



**State of South Dakota**

**Department of Human Services**

**Division of Long Term Services and Supports**

# ***[HCBS SETTINGS GUIDE TO EXPECTATIONS AND COMPLIANCE]***

This guide outlines expectations of Assisted Living, Adult Day, and Community Living Home Providers to ensure compliance of the HCBS Setting requirements.

DEFINITIONS .....	3
INTRODUCTION.....	6
DISCLAIMER.....	7
PROVIDER POLICY REQUIREMENTS.....	8
PROVIDER POLICY EXPECTATIONS.....	9
PROVIDER EXPECTATIONS AND CONCEPT AREAS.....	11
CONCEPT AREA 1: LOCATION.....	12
TOPIC: CHOICE.....	12
Choice Policy Expectations: .....	12
TOPIC: EQUAL ACCESS .....	13
Equal Access Policy Expectations .....	13
TOPIC: VISITATION.....	13
Visitation Policy Expectations.....	14
CONCEPT AREA 2: LIVING ARRANGEMENTS.....	15
TOPIC: IMMEDIATE ACCESS TO SETTING .....	15
Immediate Access to Setting Expectations.....	15
TOPIC: ADMISSIONS AGREEMENT .....	16
Admissions Agreement Policy Expectations.....	16
TOPIC: PERSONAL EFFECTS .....	16
Personal Effects Policy Expectations .....	16
TOPIC: ACCESS TO FOOD.....	17
Access to Food Policy Expectations.....	17
TOPIC: SERVICES.....	18
Services Policy Expectations .....	18
TOPIC: GRIEVANCE PROCEDURES .....	19
Grievance Procedures Policy Expectations.....	19
CONCEPT AREA 3: PRIVACY.....	21
TOPIC: BEDROOM OR APARTMENT DOOR LOCKS .....	21
Bedroom or Apartment Door Lock Policy Expectations .....	21
TOPIC: ROOMMATE CHOICE.....	22
Roommate Choice Policy Expectations .....	22
TOPIC: PERSONAL HYGIENE.....	22
Personal Hygiene Policy Expectations.....	22

TOPIC: HEALTH-RELATED INFORMATION .....	23
Health-Related Information Policy Expectations.....	23
TOPIC: COMMUNICATION WITH FAMILY AND FRIENDS.....	24
Communication with Family and Friends Policy Expectations .....	24
CONCEPT AREA 4: DIGNITY AND RESPECT.....	25
TOPIC: CONSUMER RIGHTS .....	25
Consumer Rights Policy Expectations.....	25
CONCEPT AREA 5: PHYSICAL ACCESSIBILITY .....	27
TOPIC: ACCESS TO APPLIANCES.....	27
Access to Appliances Policy Expectations.....	27
TOPIC: MOBILITY AND ENVIRONMENTAL ACCESS.....	27
Mobility and Environmental Access Policy Expectations.....	27
CONCEPT AREA 6: AUTONOMY.....	29
Life Decisions Policy Expectations .....	29
CONCEPT AREA 7: COMMUNITY INTEGRATION.....	31
TOPIC: COMMUNITY ACCESS AND ACTIVITIES .....	31
Community Access and Activities Policy Expectations.....	31
TOPIC: ACCESS TO FINANCIAL RESOURCES .....	32
Access to Financial Resources Policy Expectations.....	32
TOPIC: WORK AND VOLUNTEER .....	32
Work and Volunteer Policy Expectations.....	33
RESOURCES .....	34

## DEFINITIONS

The following definitions apply:

**“Adult Day Services”** provide regular care, supervision and structured activities in a non-institutional community-based setting. Adult day services include both health and social services needed to ensure the optimal functioning of the consumer for a period of less than 24 hours per day. Adult day services are provided to a consumer who lives at home. Nutritious meals/snack are available but are billed as a separate service. Adult day services are integrated in the community. Although not required, nursing services are provided based on assessed need and include health screenings, blood pressure checks, medication management, and a general assessment of the consumer’s condition.

**“Assisted Living Centers”** include personal care and supportive services that are furnished to eligible consumer(s) who reside in a homelike, non-institutional setting that includes 24-hour on-site response capability to meet scheduled or unpredictable consumer(s) needs and to provide supervision, safety and security. Services shall support full access to the greater community of consumers receiving Medicaid home and community-based services to the same degree of access as individuals not receiving Medicaid home and community-based services. The assisted living location promotes the health, treatment, comfort, safety, and well-being of consumer(s), with easy accessibility for visitors and others. Services also include social and recreational programming, and medication assistance (to the extent permitted under state law). Services that are provided by third parties must be coordinated with the Assisted Living Provider and LTSS Service Coordinator.

**“Community Living Home”** offer participants an opportunity to receive services and supports in a small, licensed home. The purpose of this service is to provide necessary care and supervision for the participant and to provide opportunity for the participant to remain in the community in the most integrated setting. Participant needs shall be addressed in a manner that support and enable the individual to maximize abilities to function at the highest level of independence possible. The service is designed to

provide an alternative long-term care option to persons who meet Nursing Facility level of care and whose needs can be met in a community living home setting.

