



## Rhode Island HCBS Settings Rule Compliance Overview

The State of Rhode Island is committed to ensuring compliance with the HCBS Settings Rule. The following provides an overview of the various ways by which the tenets of the HCBS Settings Rule have been incorporated into the State's policies and practices to protect the rights of Medicaid HCBS consumers.

### I. **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.**

As noted in the Statewide Transition Plan (STP), the State evaluated various types of settings overseen by a number of State agencies. These include (1) assisted living residences, (2) adult day programs, (3) shared living settings, and (4) day programs and community residential settings for individuals with I/DD. The State also reviewed all policies and procedures impacting these settings—including statutes, regulations, the State's 1115 Waiver, and subregulatory guidance—and modified these policies as necessary to comply with the requirements of the HCBS Settings Rule. Any proposed changes to State policies are reviewed by staff to ensure continued alignment.

(1) **ASSISTED LIVING:** Assisted living residences are licensed by the Rhode Island Department of Health (RIDOH) pursuant to R.I. Gen. Laws § 23-17.4 et seq. and 216-RICR-40-10-2 and certified by the Executive Office of Health and Human Services (EOHHS) prior to enrollment as a Medicaid provider.

**Licensing standards.** Assisted living licensing standards set forth the requirements to (1) promote the dignity, individuality, independence, privacy, and autonomy of residents, (2) provide a safe and home-like environment, and (3) protect the safety, health, and welfare of residents, encourage quality of life for all residents, and encourage quality in all aspects of the operations of assisted living residences. These standards describe the provider's responsibility to ensure quality of care; monitor health, safety, and well-being; and provide reasonable recreational, social, and personal services. Assisted living administrators are required to ensure that all new employees receive orientation and training prior to beginning work alone. Training topics include how to recognize abuse, neglect, and mistreatment; upholding values of dignity, independence, autonomy, and choice; residents' rights; resident safety; and confidentiality and recordkeeping. Assisted living resident rights are enumerated in R.I. Gen. Laws § 23-17.4-16 and provide statutory protection of rights to dignity, choice, privacy, autonomy, independence, visitors without restrictions, management of financial affairs, and freedom to furnish units. Providers are required to communicate these rights to all residents by displaying them on premises in addition to obtaining a signed copy from each resident acknowledging receipt. Assisted living residences are also required by law and regulation to execute a residency agreement with the individual. Resident records must be kept confidential pursuant to R.I. Gen. Laws § 5-37.3, accessible only to authorized personnel. Assisted living residences are required to maintain comprehensive governing policies and procedures, review these policies at least annually, and promptly inform each resident if there are any changes. Assisted living residences are subject to inspections, either announced or unannounced, by RIDOH at such time and



frequencies as determined by RIDOH. Any deficiencies identified during a RIDOH inspection are communicated to the provider. Depending on the nature of any deficiencies, the provider may be placed on a plan of correction monitored by RIDOH. Failure to comply with all licensing standards is grounds for denial, suspension, or revocation of the license as appropriate.

**Certification standards.** Assisted living certification standards for enrollment in the Medicaid program are available [online](#). These standards were updated to incorporate several components of the HCBS Settings Rule. In order to be certified as a Medicaid provider, an assisted living residence must be licensed by RIDOH, ensuring that the requirements noted above are met, in addition to the below criteria:

- Certification is contingent on demonstration that the assisted living residence is equipped to provide the appropriate service package to meet a person's needs in a manner that promotes choice, dignity, and independence.
- Standards clarify that assisted living residences are considered a community setting and not a medical institution or health facility because assisted living does not include 24-hour skilled nursing care and the living environment is a home-like setting. 'Home-like' means an environment having the qualities of a home, including privacy, comfortable surroundings, and the opportunity to decorate one's living area and arrange furnishings to suit one's personal preferences. A home-like environment provides opportunities for self-expression, encourages interaction with the community, family, and friends, allows for control over one's own schedule, ensures freedom from coercion and restraint, and has a legally enforceable agreement comparable to a lease.
- The residence is required to maintain separate living units, including toilet facilities and sufficient living space for eating meals, sleeping, and engaging in other daily activities, and the right to privacy and the opportunity to lock the door to the living unit, bedroom, or bathroom unless determined by the assessment and person-centered plan that locking doors may pose a risk to the health and safety of the resident or others.
- Standards require that social and recreational programming reflect residents' interests and needs and promote integration in the assisted living residence and the greater community.
- EOHHS must review providers' policies and procedures and provide a letter of compliance with the Final Rule prior to certification or recertification as a Medicaid assisted living provider. The approval letter must be provided to EOHHS' fiscal intermediary, Gainwell, and confirmed in the system in order to proceed with enrollment in Medicaid. This ensures that there is a separate review of provider policies specific to compliance with the HCBS Final Rule. This letter is also required as part of the credentialing process by the managed care organizations.

