

HCBS Final Rule on Community Integration: Adult Foster Home Caregivers

Hawaii DOH, Developmental Disabilities Division
September 12, 2022



Today's Agenda

- **Reminders:**
 - What is the HCBS Final Rule?
 - What are the federal requirements under the rule?
- **Hawaii DDD:**
 - What does the compliance process look like for DDD Adult Foster Homes (AFH)?
 - How do we ensure participants in DDD AFH live in settings that are compliant with the HCBS Final Rule requirements?
 - Confirming and validating compliance and supporting remediation and improvement
- **Scenarios: Test your Knowledge!**
- **Questions and Answers**



HCBS Settings Final Rule: What is it, again?

- The rule identifies what is considered home and community-based - and what is not
- The goal of the rule is to make sure people receiving HCBS can live and work and spend time in the greater community in the ways they want, including with people who are not involved in services
- Each person's experience, and their opportunity for community integration and participation is very important
- Every setting receiving Medicaid HCBS funds must be compliant by March 2023

HCBS Final Rule: Supporting Community Integration

- Supporting people with disabilities to exercise their rights to:
 - Make choices about where and how to live, including who supports them and what their schedule looks like
 - Be supported to make informed decisions
 - Live with privacy, dignity, and respect
 - Seek a job in the regular workforce
 - Interact with the broader community
 - Develop and keep relationships with people without disabilities
 - Be supported in a person-centered way
 - Pursue a great quality of life

What does this mean for Adult Foster Homes?

Waiver participants have rights and freedoms afforded to most of us, including:

- To be able to come and go from their home, make their own schedules, and decide what they want to do and when they want to do it, including working in a job
- Privacy rights, including the ability to lock their bedroom door, be alone in their room, entertain visitors, pick their roommate, and use the phone or internet without interference
- To access food at any time, make choices about food
- Express themselves through what they choose to wear, how they want to decorate their room, who they want to associate with
- And more!!



Community Integration: Multiple Perspectives



Confirming and validating - ongoing

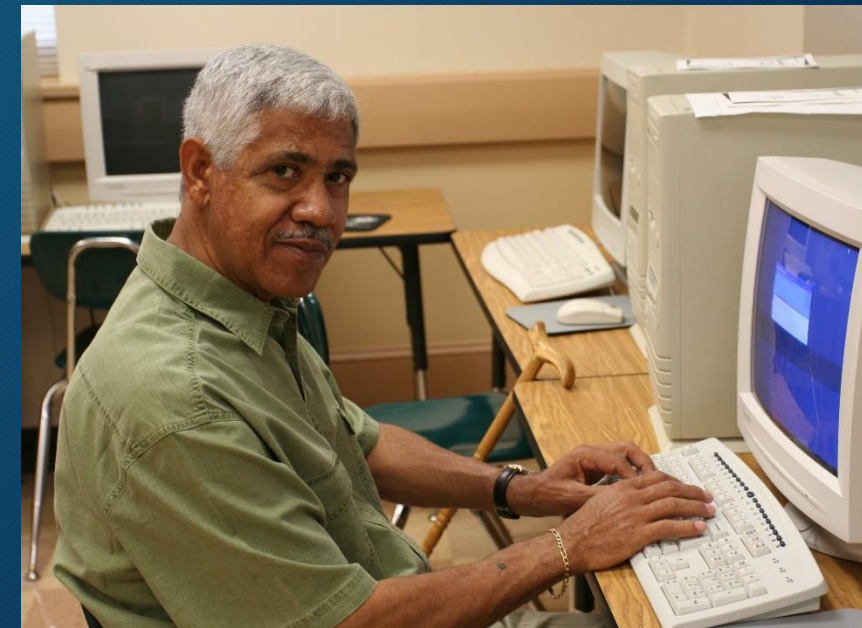
How does the DDD provide oversight and monitor for compliance in DDD AFHs?