**“Consumer”** refers to recipients of HCBS supports and services who are residing in an Assisted Living Center, Adult Day Center and/or Community Living Home. An eligible consumer is any person in need of services who has been determined eligible by DHS. The State will provide on-going case management for each consumer. Case management will include reassessing the consumer’s needs and eligibility at least annually, facilitating the development of the LTSS Individual Support Plan (ISP), convening annually and as-needed person-centered planning meetings to develop and approve changes to the LTSS Individual Support Plan (ISP), authorizing additional services by the Provider and/or third parties, and resolving any consumer concerns and other consumer-related issues.

**“LTSS Individual Support Plan (ISP)”** is an electronic document within each consumer’s record in the Therap case management system. The Individual Support Plan (ISP) is developed by the LTSS Service Coordinator with the consumer, as well as any individuals the consumer chooses. The ISP must be finalized with the agreement and informed consent of the consumer in writing and signed by all individuals and providers responsible for its implementation.

The Individual Support Plan (ISP) reflects the services and supports that are important for the individual to meet the needs identified through an assessment of need, as well as what is important to the consumer with regard to preferences for the delivery of such services and supports.

Any modification of the federal regulations for the HCBS Settings Final Rule, as described at CFR 42 § 441.710(a)(1)(vi), must be individualized and addressed in the LTSS Individual Support Plan (ISP). If a provider is implementing any modification(s) to any of the federal home and community-based settings requirements, the modification(s) must be discussed with the LTSS Service Coordinator and documented in the LTSS Individual Support Plan (ISP).

The Provider must notify the LTSS Service Coordinator whenever a change in the consumer's condition occurs and/or a modification may be necessary. The Provider is expected to provide input and otherwise participate in the development of the initial and ongoing LTSS Individual Support Plan (ISP).

**“Key Concept Areas”** refers to seven key categories requiring Provider compliance per the HCBS Settings Final Rule including:

***Concept Area 1:*** Location;

***Concept Area 2:*** Living Arrangements;

***Concept Area 3:*** Privacy;

***Concept Area 4:*** Dignity and Respect;

***Concept Area 5:*** Physical Accessibility;

***Concept Area 6:*** Autonomy; and

***Concept Area 7:*** Community Integration.

**“Legal Representative”** refers to one who represents or stands in the place of another under authority recognized by law especially with respect to the other's property or interests; one acting under a power of attorney.

**“Provider”** refers to the person who is responsible for managing the Assisted Living Center, Adult Day Center or Community Living Home and/or staff employed at the Assisted Living Center, Adult Day Center or Community Living Home.

**“Representative Payee”** refers to a Provider who acts as the receiver of income for a Consumer who is not fully capable of managing his/her own benefits.

**“Setting”** refers to a homelike, non-institutional Assisted Living Center, Adult Day Center or Community Living Home that is integrated in and supports full access to the greater community and has been selected by the Consumer from among setting options

including non-disability specific settings and an option for a private unit in a residential setting.

“**Therap**” is the online case management documenting and billing software.

## INTRODUCTION

On January 16, 2014 the Centers for Medicare and Medicaid Services (CMS) released a [Final Rule](#) regarding Home and Community-Based Services (HCBS) Setting requirements. The final rule establishes an outcome-oriented definition of home and community-based (HCBS) settings, as opposed to previous definitions that were based solely on a setting’s location, geography or physical characteristics. The intent of this is to ensure Consumers in Medicaid’s HCBS waiver programs receive services and supports in the most integrated setting and have full access to the benefits of community living.

The final rule requires that all home and community-based settings meet certain qualifications. These include:

- The setting is integrated in and supports full access to the greater community;
- Is selected by the Consumer from among setting options;
- Ensures Consumer rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.

The final rule also includes additional requirements for provider-owned or controlled home and community-based residential settings. These requirements include:

- The Consumer has a lease or other legally enforceable agreement providing similar protections;
- The Consumer has privacy in their unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit;

- The Consumer controls his/her own schedule, including access to food at any time;
- The Consumer can have visitors at any time; and
- The setting is physically accessible.

For more information about the Final Rule, you are encouraged to visit the Department of Social Services' website, <https://dss.sd.gov/medicaid/hcbs.aspx>. Providers must be in full compliance with the HCBS Setting Final Rule by **March 17, 2023**.

## DISCLAIMER

This *HCBS Settings Guide to Expectations and Compliance* document is intended to be an easy-to-understand interpretation of the requirements under the Centers for Medicare and Medicaid Services regulations, and South Dakota's expectations within the seven key Concept Areas for Provider compliance.

