

Community Choices Waiver Provider Training

HCBS Final Rule



Wyoming Department of Health
Division of Healthcare Financing
Home and Community-Based Services Section
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Welcome to the Division of Healthcare Financing (Division), Home and Community-Based Services (HCBS) Section provider training regarding Community Choice Waiver (CCW) HCBS Final Rule. I am Certification and Credentialing Specialist Shirley Lueders, from the Provider Support Unit. Thank you for joining us today.

Purpose of This Training



To review the Final Rule regulations and provide clarity on the expectations regarding the Final Rule

As a provider of Community Choices Waiver (CCW) services, it is important to understand the regulations established by the Centers for Medicare and Medicaid Services (CMS) for all home and community-based services (HCBS). The purpose of this training is to review these regulations, which we will refer to as the Final Rule, and provide clarity on the expectations that CMS and the Division have regarding the Final Rule.

Training Agenda

- Define the Final Rule
- Discuss Final Rule as related to participant rights
- Examine Final Rule as related to services
- Explore Final Rule as related to settings

This training will focus on defining the Final Rule by discussing how it relates to participant rights. Together we will examine the Final rule in relation to CCW services and explore the settings in which CCW services are provided. Additionally, this training will demonstrate best practices to remain compliant with the Final Rule.

HCBS Authority

- Federally authorized under Section 1915(c) of the Social Security Act
 - Under Medicaid “umbrella”
 - Funded with state and federal dollars
- Federally approved Waiver agreement that outlines federal and state requirements



The purpose of all HCBS waivers, and specifically the CCW, is to provide individuals with supports and services that they need to live in their homes and communities. Individuals who qualify for the CCW are Medicaid recipients. The CCW is federally authorized through Section 1915(c) of the Social Security Act, and funded with a combination of state and federal funds. The service and supports that the CCW fund are not otherwise included in the Wyoming Medicaid state plan.

Since the CCW is funded in this manner, there are a number of state and federal requirements that are outlined in the federally approved Waiver agreement, and elsewhere in state and federal law. The Waiver agreement defines how the CCW program will function, how the state will ensure services and supports comply with rules and regulation, and other details about the CCW program. This Waiver application was submitted by the State of Wyoming and later approved by CMS. The approved CCW agreement details the waiver’s functions and is available on the [HCBS Public Notices, Regulatory Documents, and Reports page](#) on the Division’s website.

The focus of today’s training are requirements outlined in 42 CFR § 441, the HCBS Final rule. This regulation is fundamental to HCBS programs, and compliance with this regulation is required within the approved CCW waiver agreement.

HCBS Final Rule

- Established in 2014
- Compliance federally required by March 1, 2022
- Addresses:
 - Participant rights
 - Characteristics of waiver services
 - Requirements for HCBS settings

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You might be asking yourself “what is the HCBS Final Rule and what does it have to do with being a CCW service provider?” The simple answer is everything.

The HCBS Final Rule was established by CMS in 2014. This regulation lays the groundwork for the purpose and priorities of HCBS. It describes participant rights, the characteristics of services, and requirements of HCBS settings. HCBS programs--in this case, the Wyoming Department of Health, HCBS Section--are responsible for ensuring that providers who receive reimbursement for CCW service provision are in compliance with the components of the Final Rule by March 1, 2022.

That means that the HCBS Section is responsible for providing assurances to CMS on an ongoing basis that all CCW providers meet these standards. It is important that CCW providers, case managers, participants, families, and other stakeholders are aware of these requirements, as they are foundational to the CCW program.

Final Rule and Participant rights



One important element of the Final Rule is the emphasis on participant rights. As we discuss the rights included in the the Final Rule, it is important to point out that participants of the CCW are guaranteed the same rights as someone not receiving HCBS. HCBS are designed to support those rights and ensure participants have the ability to exercise all of their rights as they choose.

The participants of the CCW are adults that have been making choices and exercising their rights throughout their lives. CCW providers must honor and respect the rights of the participants served to the best of their ability.

HCBS Final Rule: Participant Rights

- Requires individuals to have decision making authority over:
 - The services and supports they receive
 - Who delivers the services
 - How their needs are met
 - Their personal property and money
 - Their living arrangements, space, and visitors

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The Final Rule includes added emphasis on a participant's right to choice. This includes the choice and decision making authority over:

- The services and supports they will receive
- Who delivers their services
- How their needs are met
- Control over their personal property and money
- Where they live, with who they live, and who visits them

Participants must be supported in exercising their rights during waiver services, they are not privileges or things to be earned. Providers cannot request or require a participant to waive any of their rights as a condition of receiving services. Retaliation of a participant for exercising their rights is strictly prohibited and may result in adverse action.