- (2) **ADULT DAY:** Adult day programs are licensed by RIDOH pursuant to R.I. Gen. Laws § [23-1-52](#) and [216-RICR-40-10-7](#) and certified by EOHHS prior to enrollment as a Medicaid provider.

**Licensing standards.** As a condition of licensure, adult day programs are required to have procedures in place to ensure that the following rights are afforded to all participants:

- The right to be treated with consideration, respect, and dignity, including privacy in treatment;



- The right to participate in program of services and activities designed to encourage independence, learning, growth and awareness of constructive ways to develop one's interests and abilities;
- The right to self-determination within the setting, including deciding whether or not to participate in any given activity, being involved to the extent possible in program planning and operation, and ending participation in the adult day care program at any time;
- The right to a thorough initial assessment and development of an individualized plan of care;
- The right to be cared for in an atmosphere of sincere interest and concern in which needed supports and services are provided;
- The right to a safe, secure, and clean environment;
- The right to receive nourishment and assistance with meals as necessary to maximize functional abilities and quality of life;
- The right to confidentiality and the guarantee that no personal or medical information will be released to persons not authorized under law to receive it without the participant's written consent;
- The right to voice grievances about care or treatment without discrimination or reprisal;
- The right to be fully informed, as documented by the participant's written acknowledgment, of all participants' rights and of all rules and regulations regarding participant conduct and responsibilities;
- The right to be free from harm, including unnecessary physical or chemical restraint, isolation, excessive medication, abuse, or neglect;
- The right to be fully informed, at the time of acceptance into the program, of services and activities available and related charges; and
- The right to communicate with others to the extent of the participant's capability.

Adult day programs are required to provide individual and group activity programs that offer social, recreational, and educational events, taking into consideration the dignity of individual participants and their social, intellectual, cultural, economic, emotional, physical, and spiritual needs and interests. Activity opportunities are to be made available whenever the program is in operation. In addition, the adult day program is responsible for coordinating any ancillary services to meet individual needs as identified in the individual's care plan, including assisting in arranging transportation services. Facilities must be accessible and comfortable, with sufficient space, furnishings, and supplies to accommodate and facilitate all participants' involvement in the program. Providers are also required to maintain a participant record system which is kept confidential.

**Certification standards.** Adult day certification standards are available [online](#). These standards state that, as a condition of participation as a Medicaid provider, an adult day care provider must agree to comply with all of the provisions of the HCBS Final Rule and RIDOH licensing requirements noted above. While these certification standards incorporate the Final Rule by reference, it is necessary for the provider to demonstrate compliance through a policy review by EOHHS prior to certification or recertification as a Medicaid provider. EOHHS must confirm that policies comply with the Final Rule by issuing an approval letter, which must then be provided to Gainwell and confirmed in the system in order to proceed with enrollment in the Medicaid program. This letter is also required as part of the credentialing process by the managed care organizations. The person-centered



plan is also a central component of the adult day certification standards, highlighting the importance of individual needs and goals in determining the services and activities that are made available. EOHHS reserves the right to deny, suspend, or revoke an adult day care provider's participation in the Medicaid program for failure to comply with licensing standards and state and federal law and regulations, including the HCBS Settings Rule. These certification standards will be amended in CY2023 to make necessary updates, including clarifying the fact that adult day care is now a State Plan benefit.