This document in no way reduces, diminishes or changes the obligation of the Provider to comply with all federal and state laws and regulations as well as the Assisted Living, Adult Day Center or Community Living Home Provider Addendum to the SD Medicaid Provider Agreement and South Dakota's Statewide Transition Plan. This guidance document is exemplary in nature and is not intended to be comprehensive.

## PROVIDER POLICY REQUIREMENTS

All Providers must establish policies within each of the seven Concept Areas that are consistent with state and federal regulations, including the Home and Community-Based Settings Final Rule and the Assisted Living, Adult Day Center or Community Living Home Provider Addendum to the SD Medicaid Provider Agreement. The policies and regulations will enhance the quality of home and community-based services (HCBS) and provide additional protections to Consumers that receive services.

All Providers must post the policies in a common area of the Setting.

Refer to the Provider Policy Expectations section of this guide for more information.

# PROVIDER POLICY EXPECTATIONS

The Provider's Policy must include the following characteristics and criteria:

1. Address each of the identified Concept Areas:
  - a. Concept Area 1: Location
    - i. Choice
    - ii. Equal Access
    - iii. Visitors
  - b. Concept Area 2: Living Arrangements
    - i. Immediate Access to Setting
    - ii. Admissions Agreement
    - iii. Access to Financial Resources
    - iv. Personal Effects
    - v. Access to Food
    - vi. Services
    - vii. Grievance Procedures
  - c. Concept Area 3: Privacy
    - i. Bedroom or Apartment Door Locks
    - ii. Roommate Choice
    - iii. Personal Hygiene
    - iv. Health-Related Information
    - v. Communication with Family and Friends
  - d. Concept Area 4: Dignity and Respect
    - i. Consumer Rights
  - e. Concept Area 5: Physical Accessibility
    - i. Access to Appliances
    - ii. Mobility and Environmental Access
  - f. Concept Area 6: Autonomy
    - i. Life Decisions
  - g. Concept Area 7: Community Integration
    - i. Community Access
    - ii. Consumer Activities
    - iii. Work and Volunteer
2. Address protocol for when a Consumer requires restrictions within any Concept Area

a. Any changes, limits or restrictions identified through the assessment process within any Concept Area must be documented by the Provider on the “Modifications to LTSS ISP” form, agreed to and signed by the Consumer, and submitted to the Consumer’s LTSS Service Coordinator so the restriction can be reviewed for necessity and justified and documented in the Consumer’s LTSS ISP. The Provider must include the following information on the “Modifications to LTSS ISP” form in order to justify the restriction:

- i. A description of the restriction being imposed.
- ii. A specific and individualized assessed need(s) related to the need for a restriction.
- iii. The positive interventions and supports used prior to any modifications to the LTSS ISP.
- iv. Less intrusive methods of meeting the need and those that have been tried but did not work.
- v. A clear description of the condition that is directly proportionate to the specific assessed need.
- vi. Regular collection and review of data to measure the ongoing effectiveness of the modification.
- vii. Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- viii. The informed consent of the Consumer.
- ix. An assurance that interventions and supports will cause no harm to the Consumer.
  - The Provider may not implement a restriction until the LTSS Service Coordinator has signed the “Modifications to LTSS ISP” form.

3. Be written in an understandable and easy to read format.
4. Be easily accessible.
5. Be provided upon admission.
6. Apply equally to all Consumers, regardless of payment source, care needs, or type of disability.

7. Address how the Provider will ensure that services are provided in a manner consistent with the LTSS ISP.
8. Address how staff will be trained to ensure understanding of the requirements of the policy.
9. State that the Provider, along with the Consumer and the Long Term Services and Supports Specialist (Case Manager), must identify any known limits or restrictions of a Consumer relative to each topic within each Concept Area. Any limits or restrictions must be justified and documented in the LTSS ISP. Documentation must include a specific and individualized assessed need(s); the positive interventions and supports used prior to any modifications to the LTSS ISP; less intrusive methods of meeting the need that have been tried but did not work; a clear description of the condition that is directly proportionate to the specific assessed need; regular collection and review of data to measure the ongoing effectiveness of the modification; established time limits for periodic reviews to determine if the modification is still necessary or can be terminated; the informed consent of the Consumer; and an assurance that interventions and supports will cause no harm to the Consumer.

## PROVIDER EXPECTATIONS AND CONCEPT AREAS

Assisted Living Centers, Community Living Homes and Adult Day Centers will be assessed for compliance with the HCBS Settings Final Rule based on seven Key Concept Areas including Location, Living Arrangements, Privacy, Dignity and Respect, Physical Accessibility, Autonomy, and Community Integration. The expectations for each of the Key Concept Areas are described in the following pages of the **HCBS Settings Guide to Expectations and Compliance**. These expectations are in addition to those listed in the **Provider Policy Expectations** section of this guide.

## CONCEPT AREA 1: LOCATION

The HCBS Settings Final Rule requires all Consumers residing in an Assisted Living Center, Adult Day Center or Community Living Home to be able to choose where they live from among setting options including non-disability specific settings, have visitors of their choosing at any time, and have access throughout the Assisted Living Center, Adult Day Center or Community Living Home and the community, regardless of payment source, care needs, or type of disability.