1. AFH Certification:

- Aligned certification rules for DDD adult foster homes to implement the HCBS settings requirements
- Updated the inspection tool to reflect the HCBS settings requirements

2. ResHab Agency Monitoring:

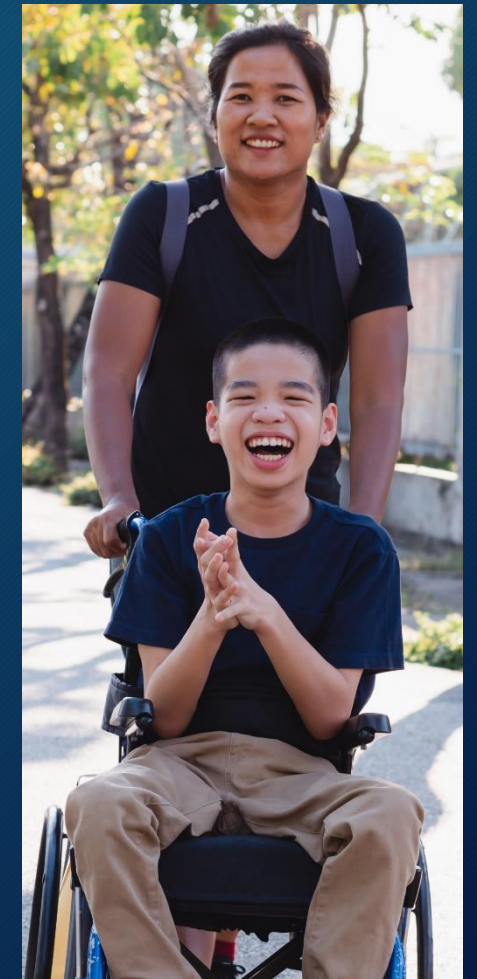
- Provider Agencies have to demonstrate evidence of compliant policies and procedures, and adequate ongoing oversight of individual settings



Alignment of Certification Rules

HAR 148.1 Certification of Adult Foster Homes

- Drafted new adult foster homes which were adopted by the Department of Health, DDD on August 2, 2021
- HAR 148.1 implements the HCBS Settings Final Rule criteria including the additional requirements for provider-owned or controlled settings:
 - ✓ A lease or other legally enforceable agreement to protect from eviction
 - ✓ Privacy in their unit including entrances lockable by the individual (necessary staff may have keys as needed)
 - ✓ Choice of roommates
 - ✓ Freedom to furnish and decorate their unit
 - ✓ Control of their schedule and activities
 - ✓ Access to food at any time
 - ✓ Visitors of their choosing at any time
 - ✓ Physical accessibility for the individual



Monitoring Compliance: Annual Re-Certification Process

- Revised the DDD AFH inspection tool to incorporate the HCBS settings rule criteria
- Compliance verification will be addressed by the AFH Certifier through the annual re-certification process
- Monitoring started in April 2022 to meet March 2023 transition date
- Evidence will be documented in the inspection tool to show how the certified caregiver is meeting the requirements
- Any area of non-compliance will require implementation of a plan of correction (POC) by the certified caregiver that describes steps to remediate and achieve compliance
- A copy of the POC will be provided to the ResHab agency to assist the certified caregiver in bringing their home in alignment with the requirements. A copy will also be provided to the Community Resource Branch

