Centers for Medicare & Medicaid Services Rules for Home and Community-Based Settings

Division of Substance Abuse and Mental Health (DSAMH)

Policy Number: DSAMH046
Date Issued: 01/18/2023
Dates Reviewed: 01/18/2023; 11/28/2023; 12/19/2024; 01/30/2025; 12/04/2025; 11/09/2026
Dates Revised: 11/23/2022; 11/08/2023; 12/04/2024; 01/29/2025; 11/19/2025; 11/04/2026
Prepared By: PROMISE
Applicability:

1. DSAMH State Providers

Approved By: Joanna Champney, Division Director



Date Signed: November 10, 2026

I. PURPOSE

States were mandated by Centers for Medicare & Medicaid Services (CMS) to bring Medicaid programs into compliance with "Home- and Community-Based Settings (HCBS) Rules" by March 17, 2023. CMS requires states to submit evidence demonstrating that these settings provide a home-like environment that supports full integration into the community. Residents in HCBS settings shall be afforded the same rights and opportunities as those living independently in the community. DSAMH PROMISE Community-Based Residential Alternative Programs currently meet the CMS definition of requiring "Heightened Scrutiny." This includes all DSAMH-funded HCBS residential funded programs, including current Mental Health Group Homes (Tiers III – V), and any future Community-Based Residential Alternative Programs (Tier I-II), if supported by HCBS funding.

II. POLICY STATEMENT

DSAMH supports the Federal requirements for HCBS. Failure to meet these requirements shall result in loss of Federal funding for HCBS. PROMISE leadership shall work with contracted providers to ensure compliance and swift remediation when required.

III. DEFINITIONS

"CMS" means Centers for Medicare & Medicaid Services.

“DHCQ” means Division of Health Care Quality.

“HCBS” means Home- and Community-Based Services.

“Group Home" means a residential facility licensed as a Group Home (GH) for Persons with Mental Illness by DHCQ and certified by DSAMH.

“PROMISE Program” means Promoting Optimal Mental Health for Individuals through Supports and Empowerment (PROMISE) Home- and Community-Based (HCBS) waiver program under DSAMH. PROMISE assesses beneficiaries for level of care needs and monitors services to ensure the beneficiary receives appropriate care from contracted providers.

“Restrictive Intervention” means any strategies or acts that limit a beneficiary’s rights or freedoms as defined by HCBS rule.

IV. SCOPE

These federal standards apply to all PROMISE Community-Based Residential Alternative Programs.

V. PROCEDURES/RESPONSIBILITIES

A. Group Home Client Rights:
    1. The right to be integrated into the community, as evidenced by community outings, activities brought into the residence, and ability to participate in employment or voluntary activities.
    2. The right to move freely through the residence, as well as having access to the community at large.
    3. The right to privacy, including locks on bedroom and bathroom doors, space to store private belongings, and areas set aside for private and personal conversations.
    4. The right to be informed of how to submit a complaint or grievance, or make suggestions regarding changes to procedures, staffing, or other preferences.
    5. The right to choose when, where, and what to eat, as evidenced by the ability to have meals and snacks outside of regularly posted times.
    6. The right to visitation with family and friends both in the residence and out in the community.
    7. The right to send and receive uncensored and unopened mail.
    8. The right to wear clothing of their own choosing.
    9. The right to communicate with their personal physician.
    10. The right to practice their personal religion or attend religious services.

B. HCBS settings must:

1. allow the individual to choose between available options for services and providers;
2. ensure rights of privacy, dignity, respect, and freedom from coercion and restraint;
3. optimize an individual's autonomy and independence in making life choices;
4. facilitate an individual's informed choice about their services and who provides them;
5. be physically accessible to the individual;
6. provide freedom and support for the individual to control their own schedules and activities;
7. provide the individual access to food when desired (meals and/or snacks); and
8. provide access to visitors at any time.

C. Exceptions: The criteria listed in Section B.6 through B.8 above are the only ones that may be changed or modified, and only on a case-by-case basis for a specific individual. For an exception or any kind of restrictive intervention to be made, there must be:
   1. a specific need that has been identified for which the person requires staff support (a diagnosis alone is not enough information to support a modification);
   2. a time-limited basis for the exception, with a need to reassess periodically to see if the modification is still needed;
   3. attempts for less restrictive and more positive approaches that were tried, documented, and found to be unsuccessful; and
   4. individual exceptions must be clearly documented in the resident's clinical record and recovery plan. They shall be updated during each recovery plan review.
      a. The use of planned restrictive interventions shall require detailed documentation in the recovery plan that must include:
         i. A summary of the functional assessment to identify suspected antecedents and functions of the behavior.
         ii. A description of the goal behavior in observable and measurable terms.
         iii. The specific targeted behavior to be addressed and a description of the conditions for which the restrictive intervention is used.
         iv. A description of the less intrusive techniques used prior to the use of the restrictive interventions.
         v. Methods and target dates for modifying or eliminating the target behavior.
         vi. Methods and target dates for a replacement behavior.
         vii. A description of the intervention to be used.
         viii. A risk-benefit analysis.
         ix. Informed consent from the individual, health care surrogate, and/or guardian.
         x. The name of the clinician responsible for monitoring and documenting the response to the planned restrictive intervention.

xi. A plan for reducing and/or eliminating the restrictive intervention written within the recovery plan, and, if appropriate, a detailed explanation and justification for continuing the restrictive intervention.

b. The restrictive intervention must be reviewed by the Group Home Psychiatrist prior to implementation and at each recovery plan review.

D. Contracted PROMISE HCBS programs shall complete the Delaware HCBS PROMISE Provider Self-Assessment of Residential Sites at least annually and provide results of self-assessments and any needed remediation plans to PROMISE Assessment Center Administrator.

E. Contracted PROMISE HCBS programs shall balance the resident's autonomy with the safety of the individual, other residents, and staff at the residential setting:
   1. Residents shall have freedom and support to control their own schedules and activities, unless a detailed exception is documented, as explained above.
   2. Residents shall have access to food (meals and/or snacks) and visitors, at any time, unless a detailed exception is documented, as explained above in V.C.
      a. HCBS Programs must promote integration into the community, including encouraging visitation.
      b. Programs may work with residents to ensure their right to have visitation is both respected and balanced with the needs of other residents in the home. This may include suggested quiet times, as well as limiting access to other areas of the residence that may impose on other residents' privacy.
      c. Program visitation guidelines should be posted and should provide flexibility for reasonable exceptions.

F. PROMISE Leadership shall assess HCBS Programs as follows:
   1. Within three months of any new PROMISE HCBS Program being established;
   2. At least annually, and when one of the following occurs:
      a. Resident grievance;
      b. Community complaint;
      c. PROMISE Care Manager Monitoring form (rated 3 or higher);
      d. Notification of concern from DSAMH Quality Assurance or Risk Management team; or
      e. Notification of concern from Delaware Division of Healthcare Quality (DHCQ).
   3. PROMISE leadership shall oversee data collection and remediation action steps for all PROMISE HCBS Programs, as needed.
   4. PROMISE leadership shall facilitate quarterly meetings with PROMISE HCBS Programs to promote continued refinement and excellence with the HCBS settings rule.

VI. References

A. Medicaid.Gov Home & Community Based Services Final Regulation

VII. POLICY LIFESPAN

This policy will be reviewed annually.

VIII. RESOURCES

A. N/A

IX. RELATED POLICIES

A. N/A