### TOPIC: CHOICE

In general:

- All Consumers are given choice of available options regarding where to live and receive services.
- All Consumers are given an opportunity to visit other settings and make informed choices about where to live and where to receive services.
- The options considered by the Consumer, and the final choice of settings and services, are documented in the Consumer's LTSS ISP.
- All Consumers have a right to receive services in the most integrated setting appropriate to the Consumer's needs, including choosing from non-disability specific settings.

### **Choice Policy Expectations:**

- The Provider will make a referral to the Long Term Services and Supports Specialist (Case Manager) when:
  - A Consumer makes a request for a change in services or setting;
  - A Consumer experiences a change in needs; and/or
  - A Consumer requests a person-centered care planning meeting.
- The Provider will ensure the Setting reflects the Consumer's needs and preferences.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the "**HCBS Settings Modification Request**" form located on the DHS/LTSS Provider Resources Page, weblink:

<https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## **TOPIC: EQUAL ACCESS**

In general, Providers must ensure equal access throughout the Assisted Living Center, Adult Day Center or Community Living Home and the community for all Consumers, regardless of payment source, care needs, or type of disability.

### **Equal Access Policy Expectations**

- All Consumers served by Medicaid have the same access to the broader community as Consumers who are not receiving Medicaid-funded home and community-based services.
- All Consumers served by Medicaid have the same access to the common areas of the Assisted Living Center, Adult Day Center or Community Living Home as Consumers who are not receiving Medicaid-funded home and community-based services.
- All Consumers served by Medicaid live and/or receive services in the same area as those Consumers not served by Medicaid.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink:  
<https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## **TOPIC: VISITATION**

In general, Providers must have policies and procedures that ensure a Consumer’s right to have visitors as they choose.

## Visitation Policy Expectations

- The Provider will allow visitors at any time, unless the restriction is related to a health or safety risk. The Provider is not responsible for lodging, meals, and/or care of visitors.
- The Provider will have a location where Consumers can visit privately with visitors to ensure privacy and confidentiality of the Consumer and visitors.
- The Provider will make the Visitation policy available to all Consumers and their guests that specifies:
  - Any limitations on the duration of stay and fees for lodging, visitor meals, etc. The policy may require roommate consent for overnight visitors;
  - Any conditions in which visitors are prohibited and/or restricted due to a risk to the health and safety of Consumers residing at the Assisted Living Center, Adult Day Center or Community Living Home;
  - If visitors are required to sign in;
  - Any restrictions on visitors who have caused or are causing a disturbance or who pose a health or safety risk to Consumers within the Assisted Living Center, Adult Day Center or Community Living Home.
    - The Provider will notify Consumers in writing if any visitor restrictions apply to their guests.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## CONCEPT AREA 2: LIVING ARRANGEMENTS

In a provider-owned or controlled residential setting, the unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the Consumer receiving services, and the Consumer 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 Consumer residing in the Assisted Living Center, Adult Day Center or Community Living Home, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

Consumers must be able to have immediate access to the setting, access personal resources, be allowed to bring in personal belongings as space permits, have access to food at any time and have access to an array of services. Additionally, Consumers must know how to file a grievance or complaint.

### **TOPIC: IMMEDIATE ACCESS TO SETTING**

In general, Consumers must have immediate access to the Assisting Living Center.

#### **Immediate Access to Setting Policy Expectations**

- All Consumers should be provided with keys or access codes to the building.
- Consumers do not have a curfew and can come and go at any time.
- The Provider may have sign in/out processes that monitor safety and are appropriate as long as the process is not used to restrict a Consumer's access to the broader community.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the **"HCBS Settings Modification Request"** form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the "Provider Policy Expectations" section of this guide for information on how to justify the restriction(s).

## **TOPIC: ADMISSIONS AGREEMENT**

In general, Providers must have an Admissions Agreement that offers the same protections as South Dakota's landlord tenant laws. The Admissions Agreement must also reflect that Consumers residing in the Assisted Living Center or Community Living Home have the freedom to furnish and decorate his/her personal space.

### **Admissions Agreement Policy Expectations**

- The Provider will ensure Consumers have the same protections as South Dakota's landlord tenant laws.
- The Provider will explain the Provisions of the Admissions Agreement to the Consumer when necessary.
- All Consumers will sign the Admissions Agreement which will be accessible for review.
- The Provider will ensure that new policies do not apply to a Consumer after signing an Admissions Agreement.
  - Once the Admissions Agreement is signed by a Consumer, he/she is grandfathered in and not required to adhere to any new policies created after the signing.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the **"HCBS Settings Modification Request"** form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the "Provider Policy Expectations" section of this guide for information on how to justify the restriction(s).

