2.3.1: Systemic Assessment: Review of Standards

A comprehensive review of state administrative rules, Medicaid policy manuals, and other state standards such as provider agreements has been conducted.

2.3.1.1 Administrative Rules

The following Medicaid rules were reviewed. The results shown here indicate whether the rule supported the federal regulations, conflicted with the federal regulations, or was silent in respect to the regulations.

The Iowa Administrative Code applicable to the HCBS and Habilitation programs includes:

- CH 77 – Identifies HCBS provider qualifications
- CH 78 - Identifies service descriptions and criteria
- CH 79 - Identifies financial rate structure, service rate reimbursement, and cost reporting procedures.
- CH83. - Identifies HCBS eligibility criteria

When analyzed as a whole, the state believes that the four IAC rule chapters support a HCBS member to received services in community based integrated settings. The state believes the rules support a member to have choice and control in the services and supports they receive. As such, the state's analysis of the administrative rules identify that collectively, the majority of the rules support the federal regulations. The state also acknowledges that the rules of the HCBS program have been in place for many years with periodic updates that reflect the addition of new services, new waiver programs and the Habilitation programs, and program evaluation that require policy change. In the analysis below it has been identified that additional rule changes will be necessary to update the Iowa administrative code to fully reflect and comport with the new federal regulation around integrated community settings and person centered planning. Specific rule language is identified in the overall conclusion summary at the end of section 2.3.1.1 beginning on page 43

Below is a high level review of the individual IAC chapters. A more detailed crosswalk follows this summary.

Medicaid Administrative Rules Summary of Results	
Rule	**Result**
441—IAC—54: Facility Participation	Possible conflict
441—IAC—77.25: HCBS Habilitation Services Conditions of Participation for Providers	The majority of rules support; additional rule language needed to clarify CMS setting regulations
441—IAC—77.30: Health and Disability Waiver Conditions of Participation for Providers	The majority of the rules support; additional rule language needed to clarify CMS setting regulations
441—IAC—77.33: Elderly Waiver Conditions of Participation for Providers	The majority of rules supports; additional rule language needed to clarify CMS setting regulations

441—IAC—77.34: AIDS/HIV Waiver Conditions of Participation for Providers	The majority or rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—77.37: Intellectual Disability Waiver Conditions of Participation for Providers	The majority of rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—77.39: Brain Injury Waiver Conditions of Participation for Providers	The majority of rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—77.41: Physical Disability Waiver Conditions of Participation for Providers	Silent
441—IAC—77.46: Children's Mental Health Waiver Conditions of Participation for Providers	The majority of rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—78.27: HCBS Habilitation Services Amount, Duration and Scope of Services	The majority of rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—78.34: Health and Disability Waiver Amount, Duration and Scope of Services	The majority of rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—78.37: Elderly Waiver Amount, Duration and Scope of Services	The majority of rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—78.38: AIDS/HIV Waiver Amount, Duration and Scope of Services	The majority of rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—78.41: Intellectual Disability Waiver Amount, Duration and Scope of Services	The majority of rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—78.43: Brain Injury Waiver Amount, Duration and Scope of Services	The majority of rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—78.46: Physical Disability Waiver Amount, Duration and Scope of Services	The majority of rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—78.52: Children's Mental Health Waiver Amount, Duration and Scope of Services	The majority of rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—79: Other Policies Relating To Providers of Medical and Remedial Care	Silent

441—IAC—83: Medicaid Waiver Services	The majority of rules supports; additional rule language needed to clarify CMS setting regulations
441—IAC—90: Targeted Case Management	The majority of rules supports; additional rule language needed to clarify CMS setting regulations

The matrix below provides a more detailed crosswalk from the federal regulations to the state administrative rules and provides the status of actions needed for any gaps that were identified. The IAC rules listed below are paragraphs and subparagraphs taken from a larger chapter of rules that are specific to individual HCBS waivers and the Habilitation program. These paragraphs and subparagraphs identify specific services, provider criteria, and waiver eligibility requirements and are used as examples of support of the federal requirements for settings and person centered planning. While the state believes that the identified paragraphs and subparagraphs support the federal requirements, there are other rule paragraphs and subparagraphs within the larger rule chapter that infers or assumes support of the federal rules, but may not clearly support the federal requirements. For example, home and vehicle modification, specialized medical equipment, or transportation services assumes or infers that services are provided within the members home and community but do not specifically states that services are to be provided in integrated community settings. For this reason, the state has determined that the majority of the rules support the federal requirements for settings and person-centered planning.

The rule analysis below identifies in the "Action Needed" column that additional rule language is needed to clarify CMS setting regulations and assure that the entirety of each applicable chapter of the IAC will fully reflect and comport with the new federal regulation around integrated community settings and person centered planning. The state will update all IAC rule chapters applicable to the HCBS Waiver and Habilitation programs. The specific rule language that will be used is identified in the overall conclusion summary at the end of section 2.3.1.1 beginning on page 43

Please note that the links to rules in this matrix open only to the relevant rule; it is not possible to link directly to the specific subrule or paragraph. In most instances, specific rule text is included as an example of support to the federal requirement.

Federal Requirement: Settings are integrated in and support full access of individuals receiving Medicaid 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 individuals not receiving Medicaid HCBS.			
State Rule	**Determination**	**Action Needed**	**Timeline**
For 1915(i) Habilitation Services, home-based habilitation services, community inclusion is addressed in 441—78.27(7)"a"; and for day habilitation services in 441—78.27(8)"a".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5

<table>
<tr><td colspan="4">Summary: Per Iowa administrative Code (IAC) 441- CH 78, page 71 states:

Home-based habilitation services are individualized supportive services provided in the member’s home and community that assist the member to reside in the most integrated setting appropriate to the member’s needs. Services are intended to provide for the daily living needs of the member and shall be available as needed during any 24-hour period. The specific support needs for each member shall be determined necessary by the interdisciplinary team and shall be identified in the member’s comprehensive service plan”.

IAC rules for day habilitation (441-78.27(8)b., page 72) states:

Day Habilitation services shall take place in a nonresidential setting separate from the member’s residence. Services shall not be provided in the member’s home. When the member lives in a residential care facility of more than 16 beds, day habilitation services provided in the facility are not considered to be provided in the member’s home if the services are provided in an area apart from the member’s sleeping accommodations. Day habilitation services provided in RCF setting would require a heightened scrutiny review to assure services provided are integrated into community

See attachment “B” for additional text from the Iowa Administrative Code in support of the state’s determination that the Habilitation rules support the CMS setting regulations.</td></tr>
<tr><td>For Intellectual Disability (ID) Waiver supported employment, respite, and supported community living (SCL) services, standards supporting these requirements are addressed in 441—IAC—77.37(2).</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
</table>

Summary: This IAC rule section identifies 19 value based outcomes that support the rights and dignity of members receiving services. Value based outcomes such as "Consumer have privacy", "Consumer make informed choices about where and with whom they live.", or "Consumers are part of community life and perform varied social roles.", are included. The 19 outcomes assist case managers and services providers to identify what is import to the member and then develop and implements services and supports based on how the outcome is defined by the individual member. All 19 outcomes identify a full spectrum of rights and dignities of members to be identified and supported. The outcomes include 77.37(2) Rights and dignity. Outcome-based standards for rights and dignity are as follows: a. (Outcome 2) Consumers are valued. b. (Outcome 3) Consumers live in positive environments. c. (Outcome 4) Consumers work in positive environments. d. (Outcome 5) Consumers exercise their rights and responsibilities. e. (Outcome 6) Consumers have privacy. f. (Outcome 7) When there is a need, consumers have support to exercise and safeguard their rights. g. (Outcome 8) Consumers decide which personal information is shared and with whom. h. (Outcome 9) Consumers make informed choices about where they work. i. (Outcome 10) Consumers make informed choices on how they spend their free time. j. (Outcome 11) Consumers make informed choices about where and with whom they live. k. (Outcome 12) Consumers choose their daily routine. l. (Outcome 13) Consumers are a part of community life and perform varied social roles. m. (Outcome 14) Consumers have a social network and varied relationships. n. (Outcome 15) Consumers develop and accomplish personal goals. o. (Outcome 16) Management of consumers' money is addressed on an individualized basis. p. (Outcome 17) Consumers maintain good health. q. (Outcome 18) The consumer's living environment is reasonably safe in the consumer's home and community. r. (Outcome 19) The consumer's desire for intimacy is respected and supported. s. (Outcome 20) Consumers have an impact on the services they receive.			
For ID Waiver SCL services, community inclusion is addressed in 441—IAC—78.41(1)"a" and for day habilitation services in 441—IAC—78.41(14)"a".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5