Participant Rights: Provider Responsibilities

- Policies and procedure should include how participant rights will be ensured and protected
- Protecting participant health and safety requires incident reporting, both to the Division and internally
- Policies for addressing Participant health and safety concerns should include an escalation to the plan of care team when necessary

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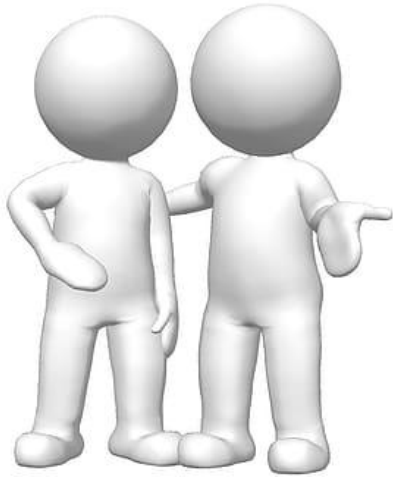
In order to demonstrate compliance with the Final Rule and the CCW agreement, providers will be required to outline their business practice and standards in their Policies and Procedures. CCW provider policy and procedures, in addition to describing their standard service delivery practices, must not impose restriction to any participant right. Provider policy and procedures must protect participant rights to the extent possible. It should be clear when reviewing the policies and procedures what safeguards are in place to ensure participants rights are protected and maximized to the extent possible.

Provider policies and procedures should also capture how the provider will protect the health and safety of participants receiving services. The approved CCW agreement has specific critical incident reporting criteria, that every provider report all participant involved incidents of:

- Physical, Verbal, Emotional and sexual abuse
- Intimidation
- Self-neglect, neglect by a service provider, and neglect by a family member or natural support
- Financial exploitation
- Sexual exploitation
- Prescription drug theft
- Diversion
- Other material exploitation
- Unexpected deaths
- Use of restraints, and

- Unauthorized use of restrictive interventions

As a best practice, providers may implement an internal incident reporting policy and procedure to ensure participant incidents are reported regardless of whether or not it is required to be reported to the Division. Internal incident reporting policies and procedures should include what information is required to be included in the report, what additional actions occur as a result of the incident, and how notifications are provided to case managers or other providers. Internal incident report data can be utilized to identify health and safety risks for participants. By including a regular review of the internal incident report data, providers will be able to identify trends that may be affecting a participant's health and safety, as well as satisfaction with their services. The internal incident reporting policy and procedure may also include how health and safety concerns are addressed - starting with the participant. Participants should be included in their care as much as possible, this includes when providers have concerns for their health and safety. Including the process for escalating health and safety concerns to the attention of the plan of care team is a valuable piece in addressing participant Health and safety concerns.



Service Characteristics Established in the Final Rule

The Final Rule provides information about how services are intended to support a participant's needs. The array of services available to participants of the waiver are unique and should be tailored to meet the needs the participant identifies during the person-centered planning process. Providers should familiarize themselves not only with the characteristics outlined in the Final Rule, but also the CCW Service index available on the [Service Definitions and Rates page](#) of the Division's website to have a well rounded understanding of how HCBS may vary from other services offered through the Medicaid state plan, Medicare, or other programs.

HCBS Final Rule: Services

- Delivered in a manner that supports access to and integration in the community
- Do not serve to isolate the participant from others within the community
- Promote independence in choice of daily activities and autonomy
- Honors the individual's privacy, dignity, and respect

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The Final Rule establishes how services should look in order to qualify as truly home and community based. Please note that the HCBS Final Rule has specific requirements, and that Division manuals, policies, procedures, and technical assistance are aimed at further defining and clarifying how those requirements are met for the CCW. Documents such as the Service Index provide important information related to the scope and limitations of services.

The HCBS Final Rule discusses common features of HCBS. As we have discussed and will discuss further, the goal of HCBS is to support individuals living in their homes and communities. To this end, services must be delivered in a manner that supports both access to and involvement in the community. Providers are expected to support participants in pursuing this goal. Similarly, services must not serve to isolate participants from others or from the broader community, including individuals not receiving HCBS. While it may be convenient to support participants in socializing only with each other, such actions may serve to isolate participants from the community.