## **TOPIC: PERSONAL EFFECTS**

In general, Consumers will have the freedom to furnish and decorate their bedroom or apartment with their personal effects and belongings to make the residence their home.

### **Personal Effects Policy Expectations**

- All Consumers may decorate their bedroom or apartment.

- The Provider will have a written policy describing any personal effects limitations in place to protect the property and/or the health and safety of Consumers. Any limitations must apply to all Consumers within the Assisted Living Center, Adult Day Center or Community Living Home.
- The Provider will allow Consumers to bring in their own furniture and other belongings, as long as personal effects do not compromise the health and safety of any Consumer and as space allows.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## **TOPIC: ACCESS TO FOOD**

In general, Consumers must have access to a variety of foods throughout the day.

### **Access to Food Policy Expectations**

- The Provider will offer a reasonable alternative to planned meals.
- All Consumers are able to make an alternative meal or snacks within their resources.
- All Consumers can elect to eat at an alternative time.
- All Consumers can elect to eat in their room or apartment.
- All Consumers choose with whom to eat or to eat alone.
- All Consumers can keep and eat foods/snacks in their room or apartment.
- The Provider will have an Access to Food policy that specifies:
  - How Consumers are notified of their right to eat where they want;
  - How Consumers are notified of their right to eat when they want; and
  - How Consumers are notified of their right to eat what they want within their resources.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink:

<https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy

Expectations” section of this guide for information on how to justify the restriction(s).

## **TOPIC: SERVICES**

In general, Consumers must have access to a variety of services and supports to meet their needs throughout the day.

Assisted Living Centers and Community Living Homes offer homemaker, personal care, chore, and meal preparation to consumers who reside in a homelike, non-institutional setting that includes 24-hour on-site response capability to meet scheduled or unpredictable consumer needs and to provide supervision, safety and security. The Assisted Living Center or Community Living Home’s location promotes the health, treatment, comfort, safety, and well-being of Consumers, with easy accessibility for visitors and others. Services also include social and recreational programming, and medication assistance (to the extent permitted under State law). Services that are provided by third parties must be coordinated with the Provider. Nursing and skilled therapy services are incidental rather than integral to the provision of assisted living services. Payment is not made for 24-hour skilled care. Federal financial participation is not available for room and board, items of comfort or convenience, or the costs of facility maintenance, upkeep and improvement. Costs of room and board are excluded from payments for assisted living services. Services are based on assessed need as identified in the LTSS ISP with a threshold equal to the average cost of nursing home care. The concurrent provision of homemaker, personal care, chore services, emergency response systems, respite care, meals and environmental accessibility adaptations as distinct additional services is prohibited for a consumer who resides in an Assisted Living Center or Community Living Home. The Provider will arrange or provide non-medical transportation to the community, including natural supports. Providers are not required to be the sole source of transportation.

### **Services Policy Expectations**

- All Consumers know how to request a change in services and supports.
- Requests for reasonable services and supports are accommodated.

- All Providers must provide information on available services to Consumers.
- The Provider will have a Services policy that specifies:
  - How Consumers will be notified about all service options available in the Assisted Living Center, Adult Day Center or Community Living Home;
  - How Consumers can request a change in services as their needs change; and
  - How Consumers will be made aware of services and supports that may be available in the broader community.
  - How Consumers preferences will be accommodated when possible.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## **TOPIC: GRIEVANCE PROCEDURES**

In general, Consumers must know how to file a grievance or complaint. A Consumer residing in an Assisted Living Center, Adult Day Center or Community Living Home should be able to voice grievances without discrimination or reprisal. A Consumer’s grievance may be in writing or oral and may relate to treatment furnished, treatment that has not been furnished, the behavior of other Consumers residing at the Assisted Living Center, Adult Day Center or Community Living Home, and infringement of the Consumer's rights.

### **Grievance Procedures Policy Expectations**

- The Provider will adopt a grievance process and make the process known to each Consumer residing at the Assisted Living Center, Adult Day Center or Community Living Home and to the Consumer's immediate family.
- Staff is knowledgeable about the process for filing a grievance.
- A grievance filed by a Consumer must not affect Consumer care.
- The Provider will have a Grievance Procedures policy that:
  - Specifies how to file a complaint;

- Contains contact information for whom to contact to file an anonymous complaint; and
- Includes the Provider's efforts to resolve the grievance and documentation of the grievance; the names of the persons involved; the disposition of the matter; and the date of disposition.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the "**HCBS Settings Modification Request**" form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the "Provider Policy Expectations" section of this guide for information on how to justify the restriction(s).

## CONCEPT AREA 3: PRIVACY

The Provider ensures a Consumer's rights of privacy. Each Consumer has privacy in their sleeping or living unit. Units have entrance doors lockable by the Consumer, with only appropriate staff having keys to doors. Consumers sharing units have a choice of roommates in that setting.

### TOPIC: BEDROOM OR APARTMENT DOOR LOCKS

In general, Consumers must be able to lock their bedroom or apartment doors to prevent entry when they choose.