<table>
<tr><td colspan="4">Summary: This IAC rule section identifies that:
78.41(1) Supported community living services. Supported community living services are provided by the provider within the member's home and community, according to the individualized member need as identified in the service plan.
a. Available components of the service are personal and home skills training services, individual advocacy services, community skills training services, personal environment support services, transportation, and treatment services.
Day habilitation services are services that assist or support the member in developing or maintaining life skills and community integration. Services must enable or enhance the member's intellectual functioning, physical and emotional health and development, language and communication development, cognitive functioning, socialization and community integration, functional skill development, behavior management, responsibility and self-direction, daily living activities, self-advocacy skills, or mobility.</td></tr>
<tr><td>For ID Waiver residential-based SCL for children, these are addressed in 441—IAC—77.37(23)"b".</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
<tr><td colspan="4">Summary: This rule section requires a provider to establish standards for the rights and dignity of children that are age-appropriate. The outcomes assist case managers and services providers to identify what is import to the member and then develop and implement services and supports based on how the outcome is defined by the individual member. The standards for rights and dignity include:

2. The agency must have standards for the rights and dignity of children that are age-appropriate. These standards shall include the following:
● Children, their families, and their legal representatives decide what personal information is shared and with whom.
● Children are a part of family and community life and perform varied social roles.
● Children have family connections, a social network, and varied relationships.
● Children develop and accomplish personal goals.
● Children are valued.
● Children live in positive environments.
● Children exercise their rights and responsibilities.
● Children make informed choices about how they spend their free time.
● Children choose their daily routine.</td></tr>
<tr><td>For the ID Waiver supported employment service, opportunities to pursue competitive work in integrated settings is addressed in 441—IAC—78.41(7).</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
</table>

Summary: Individual supported employment services are services provided to, or on behalf of, a member that enable them to obtain and maintain an individual job in competitive employment, customized employment or self-employment in an integrated work setting in the general workforce. The IAC rules identify that individual supported employment services shall take place in integrated work settings. For self-employment, the member's home can be considered an integrated work setting. Employment in the service provider's organization (not including a sheltered workshop or similar type of work setting where members are paid for the production of goods or services) can be considered employment in an integrated work setting in the general workforce if the employment occurs in a work setting where interactions are predominantly with coworkers or business associates who do not have disabilities or with the general public. On May 4, 2016 the state implemented new rules for supported employment for the ID, BI and Habilitation The rules implemented changes to the provider qualifications, service definitions and reimbursement methodologies for HCBS Prevocational and Supported Employment services and will bring HCBS prevocational and employment services into compliance with the definitions and service structure as provided by the Centers for Medicare and Medicaid Services (CMS) in their 2011 bulletin and the 2015 1915 (c) Technical Guide. See attachment "B" for the text of the new SE rules.			
For Brain Injury (BI) Waiver supported employment, behavioral programming, and supported community living (SCL) services, standards supporting these requirements are addressed in 441—IAC—77.39(2).	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5

<table>
<tr><td colspan="4">Summary: This IAC rule section identifies 19 value based outcomes that support the rights and dignity of members receiving services. Value based outcomes such as “Consumer have privacy”, “Consumer make informed choices about where and with whom they live.”, or “Consumers are part of community life and perform varied social roles.”, are included. The 19 outcomes assist case managers and services providers to identify what is import to the member and then develop and implements services and supports based on how the outcome is defined by the individual member. All 19 outcomes identify a full spectrum of rights and dignities of members to be identified and supported. These include:
77.39(2) Rights and dignity. Outcome-based standards for rights and dignity are as follows:
a. (Outcome 2) Consumers are valued.
b. (Outcome 3) Consumers live in positive environments.
c. (Outcome 4) Consumers work in positive environments.
d. (Outcome 5) Consumers exercise their rights and responsibilities.
e. (Outcome 6) Consumers have privacy.
f. (Outcome 7) When there is a need, consumers have support to exercise and safeguard their rights.
g. (Outcome 8) Consumers decide which personal information is shared and with whom.
h. (Outcome 9) Consumers make informed choices about where they work.
i. (Outcome 10) Consumers make informed choices on how they spend their free time.
j. (Outcome 11) Consumers make informed choices about where and with whom they live.
k. (Outcome 12) Consumers choose their daily routine.
l. (Outcome 13) Consumers are a part of community life and perform varied social roles.
m.(Outcome 14) Consumers have a social network and varied relationships.
n. (Outcome 15) Consumers develop and accomplish personal goals.
o. (Outcome 16) Management of consumers’ money is addressed on an individualized basis.
p. (Outcome 17) Consumers maintain good health.
q. (Outcome 18) The consumer’s living environment is reasonably safe in the consumer’s home and community.
r. (Outcome 19) The consumer’s desire for intimacy is respected and supported.
s. (Outcome 20) Consumers have an impact on the services they receive.</td></tr>
<tr><td>For BI Waiver case management services, choice and community inclusion are addressed in 441—IAC—78.43(1)”b”.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
</table>

<table>
<tr><td colspan="4">Summary: 78.41(2) states:
Case management services. Individual case management services means services that assist members who reside in a community setting or are transitioning to a community setting in gaining access to needed medical, social, educational, housing, transportation, vocational, and other appropriate services in order to ensure the health, safety, and welfare of the member.
a. Case management services shall be provided as set forth in rules 441—90.5(249A) and 441—90.8(249A).
b. The service shall be delivered in such a way as to enhance the capabilities of consumers and their families to exercise their rights and responsibilities as citizens in the community. The goal is to enhance the ability of the consumer to exercise choice, make decisions, take risks that are a typical part of life, and fully participate as members of the community.
c. The case manager must develop a relationship with the consumer so that the abilities, needs and desires of the consumer can be clearly identified and communicated and the case manager can help to ensure that the system and specific services are responsive to the needs of the individual consumers.</td></tr>
<tr><td>For BI Waiver SCL services, community inclusion is addressed in 441—IAC—78.43(2)"a".</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
<tr><td colspan="4">Summary: This IAC rule section identifies: that SCL services:
"a. The basic components of the service may include, but are not limited to, personal and home skills training services, individual advocacy services, community skills training services, personal environment support services, transportation, and treatment services.
(1) Personal and home skills training services are activities which assist a member to develop or maintain skills for self-care, self-directedness, and care of the immediate environment.
(2) Individual advocacy is the act or process of representing the member's rights and interests in order to realize the rights to which the member is entitled and to remove barriers to meeting the member's needs.
(3) Community skills training services are activities which assist a member to develop or maintain skills allowing better participation in the community. Services shall focus on the following areas as they apply to the member being served:</td></tr>
<tr><td>For the BI Waiver supported employment service, opportunities to pursue competitive work in integrated settings is addressed in 441—IAC—78.43(4).</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
</table>

