

HCBS Settings Rule: Provider Owned and/or Controlled Settings

A setting is provider-owned and/or controlled when the setting in which the individual resides is a physical place that is owned, co-owned, and/or operated by a provider of home and community-based services (HCBS).

Examples:

1. Settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS to the individual) *are considered provider-owned or controlled settings* and should be evaluated as such.
2. If a provider is furnishing Home and Community-Based Services to all individuals in a setting in a property owned and leased by a third party, is this setting considered provider-owned and controlled?
 - If the individual leases directly from the third party that has no direct or indirect financial relationship with the provider, *this would not be considered provider-owned or controlled.*
 - If the HCBS provider leases from a third party or owns the property, *this would be considered provider-owned or controlled.*
3. If the provider does not lease or own the property, but has a direct or indirect financial relationship with the property owner, *we would presume that the setting was provider controlled unless the property owner or provider establishes that the nature of the relationship did not affect either the care provided or the financial conditions applicable to tenants.*
4. It is also critical that a state is informed about the nature of the relationship between the participant and the person who owns the home in foster care or shared living settings.
 - If the caregiver receives funding from an HCBS authority, and is not a family member of the HCBS participant, then the *setting is provider-owned or controlled.*
5. Any setting in which, as a result of selection of the setting, the individual's selection of a provider is limited; any setting where the provider comes with the setting: *provider controlled.*
 - For example, a setting where the individual must have a specific provider in order to live in that setting is *provider controlled.*
 - This is most often found in assisted living, senior housing, supportive housing and group home living arrangements.

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6. A Medicaid recipient rents a setting, e.g., an apartment with roommates; however, a provider or state agency provides 24 hour supervision. The recipient holds the lease, but the provider/state provides the supervision, etc.: if the individual can change providers without breaking the lease, then the *setting is not provider controlled*.
7. A parent wills her home through her estate to her son, who now is in his own home, but requires 24 hour supervision/supports.
 - The individual has chosen his own providers who will work with him: this *setting is not provider controlled*.
 - If that same individual's mother willed her home to a provider agency, which agreed to serve her adult child in the home, then the home *would be provider-owned and controlled*.
8. An Assisted Living or Senior Apartment building in which the senior rents the apartment, but when s/he decides to live there, there is only one choice of HCBS provider: *this is a provider controlled setting*.
9. Individual, privately-owned homes (privately-owned or rented homes and apartments in which the individual receiving Medicaid-funded home and community-based services lives independently or with family members, friends, or roommates) are presumed to be in compliance with the regulatory criteria of a home and community-based setting. *This is not provider owned or controlled*.

You can access the CMS guidance here: <https://www.medicaid.gov/sites/default/files/2019-12/provider-owned-and-controlled-settings.pdf>

Submit any questions to HCBSSettings@utah.gov

