

# What does Community Living Mean?

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CMS Rules for Home and Community-Based Services

Testimony before the House Human Services Committee

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Vermont Developmental Disabilities Council

*Advocate. Change. Join.*



# Olmstead v. L.C., 1999

“...Confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement and cultural enrichment.”

-Justice Ruth Bader Ginsberg



# Defining “Community Living”

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- CMS initiated rulemaking in 2009 regarding HCBS and published proposed rules in 2011. They received over 2000 public comments submitted.
- Administration for Community Living (ACL) commissioned a report by self-advocates. Vermonters were active participants.



# Keeping the Promise

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Self-Advocates Define the  
Meaning of Community  
Living

We are restricted from Community  
life when...

... opportunities for typical life activities  
are strictly limited to what the provider  
will allow, not our own preferences.

... we experience limits on our freedom of  
association. There is a lack of freedom to  
come and go.

...People make decision for us - limiting  
choices about where to live, food, clothing,  
health care, and spending money.



# Keeping the Promise

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Self-Advocates Define the  
Meaning of Community  
Living

Community Living means...

**Choice and Agency.** We can do what we want when we want to do it, instead of having to decide as a big group of people and move together.

**Making a contribution.** We should have the opportunity to volunteer and participate in civic life like everyone else.

**Being a Part of a Neighborhood.** We should live in a neighborhood where we can connect with community members who live next door



# 42 CFR § 441.301(c)(1)(vi)

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## Person-Centered Planning

- Implemented March 2014
- Describes the minimum requirements for
  1. The planning process
  2. The plan itself
- Includes a statement about conflict-of-interest free case management.

## Settings Rule

- Delayed until March 2023.
- Outcome-oriented definition of HCBS settings, rather than one based solely on a setting's location, geography, or physical characteristics.
- Requires a states transition plan, followed by a five-year implementation period.



# I. The Person-Centered Planning Provisions

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- The **individual will lead** the person-centered planning process where possible, unless under guardianship.

*And the process will...*

- Include others chosen by the individuals.
- Occurs at times and locations of convenience to the individual.
- Provides necessary information and support so the individual can lead the process and make informed choices.
- Reflects cultural considerations of the individual and provides information in plain language.
- Offer **informed choices** to the individual regarding the services and supports they receive and from whom.
- Records the **alternative HCBS settings** that were considered by the individual.



# I. The Person-Centered Planning Provisions, Cont.

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- Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual, **must not provide case management or develop the person-centered service plan,**

except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS. In these cases, the State must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process





## II. The Settings Provisions

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Must have all the following qualities

1. The setting is **integrated in and supports full access to the greater community**, including opportunities for the individual 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 individuals not receiving Medicaid HCBS.
2. The setting is **selected by the individual from among setting options** including non-disability specific settings and an option for a private unit in a residential setting.



## II. The Settings Provisions, Cont.

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3. Ensures an individual's **rights of privacy, dignity and respect**, and freedom from coercion and restraint.
4. Facilitates **individual choice** regarding
  - daily activities, physical environment, and with whom to interact.
  - services and supports, and who provides them.



## II. The Settings Provisions, Cont.

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5. And if the setting is a “provider-owned or controlled residential setting,” there are additional requirements:
  - A. **Lease-like protections:** The unit is a physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services.
  - B. **Privacy** in their sleeping or living unit:
    - Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
    - Individuals sharing units have a choice of roommates in that setting.
    - Individuals have the freedom to furnish and decorate their units.
  - C. Freedom and support to **control their own schedules** and activities and have **access to food at any time.**
  - D. Can have **visitors of their choosing** at any time.



## II. The Settings Provisions, Cont.

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Settings that are **not** Home and Community Based Settings:

- These include “... any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.”
- These are assumed to be “institutional in nature” until proven otherwise by a process of “heightened scrutiny,” resulting in CMS approval.