Summary: Individual supported employment services are services provided to, or on behalf of, a member that enable them to obtain and maintain an individual job in competitive employment, customized employment or self-employment in an integrated work setting in the general workforce. The IAC rules identify that individual supported employment services shall take place in integrated work settings. For self-employment, the member's home can be considered an integrated work setting. Employment in the service provider's organization (not including a sheltered workshop or similar type of work setting where members are paid for the production of goods or services) can be considered employment in an integrated work setting in the general workforce if the employment occurs in a work setting where interactions are predominantly with coworkers or business associates who do not have disabilities or with the general public. On May 4, 2016 the state implemented new rules for supported employment for the ID, BI and Habilitation The rules implemented changes to the provider qualifications, service definitions and reimbursement methodologies for HCBS Prevocational and Supported Employment services and will bring HCBS prevocational and employment services into compliance with the definitions and service structure as provided by the Centers for Medicare and Medicaid Services (CMS) in their 2011 bulletin and the 2015 1915 (c) Technical Guide. See attachment "B" for the text of the new SE rules.			
For the PD waiver the rules in IAC 441- 77.41(249A) https://www.legis.iowa.gov/docs/ACO/chapter/441.77.pdf address provider qualifications for HCBS PD Waiver services.	Silent	Rule Change (see overall conclusion at end of this section	See section 2.3.5
Summary: IAC Chapter 77 rules address HCBS provider qualifications for each individual HCBS service. HCBS waiver services, like SCL , supported employment (SE), day habilitation, prevocational services, etc., are identified in rule as provided in specific residential or non-residential settings. The rules for these site specific services identify the applicable setting criteria. The services that are available in the PD waiver and identified in IAC 441-77.41(249A) are CDAC, HVM, PERS, SME, Transportation, and CCO. These services are not site specific and do not require or identify specific residential or non-residential settings in the service descriptions. As such, they are identified as being silent in support of being provided in integrated settings. IAC Ch. 78 rules address specific service components and services delivery criteria. CH 441-78.46(249A) for the PD Waiver rules are addressed in this section (2.3.1.1) of the transition plan and identify that are provided to the member in the least restrictive environment.			
For the Children's Mental Health Waiver, inclusion in community life is addressed in 441—IAC—77.46(1)"c".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5

This section of the IAC rules identify that Children's Mental Health providers shall implement outcome-based standards for the rights and dignity of children with serious emotional disturbance. These rights and dignities are identified in CH 77.46(249A) and include: c. Outcome-based standards and quality assurance. (1) Providers shall implement the following outcome-based standards for the rights and dignity of children with serious emotional disturbance: 1. Consumers are valued. 2. Consumers are a part of community life. 3. Consumers develop meaningful goals. 4. Consumers maintain physical and mental health. 5. Consumers are safe. 6. Consumers and their families have an impact on the services received. The outcomes assist case managers and services providers to identify what is important to the member and to develop and implement services and supports based on how the outcome is defined by the individual member.			
For HCBS Habilitation Services supported employment services, opportunities to pursue competitive work in integrated settings is addressed in 441—IAC—78.27(10)"b".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: Individual supported employment services are services provided to, or on behalf of, a member that enable them to obtain and maintain an individual job in competitive employment, customized employment or self-employment in an integrated work setting in the general workforce. The IAC rules identify that individual supported employment services shall take place in integrated work settings. For self-employment, the member's home can be considered an integrated work setting. Employment in the service provider's organization (not including a sheltered workshop or similar type of work setting where members are paid for the production of goods or services) can be considered employment in an integrated work setting in the general workforce if the employment occurs in a work setting where interactions are predominantly with coworkers or business associates who do not have disabilities or with the general public. On May 4, 2016 the state implemented new rules for supported employment for the ID, BI and Habilitation Services. The new rules implemented changes to the provider qualifications, service definitions and reimbursement methodologies for HCBS Prevocational and Supported Employment services and will bring HCBS prevocational and employment services into compliance with the definitions and service structure as provided by the Centers for Medicare and Medicaid Services (CMS) in their 2011 bulletin and the 2015 1915 (c) Technical Guide. See attachment "B" for the text of the new SE rules.			
Federal Requirement: Settings are selected by the individual 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 individual's needs, preferences, and, for residential settings, resources available for room and board.			
State Rule	**Determination**	**Action Needed**	**Timeline**

For 1915(i) Habilitation Services, service plan requirements related to needs, choice, and desired individual outcomes are addressed in 441—IAC—78.27(4)"a".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5

<table>
<tr><td colspan="4">Summary: IAC rules identify that a comprehensive service plan or treatment plan be developed for each member receiving home- and community-based habilitation services based on the member's current assessment and reflect the member's desired individual outcomes. The member works with their interdisciplinary team to identify providers and services.

IAC 441-78.27(1) Definitions., identify the following terms and definitions that the state believes supports the intent of individualized services define for the Habilitation program state:
"Assessment" means the review of the current functioning of the member using the service in regard to the member's situation, needs, strengths, abilities, desires, and goals.
"Case management" means case management services accredited under 441—Chapter 24 and provided according to 441—Chapter 90
"Comprehensive service plan" means an individualized, goal-oriented plan of services written in language understandable by the member using the service and developed collaboratively by the member and the case manager.
"Interdisciplinary team" means a group of persons with varied professional backgrounds who meet with the member to develop a comprehensive service plan to address the member's need for services.
441-78.27(1)a. defines how service plans are developed

CH 90.5(1) defines CM service plan development. This includes:
"The comprehensive assessment shall address all of the member's areas of need, strengths, preferences, and risk factors, considering the member's physical and social environment. A face-to-face reassessment must be conducted at a minimum annually and more frequently if changes occur in the member's condition."
"The case manager shall develop and periodically revise a comprehensive service plan based on the comprehensive assessment, which shall include a crisis intervention plan based on the risk factors identified in the risk assessment portion of the comprehensive assessment. The case manager shall ensure the active participation of the member and work with the member or the member's legally authorized representative and other sources to choose providers and develop the goals"

The state believes that the above rules identify or directly imply the active involvement of the member as part of the interdisciplinary team to be supported in making informed decisions about services and supports received. The comprehensive service plan identifies all needs of the member and identifies services and supports that can be accessed to meet the needs. The service plan looks for all community supports, not just those available through the Habilitation program. The member is afforded choice in the services and supports available to meet their need.

In situations where the rules do not specifically identify the support of members to be in the center of the person centered planning process, the state will modify existing rules to better clarify the role of the member in directing and selecting services and the support they received to fully engage in the member in the person centered planning process.</td></tr>
<tr><td>For the Health and Disability Waiver, service planning based on individual needs and desires is addressed in 441—IAC—83.2(2)"a".</td><td>Conflicts</td><td>Will require IAC rule changes</td><td>3/31/17</td></tr>
</table>

<table>
<tr><td colspan="4"><u>Summary</u>: The rule identifies the development and implementation of the of the members comprehensive service plan. Specifically:

a. The member shall have a service plan approved by the department which is developed by the service worker or targeted case manager identified by the county of residence. This service plan must be completed prior to services provision and annually thereafter. The service worker or targeted case manager shall establish the interdisciplinary team for the member and, with the team, identify the member's need for service based on the member's needs and desires as well as the availability and appropriateness of services, using the following criteria:
(1) This service plan shall be based, in part, on information in the completed Service Worker Comprehensive Assessment, Form 470-5044. Form 470-5044 shall be completed annually. The service worker or targeted case manager shall have a face-to-face visit with the member at least annually.
(2) Service plans for persons aged 20 or under shall be developed to reflect use of all appropriate nonwaiver Medicaid services and so as not to replace or duplicate those services. The service worker or targeted case manager shall list all nonwaiver Medicaid services in the service plan.
(3) Service plans for persons aged 20 or under that include home health or nursing services shall not be approved until a home health agency has made a request to cover the member's service needs through nonwaiver Medicaid services.

