HCBS Settings Final Rule
Rights Modification Stakeholder Workgroup
Meeting Minutes

Attendees Present:

Name	Agency	Email
Nicole Schiavone	A Wildflower Assisted Living and Care	nicole@awildflowerassistedliving.org
Ellen Jensby	Alliance	ejensby@alliancecolorado.org
Anaya Robinson	Atlantis Community	anaya@atlantiscommunity.org
Kara Johnson-Hufford	CDPHE	kara.johnson-hufford@state.co.us
Barb Rydell	CDPHE	Barbara.Rydell@state.co.us
Regina DiPadova	Cheyenne Village	rdipadova@cheyennevillage.org
Jennifer Spencer	Community Intersections	directors@ci-colorado.org
Cindy Dutton	Continuum of Colorado	c.dutton@continuumcolo.org
Bob Lawhead	Developmental Disabilities Council	Robert.Lawhead@state.co.us
Kristie Braaten	Developmental Disabilities Resource Center	Kristie.braaten@ddrcco.com
Dani McCann	Developmental Pathways	D.McCann@dpcolo.org
Dennis Roy	Developmental Pathways	D.Roy@dpcolo.org
Meghan Baker	Disability Law Colorado	mbaker@disabilitylawco.org
Caitlin Phillips	DRCOG Ombudsman Program	cphillips@drcog.org
Bruce Mayberry	Dungarvin	bmayberry@dungarvin.com
Leeah Key	Eastern Colorado Services	lkey@ecsdd.org
Marla Maxey	Foothills Gateway	marlam@foothillsgateway.org
Annie Green	Friends of Broomfield	agreen@friendsofbroomfield.org
Tamara French	Goodwill	tfrench@discovermygoodwill.com
Sarita Reddy	Greeley Center for Independence	sreddy@gciinc.org
Kyra Acuna	HCPF	kyra.acuna@state.co.us
Nancy Harris	HCPF	nancy.harris1@state.co.us
Cassandra Keller	HCPF	Cassandra.Keller@state.co.us
Leah Pogoriler	HCPF	Leah.Pogoriler@state.co.us
Rebecca Spencer	HCPF	rebecca.spencer@state.co.us
Lori Thompson	HCPF	lori.thompson@state.co.us
Laurel Rochester	Imagine!	lrochester@imaginecolorado.org
Katie Wilson	Jefferson Center for Mental Health	katiew@jcmh.org
Lynette Johnson	Laradon Hall Society for Exceptional Children and Adults	Lynette.johnson@laradon.org
Terry Zamell	LeadingAge Colorado	terry@leadingagecolorado.org
Dene Kiser	MK Legacy	dene@mklegacy.com
Charlotte McClanahan	MK Legacy	charlotte@mklegacy.com

Name	Agency	Email
Jessica Eppel	MOSAIC	jessica.eppel@mosaicinfo.org
Brent Basham	Mountain Valley Developmental Services	bbasham@mtnvalley.org
Tom Whattoff	Mountain Valley Developmental Services	twhattoff@mtnvalley.org
Leslie Rothman	Mountain View Consulting	leslie.rothman@outlook.com
Jessica Bailey	North Metro Community Services Residential	jessica.bailey@nmetro.org
Alex Hopkins	Overture	ahopkins@overturecolorado.com
Chris Lawson	Parker Personal Care Homes	clawson@parkerpch.com
Jodi Walters	Parker Personal Care Homes	jwalters@parkerpch.com
Jen Martinez	PASCO	jennifer.martinez@pascohh.com
Amanda Alvey	Public Consulting Group	aalvey@pcgus.com
Jamin Barber	Public Consulting Group	jbarber@pcgus.com
Kevin Hutchinson	Public Consulting Group	khutchinson@pcgus.com
Margot Jones	Public Consulting Group	mjones@pcgus.com
Kaitlyn Oakley	Public Consulting Group	koakley@pcgus.com
Janna Hartman	Pueblo County	Janna.hartman@pueblocounty.us
Nicole Schofield	Rocky Mountain Human Services	NSchofield@rmhumanservices.org
Travis Wilson	Rocky Mountain Human Services	twilson@rmhumanservices.org
Kay Harden	Sample Supports	kay@samplesupports.com
Erin Noah-Verser	Stellar Care	Enoah-verser@stellarcare.org
Dani Gordon	Support, Inc.	danielle.gordon@supportinc.com
Laura Viers	Support, Inc.	Laura.viers@supportinc.com
Kari Easterly	The Arc of Adams County	keasterly@arcadams.org
Abigail Negley	The Arc of Colorado	Abigail@thearcofco.org
Christina Butero	The Arc Pikes Peak Region	Christina@thearcppr.org
Michelle Gaumond	The Resource Exchange	Mgaumond@tre.org
Brandi Griffiths	The Resource Exchange	bgriffiths@tre.org
Shana Leeper	The Resource Exchange	SLeeper@TRE.ORG

I. Meeting Objectives

Participants agreed on the following objectives for the meeting:

A. Obtain feedback and perspectives from participants
B. Identify additional stakeholders who require input
C. Identify set of action items to achieve alignment on State Rule prior to its release for public comment

Participants agreed on ground rules set forth in separate document.

II. Welcome + PCG Facilitator Introductions

Participants were welcomed and introduced themselves. The participant list is set out above.

