

5160-44-01

**Nursing facility-based level of care home and community-based services programs: home and community-based settings.**

(A) Notwithstanding any provisions to the contrary in paragraph (E) of this rule, individuals receiving home and community-based services (HCBS) through either an Ohio department of medicaid (ODM) or Ohio department of aging (ODA) -administered waiver program authorized under section 1915(c) of the Social Security Act (as in effect on January 1, ~~2020~~2021) or the Ohio medicaid state plan authorized under section 1915(i) of the Social Security Act (as in effect on January 1, ~~2020~~2021) must reside in and/or receive HCBS in a private residence or another setting that meets the home and community-based setting requirements set forth in this rule.

(1) A private residence is presumed to be a home and community-based setting provided it meets the requirements set forth in paragraph (B) of this rule. For the purposes of this rule, provider owned or controlled settings are not private residences.

(2) Home and community-based settings do not include any of the following:

- (a) A nursing facility;
- (b) An ~~institution~~institution for mental diseases;
- (c) An intermediate care facility for individuals with intellectual disabilities;
- (d) A hospital; or
- (e) Any other locations as determined by the ODM or its designee.

(B) Home and community-based settings must have all of the following characteristics, and such other characteristics as the secretary of the U.S. department of health and human services determines to be appropriate, based on the needs of the individual as indicated in their person-centered services plan:

(1) 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 services through the ODM or ODA-administered waiver programs authorized under section 1915(c) of the Social Security Act (as in effect on January 1, ~~2020~~2021) or Ohio medicaid state plan authorized under section 1915(i) of the Social Security Act (as in effect on January 1, ~~2020~~2021).

- (2) The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting.
    - (a) The setting options are identified and documented in the person-centered services plan and are based on the individual's needs, preferences, and for residential settings, resources available for room and board.
    - (b) For the purposes of this rule, non-disability specific setting means a home and community-based setting that is not limited to same or similar types of disabilities, or any disabilities at all.
  - (3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
  - (4) The setting 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.
  - (5) The setting facilitates individual choice regarding services and supports, and who provides them.
- (C) In addition to the characteristics set forth in paragraph (B) of this rule, in a provider-owned or controlled residential setting, the following additional conditions must be met, consistent with the individual's approved person-centered services plan.
- (1) The individual's unit or dwelling is a specific physical place that can be rented or occupied under either:
    - (a) A legally enforceable agreement between the individual receiving services, and the owner of the dwelling pursuant to Chapter 5321. of the Revised Code.
    - (b) For settings in which Chapter 5321. of the Revised Code does not apply, a lease, residency agreement or other legally enforceable agreement in effect for the individual which provides protections that address eviction processes and appeals comparable to those provided under Chapter 5321. and Chapter 1923. of the Revised Code. The agreement must:
      - (i) Specify the responsibilities of the individual and the home and community-based setting;
      - (ii) Specify the circumstances under which the individual would be required to relocate, resulting in the termination of the agreement;

- (iii) Address the steps an individual must follow in order to request a review and/or appeal of the relocation that results in termination of the agreement; and
      - (iv) Permit the additional conditions set forth in paragraphs (C)(2) to (C)(5) of this rule unless modified in the individual's person-centered services plan.
  - (2) The individual has privacy in his or her sleeping or living unit including all of the following:
    - (a) The setting and unit have entrance doors lockable by the individual, with only appropriate staff having keys; and
    - (b) An individual sharing a unit has a choice of roommates in that setting.
  - (3) The individual has the freedom to furnish and decorate his or her sleeping or living unit within the lease or legally enforceable agreement.
  - (4) The individual has the freedom and support to control his or her own schedule and activities, and has access to food at any time.
  - (5) The setting is physically accessible to the individual.
- (D) Any modification of the additional conditions set forth in paragraphs (C)(1) to (C)(5) of this rule must be supported by a specific assessed need and justified in the individual's person-centered services plan in accordance with rule 5160-44-02 of the Administrative Code. The condition in paragraph (C)(5) of this rule cannot be modified in any way.
- (E) Services provided under the 1915(c) HCBS waiver program or the 1915(i) HCBS state plan benefit may be provided in settings that have not been determined to meet the home and community-based settings criteria set forth in this rule to accommodate circumstances in which an individual requires relocation to an alternative setting to ensure the continuation of needed home and community-based services. Case managers should document what criteria were not met and what steps were taken to mitigate the deficiencies.

Effective: 12/30/2021

Five Year Review (FYR) Dates: 10/15/2021 and 12/30/2026

CERTIFIED ELECTRONICALLY

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Certification

12/20/2021

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Date

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