The above rule does not fully support person centered planning and the involvement of the member in the person centered planning process. Rules changes are needed to enhance and support the member to be active in directing and selecting services to meet their individual needs.</td></tr>
<tr><td>For the Elderly Waiver, service planning based on individual needs and desires is addressed in 441—IAC—83.22(2)"b".</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
</table>

Summary: Identifies the role of the IDT and how to identify the need for services. specifically these rules state:
Content of service plan. The service plan shall include the following information based on the consumer's current assessment and service needs:
(1) Observable or measurable individual goals.
(2) Interventions and supports needed to meet those goals.
(3) Incremental action steps, as appropriate.
(4) The names of staff, people, businesses, or organizations responsible for carrying out the interventions or supports.
(5) The desired individual outcomes.
(6) The identified activities to encourage the consumer to make choices, to experience a sense of achievement, and to modify or continue participation in the service plan.
(7) Description of any restrictions on the consumer's rights, including the need for the restriction and a plan to restore the rights. For this purpose, rights include maintenance of personal funds and self-administration of medications.
(8) A list of all Medicaid and non-Medicaid services that the consumer received at the time of waiver program enrollment that includes:
1. The name of the service provider responsible for providing the service.
2. The funding source for the service.
3. The amount of service that the consumer is to receive.
(9) Indication of whether the consumer has elected the consumer choice option and, if so, the independent support broker and the financial management service that the consumer has selected.
(10) The determination that the services authorized in the service plan are the least costly
(11) A plan for emergencies that identifies the supports available to the consumer in situations for which no approved service plan exists and which, if not addressed, may result in injury or harm to the consumer or other persons or in significant amounts of property damage. Emergency plans shall include:
1. The consumer's risk assessment and the health and safety issues identified by the consumer's interdisciplinary team.
2. The emergency backup support and crisis response system identified by the interdisciplinary team.
3. Emergency, backup staff designated by providers for applicable services.

The state believes that the above rules identify or directly imply the active involvement of the member as part of the interdisciplinary team to be supported in making informed decisions about services and supports received. The comprehensive service plan identifies at all needs of the member and identifies services and supports that can be accessed to meet the needs. The service plan looks for all community supports, not just those available through the Habilitation program. The member is afforded choice in the services and supports available to meet their need.

In situations where the rules do not specifically identify the support of members to be in the center of the person centered planning process, the state will modify existing rules to better clarify the role of the member in directing and selecting services and the support they received to fully engage in the member in the person centered planning process.

<table>
<tr><td>For the Intellectual Disability Waiver, service planning based on individual needs and desires is addressed in 441—IAC—83.61(2)”g” and 441—IAC—83.67(1).</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
<tr><td colspan="4">Summary: these rules state:
g. At initial enrollment, the case manager shall establish an interdisciplinary team for each applicant and, with the team, identify the applicant’s need for service based on the applicant’s needs and desires as well as the availability and appropriateness of services. The Medicaid case manager shall complete an annual review thereafter. The following criteria shall be used for the initial and ongoing identification of need for services:
(1) The assessment shall be based on the results of the most recent SIS (Supports Intensity Scale) assessment or of the SIS contractor’s off-year review.
(2) Service plans must be developed or reviewed to reflect use of all appropriate nonwaiver Medicaid services so as not to replace or duplicate those services.

83.67(1) Development. The service plan shall be developed by the interdisciplinary team, which includes the consumer, and, if appropriate, the legal representative, consumer’s family, case manager or service worker, service providers, and others directly involved.

The member is considered an active member on the IDT. The services and supports received are based on the member’s wants, needs and desires.</td></tr>
<tr><td>For the Brain Injury Waiver, service planning based on individual needs and desires is addressed in 441—IAC—83.82(2)”a” and 441—IAC—83.87.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
<tr><td colspan="4">Summary: the rule states:
a. The applicant shall have a service plan approved by the department that is developed by the certified case manager for this waiver as identified by the county of residence. This must be completed before services provision and annually thereafter. The case manager shall establish the interdisciplinary team for the applicant and, with the team, identify the applicant’s need for service based on the applicant’s needs and desires as well as the availability and appropriateness of services using the following criteria

The member is considered an active member on the IDT. The services and supports received are based on the member’s wants needs and desires.</td></tr>
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<tr><td>For Health and Disability Waiver interim medical monitoring and treatment (IMMT) services, 441—IAC—78.34(8)”d”(4) limits the settings in which the service may be provided.</td><td>Possible conflict</td><td>Rule will be amended to remove settings restrictions.</td><td>See section 2.3.5</td></tr>
<tr><td colspan="4">Summary: This rule allows IMMT services to be provided in residential care facilities (RCF) or adult day care settings as well as other community integrated settings. These two setting will require the approval of a heightened scrutiny review prior allowing service.</td></tr>
<tr><td>For Intellectual Disability Waiver interim medical monitoring and treatment (IMMT) services, 441—IAC—78.41(9)”d”(4) limits the settings in which the service may be provided.</td><td>Possible conflict</td><td>Rule will be amended to remove settings restrictions.</td><td>See section 2.3.5</td></tr>
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<tr><td>For Brain Injury Waiver interim medical monitoring and treatment (IMMT) services, 441—IAC—78.43(14)”d”(4) limits the settings in which the service may be provided.</td><td>Possible conflict</td><td>Rule will be amended to remove settings restrictions.</td><td>See section 2.3.5</td></tr>
<tr><td colspan="4">Summary: This rule allows IMMT services to be provided in residential care facilities (RCF) or adult day care settings as well as other community integrated settings. These two setting will require the approval of a heightened scrutiny review prior allowing service.</td></tr>
<tr><td colspan="4">Federal Requirement: Settings ensure an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.</td></tr>
<tr><td>State Rule</td><td>Determination</td><td>Action Needed</td><td>Timeline</td></tr>
<tr><td>For 1915(i) Habilitation Services, restraints and restrictions are addressed in 441—IAC—77.25(4) and 441—IAC—78.27(4)”c”.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
<tr><td colspan="4">Summary: 77.25(4) Restraint, restriction, and behavioral intervention. The provider shall have in place a system for the review, approval, and implementation of ethical, safe, humane, and efficient behavioral intervention procedures. All members receiving home- and community-based habilitation services shall be afforded the protections</td></tr>
<tr><td>For all HCBS members receiving Targeted Case management or Community-Based Case Management through an MCO, freedom from restrictions is addressed in 441—IAC—90.5(4).</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
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Summary: This rule identifies: 90.5(4) Rights restrictions. Member rights may be restricted only with the consent of the member or the member's legally authorized representative and only if the service plan includes: a. Documentation of why there is a need for the restriction; b. A plan to restore those rights or a reason why restoration is not necessary or appropriate; and c. Documentation that periodic evaluations of the restriction are conducted to determine continued need.			
For Health and Disability Waiver, requirements for services to be provided in the least restrictive environment are addressed in 441—IAC—78.34(14)"b".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: 78.34(14)b. All services provided under the waiver must be delivered in the least restrictive environment possible and in conformity with the member's service plan.			
For Elderly Waiver, requirements for services to be provided in the least restrictive environment are addressed in 441—IAC—78.37(19)"b".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: This rule identifies the general service standards for the EW. The rules state: 78.37(19) General service standards. All elderly waiver services must be provided in accordance with the following standards: b. All services provided under the waiver must be delivered in the least restrictive environment possible and in conformity with the member's service plan.			
For AIDS/HIV Waiver, requirements for services to be provided in the least restrictive environment are addressed in 441—IAC—78.38(10)"b".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: 78.38(10) General service standards. All AIDS/HIV waiver services must be provided in accordance with the following standards: b. All services provided under the waiver must be delivered in the least restrictive environment possible and in conformity with the member's service plan.			
For Intellectual Disability Waiver, requirements for services to be provided in the least restrictive environment are addressed in 441—IAC—78.41(16)"b".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5