Inspection Tool - Examples

42 CFR 441.301(c)(4)(vi)(C)		
HAR 148.1 Citation	Inspection Tool Question	Evidence of Compliance
§11-148.1-35(b)	Can each adult with I/DD have access food of their choosing at any time, without restrictions?	Interview with caregiver and observation of how each adult with I/DD can eat a meal or snack at any time, have choice of “meal times”, food is available or accessible without having to ask for permission
42 CFR 441.301(c)(4)(vi)(C)		
§11-148.1-37(a)(4)	Does each adult with I/DD have the freedom and support to control their own schedule and activities?	Documentation of individual schedules showing how each adult with I/DD is supported to plan their own schedule and activities in the community, documentation of activities that are based on personal preferences and interests, there is no “set schedule” that everyone has to follow (e.g. when to get up, eat, or go to bed)
42 CFR 441.301(c)(4)(vi)(D)		
§11-148.1-37(a)(3)	How is each adult with I/DD allowed to have visitors at any time, without restrictions?	Interview with caregiver of how each adult with I/DD can have visitors and have no restrictions on visit times, there is a private place to meet with visitors, including their bedroom
42 CFR 441.301(c)(4)(vi)(B)(1)		
§11-148.1-58(a)(2)	Can each adult with I/DD close and lock doors to their personal or private spaces in the setting, including their bedroom and bathroom, with only appropriate staff able to access keys to their bedroom?	Observation of a lockable door to bedroom and the adult with I/DD has keys to the bedroom

Plan of Correction for Non-Compliance

Department of Health
Developmental Disabilities Division
Certification Unit

PLAN OF CORRECTION (POC) FOR HCBS FINAL RULE COMPLIANCE

Rule Citation	Deficiencies	Describe steps and/or actions taken or to be taken to correct the deficiencies and prevent future deficiencies from happening again (Must be typed)	Completion Date
§11-148.1-37(a)(3)	Home restricts visiting hours and there is no privacy to meet with visitors. Home does not allow visitors after 8:00 pm. Visitors are only allowed to meet in the living room where other people in the home are watching TV.		
§11-148.1-37(a)(4)	The adults with I/DD do not have control over their schedules and must follow the same schedule in the morning. The caregiver states that the adults with I/DD have set times of when they wake and must be ready to leave the home by 7:00 am, Monday to Friday, as she needs to be at work by 8:00 am.		

Copies to:

DDD – Community Resources Branch

ResHab Agency

Scenarios / Stories (Polls)

- Kimo
- Michael
- Lynne
- Kai
- Leilani & Mary



*While parts of these scenarios are based on real waiver participant experiences, the names have been changed, some details have been modified, and the photos are stock images



Kimo

1. Kimo used to work, and he decided to retire several years ago
2. He prefers a regular routine which he follows every day. Kimo can decide what activities he prefers to participate in, including bowling and playing bocce ball
3. His caregiver helped him register for the Special Olympics and he has been regularly participating
4. He has won numerous medals that he proudly displays in his bedroom, which is painted a color he picked out
5. Kimo is excited that the Special Olympics has started again this year, and he actively participates in weekly meetings via zoom and enjoys being part of the team
6. Kimo is supported to go shopping at different stores and eat at different places. He collects the bags from each store and has a big collection in of them in his bedroom
7. He also has his own television in his bedroom, a cell phone, his own ipad and internet access. He uses these things at any time, 24/7, when he wants to talk to his friends and family

Michael

1. Communicates with his caregiver and others through his gestures and facial expressions
2. Michael uses a wheelchair and his caregiver arranges for the handivan to take him to his medical appointments
3. Michael has a schedule that the caregiver has determined is best for him, with set times to get up, eat, and go to bed
4. Michael goes out a couple times a week with his PAB worker and enjoys this, smiling and showing his happiness through his gestures
5. When asked how she helps Michael to enjoy the community, the caregiver insists that Michael's preference is only to stay home and watch television or listen to the radio. When asked, the caregiver could not describe what other activities Michael likes
6. Michael's bedroom has bare walls. The furnishings and décor are limited and do not tell a visitor anything about what Michael likes and dislikes
7. The path to Michael's room and bathroom are accessible for a wheelchair but Michael cannot get into the kitchen or the laundry area of the home