- (3) **SHARED LIVING:** Shared living programs are operated by both EOHHS (Rite @ Home program) and the Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH). As noted in the STP, individual caregivers are overseen by agencies contracted by the State.

EOHHS shared living certification standards for contracted Rite @ Home agencies are available [online](#). These standards were updated to incorporate several components of the HCBS Settings Rule. Notable provisions include:

- The Rite @ Home agency must develop and implement policies that ensure compliance with the HCBS Final Rule.
- A person-centered care plan must be developed with each consumer which outlines the participant's needs and goals and facilitates individual choice regarding services and supports and who provides them. The consumer must be allowed to identify and include other members they wish to participate in the care planning process.
- The Rite @ Home provider agency is responsible for developing a process by which the provider agency assesses potential home settings and caregivers that most effectively meet the consumer's needs and preferences. The provider agency must provide, whenever possible or upon the individual's request, a choice of alternate home settings and caregivers and develop a process by which the consumer, and when appropriate other family members, have the opportunity to meet potential caregivers and visit potential home settings. The setting must be integrated in and support full access to the greater community to the same degree of access as individuals not receiving Medicaid HCBS. Consumers receiving services in this setting should have the same experience as those not receiving Medicaid HCBS. The setting shall facilitate individual choice regarding services and supports and who provides them. The Rite @ Home agency provider maintains basic documentation of the living arrangement and monitors the consumer's understanding of the living arrangements. Any settings that have qualities of an institutional setting, including a setting that is located in a building that is also a publicly or privately-owned facility that provides inpatient treatment, or in a building on the grounds of or immediately adjacent to a public institution, or a setting that has the effect of isolating consumers, are not permitted to be a home setting.
- Once a setting is selected, the Rite @ Home provider agency is also responsible for conducting a home visit which ensures that the setting is indeed a home setting and complies with the tenets of the Final Rule. The home visit ensures that the setting is safe, clean, and accessible; provides private sleeping arrangements including the ability to furnish and decorate and lock doors; permits control over personal resources; optimizes opportunities to seek employment and access to activities in the greater community; protects the consumer's rights to privacy, dignity, respect, and freedom



from coercion and restraint; and optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices.

- The Rte @ Home provider is responsible for ensuring that the setting continues to meet the consumer's needs by conducting home visits at defined intervals (beginning with weekly and transitioning to monthly).
- The Rte @ Home provider is responsible for having written policies for ensuring ongoing compliance with home setting requirements.
- The Rte @ Home provider is responsible for conducting satisfaction surveys of participants and utilizing feedback to make program improvements. Survey results and an annual improvement plan must be submitted to EOHHS.

In addition, it is necessary for EOHHS shared living providers to demonstrate compliance with the HCBS Final Rule through a policy review prior to certification or recertification as a Medicaid provider. EOHHS must confirm that policies comply with the Final Rule by issuing an approval letter, which must then be provided to Gainwell and confirmed in the system in order to proceed with enrollment in the Medicaid program. This letter is also required as part of the credentialing process by the managed care organizations.

BHDDH standards for developmental disability organizations, which includes the BHDDH shared living provider agencies, are described below.

- (4) **SETTINGS FOR INDIVIDUALS WITH I/DD:** All settings for individuals with I/DD, including community residential settings and day/employment programs, are both licensed and certified BHDDH. BHDDH is responsible for the administration of all aspects of community and residential facilities for individuals with I/DD under R.I. Gen. Laws § 40.1-24 et seq., 212-RICR-10-00-1, and 212-RICR-10-05-1, including setting standards for providers and monitoring to ensure compliance.

Pursuant to R.I. Gen. Laws § 40.1-21 et seq., BHDDH is charged with providing for a comprehensive, integrated array of services for individuals with I/DD, pursuant to a person-centered plan, and to protect the human dignity, constitutional rights and liberties, social well-being and general welfare of all individuals with I/DD.