Additionally, services and supports should promote participant independence, choice, and autonomy. CCW participants can make their own decisions, and the supports offered through CCW should promote individuals in exercising these rights.

Of course, every service should be delivered in a way that honors the individual's privacy and dignity, and the provider should always treat the participant with respect.

Service Delivery: Provider Responsibilities

- Describe and share standard operating procedures for service delivery
- Identify roles and responsibilities of the participant and provider
- Establish accountability and boundaries for service delivery

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As we discussed earlier in this training, services provided in HCBS settings must support participants' access to the community, honor choice, and promote independence. But what does that look like in practice? For some providers, who offer transportation, this may be as simple as working with participants to schedule when and where they need or want to go on a weekly or monthly basis. Again, we ask, what does this look like in practice? How does a provider communicate their abilities and expectations to participants or other community members?

HCBS providers who create and educate on their written policies and procedures will be able to describe and share their standard procedures as necessary. Considering the transportation providers who create a monthly schedule for participants, their policy and procedure may include what type of transportation is available, during what hours, how much advance notice is required, how to cancel a scheduled transportation, who to contact about scheduling, and other provider specific requirements for the transportation service they offer.

Policies and procedures should protect both the provider and participant from unwanted outcomes and help to promote a positive relationship. When policies and procedures are provided during the development of the plan of care, the scope of the person-centered service can be identified and included in the plan. The plan of care identifies the scope and frequency of the service that is specifically delivered to the participant. A provider who has written policies and procedures may be able to identify and resolve conflicts before they happen.

Policies and procedures should also provide accountability and identify the roles and responsibilities of the provider and participant when it comes to the service provision. By identifying the policy and procedure a provider operates within, providers are clearly establishing the boundaries of which their services are available. Participants should be given the options to review provider policies and procedures as part of the intake process. If the policy and procedure contain information that does not support the participant's specific needs, it may be necessary for the participant to find a provider with policies and procedures that accommodate their service needs.

Setting Requirements Established in the Final Rule



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Now that we have discussed how participants are supported through exercising their rights and service delivery, let's jump into where the services are able to be delivered.

As we briefly touched on earlier, the purpose of HCBS Waivers is to provide individuals with supports and services that they need to live in their homes and communities. Participants of the CCW have a nursing facility level of care assessed needs. Where does a person receive nursing facility level of care in their home and community, if not in a nursing facility?

HCBS Final Rule: Settings

- HCBS Settings do not all look the same
 - Different depending on location, service, and participant needs/desires
- All HCBS settings do have some things in common:
 - Supports full access to the greater community
 - Selected by the participant, and facilitates choice
 - Ensures participant rights and promotes independence and autonomy

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The locations where HCBS are delivered are referred to as “service settings.” As the goal of HCBS is to be delivered in the home and community, service settings may look different depending on the type of service, the participant, or the community.

But does that mean that any place, any time, is an HCBS setting? No. The Final Rule helped to define an HCBS setting by the nature and quality of individuals’ experiences.

The final rule requires that all HCBS settings are:

- Integrated in and supports full access to the greater community
- Selected by the participant from other non-disability specific options
- Ensures the right to privacy, dignity and respect, and freedom from coercion and restraint
- Promotes independence in choice of daily activities and optimizing autonomy in making life choices
- Facilitates choice regarding services and who provides them

CMS clarified through the Final Settings rule that requirements apply to ALL HCBS delivery options, not just residential services (like ALFs). However, it might also be useful to demonstrate what is not an HCBS setting.

What is not HCBS setting?

- Facility that provides in-patient treatment
- A location on the grounds of or adjacent to a public institution
- A location that isolates waiver participants from the broader community

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Even though CMS has moved away from defining “what is not an HCBS setting,” it is still important for us to address the exceptions granted to Wyoming when it comes to HCBS settings.

The final settings rule identifies other settings that are presumed to have institutional qualities, and do not meet the threshold for Medicaid HCBS. These settings include those in a publicly or privately owned facility that provides inpatient treatment; on the grounds of, or immediately adjacent to, a public institution; or that have the effect of isolating individuals receiving Medicaid-funded HCBS from the broader community of individuals not receiving Medicaid-funded HCBS. These excluded settings include nursing facilities, institutions for mental disease, intermediate care facilities for individuals with intellectual disabilities, and hospital where other Medicaid funding authorities support services provided in these institutional settings.

