

ORGANIZATIONAL PROCEDURE

PROCEDURE # 13.10b	EFFECTIVE DATE	REVISED DATE
TITLE: Home and Community Based Services Compliance Monitoring	2/1/2025	
ATTACHMENT TO	REVIEW DATES	
POLICY #: 13.10		
POLICY TITLE: Home and Community Based Services Administration		
CHAPTER: SERVICE DELIVERY		

I. PURPOSE

To ensure that the Lakeshore Regional Entity (the Entity) conducts monitoring and coordination of oversight of the Provider Network with the Community Mental Health Services Program (CMHSP), specifically Home and Community Based Services (HCBS) Final Rule compliance with federal and state regulations through a collaborative, standardized procedure for conducting reviews and monitoring of ongoing compliance.

II. PROCEDURES

A. **Provisional Approval Process:**

The provisional approval survey ensures that the setting in which new providers (or existing providers with new locations), that are seeking to provide services to participants of the Habilitation Supports Waiver (HSW) and the 1915i State Plan ((i)SPA) programs are not isolative or institutional. Provisional approval allows the Entity's Member CMHSP's to contract with new providers who do not have current HCBS participants receiving services in their setting. The Entity or its designee will conduct a provisional review of the setting prior to the provision of services to HCBS participants to ensure it meets the following qualifications and characteristics:

- Is integrated in and support full access to the broad community including opportunities to seek competitive and integrated employment, engage in community life, control personal resources and receive services in the community to the same degree of access as individuals not receiving HCBS services.
- Is selected by the individual served from a variety of setting options, and for residential settings, is consistent with the individual's available resources to pay for room and board. Setting options are identified and documented in the individual plan of service (IPOS) and are based upon the individual's needs and preferences.
- Ensures individuals have rights to privacy, dignity and respect, as well as freedom from coercion and restraint.
- Optimizes autonomy and independence in making life's choices; and
- Facilitates choice regarding services and who provides them.

1. Individuals served must have the ability to access the following:
 - a. A lease or other legally enforceable agreement to protect from eviction, which includes a signed Summary of Resident Rights, that is retained in each resident record;
 - b. Privacy in their room including lockable doors, choice of roommates, and freedom to furnish or decorate the room;
 - c. Control of his/her own schedule and activities, and the ability to decline to participate in activities without repercussions;
 - d. Food at any time;
 - e. Control over their own finances including access at all times;
 - f. Visitors at any time; and
 - g. A setting that is physically accessible.

2. Modifications or restrictions of an individual's rights must be based upon health and safety needs of the individual served. Health or safety needs are the only acceptable justifications for restricting a individual's served rights and/or freedom of movement. The IPOS must include:
 - a. The identification of the specific and individualized assessed need;
 - b. The positive interventions and supports used prior to any modification;
 - c. The less intrusive methods that were tried and did not work, including how and why they did not work;
 - d. A clear description of the condition that is directly proportionate to the assessed need;
 - e. The regular collection and review of data to measure the effectiveness of the modification;
 - f. The established time limits for periodic review to determine if the modification is still necessary or can be terminated; including a fully detailed plan that identifies movement from most restrictive to least restrictive interventions as well as the identification of the services and supports that will be provided to support the development of skill to reduce the need for the modification;
 - g. The informed consent of the individual served; and
 - h. The assurance that interventions and supports will cause no harm to the individual served.

3. Upon completion of the provisional review, the Entity or designee will complete the HCBS Provisional Application and approve the setting for services to HCBS participants.

B. Provisional Consultation Process:

When a setting is found or known to have restrictive features, either physically or through its policies, the setting is not HCBS compliant. The Entity is not authorized to approve the setting and a provisional consultation will be required for every individual the Entity or its Member CMHSP's wish to refer to that setting.

1. Prior to scheduling a Provisional Consultation, The Entity or designee will conduct an onsite review of the setting or utilize an annual physical assessment that has been conducted within the past 12 months to answer the following questions:
 - a. Are there barriers or locked areas that prevent access to all areas of the home?
 - b. Are there gates on the property that do not allow entry and exit by residents?
 - c. Are residents able to come and go from the setting as they choose?
 - d. Is the setting secure? If so, how?
 - e. Are there restrictions on individual's freedoms that are inconsistent with the rule?
 - f. Are there setting-wide policies in place that restrict access or the rights of participants that are not based upon the individual's needs or are instituted without regard to IPOS requirements?

2. An individual being referred for placement in a secure/restrictive setting may not be placed in that setting before their IPOS establishes the health and/or safety need for the restrictive setting and a Provisional Consultation with the Entity, the Member CMHSP and MDHHS occurs. The Entity is the gatekeeper to the provisional consultation and conducts a thorough review of evidence that supports the need for placement in the secure setting prior to scheduling the consultation. MDHHS reviews the evidence submitted that supports the need for the restrictive setting which may include:
 - A current HCBS compliant IPOS;
 - Information related to restrictiveness of the setting (PIHP/CMHSP review documentation);
 - Identification that the setting is more restrictive than the individuals current placement;
 - A current and compliant IPOS that identifies why a restriction is needed and steps taken to meet the health/safety need through less restrictive interventions that have been tried and were unsuccessful;
 - Court documents such as:
 - NGRI Status- risk mitigation documentation
 - Court ordered placement or treatment documentation
 - Supervision requirements
 - Other documentation that a health and/or safety need necessitates a restriction and other interventions that have been tried prior to imposing the restriction;
 - Policies and procedures of the setting particularly related to an individual's rights with the setting. HCBS specific issues such as access to the community, freedom of movement, restrictions on legally allowed behaviors. Handbooks or Resident Rights and Responsibility documents.

MDHHS makes the final determination on the placement for the individual based upon the specific needs of the individual, not the setting. MDHHS establishes the frequency for review of the individual once placed in the setting.

C. Annual and Ongoing Monitoring:

The Entity and its Member CMHSP’s are responsible for conducting annual and ongoing monitoring activities to ensure the Provider Network remains in full compliance with the HCBS Final Rule.

Ongoing review and monitoring will occur through the Entity’s Annual Facility Review/HCBS Physical Assessment and Comprehensive Assessment Process. The Entity coordinates with each Provider and the appropriate CMHSP to address any related corrective and remedial actions related to assessment/reassessment of the setting and each participant (consumer) Individual Plan of Service.

Failure to complete the provisional approval process, provisional consultation process and all ongoing monitoring assessments will result in the exclusion from participating in Medicaid or Health Michigan Plan funded HCBS services.

The Entity will maintain documentation of all HCBS monitoring efforts and will make data available to MDHHS as needed and, upon request by CMS.

D. Training:

The Entity and its Member CMHSP’s are responsible for ensuring the Provider Network staff, in particular, Direct Support Professionals, are fully trained upon hire and annually, on the HCBS Final Rule including:

1. The HCBS Final Rule Requirements
2. The elements of a home and community-based setting
3. The HCBS Individual Plan of Service requirements
4. Steps to report HCBS out of compliance concerns, especially as it relates to modifications in the Individual Plan of Service.

III. CHANGE LOG

Date of Change	Description of Change	Responsible Party
2/1/2025	NEW Procedure - formerly Policy 4.8 (rescinded)	COO and HCBS Manager