Individuals with I/DD have numerous rights protected by state law. These include the right to have letters be forwarded unopened (R.I. Gen. Laws § 40.1-22-12) and unrestricted access to visitors (R.I. Gen. Laws § 40.1-22-13, amended in 2019). In addition, there is a chapter of general law dedicated to rights for individuals with developmental disabilities which was amended in 2019 to align the statute with the tenets of the HCBS Final Rule. These rights are enumerated in R.I. Gen. Laws § 40.1-26-3 including, among other things, the rights to:

- Dignity;
- Privacy;
- A safe and supportive environment;
- Freedom from abuse and unnecessary restraint;
- Engagement in desired activities in the most integrated community setting;
- Participation in the development of the person-centered plan;
- Access to telephone communication and visitors at any time;



- Keep and spend one's own money; and
- Select and wear one's own clothing and use possessions.

The BHDDH Office of Quality Assurance provides for the protection and promotion of these rights (R.I. Gen. Laws § 40.1-26-10). All providers are required by R.I. Gen. Laws § 40.1-26-4 to provide participants with information about their rights upon entry into the agency and at every plan review in a manner that is consistent with the participant's learning style. Deprivation of participant rights is punishable by fine or imprisonment (R.I. Gen. Laws §§ 40.1-22-26 and 40.1-26-7) and/or independent disciplinary action by the provider if the person responsible is employed by a provider (R.I. Gen. Laws § 40.1-22-27).

**Licensing standards.** BHDDH's licensing standards for developmental disability organizations (DDOs) are set forth in regulation. Regulations require that settings be physically accessible and services be customized to meet individual needs and desires in the least restrictive setting, including promoting community inclusion and membership. Providers are required to have written policies and procedures outlining individual rights and inform individuals of these rights in a way that is understandable. Licensing regulations specifically incorporate the tenets of the HCBS Final Rule by describing individual rights to privacy, dignity, respect, freedom from coercion and restraint, full access to the community, and control of personal resources. Individuals in residential settings must be able to lock the entrance to their sleeping or living unit, with only appropriate staff having keys, choose a roommate in a shared unit, furnish their sleeping unit, and have access to food and visitors at any time. Licensing regulations also note that limitations on rights must be justified in the individual's person-centered plan; for example, an individual's right to manage finances may be limited based on individual abilities and circumstances and restraints may be permitted in very limited circumstances. Residential DDOs are required by regulation to ensure that there is a legally enforceable written agreement that includes, at a minimum, the same responsibilities and protections from eviction that tenants have under landlord/tenant law. Providers are also required to have a human rights committee that convenes regularly for the promotion and protection of participant rights, reviewing modifications to participant rights, and reviewing grievances. BHDDH retains the right to conduct an inspection or investigation of any provider or setting at any time, and providers must facilitate free access to the grounds, buildings, and books and records to facilitate the inspection. BHDDH investigates potential violations of licensing regulations through its Quality Assurance unit. Any instance of non-compliance with licensing regulations is a valid ground for licensure action. The Quality Assurance unit is also responsible for investigating violations of participant rights and reports of abuse, neglect, exploitation, or other mistreatment of individuals with I/DD and adults with disabilities.

**Certification standards.** BHDDH's certification standards for DDOs are available online. The certification standards describe a set of base standards that apply to all programs, in addition to specific requirements based on setting type (employment services, day and community supports, shared living, and residential). These standards are driven by the core values of self-determination, empowerment, accessibility, community inclusion, and customized service delivery. These standards were updated, most recently in 2019, to incorporate the tenets of the HCBS Final Rule. The base certification standards emphasize the importance of person-centeredness, meaningful choice, access to information and resources in the broader community, autonomy, independence, privacy, schedule control,



accessibility, integration, equal opportunity, and more. Providers are required to survey participants annually and use survey results and other data for continuous improvement. Providers are also required to have comprehensive policies and procedures for their programs which promote respect for individual goals and preferences. The shared living standards require a process for training, monitoring, and evaluating shared living contractors, including home visits. The residential standards emphasize the need for full access and a legally binding agreement with the participant.

In addition to licensing and certification standards BHDDH has also issued guidance for providers specific to the HCBS Final Rule in the form of two FAQ documents. The guidance addresses each of the requirements of the HCBS Final Rule to ensure that the components of the rule are understood and includes sample policy language for providers to incorporate. These FAQs are available [online](#).

