



## **14 NYCRR PART 595 SUBREGULATORY GUIDANCE Issued October 7, 2022**

In order for individuals to receive Home and Community-Based Services (HCBS), the setting in which they reside must be compliant with all aspects of the settings final rule issued by Centers for Medicare and Medicaid Services (CMS). Specifically, Community Residence Single Room Occupancy (CR-SRO) programs that are neither on the ground of or adjacent to a state psychiatric center (PC), as well as all licensed Apartment Treatment programs, must meet the below standards/ qualities.

HCBS settings must:

1. Be fully integrated into the broader community to the same degree of access as individuals not receiving Medicaid HCBS, including:
  - a. opportunities to seek employment/ work in competitive integrated settings;
  - b. engage in community life;
  - c. control personal resources;
  - d. receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS;
  
2. Be selected by the individual among options including non-disability specific settings and an option for a private unit in a residential setting;
  - a. the options are documented in the person-centered service plan;
  - b. the options are based on the individual's needs, preferences, and for residential settings, resources available for room and board;
  
3. Ensure an individual's rights to privacy
  - a. Ensure an individual's rights to dignity and respect;
  - b. Ensure an individual's rights of freedom from coercion and restraint;
  
4. Optimize but do 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;
  
5. Facilitate individual choice regarding services and supports, and who provides them;
  
6. Have a person-centered planning process that provides necessary information and support to individuals to ensure recipients can direct their housing support plan as much as possible. Person-centered planning shall meet the following requirements:
  - a. Includes people chosen by the individual
  - b. Is timely and occurs at times/locations convenient to the individual
  - c. Assists the person in achieving outcomes they define for themselves in the most integrated community setting they desire
  - d. Ensures delivery of services in a manner that reflects personal preferences and choices
  - e. Helps promote the health and welfare of those receiving services
  - f. Takes into consideration the culture of the person served
  - g. Uses plain language that can be understood by the person
  - h. Includes strategies for solving disagreements
  - i. Is reviewed/ revised when circumstances change or at request of the individual
  - j. Identifies individuals' strengths, preferences, needs (clinical and support), and desired outcomes;

7. The unit or dwelling is a specific place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the jurisdiction's landlord/tenant law or equivalent;
8. Each individual has privacy in their sleeping/ living unit:
  - a. units have entrance doors lockable by the individual, with only appropriate staff having keys;
  - b. individuals sharing units have a choice of roommates in that setting;
  - c. individuals have the freedom to decorate their sleeping or living units within the lease or other agreement;
9. Individuals have the freedom and support to:
  - a. control their own schedules and activities;
  - b. have access to food at any time;
10. Individuals are able to have visitors of their choosing at any time; and
11. The setting is physically accessible to the individual.

Note: Community residences and licensed housing programs located on the grounds or immediately adjacent to a PC are presumed to be non-compliant settings per CMS and are not subject to the settings final rule. However, these programs have a rehabilitative and person-centered focus and should still comply with the guidance contained herein to the extent feasible.

Please further note that the Settings standards referenced in this document do not apply to Community Oriented Recovery and Empowerment (CORE) Services. Individuals who are eligible to receive CORE Services are not subject to residential settings restrictions under the HCBS Final Rule. As such, individuals residing in community residences and licensed housing programs on the grounds or immediately adjacent to a PC are eligible to receive CORE Services.