#### **Bedroom or Apartment Door Lock Policy Expectations**

- All Consumers must be able to lock their bedroom or apartment door when they are in their room.
- All Consumers must be able to lock their bedroom or apartment door when they leave their room.
- Only appropriate staff has access to the Consumer's bedroom or apartment.
- The Provider will have a Bedroom or Apartment Door Lock policy that specifies:
  - How Consumers are notified of their right to lock their bedroom or apartment doors when they are in their room;
  - How Consumers are notified of their right to lock their bedroom or apartment doors when they leave their room; and
  - Identify appropriate staff that should have access to the Consumer's bedroom or apartment.
- The Bedroom or Apartment Door Lock policy may specify expectations, process and costs associated with lost keys.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the **"HCBS Settings Modification Request"** form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the "Provider Policy Expectations" section of this guide for information on how to justify the restriction(s).

## **TOPIC: ROOMMATE CHOICE**

In general, when Consumers residing at the Assisted Living Center or Community Living Home share a bedroom or apartment, they will be able to choose their roommate.

### **Roommate Choice Policy Expectations**

- The Provider will have a Roommate Choice policy that specifies:
  - How Consumers are involved in the roommate assignment/selection process;
  - How Consumer preferences are considered;
  - When a Consumer can request a change in roommate; and
  - How Consumers are notified of their right to choose a roommate.
- The Department expects the Roommate Choice policy to also meet the Department of Health requirements.
- Providers, who do not have shared bedrooms or apartments, must send an email to [HCBS@state.sd.us](mailto:HCBS@state.sd.us) indicating all rooms in their Assisted Living Center or Community Living Home are private bedrooms or apartments.
- Proof of a Roommate Choice policy should be sent to [HCBS@state.sd.us](mailto:HCBS@state.sd.us).
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## **TOPIC: PERSONAL HYGIENE**

In general, the Setting must respect the Consumer’s preferences and recognize the Consumer’s right to privacy when completing activities of daily living.

### **Personal Hygiene Policy Expectations**

- A Consumer that needs assistance with grooming is groomed as he/she desires.
- The nails of Consumers are kept trimmed and clean.
- All Consumers who are able to complete activities of daily living without assistance are able to do so privately.

- No unnecessary staff is in the bedroom or apartment when Consumers are completing activities of daily living.
- If Consumers share a bedroom or apartment, each Consumer has the right to complete personal hygiene in private.
- The Provider will respect a Consumer’s preferences to allow for choice of clothing and personal care products within resources.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## **TOPIC: HEALTH-RELATED INFORMATION**

In general, the policies of the Assisted Living Center, Adult Day Center or Community Living Home respect each Consumer’s right to privacy regarding medications and other health related information.

### **Health-Related Information Policy Expectations**

- Health information including dietary needs, therapy schedules, and medication lists is not visible to the public or other Consumers.
- Staff is trained and understands requirements regarding protected healthcare information.
- Reasonable arrangements should be made if a Consumer requests to be accompanied by staff during medical appointments.
- All Consumers are offered a choice regarding where to take and/or receive medications, and may do so in private.
- All Consumers are able to consult with their healthcare Providers in private and choose their own physician.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink:

<https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## **TOPIC: COMMUNICATION WITH FAMILY AND FRIENDS**

In general, Consumers residing at the Assisted Living Center, Adult Day Center or Community Living Home are able to communicate with other Individuals in private.

### **Communication with Family and Friends Policy**

#### **Expectations**

- All Consumers have access to a telephone or computer or other communication device in a private area.
- Mail, email, texts or other written communication to or from a Consumer is kept private and confidential, and is reviewed and/or opened by the Consumer, unless the Consumer provides informed consent to be reviewed or opened by someone else.
- The Setting will include a location where Consumers can visit privately with guests.
- The Provider may have a policy requiring Consumers to reserve a space for visiting with guests in advance.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink:  
<https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## CONCEPT AREA 4: DIGNITY AND RESPECT

The Provider ensures a Consumer's rights of dignity and respect, and freedom from coercion and restraint.

### TOPIC: CONSUMER RIGHTS

In general, Consumers residing at the Assisted Living Center, Adult Day Center or Community Living Home will be treated with dignity and respect and free from coercion and restraint.

#### Consumer Rights Policy Expectations

- A Consumer's right to dignity, respect and privacy is ensured at all times.
- The dining area should afford dignity to diners.
- Consumers will be dressed in clothes that fit, are clean, and are appropriate for the time of day, weather, and preferences.
- Staff will communicate with Consumers in a dignified and respectful manner.
  - Staff will address Consumers in the manner in which the Consumer would like to be addressed.
  - Staff will not curse or use profanity and will converse with Consumers in a respectful and appropriate manner.
  - Staff will not talk to other staff about a Consumer as if the Consumer was not present or within earshot of other persons living in or visiting the Assisted Living Center, Adult Day Center or Community Living Home.
- The Provider will provide information on available services to Consumers.
- The Provider will inform Consumers about their rights while residing at the Assisted Living Center, Adult Day Center or Community Living Home.
- The Provider will provide care and an environment that contributes to the Consumer's quality of life at the Assisted Living Center, Adult Day Center or Community Living Home.
- The Provider will provide for the spiritual needs of the Consumer while residing at the Assisted Living Center or Community Living Home consistent with the

Consumer’s preferences, including opportunities to engage in spiritual activities in the broader community.

- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## CONCEPT AREA 5: PHYSICAL ACCESSIBILITY

The Setting must be physically accessible to the Consumer. The Assisted Living Center, Adult Day Center or Community Living Home must be fully accessible and compliant with the Americans with Disabilities Act (ADA).

### **TOPIC: ACCESS TO APPLIANCES**

In general, when a Consumer expresses a desire to use an appliance, the appliance must be accessible i.e. washer and dryer are front loading for a Consumer in a wheelchair if he/she chooses to do his/her own laundry or access to a microwave in the event a Consumer wishes to warm up a meal.

#### **Access to Appliances Policy Expectations**

- A food preparation area is available and accessible to Consumers in their apartment/room or a common area.
- When Providers require or allow participation in instrumental activities of daily living such as laundry or cooking, the Provider must provide accessible appliances.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

### **TOPIC: MOBILITY AND ENVIRONMENTAL ACCESS**

In general, the Setting should be fully accessible and compliant with the Americans with Disabilities Act (ADA). Consumers must be able to move freely around the Setting without assistance, and have reasonable unrestricted access in the Assisted Living Center, Adult Day Center or Community Living Home.

#### **Mobility and Environmental Access Policy Expectations**

- The Provider will make modifications to meet a Consumer’s mobility needs.
- Consumers must be able to access all areas without assistance.

- When Consumers require supports to move about the Assisted Living Center, Adult Day Center or Community Living Home as they choose, environmental accessibility features such as grab bars, seats in the bathroom, ramps for wheel chairs and walkers, viable exits for emergencies, etc. must be provided.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## CONCEPT AREA 6: AUTONOMY

The Provider must have policies that optimize, but does not regiment, Consumer initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact. Policies must facilitate choice regarding services and supports, and who provides them. Consumers have the freedom and support to control their own schedules and activities.

### TOPIC: LIFE DECISIONS

In general, Consumers residing at the Assisted Living Center, Adult Day Center or Community Living Home will have independence and support in making life choices.

### Life Decisions Policy Expectations

- Consumers are not required to adhere to a set schedule for walking, sleeping, bathing, eating, exercising, participating in activities, etc.
- Consumer choices are incorporated into the services and supports received.
- All Consumers should be empowered to make decisions.
- All Consumers must be free to choose a Provider from among those willing to participate under the medical assistance program.
  - Consumers may choose a personal attending physician, physician assistant, or nurse practitioner, be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect their well-being, and unless incompetent or incapacitated, participate in planning care and treatment or changes in care or treatment.
  - The Provider will assist a Consumer in identifying appropriate community Providers of services that are available in the community to meet his/her specific needs.
  - The Provider will inform the Consumer how to make a request for a new Provider.
- All Consumers must have an LTSS ISP signed by the Consumer or the Consumer's Legal Representative.
  - The LTSS ISP must:

- Describe the service to be provided, the extent and frequency of the service, and the anticipated cost;
    - Be revised annually or as the Consumer’s needs change; and
    - Be person-centered.
  - All Consumers must have an active role in the development and updating of the LTSS ISP.
  - Care planning meetings should be scheduled at a time convenient for the Consumer and/or representative, to attend.
  - Consumers and chosen representatives should be made aware of how to schedule a person-centered ISP meeting when their needs change.
- The Provider will establish policies to protect and promote the rights of each Consumer.
  - Prior to or at time of admission, the Provider must inform the Consumer, both orally and in writing, of the Consumer’s rights and of the rules governing the Consumer’s conduct and responsibilities while living at the Assisted Living Center, Adult Day Center or Community Living Home.
    - The Consumer must acknowledge receipt of the information in writing; and
    - Any changes throughout the stay must be given by the Provider to the Consumer both orally and in writing.
  - All Consumers should be made aware, both orally and in writing, of how to make a service request.
  - The Provider will document reasons why a specific service request cannot be accommodated in the LTSS ISP.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## CONCEPT AREA 7: COMMUNITY INTEGRATION

The setting must be integrated in and support full access of Consumers 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.

### TOPIC: COMMUNITY ACCESS AND ACTIVITIES

In general, the Provider offers activities in the Setting and also takes steps to educate Consumers about activities in the broader community and encourages and facilitates Consumers' access to these activities consistent with Consumer preferences and needs.

