. These are the places where you live, work or where you receive services, either in your home, or in the community.

In New Mexico, we have based our services on person-centered philosophy and practices for many years. Now the rest of the country will be joining NM in a national movement for everyone with intellectual and developmental disabilities (I/DD) to exercise your rights and make informed choices about how you want to live your life. We are calling this the “Know Your Rights” Campaign. This letter will summarize what New Mexico is working on with CMS in order to meet the new settings requirements, and what you and your guardian, if you have one, need to know, including:

- What is a home and community-based setting, according to CMS?
- What are NOT home and community-based settings?
- How can Person-Centered Service Planning ensure that services meet this requirement?

The CMS Final Rule wants to make sure you are included in your community. What does this mean?

- You have the right to be part of the community where you live, work, and you determine who you connect with to provide you support. This Rule says you can choose where you live, who you live with, how you live, how you spend your days, and who you spend your days with. This includes choosing who provides services to you.

Examples of some settings that may not be allowed under the Final Rule because they may not encourage you to be part of your community include:

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- Places where people spend their day that are considered “day hab” or “segregated employment” settings with only other people who have disabilities and direct support personnel.
- Gated communities or campuses, or Residential Schools where everyone lives on the campus and all work and leisure activity takes place on the campus.
- Groups of group homes close together in a single area.

What do your rights look like at your house, and in your community?

- You have chosen where you live, decorate your space the way you want to, and work and participate in activities based on your needs and preferences.
- You exercise the right to privacy, dignity and respect, freedom from coercion and restraint.
- You eat your meals and have visitors when you want to – anytime day or night.
- You are supported to take initiative, be independent, and make choices about your daily activities, the people you spend time with, and your daily environment.
- You either have your own business, you are working at a job in the community with all kinds of different people or you are at school with your peers.
- You are supported to make friends and connections in the community to help you achieve your dreams and goals.

New Mexico has long had a Person-Centered Planning process, and your plan should continue to demonstrate that you have opportunities to receive home and community-based experiences, as described in the rule:

Sometimes, in order for you to be safe in the community, your providers of services and supports may need to add extra measures within your person centered plan.

If you do have extra health and safety needs, we want to make sure you are exercising as many rights as possible. Here are some ways your selected providers can assist you:

- To identify your specific individual needs, and not make an assumption based on your diagnosis or type of disability.
- With documenting approaches that have already been tried, but did not work.
- To make a plan with a clear description of how they will support you, show that it matches your needs, and collect information showing that it is working for you on an ongoing basis.
- With identifying if your plan is not working, then they must work with you to change the plan.
- By explaining to you what the changes are in a manner you understand, and you must decide if you agree to those changes.
- With ensuring that these changes will benefit, not harm you.

If you don't have extra health and safety needs, we want to make sure you are living your life the same as anyone else would. This includes:

- You have chosen your home and community settings based on your needs and preferences.
- You are able to take initiative and to be independent.
- If you pay rent for the house or apartment, you have the same rights as anyone who rents- including a lease or rental agreement, and choice of roommate or roommates.
- If you live in a group home, or Intermediate Care Facility that has rules about your schedule, activities, when and what you eat, having visitors, barriers to wheelchair accessibility – this will all be changing soon.

It is important to know that states have until March 2019 to work on their plans to change their services and settings to meet what the Center for Medicare and Medicaid, (CMS) requires they do. The purpose is to support everyone receiving services to actively exercise their rights.

New Mexico is submitting a transition plan to CMS to show them how we will make sure we are following the Final Rule. You will be given an opportunity to provide input regarding New Mexico's Plan during a period of public comment.

While we are making these changes you will not lose services you are receiving now, but you may be offered a change in setting. Any changes the state makes must maintain or improve the services you receive. You and your selected providers will discuss whether the settings you currently spend time in meet the requirements of the Final Rule. If some changes need to be made, you will be the person making the choices you want to make your life better. This is an exciting movement for New Mexico and the United States, and we hope that you are excited as well for this opportunity to ensure inclusion and self-determination is a reality for everyone.

For more information on the CMS Final Rule: HCBS Settings Requirements:

<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>