Included in the approved waiver agreement is respite service delivered in a nursing home. This exception was granted to accommodate the ruralness of Wyoming and to offer an alternative for respite in a participant's home or assisted living facility (ALF). No additional CCW services are eligible to be compensated in a nursing facility. Additionally, ALF locations attached to a nursing facility fall under heightened scrutiny and may be required to demonstrate that the setting is home and community-based and does not have the qualities of an institution.



Provider Controlled vs. Participant Controlled

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Now that we have discussed what an HCBS setting is, let's look at the two types of locations where HCBS are provided: provider controlled and participant controlled

What is provider controlled?

- Provider owns or co-owns the setting outright
- Provider is the leaseholder of the setting
- Provider has a financial relationship with the property owner that authorizes special rights to how the setting functions and who is allowed to use the setting

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Provider controlled settings can be described as a location where HCBS services are provided, in which the provider of those services is the owner, leaseholder, or has rights to the setting based on their relationship to the property owner. While Wyoming Division of Aging's Licensure and Surveys take care of certifying ALF and Adult Day Service (ADS) sites, it is important for providers who control the service settings to understand the requirements of HCBS. Providers who deliver services in such settings are responsible for meeting specific requirements due to the level of control the provider has over these settings.

Provider Controlled Requirements

- Lease or Residential agreement that affords the same protections under state landlord-tenant laws
- Guarantee privacy including lockable doors, choice in roommates, and freedom to furnish/decorate
- Honor control of personal schedule, including when and what to eat
- Allow visitors of choice, any time
- Be physically accessible

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The Final Settings Rule requires provider controlled settings where residential services are provided must:

- Have a lease or residential agreement that allows the same responsibilities and protections from eviction as all tenants under landlord tenant law of the state, as established under W.S. 1-21-1201 through -1211, the county, and the city where the service setting is located.
- Guarantee privacy in participant units, including lockable doors with only appropriate staff having keys, choice in roommates, and the freedom to furnish or decorate the unit
- Honor participant's control of personal schedule, including when and what to eat
- Allow visitors of choice at anytime
- Be physically accessible to the participant

The intent of the HCBS final rule is to ensure that participants of HCBS are offered the same freedoms and rights that would be otherwise available to them outside of HCBS. CCW participants are adults and should be provided the same respect and dignity that all Wyoming citizens are afforded, regardless of their additional needs supported by the waiver.

Provider Controlled Scenarios

- ADS and ALF settings are certified by Aging, but must also meet the HCBS Final Rule
- ALF providers are required to demonstrate many of the Final Rule requirements through policies and procedures
- Policies and procedures must not restrict participant rights

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To illustrate a provider controlled setting, let's consider:

Both ADS and ALF services are typically provided in locations that are owned or controlled by a provider. Both services locations must be inspected, certified by Licensure and Surveys, as well as meet the Final Rule. ALFs must also meet the residential requirements of the Final Rule. Home Health agencies typically provide services in participant controlled settings, even within an ALF- unless they are contracted to provide services on behalf of the provider. A contracted home health agency providing services within the facility would be considered an extension of the ALF staff. If a Home Health Agency provider is a property owner, leasing to a participant whom they serve, the circumstances will change.

HCBS Final Rule requires ALF providers to have a lease agreement in place that offers the same protections that someone not receiving HCBS would have from eviction and termination. The lease agreement is oftentimes a separate agreement from the services agreement. The services provided to waiver participants are subject to the waiver definition and considered paid in full, additional services addressing items of comfort or convenience may be agreed upon between the provider and participant and documented through signed agreements.

In addition to Final Rule requirements, providers who provide residential services in settings they control must have policies and procedures in place identifying how the rights guaranteed by the Final Rule are protected and exercised. These policies should include specific information about the participant's right to have visitors of their

choosing at any time and a participant's right to manage their own schedule. Some ALF policies and procedures may be created and implemented to provide guidance and regulation to residents, but policies that affect a participant's personal choices are considered overreach or a violation of a participant's rights. Dress codes and meal time restrictions, in particular, have frequently been addressed as inappropriate.