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<tr><td colspan="4">Summary: 78.41(16) General service standards. All intellectual disability waiver services must be provided in accordance with the following standards:

b. All services provided under the waiver must be delivered in the least restrictive environment possible and in conformity with the member’s service plan.</td></tr>
<tr><td>For the Brain Injury Waiver, requirements for services to be provided in the least restrictive environment are addressed in 441—IAC—78.43(16)”b”.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
<tr><td colspan="4">Summary: 78.43(16) General service standards. All brain injury waiver services must be provided in accordance with the following standards:
b. All services provided under the waiver must be delivered in the least restrictive environment possible and in conformity with the member’s service plan.</td></tr>
<tr><td>For the Physical Disability Waiver, requirements for services to be provided in the least restrictive environment are addressed in 441—IAC—78.46(7)”b”.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
<tr><td colspan="4">Summary: 78.46(7) General service standards. All physical disability waiver services must be provided in accordance with the following standards:

b. All services provided under the waiver must be delivered in the least restrictive environment possible and in conformity with the member’s service plan</td></tr>
<tr><td>For the Children’s Mental Health Waiver, requirements for services to be provided in the least restrictive environment are addressed in 441—IAC—78.52(1)”b”.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
<tr><td colspan="4">Summary: 78.52(1) General service standards. All children’s mental health waiver services must be provided in accordance with the following standards:

b. All services provided under the waiver must be delivered in the least restrictive environment possible and in conformity with the member’s service plan.</td></tr>
<tr><td>For the Elderly Waiver, restrictions of rights are addressed in 441—IAC—83.22(2)”d”.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
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<tr><td colspan="4"><u>Summary</u>: d. Content of service plan. The service plan shall include the following information based on the consumer’s current assessment and service needs:
(1) Observable or measurable individual goals.
(2) Interventions and supports needed to meet those goals.
(3) Incremental action steps, as appropriate.
(4) The names of staff, people, businesses, or organizations responsible for carrying out the interventions or supports.
(5) The desired individual outcomes.
6) The identified activities to encourage the consumer to make choices, to experience a sense of achievement, and to modify or continue participation in the service plan.
(7) Description of any restrictions on the consumer’s rights, including the need for the restriction and a plan to restore the rights. For this purpose, rights include maintenance of personal funds and self-administration of medications.</td></tr>
<tr><td>For the Intellectual Disability Waiver, restrictions of rights are addressed in 441—IAC—83.67(4)”c”.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
<tr><td colspan="4"><u>Summary</u>: 83.67(4) Information in plan. The plan shall be in accordance with 441—subrule 24.4(3) and shall additionally include the following information to assist in evaluating the program:
a. A listing of all services received by a consumer at the time of waiver program enrollment.
b. For supported community living:
(1) The consumer’s living environment at the time of waiver enrollment.
(2) The number of hours per day of on-site staff supervision needed by the consumer.
(3) The number of other waiver consumers who will live with the consumer in the living unit.
c. An identification and justification of any restriction of the consumer’s rights including, but not limited to:
(1) Maintenance of personal funds.
(2) Self-administration of medications.
d. The name of the service provider responsible for providing each service.
e. The service funding source.
f. The amount of the service to be received by the consumer.
g. Whether the consumer has elected the consumer choices option and, if so:
(1) The independent support broker selected by the consumer; and
(2) The financial management service selected by the consumer.</td></tr>
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Summary: 83.87(1) Information in plan. The plan shall be in accordance with 441—subrule 24.4(3) and shall additionally include the following information to assist in evaluating the program: a. A listing of all services received by a consumer at the time of waiver program enrollment. b. For supported community living: (1) The consumer's living environment at the time of waiver enrollment. (2) The number of hours per day of on-site staff supervision needed by the consumer. (3) The number of other waiver consumers who will live with the consumer in the living unit. c. An identification and justification of any restriction of the consumer's rights including, but not limited to: (1) Maintenance of personal funds. (2) Self-administration of medications. d. The name of the service provider responsible for providing each service. e. The service funding source. f. The amount of the service to be received by the consumer. g. Whether the consumer has elected the consumer choices option and, if so: (1) The independent support broker selected by the consumer; and (2) The financial management service selected by the consumer.			
Federal Requirement: Settings 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.			
State Rule	**Determination**	**Action Needed**	**Timeline**
For Health and Disability Waiver respite services, individual preferences are addressed in 441—IAC—77.30(5)"b", and use of settings used by the general public is addressed in 441—IAC—77.30(5)"d".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: b. Respite providers shall meet the following conditions: (1) Providers shall maintain the following information that shall be updated at least annually: 1. The consumer's name, birth date, age, and address and the telephone number of each parent, guardian or primary caregiver. 2. An emergency medical care release. 3. Emergency contact telephone numbers such as the number of the consumer's physician and the parents, guardian, or primary caregiver. 4. The consumer's medical issues, including allergies. 5. The consumer's daily schedule which includes the consumer's preferences in activities or foods or any other special concerns d. Respite provided outside the consumer's home or the facility covered by the licensure, certification, accreditation, or contract must be approved by the parent, guardian or primary caregiver and the interdisciplinary team and must be consistent with the way the location is used by the general public. Respite in these locations shall not exceed 72 continuous hours.			

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<tr><td>For Elderly Waiver respite services, individual preferences are addressed in 441—IAC—77.33(6)”b”, and use of settings used by the general public is addressed in 441—IAC—77.33(6)”d”.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
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3. Emergency contact telephone numbers such as the number of the consumer’s physician and the parents, guardian, or primary caregiver.
4. The consumer’s medical issues, including allergies.
5. The consumer’s daily schedule which includes the consumer’s preferences in activities or foods or any other special concerns

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<tr><td>For AIDS/HIV Waiver respite services, individual preferences are addressed in 441—IAC—77.34(5)”b”, and use of settings used by the general public is addressed in 441—IAC—77.34(5)”d”.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
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<tr><td>For Intellectual Disability Waiver respite services, individual preferences are addressed in 441—IAC—77.37(15)”b”, and use of settings used by the general public is addressed in 441—IAC—77.37(15)”d”.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
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3. Emergency contact telephone numbers such as the number of the consumer’s physician and the parents, guardian, or primary caregiver.
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<tr><td>For Brain Injury Waiver respite services, individual preferences are addressed in 441—IAC—77.39(14)”b”, and use of settings used by the general public is addressed in 441—IAC—77.39(14)”d”.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
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<tr><td>For Children’s Mental Health Waiver respite services, individual preferences are addressed in 441—IAC—77.46(5)”c”, and use of settings used by the general public is addressed in 441—IAC—77.46(5)”i”.</td><td>The majority of rules supports.</td><td>Additional rule language needed to clarify CMS setting regulations</td><td>See section 2.3.5</td></tr>
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For Health and Disability Waiver consumer choices option services, individual choice, autonomy, and opportunities for community living and inclusion are addressed in 441—IAC—78.34(13).	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
The Consumer Choices Option (CCO) is the state's self-direction program available to members that access HCBS HD waiver services. As a self-direction program, the member has both budget and employer authority giving them total control over hiring and firing staff, scheduling needed supports and services, setting employee wages and approving payment for services.			
For Elderly Waiver consumer choices option services, individual choice, autonomy, and opportunities for community living and inclusion are addressed in 441—IAC—78.37(16).	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
The Consumer Choices Option (CCO) is the state's self-direction program available to members that access HCBS EW waiver services. As a self-direction program, the member has both budget and employer authority giving them total control over hiring and firing staff, scheduling needed supports and services, setting employee wages and approving payment for services.			
For AIDS/HIV Waiver consumer choices option services, individual choice, autonomy, and opportunities for community living and inclusion are addressed in 441—IAC—78.38(9).	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
The Consumer Choices Option (CCO) is the state's self-direction program available to members that access HCBS AIDS/HIV waiver services. As a self-direction program, the member has both budget and employer authority giving them total control over hiring and firing staff, scheduling needed supports and services, setting employee wages and approving payment for services.			
For Intellectual Disability Waiver consumer choices option services, individual choice, autonomy, and opportunities for community living and inclusion are addressed in 441—IAC—78.41(15).	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5