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Lynne



1. Lynne is able to express her wants and needs verbally, but sometimes can be difficult to understand
2. She enjoys journaling, shopping for bracelets, eating Dim Sum and going to McDonalds to buy her favorite items – pancakes and egg mcmuffins
3. She has a wallet where she keeps her money
4. Lynne likes to show people her room, where she proudly shares all her bracelets, hung nicely and ready to be worn. She selects what bracelet she wants to wear each day
5. In her room there is a picture of Lynne smiling widely eating dim sum surrounded by her caregiver and caregiver's family members at a Chinese restaurant
6. During a certification visit, Lynne decided that she was tired being around the certifier and preferred to sit at her desk to write in her journal with the bedroom door closed, and so she did
7. Lynne likes to visit with her neighbor's dog and has learned how to get the dog to sit, and to give her treats

Kai

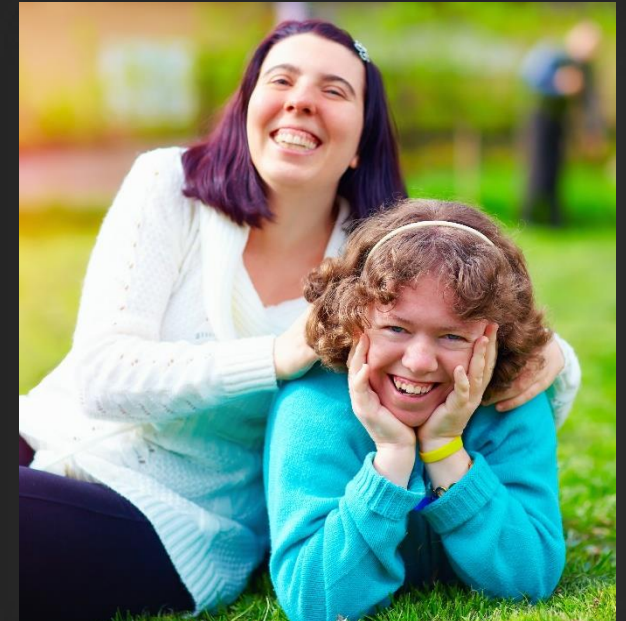
1. Kai can be a silly and outgoing guy most of the time, but he has demonstrated some challenging behaviors when he is frustrated
2. He likes to interact with other people and go out into the community. His caregiver takes him to the store to see other people and sees this as a good recreational activity
3. Kai doesn't belong to any groups or clubs or a spiritual community, and does not seem to have any hobbies or outside activities
4. Kai does not work in a job. He goes to an Adult Day Health center where he often tries to leave, or he acts out towards staff by hitting or spitting
5. The certifier noticed that Kai does have access to a computer and the internet, and he said he likes to facetime with new people he meets online
6. Kai doesn't have any dietary restrictions from a doctor or nutritionist. His guardian worries about Kai's weight and has asked the caregiver to restrict his access to food, which is kept in a locked cabinet



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1. Leilani and Mary live together with a family. They asked to live together after they became friends when they were younger
2. When the certifier arrived to the AFH, they were with other family members at a table playing board games & cards and listening to the radio
3. That day the women described doing manicures, dancing, coloring and drawing and enjoying themselves
4. The caregiving family members listen to Leilani and Mary individually when they tell them what they want to do and where they want to go, and try to support them even when Leilani and Mary want to do different things at the same time
4. Leilani and Mary originally wanted to share a bedroom but when they both decided they wanted more privacy, the caregiver worked with the case manager to find a solution so they could live in the same home but not share a bedroom
5. Leilani works at a job in a hotel. Mary would like to work because she has seen how Leilani has extra money to shop. The caregiver has asked the case manager to help Mary explore employment options

Leilani
and
Mary



Questions and Answers



- More resources about the rule, including webinars, videos and other information, available here: <https://health.hawaii.gov/ddd/news/references-for-ddd-hcbs-final-rule-compliance/>
- For additional information, please contact your AFH Certifier or email doh.dddafh@doh.hawaii.gov



Additional Questions?

doh.dddafh@doh.hawaii.gov



Developmental Disabilities Division
Outcomes and Compliance Branch
Certification Unit