#### **Community Access and Activities Policy Expectations**

- The Provider will promote participation in outside activities; but is not required to fund participation in outside activities.
- The Provider will arrange or provide non-medical transportation to the community, including natural supports.
  - Providers are not required to be the sole source of transportation.
- All Consumers will be allowed to leave the setting when they choose to participate in community activities.
- All Consumers have access to learn about outside activities and community events.
- The Provider will offer alternative meals or activities of daily living arrangements for Consumers choosing to participate in outside activities and events.
- A Consumer may schedule activities at his/her convenience and have access to non-group activities in the broader community.
- The Provider will offer activities in the Assisted Living Center, Adult Day Center or Community Living Home.

- All Consumers should have access to such things as a television, radio, and leisure activities that interest him/her at the Assisted Living Center, Adult Day Center or Community Living Home.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## **TOPIC: ACCESS TO FINANCIAL RESOURCES**

In general, Consumers and as applicable the Consumer’s Representative Payee must be able to access personal resources.

### **Access to Financial Resources Policy Expectations**

- All Consumers have the right to choose their banking and financial services.
- All Consumers have access to their funds and other personal resources.
- The Provider will ensure all Consumers are able to keep their personal needs allowance.
- The Provider, if identified as the Representative Payee, may manage a Consumer’s personal finances.
- All Consumers have the opportunity to shop and make purchases consistent with their choices and available personal resources.
- The Provider will ensure that comingling of funds does not occur.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

## **TOPIC: WORK AND VOLUNTEER**

In general, Consumers are able to work and volunteer in the community as they choose.

## Work and Volunteer Policy Expectations

- The Provider will offer alternative meals or activities of daily living arrangements for Consumers choosing to work or volunteer.
- The Provider will arrange transportation or natural supports for Consumers wishing to work or volunteer.
  - Providers are not required to be the sole source of transportation.
- The Provider will facilitate access to materials advertising opportunities to work or volunteer.
- A Consumer may participate in meaningful non-work activities in an integrated community setting for the period of time he/she desires.
- The Provider will seek approval for any modifications and/or restrictions by completing and submitting the “**HCBS Settings Modification Request**” form located on the DHS/LTSS Provider Resources Page, weblink: <https://dhs.sd.gov/ltss/ltssproviders.aspx> . Refer to the “Provider Policy Expectations” section of this guide for information on how to justify the restriction(s).

# RESOURCES

## AMERICANS WITH DISABILITIES ACT (ADA)

The ADA prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications. To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such impairment, or a person who is perceived by others as having such impairment. Link directly to <https://www.ada.gov/>.

## ARTICLE 44:70 - ASSISTED LIVING CENTERS

To review Administrative Rules of South Dakota (ARSD) that pertain to Assisted Living Centers, log onto <http://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=44:70>.

## CHAPTER 22-46 – ABUSE, NEGLECT, OR EXPLOITATION OF ELDERS OR ADULTS WITH DISABILITIES

To review South Dakota Codified Law (SDCL) that pertains to abuse, neglect or exploitation of elders or adults with disabilities (including mandatory reporting of abuse or neglect by staff and by person in charge of the Assisted Living Center), log onto [http://www.sdlegislature.gov/Statutes/Codified\\_Laws/DisplayStatute.aspx?Type=Statute&Statute=22-46](http://www.sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=22-46).

## CHAPTER 43-32 – LEASE OF REAL PROPERTY

To review South Dakota Codified Law (SDCL) that pertains to lease of real property, log onto <http://www.sdlegislature.gov/Statutes/PrinterStatute.aspx?Type=Statute&Statute=43-32>.

## HOME & COMMUNITY-BASED SETTINGS FINAL RULE

Home and community-based services (HCBS) provide opportunities for Medicaid beneficiaries to receive services in their home or community. The final Home and Community-Based Services regulations set forth new requirements for several Medicaid

authorities under which states may provide home and community-based long-term services and supports. The regulations enhance the quality of HCBS and provide additional protections to individuals that receive services under these Medicaid authorities. To review Fact Sheets regarding the final settings regulation, visit <https://www.medicaid.gov/medicaid/home-community-based-services/guidance/home-community-based-services-final-regulation/index.html>

### **HOME AND COMMUNITY-BASED SERVICES WAIVER PROGRAM**

The Home and Community Based Services Waiver operated by the Division of Long Term Services and Supports, allows the Department to use Title XIX Medicaid to provide home and community based services to Consumers that are at risk for institutionalization. Link directly to <http://dhs.sd.gov/ltss/titlexix.aspx>.

Code of Federal Regulations (CFR) Title 42 Public Health

### **SOUTH DAKOTA MEDICAID**

The Department of Social Services (DSS) is the designated State Medicaid Agency for South Dakota. Other State agencies also administer programs funded by Medicaid in South Dakota, including the Departments of Human Services, Corrections, Education and Health. South Dakota Medicaid is funded jointly by the State and Federal government. Link directly to <http://dss.sd.gov/medicaid/>.