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For Brain Injury Waiver consumer choices option services, individual choice, autonomy, and opportunities for community living and inclusion are addressed in 441—IAC—78.43(15).	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
The Consumer Choices Option (CCO) is the state's self-direction program available to members that access HCBS BI waiver services. As a self-direction program, the member has both budget and employer authority giving them total control over hiring and firing staff, scheduling needed supports and services, setting employee wages and approving payment for services.			
For Physical Disability Waiver consumer choices option services, individual choice, autonomy, and opportunities for community living and inclusion are addressed in 441—IAC—78.46(6).	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
The Consumer Choices Option (CCO) is the state's self-direction program available to members that access HCBS PD waiver services. As a self-direction program, the member has both budget and employer authority giving them total control over hiring and firing staff, scheduling needed supports and services, setting employee wages and approving payment for services.			
Federal Requirement: Settings facilitate individual choice regarding services and supports, and who provides them.			
State Rule	**Determination**	**Action Needed**	**Timeline**
For 1915(i) Habilitation Services, individual choice in services and providers is addressed in 441—IAC—78.27(4)"a".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: Rules support that the member's service plan provides individualized, planned, and appropriate services that are developed with the member in collaboration with an interdisciplinary team, as appropriate			
For Health and Disability Waiver consumer directed attendant care (CDAC) services, individual choice in services and providers is addressed in 441—IAC—78.34(7)"a".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5

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a. Service planning.
(1) The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall:
1. Select the individual or agency that will provide the components of the attendant care services.
2. Determine with the selected provider what components of attendant care services the provider shall perform, subject to confirmation by the service worker or case manager that those components are consistent with the assessment and are authorized covered services.
3. Complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, to indicate the frequency, scope, and duration of services (a description of each service component and the time agreed on for that component). The case manager or service worker and provider shall also sign the agreement.
4. Submit the completed agreement to the service worker or case manager. The agreement shall be part of the member’s service plan and shall be kept in the member’s records, in the provider’s records, and in the service worker’s or case manager’s records. Any service component that is not listed in the agreement shall not be payable.</td></tr>
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(1) The member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall:
1. Select the individual or agency that will provide the components of the attendant care services.
2. Determine with the selected provider what components of attendant care services the provider shall perform, subject to confirmation by the service worker or case manager that those components are consistent with the assessment and are authorized covered services.
3. Complete, sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, to indicate the frequency, scope, and duration of services (a description of each service component and the time agreed on for that component). The case manager or service worker and provider shall also sign the agreement.
4. Submit the completed agreement to the service worker or case manager. The agreement shall be part of the member’s service plan and shall be kept in the member’s records, in the provider’s records, and in the service worker’s or case manager’s records. Any service component that is not listed in the agreement shall not be payable..</td></tr>
</table>

For Intellectual Disability Waiver supported employment, respite, and supported community living services, choice in services and providers is addressed in 441—IAC—77.37(2)"h" and "s". For ID Waiver residential-based SCL for children, these are addressed in 441—IAC—77.37(23)"d".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: Individual outcomes in this rule support member choice and input in where they work and the services they receive See outcome based standards for rights and dignity rules referenced above			
For Brain Injury Waiver supported employment, behavioral programming, and supported community living services, choice in services and providers is addressed in 441—IAC—77.39(2)"h" and "s".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: Individual outcomes in this rule support member choice and input in where they work and the services they receive See outcome based standards for rights and dignity rules referenced above			
For the Children's Mental Health Waiver, this is addressed in 441—IAC—77.46(1)"c".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: Individual outcomes in this rule support member choice and input in the services they receive. See individual outcomes, above			
For the Elderly Waiver, choice and participation in service planning are addressed in 441—IAC—83.22(2)"d".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: Rules identify the person centered service planning process requirements for the elderly Waive program. See above			
For all HCBS members receiving Targeted Case management or Community-Based Case Management through an MCO, active participation of the member in service planning including choice of providers, is addressed in 441—IAC—90.5(1)"b".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: Rules identify the person centered service planning process requirements for the targeted case manager and community based case manager. See 90.5(1)b. service plan rules above			
Federal Requirement: In provider-owned or controlled residential settings, the setting is a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.			
State Rule	**Determination**	**Action Needed**	**Timeline**

For the Intellectual Disability Waiver, 441—IAC—77.37(3) requires a contract for residential services, but does not specify that it must have protections equal to landlord tenant laws. Residential services are also provided through the Brain Injury Waiver and the Habilitation Services program, which do not have a requirement of this type.	Possible conflict	Rules will be amended to clarify.	See section 2.3.5
The ID waiver contracts with members states: 77.37(3) Contracts with consumers. The provider shall have written procedures which provide for the establishment of an agreement between the consumer and the provider. a. The agreement shall define the responsibilities of the provider and the consumer, the rights of the consumer, the services to be provided to the consumer by the provider, all room and board and copay fees to be charged to the consumer and the sources of payment. b. Contracts shall be reviewed at least annually. The BI and Habilitation programs also provide residential services that may be provided in a provider owned or controlled setting. Rules will be promulgated to mirror the ID waiver provider contract requirements.			
Federal Requirement: In provider-owned or controlled residential settings, each individual has privacy in their sleeping or living unit.			
State Rule	**Determination**	**Action Needed**	**Timeline**
For Intellectual Disability Waiver supported employment, respite, and supported community living services, this is addressed in 441—IAC—77.37(2)"e" and "r".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: Individual outcomes in this rule support member choice and input in areas pf personal privacy and intimacy in their lives. See outcome based standards for rights and dignity rules referenced above			
For Brain Injury Waiver supported employment, behavioral programming, and supported community living services, this is addressed in 441—IAC—77.39(2)"e" and "r".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: Individual outcomes in this rule support member choice and input in areas of personal privacy and intimacy in their lives.			
Federal Requirement: In provider-owned or controlled residential settings, units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.			
State Rule	**Determination**	**Action Needed**	**Timeline**
No applicable rule found.	Silent	Rules will be amended to add this requirement.	See section 2.3.5