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

As stated in the STP, all identified HCBS providers were assessed for compliance beginning with a provider self-assessment. These self-assessments were used as an initial gauge, but were not the sole source of review. Provider self-assessments were validated with at least two other review methods. These validation actions include consumer experience surveys, desk reviews of the policies of each provider and/or setting, submission of supporting documentation, and site visits. Any gaps in compliance identified in this review process were noted in a compliance report which was used to generate provider-level remediation action plans.

Licensing renewal and recertification occur at regular intervals and both provide an opportunity to confirm continued compliance for providers that have already demonstrated initial compliance. If other concerns involving potential non-compliance arise outside of the licensing and/or certification process, EOHHS and BHDDH can work with providers individually to develop a remediation plan.

For DDOs specifically, certification standards are accompanied by a set of quality metrics to assess individual provider performance. These metrics are also available [online](#) (note that the “draft” watermark is an error and these metrics are in use as written). The Quality Assurance unit conducts site visits, record reviews, policies and procedures, and interviews of participants and staff to assess compliance and issue findings. This incorporates HCBS Final Rule compliance into regular quality monitoring. Any metric with a score of 75% or lower must be addressed in a Quality Improvement Plan (QIP) monitored by the Quality Assurance team.

All new providers must go through the licensing and certification processes identified above, including submission of policies and procedures for HCBS Final Rule compliance review using the tools described in the STP, before the provider is permitted to offer Medicaid HCBS.

## **III. 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.**



Various means exist for a beneficiary to seek recourse in the event of non-compliance, depending on the nature of the grievance. The State requires that individuals be regularly informed of their rights and provide signed acknowledgement of these rights, including how to communicate concerns. Generally, grievances begin at the provider level.

Assisted living providers are required by R.I. Gen. Laws § 23-17.4-10.1 to maintain a quality assurance program to monitor quality, identify areas to improve and methods to improve them, and evaluate progress. This process includes a quality improvement committee charged with developing methods to identify, evaluate, and correct identified problems and maintain records of all quality improvement activities. RIDOH assisted living regulations require that assisted living providers have written procedures for resolution of resident grievances and inform residents of their rights to communicate grievances both within and outside of the setting. All records must be made available to RIDOH. Similarly, adult day providers are required by RIDOH regulations to establish a grievance procedure to enable participants and their families/caregivers to have their concerns addressed without fear of recrimination. Shared living providers are required to document complaints received during home visits, with evidence of follow-up and resolution with applicable dates. These complaint reports must be submitted to and reviewed by EOHHS each month in the format described in the appendices to the RItE @ Home certification standards available online. Developmental disability organizations are also required by R.I. Gen. Laws § 40.1-26-5, as a condition of licensure, to establish a written grievance procedure which is presented to each participant and posted in each setting. DDOs are required to make grievance forms available at all times and to encourage and assist all participants in exercising their rights without discrimination or recrimination. DDOs are required to provide the human rights committee with copies of all grievances, followed by the final resolution of all grievances. If a person filing a grievance is not satisfied with the outcome, it may be appealed to BHDDH. Grievances may also be filed with the State's long-term care ombudsman, Governor's Commission on Disabilities, and the Commission for Human Rights.

Participants can also contact the state directly to submit provider complaints. For providers licensed by the Department of Health, including assisted living and adult day providers, complaints may be filed directly with RIDOH. For providers licensed by BHDDH, complaints may be filed directly with BHDDH Quality Assurance. The State will continue to work to ensure that communication channels remain open between the several departments involved in implementing the requirements of the HCBS Final Rule.

If an instance of non-compliance rises to the level of abuse, neglect, or other mistreatment, reports may be required by law. Depending on the nature of the incident and the perpetrator and individual involved, reporting may be required to RIDOH, the long-term care ombudsman, BHDDH Quality Assurance, and/or Adult Protective Services.

The State reserves the right to take licensing and/or certification action based on the severity of an incident report or complaint of non-compliance, or may take other action such as a corrective action plan and subsequent compliance review depending on the circumstances.