

WAC 388-823-1096 What requirements must a home or community-based service setting meet? (1) **Home and Community-Based Settings.** Home and community-based settings must have all of the following qualities based on the needs of the HCBS participant as indicated in their person-centered service plan:

(a) The setting is integrated in and supports full access of HCBS participants receiving home and community-based services under 42 C.F.R. Section 440.180 ("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 people not receiving HCBS.

(b) The setting is selected by the HCBS participant 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 HCBS participant's needs, preferences, and, for residential settings, resources available for room and board.

(c) Ensures the HCBS participant's rights of privacy, dignity and respect, and freedom from coercion and restraint.

(d) 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.

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

(2) **Provider-owned or controlled residential settings.** In a provider-owned or controlled residential setting, in addition to the qualities under subsection (1) of this section, 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 HCBS participant, and the HCBS participant has, at a minimum, the same responsibilities and protections from eviction that tenants have under the Washington State Residential Landlord-Tenant Act, and other applicable county or city tenant protections. 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 HCBS participant has privacy in their sleeping or living unit:

(i) Units have entrance doors lockable by the HCBS participant, with only appropriate staff having keys to doors.

(ii) HCBS participants sharing units have a choice of roommates in that setting.

(iii) HCBS participants have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

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

(d) HCBS participants are able to have visitors of their choosing at any time.

(e) The setting is physically accessible to the HCBS participant.

(3) **Modifications.** Any modification of the additional conditions, under subsection (2)(a) through (2)(d) of this section, must be sup-

ported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

- (a) A specific and individualized assessed need.
- (b) The positive interventions and supports used prior to any modifications to the person-centered service plan.
- (c) Less intrusive methods of meeting the need that have been tried but did not work.
- (d) A clear description of the condition that is directly proportionate to the specific assessed need.
- (e) Regular collection and review of data to measure the ongoing effectiveness of the modification.
- (f) Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- (g) The informed consent of the HCBS participant.
- (h) An assurance that interventions and supports will cause no harm to the HCBS participant.

(4) **Settings that are not Home and Community-Based.** Home and community-based settings do not include the following:

- (a) A nursing facility;
- (b) An institution for mental diseases;
- (c) An intermediate care facility for individuals with intellectual disabilities;
- (d) A hospital; or
- (e) Any other locations that have qualities of an institutional setting as determined by the Centers for Medicare and Medicaid Services (CMS). Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating HCBS participants from the broader community of people not receiving HCBS will be presumed to be a setting that has the qualities of an institution unless CMS determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

[Statutory Authority: RCW 71A.12.030, 71A.26.040, 71A.26.030, and 42 C.F.R. 441.301 (c)(4). WSR 23-21-001, § 388-823-1096, filed 10/4/23, effective 11/4/23. Statutory Authority: RCW 71A.12.030 and 42 C.F.R. § 441.301 (c)(4). WSR 18-10-071, § 388-823-1096, filed 4/30/18, effective 5/31/18.]