Summary: Rules currently do not address lockable doors in a member's living unit. Rules will be promulgated to address the lockability of living units doors, both exterior doors and to individual sleeping unit,			
Federal Requirement: In provider-owned or controlled residential settings individuals sharing units have a choice of roommates.			
State Rule	**Determination**	**Action Needed**	**Timeline**
For Intellectual Disability Waiver supported employment, respite, and supported community living services, this is addressed in 441—IAC—77.37(2)"j".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: The Individual outcome in this rule supports a member's choice in where and with whom they live. See outcome based standards for rights and dignity rules referenced above			
For Brain Injury Waiver supported employment, behavioral programming, and supported community living services, this is addressed in 441—IAC—77.39(2)"j".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: The Individual outcome in this rule supports a member's choice in where and with whom they live. See outcome based standards for rights and dignity rules referenced above			
Federal Requirement: In provider-owned or controlled residential settings, individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.			
State Rule	**Determination**	**Action Needed**	**Timeline**
For any HCBS service provided in a residential care facility, 441—IAC—54.4(4) states that a facility "may" allow residents to provide their own furnishings.	Possibly Conflicts	Rule will be amended to explicitly allow residents to furnish and decorate their units.	See section 2.3.5
Summary: Facility rules state that "it is the responsibility of the facility to completely furnish the member's room without additional charge. When the member wishes to provide some item or items of room furnishing, the facility may grant the request". This rule does not directly limit a member's freedom to furnish and decorate their sleeping or living units. Providers of facility services have the ability to establish policies and procedures and work with a member to give them choice how their sleeping and living space is decorated.			
Federal Requirement: In provider-owned or controlled residential settings individuals have the freedom and support to control their schedules and activities and have access to food any time.			
State Rule	**Determination**	**Action Needed**	**Timeline**
For Intellectual Disability Waiver supported employment, respite, and supported community living services, this is addressed in 441—IAC—77.37(2)"i" and "k". For ID Waiver residential-based SCL for children, these are addressed in 441—IAC—77.37(23)"b".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5

Summary: Individual outcomes in this rule support member choice and input in how they spend their free time and choosing their daily routine. See outcome based standards for rights and dignity rules referenced above			
For Brain Injury Waiver supported employment, behavioral programming, and supported community living services, this is addressed in 441—IAC—77.39(2)"i" and "k".	The majority of rules supports.	Additional rule language needed to clarify CMS setting regulations	See section 2.3.5
Summary: Individual outcomes in this rule support member choice and input in areas pf personal privacy and intimacy in their lives. See outcome based standards for rights and dignity rules referenced above			
Federal Requirement: In provider-owned or controlled residential settings individuals may have visitors of their choosing at any time.			
State Rule	**Determination**	**Action Needed**	**Timeline**
No applicable rule found.	Silent	Rules will be amended to add this requirement.	See section 2.3.5
Summary: The IAC rules do not specifically address the time of day when visitors are allowed in provider owned or controlled environments. Since the rules are silent, it is up to the each provider to develop policy and procedures around visiting times within the member's home.			
Federal Requirement: In provider-owned or controlled residential settings the setting is physically accessible to the individual.			
State Rule	**Determination**	**Action Needed**	**Timeline**
No applicable rule found.	Silent	Rules will be amended to add this requirement.	See section 2.3.5
Summary: The rules applicable for provider owned or controlled settings do not specifically address the need for accessibility. Member do have choice in where the live and with whom they live. Members have the ability to move to different locations that better meet their needs if they choose.			

Overall conclusions: The state's systematic assessment of the Iowa Administrative Code (IAC) rules included a review and analysis of all applicable rules for service delivery, provider qualifications, and locations and settings where HCBS services are provided. The state's analysis found the majority of the IAC rules support a member's full access and inclusion in community settings, choice in where they live and the supports they receive, and their right to live, work and recreate within the communities they choose.

The analysis of the rules was conducted by the state's subject matter experts (SME) in HCBS waiver and Habilitation program services. The SMEs not only used their expertise in understanding the policy as written into the Iowa Administrative Code rules, but also their knowledge and historical involvement with the development and implementation of HCBS waiver and Habilitation services . This knowledge and expertise includes:

- Training and technical assistance provided to HCBS and Habilitation service providers and case managers around community integration, person centered planning and individual value based outcomes.
- Training provided to case managers through statewide, regional, and individual provider training and technical assistance that address the implementation of HCBS and Habilitation services.
- Consultation and statewide training provided by Michael Smull on Essential Lifestyle Planning and Derrick Dufresne on Five-Star Quality
- Ongoing HCBS and Habilitation quality assurance activities and subsequent corrective actions required to come into compliance with IAC rules
- Case Management quality assurance oversight.
- Program integrity activity findings.
- Development and implementation of new services like consumer directed attendant care (CDAC) and Self-direction Services (CCO)

Iowa has a long history of providing supports and services to HCBS and Habilitation members that allows members to choose where and with whom they live. Prior to July 1, 1992 when the ID waive began, HCBS services were only provided in the member's home or within the greater community in which they lived. With the creation of the ID Waiver in 1992 (and later the BI Waiver) provision of services in provider owned and controlled settings began. At that time the state took extensive measures to assure that services were not provided in licensed environments. Residential services were provided in the member's home, family home, or in small unlicensed home environments serving 3-4 members that were fully integrated into the local community. Supports and services were provided in the living environment where the member chose to live. Waiver service agreements were established and were separate from lease agreements, allowing a member the freedom to move to a setting of their choice or choosing to live with different roommates knowing that their assessed service needs would be provided in any community based setting of their choice.

The rules promulgated in the IAC rules reflect the department's intent that HCBS and Habilitation services are provided to members in integrated community based settings and allow the member to choose supports and services to remain living in their home and community. As identified in the analysis conducted in section 2.3.1, the state believes that the majority of the rules currently in the IAC support the CMS settings regulations as identified above.

With this in mind, the rules analysis identified possible conflicts with the new federal settings regulations. The identified conflicts will require rules changes to address the conflict to come into compliance. For example, IAC chapter 78 rules that define waiver services allows Interim Medical Monitoring and Treatment (IMMT) services to be provided in residential care facilities or adult day care settings as well as other community integrated settings. IMMT services that are provided in these two setting will require heightened scrutiny review and approval prior allowing service provision in those settings. Rules will be promulgated to reflect the need for site approval.

The rules analysis also identified the need for additional rule development regarding landlord tenant agreements in provider owned or controlled residential environments. The ID waiver is the only waiver that requires that a provider establish a contract with a member. The contract defines the responsibilities of the provider and the member, the rights of the member, the services to be

provided to the member by the provider, and all room, board, and copay fees to be charged to the member and the sources of payment. The contract is separate from any lease or rental agreement that may be in place. The IAC rules do not address the need for a lease agreement between a member and the provider when the provider owns or has a vested interest in the property where the member resides. The state has identified the need to add the contract language that is currently required in the ID waiver to be included in the BI waiver. The state will also promulgate rules applicable to provider owned or controlled settings to require lease agreements with members. The lease shall meet all landlord tenant laws of state, county, city or other designated entity in Iowa. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement will be required providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

The rules analysis identified additional conflicts when services are provided in provider owned and controlled environments that will require additional rule changes or modification. The first issue is lockable doors. The IAC rules for HCBS services are silent on members having lockable doors to living and sleeping units. As such, rules will be promulgated to assure that members have the ability to lock entrance doors to their home or to their individual sleeping units with appropriate staff having access to keys to the locks as needed to assure member health and safety.

The second issue in provider owned or a controlled setting is the ability to have visitors of their choosing at any time. The current IAC rules do not limit or prevent a member from having visitors at any time of the day. As such, the ability to limit visiting times may be determined by individual provider policies and procedures or the individual decisions of provider staff working within the home. Rules will be promulgated to clarify that members may entertain visitors of their choosing at any time of the day or night.

A third issue in provider owned or controlled settings that the IAC rules remain silent involve the assurance that the residential setting is physically accessible to the members living in that environment. Rules will be promulgated to assure that all provider owned and controlled settings meet the physical accessibility needs of the members living in the setting.

The state's analysis of CH 77 rules for the PD Waiver and the CH 79 rules were assessed as being silent on the HCBS settings. The Ch. 77 rules are addressed and summarized above. CH 79 of the IAC addresses provider rate development, rate reimbursement, and cost reporting methodologies. These rules do not have an impact the implementation of CMS settings rules. As such, they are silent on the settings in which services are provided and no change to the CH 79 rules are needed.