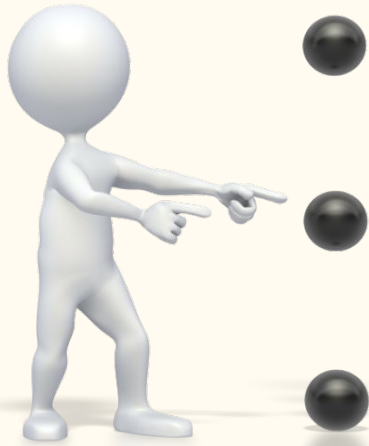
The participant has chosen to receive services and invited someone into their home.



Participants of the CCW program typically receive services in their homes. The participant's home is considered a participant controlled setting. When delivering services in a participant controlled setting, it is important to remember that the participant has chosen to receive services and to invite someone into their home.

Imagine inviting a stranger into your home to assist with personal and private needs. How would you feel? Vulnerable? Uncomfortable? It's important for providers to remember they are guests in the home of the participant, and should be respectful and courteous of the setting, as much as the participant.

Participant controlled settings



Recognize Autonomy

Respect of the setting

Maintain Health and Safety

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When HCBS are provided in participant controlled settings, including participant homes or homes belonging to the participant's family, it is expected that the settings are least restrictive in nature and conducive to the participant's care. Participant controlled settings are not under the authority of Medicaid; however, the services provided should promote the participant's independence, choice, and access to the community. HCBS service delivery should never be isolating or restrictive as it would be in conflict with the fundamentals of HCBS.

A provider should be aware and observant of the health and safety of the participant in their setting. This may require addressing immediate concerns with the participant while delivering services. If the provider and participant are unable to address the concern together and additional assistance or resources are needed, providers should document and report the concerns to the case manager and appropriate plan of care team members.

It is not the provider's responsibility to organize or rearrange the participant's setting without permission or request of the participant. Homes are typically decorated and arranged in a manner that is conducive to the resident's daily functions and tasks. The provider should observe and recognize the participant's autonomy in the setting and allow the participant to function without forced change to their routines. Just because it doesn't make sense to the provider, doesn't mean it needs to change.

It is important for providers to remain respectful of the participant's home and property. Providers should be cautious of the surroundings to ensure the setting is in

the same condition (or better) than when services began. Providers should be mindful of the tasks and service they are there to perform, minimizing deviation from service delivery. To avoid confusion or difficult situations, it is best for providers to stay within the scope of support intended for the participant.

Participant Controlled Scenarios

- Participant-controlled locations most often refer to the participant's Home
- Home means their residence, which include their private unit in an ALF
- Participant homes are not under the Authority of Medicaid
- Providers will need to work with participants to address any and all Health and Safety concerns.

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To illustrate a participant controlled setting, let's consider:

When services are provided in participant-controlled settings, only the services are subject to Medicaid authority. Meaning that Medicaid does not inspect or require inspections of participant homes. It is important that when we discuss a participant's home it is intended to mean their residence or the place where they live. As we briefly touched on in the provider-controlled section of this training, Home Health Agency services can be provided in a participant's residence which might be within an ALF. The lease or residential agreement with the ALF identifies the private space as the participant's. The ALF is responsible for the setting and the services included within their service agreement with the participant, both are subject to the Final Rule. Home Health services provided in the participant's unit are subject to Final Rule and the Home health agency would be responsible for ensuring compliance with the Final Rule.

Providers who enter participant homes to deliver services should work with the participant to establish a safe routine for service delivery and get permission from the participant before making changes, of any level. Most of us have special ways we keep our homes, that make our daily activities easier. Providers should remain respectful of participant's home and belongings. Some participants may have significant attachments to their belongings which can make parting with them uncomfortable. Providers should never discard or dispose of a participant's belongings without permission. Sometimes, a simple relocation of an item could pose a significant threat to a participant's health and safety. Medications, as an example,

may be ordered a certain way in a medicine cabinet that allows the participant to operate without error. What happens when the medications are reorganized and the participant takes the wrong medication or dose of medication? In order to safely support the participant, it is always best to work together to address concerns.

It is the provider's role, while delivering services in a participant-controlled setting, to be observant of health and safety concerns. If a health or safety concern is identified, the provider should work with the participant to address the concern. Providers should document concerns and escalate them as needed based on their policies and procedures. Working with the participant to identify and resolve health and safety concerns will assist a participant with understanding what and why the concern is potentially harmful. CCW participants are adults, some who may have lived in their homes for many years and have many belongings which should always be respected.



