



Analysis of HCBS Rule Compared to Olmstead & PSH Principles

The following compares the U.S. Centers for Medicare & Medicaid Services (CMS) final rule establishing requirements for the qualities of settings eligible for reimbursement for Medicaid Home & Community-Based Services (HCBS) to federal Olmstead principles and the evidence-based principles for Permanent Supportive Housing (PSH).

CMS HCBS Rule ¹	Olmstead Guidance/Principles ²	Evidence-Based PSH Principles ³
The setting is selected by the individual from among setting options including non-disability specific settings; choice of setting must be documented in person-centered service plan. Individuals must have options available for both private and shared living; provider owned or controlled housing must facilitate choice regarding roommate selection.	People live in housing that they chose in a neighborhood in which they desire to live. They are not “placed” or “steered” to the housing by providers that may be associated with the housing unit or building.	People have a choice of housing options (i.e. housing type and unit) and of living arrangements (e.g., whether to live with someone and who that someone is).
Separation of housing and services is not required; choice regarding services including choice of provider in provider-owned housing must be addressed in person-centered service plan.	The housing owner/sponsor may not be the person’s representative payee, and may not require as a condition of tenancy that people have the rent directly deducted from the person’s income. ⁴	Housing management and service provision functions are functionally separate and not performed by the same provider/agency staff.
CMS has no statutory authority with regard to housing affordability, so there is no reference in the final rule to affordability.	People live in safe and affordable housing; they cannot be required to pay more than 30-40% of their income for housing costs, including utilities.	Housing is decent and safe (i.e. meets federal Housing Quality Standards), people pay no more than 30-40% of monthly income for housing/utility costs.
The setting is integrated in and supports full access to the greater community; excluded from HCBS settings are those that have the effect of discouraging integration of individuals receiving Medicaid-funded HCBS from the broader community.	People live, work and socialize primarily with other people who do not have disabilities. Housing is not a “disability identified” setting; it is similar to the housing stock in the community, and is not identified or advertised as housing restricted to people with disabilities.	People live in housing units typical of the community, without clustering people with disabilities.
The setting ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint. The setting has a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement with the same responsibilities/ protections as tenants have under local landlord/tenant law. A lease or other legally enforceable agreement providing similar protections is required for individuals residing in provider-owned or controlled housing.	Tenancy may not be terminated for any reason other than violation of a standard lease consistent with state/local law. People cannot be “evicted” or “discharged” from their housing unit for violation of “program rules” or refusal to accept services offered by the housing provider or any other service provider. ⁵	People have leases or landlord/ tenant agreements that provide all tenancy rights allowable under state/local law; tenancy is not contingent on program compliance or limits on length of stay beyond that in a standard lease.
The setting optimizes autonomy and independence in making life choices and facilitates choice regarding services and who provides them; these choices must be reflected in the person-centered service plan.	Public entities must ensure that individuals have an opportunity to make an informed choice. People have choice in their daily life activities and the opportunity to interact with non-disabled persons to the fullest extent possible.	Services are consumer driven; people choose and modify the types of services they want and are not required to accept a standard service package. They may choose from an array of services, including the option of no services.

¹See: <https://www.federalregister.gov/articles/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider>

² Synthesized from recent *Olmstead* decisions and/or Federal *Olmstead* Guidance – for more info see: <http://www.ada.gov/olmstead>.

³ Substance Abuse and Mental Health Services Administration. *Permanent Supportive Housing Evidence-Based Practices (EBP) Kit*. Rockville, MD: 2010.

⁴Tenants may voluntarily enter into an agreement to have the rent paid directly to the landlord, but this cannot be a condition of tenancy.

⁵Note: People can voluntarily enter into agreements to abide by housing community standards, such as remaining sober or not bringing drugs or alcohol into the setting. However, provisions such as being required to go to a day program or otherwise receive specific services from the provider that also controls the housing – or any other provider – would constitute evidence of a restricted setting.