As identified in the analysis of the IAC rules in section 2.3.1 above, the state believes that the majority of the HCBS waiver and Habilitation program rules support the CMS settings and person centered planning requirements. The state recognizes that many of Iowa's current HCBS and Habilitation program rules have been developed over many years and may not directly or comprehensively support the language of the new CMS settings and person centered planning regulations In order to support the CMS settings regulation, Iowa has drafted initial rule changes to provide direction to all HCBS services and service providers within the state. The initial rules were drafted to address the CMS settings and are currently being reviewed by the Iowa Attorney General's office. Through additional CMS review and feedback of Iowa's recently submitted drafts of the statewide transition plan, the state has identified a need for additional rule changes that were not included with the initial draft of the HCBS rules. In addition to the above service specific rules changes, the state will make the following rule changes to each chapter applicable to the HCBS waivers and the Habilitation program in the Iowa Administrative Code to fully comport with CMS regulations. By making these changes, all rules for HCBS services and service providers will fully comport with the HCBS settings and person centered planning regulations. The following rule changes will be made:

1. Provider qualifications rules in IAC 441- Ch. 77 will include criteria for services that are provided in provider owned and controlled settings

2. Service definition rules in IAC 441- CH 78 will include the HCBS final rules for setting requirements:
    - The setting is integrated in and supports full access of individuals receiving Medicaid 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 individuals not receiving Medicaid HCBS.
    - 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. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
    - The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
    - 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.
    - Facilitates individual choice regarding services and supports, and who provides them.
    - The unit or dwelling is a specific physical 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 landlord/tenant law of the State, county, city, or other designated entity. 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 the jurisdiction's landlord/tenant law.
    - Each individual has privacy in their sleeping or living unit.
    - Units have entrance doors lockable by the individuals, with only appropriate staff having keys.
    - Individuals sharing units have a choice of roommates in that setting.
    - Individuals have freedom to furnish and decorate their sleeping and living areas within the lease or other agreement.
    - Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
    - Individuals are able to have visitors of their choosing at any time.
    - The setting is physically accessible to the individual.

3. Modifications to provider-owned settings requirements:
    - The requirements must be documented in the person-centered service plan in order to modify any of the criteria.

- The person-centered service plan be reviewed, and revised upon reassessment of function need, at least every 12 months, when the individual's circumstances or needs change significantly, or at the request of the individual.
- Identify a specific and individualized assessed need.
- Document the positive interventions and supports used prior to any modifications to the person centered service plan.
- Document less intrusive methods of meeting the need that have been tried but did not work.
- Include a clear description of the condition that is directly proportionate to the specific assessed need.
- Include a regular collection and review of data to measure the ongoing effectiveness of the modification.
- Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- Include informed consent of the individual.

4. Home and community-based settings do not include the following:
   - A nursing facility;
   - An institution for mental diseases;
   - An intermediate care facility for individuals with intellectual disabilities;
   - A hospital; or
   - Any other locations that have qualities of an institutional setting, as determined by the Secretary. 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 individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary 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.

IAC 441- CH 90 will include criteria to assure person centered planning concepts of:

- The member directing services
- Supportive decision making
- Conflict of interest and problem solving
- Making informed choices, and
- Having full access to the community and the resources.

To address these additional changes, remediation activities and timelines for rule promulgation have been extended from previously submitted STP drafts. Section 2.3.5 of this transition plan identifies the updated timelines. Each of the HCBS and Habilitation rules in the Iowa Administrative Code will be updated to clearly identify and reflect the CMS regulations for integrated settings and person centered planning.

Licensed Residential Facilities

For licensed facilities in which HCBS may be provided, the following survey and certification agency rules were reviewed. These rules are not under the purview of the Iowa Medicaid program and as such IME cannot directly make changes to these rules. The IME will initiate contact and consult with the Iowa Department of Inspections and Appeals (DIA), the entity that is responsible policy and oversight of residential care facilities and other licensed settings. The IME will provide education and technical assistance to DIA with regards to the CMS settings regulations and how to address any licensing rules that that are in conflict with CMS HCBS settings. The results shown here indicate whether the DIA rule supported the federal regulations, conflicted with the federal regulations, or was silent in respect to the regulations.

Survey and Certification Administrative Rules Summary of Results	
Rule	**Result**
481—IAC—57: Residential Care Facilities	Supports: rights to privacy, resident choice in service planning, choice in daily activities. Possible conflicts: discharge process may not offer protections equivalent to landlord tenant law, choice of roommate may be limited in certain situations, access to food at any time may be limited, access to visitors may be limited, daily schedules may be routinized.
481—IAC—62: Residential Care Facilities for Persons with Mental Illness	Supports: service plan based on individual needs and preferences, services in least restrictive environment. Possible conflicts: discharge process may not offer protections equivalent to landlord tenant law, choice of roommate may be limited in certain situations, access to food at any time may be limited, access to visitors may be limited, daily schedules may be routinized.
481—IAC—63: Residential Care Facilities for the Intellectually Disabled	Supports: service plan based on individual needs and preferences, services in least restrictive environment. Possible conflicts: discharge process may not offer protections equivalent to landlord tenant law, choice of roommate may be limited in certain situations, access to food at any time may be limited, access to visitors may be limited, daily schedules may be routinized.
481—IAC—69: Assisted Living Programs	Supports: Occupancy agreement must conform to landlord tenant law, service plan based on individual needs and preferences, managed risk policies uphold autonomy, lockable doors on each unit.
481—IAC—70: Adult Day Services	Supports: Service planning process is individualized to the

	assessed needs the member. Activities are planned based on the needs identified in a member's service plan and members are afforded choice in participation of program activities. Possible conflicts: ADC rules are either non-specific or silent on access to food, and use of community resources in service programming.

Overall Conclusions: The IME does not have authority over the rules that oversee and govern licensed facilities in Iowa. That responsibility is with the Department of Inspections and Appeals. As such, the IME does not have the authority to promulgate rules for settings that require licensure. The IME will initiate and work with DIA through the provision of education and technical assistance regarding the need for rule change to meet the CMS settings criteria in licensed facilities. The HCBS Quality Oversight Unit will also work with DIA licensed providers, through the use of the HCBS provider self-assessment process and the heightened scrutiny review of the settings, to assure that members receive services in appropriate settings. Timeline for working with DIA is included in section 2.3.5 of the STP

2.3.1.2 Policy Manuals

The HCBS provider manuals are maintained and updated by the Iowa Medicaid Enterprise. Provider manuals were updated in August 2014 to include the CMS residential setting criteria. Day Habilitation and prevocational services were updated to include the need for service provision in integrated community settings.

Provider manuals reflect the current rules that have been adopted and included in the Iowa Administrative Code. Updates occur when a change in the IAC rules have been promulgated. The rule change process in Iowa requires that proposed rules go through rigorous six month review prior to being published in the IAC. After being written by the department's subject matter expert, the proposed rules are reviewed and approved by the Attorney General's office, Fiscal Management, the IME Bureau Chief and the Medicaid Director. Once the initial approval has occurred the rules are made available for public comment. The when the rules are being formally adopted for publication in the IAC, The rules are reviewed and approved by an administrative rules committee. The administrative rules committee allows public comment on rules being adopted. Change to the final rules may occur during any of these review processes based on comments received. Due to the potential for change throughout the rules making process, Provider and Employee manuals are not updated until rules have been formally adopted.

The rules identified in section 2.3.1.1 Administrative Rules (above) have been reviewed to determine if the rules support or conflict with implementation of the HCBS setting requirements. When the rule changes to the Iowa Administrative Code have been identified as needed to support the HCBS settings, the Provider Manual will be updated upon final promulgation of the rule. The HCBS provider manual is available on the IME website at: https://dhs.iowa.gov/sites/default/files/HCBS.pdf.

2.3.1.3 Other Standards