Suggested Best Practices for CCW Providers

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CCW providers are responsible for demonstrating their compliance with HCBS Final Settings Rule and Wyoming Medicaid Rules. Division staff--including HCBS Section staff, or individuals from other teams such as Program Integrity--may ask to review certain documents at initial program enrollment and in the event of a complaint or incident report. This part of the training will discuss suggested best practices to ensure HCBS requirements are addressed and are easily identifiable through documentation.

Policy and Procedure Tips

- Providers must accept payment in full for services. Imposing additional fees is prohibited by Medicaid rule.
- How does your provider organization assist participants in exercising their rights?
- How does your organization ensure a participant is not penalized? Is there a clear process in place that is communicated to the participant?

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Although providers have the freedom to create policies and procedures that work best for their service delivery style, it is important to clarify that providers must not impose any additional fees or service deprivation of participants who exercise their rights. Waiver fees are inclusive of all service delivery costs. By familiarizing themselves with the CCW Service Index, located on the [Service Definitions and Rates page](#) of the Division's website, providers will be able to accurately identify the elements which are included as billable services and considered paid in full. Imposing additional fees for refusing services or skipping services is prohibited by Medicaid rule and may result in adverse action.

Another important consideration for providers is not only focusing on informing participant of their rights, but also assisting participants in exercising those rights. When reviewing policies and procedures, consider how your organization is delivering services. Are participants able to make their own decisions about when, where, and what to eat? Do you encourage visitors? How are participants supported in deciding how their services should look? Additionally, does your organization have a policy to ensure participants are not penalized for exercising their rights or speaking up when their rights are not being considered? And finally, are these policies and procedures communicated clearly and promptly to participants?

Policy and Procedure Tips

- Try to make sure service delivery roles and responsibilities are clear to everyone--particularly the participant!
- Policies and procedures should be re-evaluated and updated as needed
- Updates should be communicated to all parties

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Provider policies and procedures should clearly outline the roles and responsibilities of their service delivery. Ensuring that all parties are aware of the expectations and responsibilities will provide the transparency necessary to ensure successful service delivery. By keeping the language simple and the information clear, participants will be able to engage as expected.

Policies and procedures should offer some flexibility and be reviewed at least annually to ensure they remain relevant. As service delivery methods change or technology is introduced, providers should re-evaluate their policies and procedures to ensure that the written policy and procedures reflect the true nature of the services delivered. Providers may take complaints and incidents into consideration when evaluating their policies and procedures to minimize recurring incidents or complaints. The only thing worse than not having a policy is having a policy that you don't follow. Participants rely on routines and consistent service delivery, following established policies and procedures ensures consistency.

Communication of policies and procedures is key to successful service delivery and HCBS compliance. Policies and procedures should be available upon request and should be shared prior to implemented changes to allow for participants and their teams to review changes, ensure ongoing service delivery methods meet the participant's needs, and the changes fit within the plan of care.



Key Takeaways



1. The HCBS Final Rule is the basis for HCBS services
2. CCW Participants are adults and should have their choices and decisions honored and respected.
3. Providers who control service settings have additional obligations to the participants they serve
4. Providers agree to provide services in a specific manner, which includes the service setting.

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Before we wrap up this training, let's review the key takeaways:

1. The HCBS Final Rule is the basis for HCBS services, their settings, and all CCW providers should be aware of the obligations and requirements as outlined in the Final Rule.
2. CCW participants are adults who have been making their decisions for their lifetime, providers are required to respect participant choices regarding how services are delivered or not. Services are intended to be person-centered and should be delivered as needed for each individual on the waiver. Participants have rights just like you and I, these rights cannot be waived as a condition of services.
3. Providers who own or control a setting have additional obligations to the participant, and must demonstrate HCBS compliance through additional documentation. Lease agreements are separate from the services covered by the waiver. At no time, should a provider charge participants additional fees for services included in the CCW Service definition.
4. Provider agrees to provide the service in a specific manner, including the service setting. Understanding the requirements of the service, the supports the participant needs, and the setting in which the services are provided will guide the provider in meeting the individual needs of the participant to the very best of their ability.

Questions?

Contact the Provider Certification and
Credentialing team:
wdh-hcbs-credentialing@wyo.gov

Thank you for joining us for this training. If you have any questions or concerns regarding the content presented today, please reach out to the Credentialing unit at the email address listed on the slide.