III. Review of draft State Rule

Rule XXX–Statement of Purpose and Scope; Consequence of Noncompliance

Summary: The purpose of the State Rule is to implement the requirements of the federal HCBS Settings Final Rule.

A. Discussion
   (1) Feedback regarding *Section B. The Department will not pay for Covered HCBS provided at any setting that does not comply with Rules XXX through CCC.*: There should be a method to come into compliance in an orderly way, without losing Medicaid funding for minor violations, and language regarding a deadline or timeframe at which point providers must comply.
B. Response
   (1) HCPF does not intend to accelerate the transition period set forth in the STP and milestones and does not anticipate enforcement, funding, or corrective action standards that are stricter than other rules; language changes to clarify will be considered.

Rule YYY–Definitions

Summary: The purpose of this section is to define terms that are used throughout the draft rule.

(1) Question regarding *"except for Respite Services"* phrase in *"Covered HCBS"* definition *("Covered HCBS" means any Home– and Community–Based Service(s) provided under the Colorado State Medicaid Plan or a Colorado Medicaid waiver program, except for Respite Services, Palliative/Support Care services provided outside the child's home under the Children with Life-Limiting Illness Waiver, and Youth Day Services under the Children's Extensive Supports [CES] Waiver"):* Is this referring to respite care services just for children?
   (a) Answer: No. This is referring to respite care services for children and adults. If respite is provided in a typical HCBS setting, the setting should comply. If respite is provided in an institutional setting, that setting does not have to comply. (HCPF).

(2) Question regarding application of rule requirements to a setting for all individuals in the setting, within the definition of *"HCBS Setting"*: If individuals are non-HCBS clients, why would they be included?
   (a) Answer: This is guidance from CMS: CMS says that the Rule applies to the entire setting, not just individuals. If people's rights are not honored at a setting, then it wouldn't be an appropriate place for HCBS participants to be, even if they weren't the ones whose rights were being violated. The rule requires that we ensure that all people are treated the same way regardless of whether they are on Medicaid or if they pay privately. (HCPF and CDPHE.)

(b) Follow up comment: Concern over difficulty for smaller settings, such as foster homes, to come into compliance with all regulations.

(3) Additional question regarding physical locations (the language in question is: *Other Nonresidential Settings include, but are not limited to, locations in the community where Supported Community Connections and Supported Employment Services are provided*): Why is SCC included when this is not provided at a single physical location?

(i) Answer: This language came out of a question that was raised previously where providers asked, "If we have a Supported Employment Group, or people who go out in the community to a library or restaurant, what is the obligation there?" This is to ensure that all people are treated the same way. If these groups are out in the community, they need to be treated the same way as other people. For example, they should not be required to wear vests or logos, and if other people are allowed to eat and drink, they should be allowed to eat and drink. (HCPF).

(4) Question regarding "*Other Residential Setting," meaning a physical location that is residential and that is not owned, leased, operated, or managed by a Medicaid HCBS provider or by an independent contractor of such a provider*. It sounds like if the provider doesn't own or lease the home, as is the case with many IRSS settings, it's not considered provider-owned or -controlled. Is that correct?

(a) Answer: Yes. Host homes, group homes, ACFs, and the other residential settings for which we are requiring PTPs are regarded as provider-owned or -controlled. There is additional federal clarification from CMS on how the kinds of settings in this question and family caregiver homes are handled, and under the draft rule, they would be "other" residential settings. The CMS guidance is in a recent slide deck that was sent to the workgroup on 12/18/2019. HCPF will send this slide deck out again to attendees of this meeting. This slide deck also contains CMS guidance about the elements of informed consent. (HCPF)

Rule AAA–Basic Criteria Applicable to All HCBS Settings

Summary: The purpose of this section is to outline the qualities that HCBS Settings must have and the individual rights that the Settings must protect, based on the needs of the individual as indicated in their person-directed service plan, subject to the rights modification process outlined in Rule CCC.

(1) Conversation regarding the term *"age-appropriate"* in *Sections A* and *G* ("*opportunities to…engage in age-appropriate activities within and outside of the setting"* and "*Has input in the selection of age-appropriate activities at the setting and outside the setting"*, respectively*)*

(a) Question: Is *"*age-appropriate*"* referring only to children?

(i) Answer: No. This is concerning adults that are only given activities for children and aren't given the opportunity to experience things that other adults do, like attend events or go out in the community. Adults should not be treated like perpetual children. This language came in part from CMS exploratory questions about whether people are doing typical activities in the community. It is intended to guarantee that individuals have a choice when it comes to their activities and surroundings. (HCPF).

(b) Concern that current language will lead to prohibitions on preferences that adult individuals genuinely enjoy (one example given is Disney princesses). Additional concern that "age-appropriate" is too subjective for enforcement/surveyor purposes.

(c) New proposed language for *Sections A and G*: Suggestions included: "Has the opportunity to provide input into the selection of activities, including age-appropriate activities." "Has the opportunity to select activities, including age-appropriate activities, at the setting and outside the setting." "Has the opportunity to select activities, from a menu including age-appropriate activities, at the setting and outside the setting."
   (i) Comment on proposed language: This lessens the strength of the rule because it changes "age-appropriate" from being a requirement to being an inclusion. Additionally, this insinuates that "age-appropriate" is not individual choice, which intrinsically minimizes the value of the choices and preferences of the individuals choosing the activities that are not deemed 'age-appropriate' by others.
   (ii) Proposed language change: "Providers optimize, but do not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact."
   (iii)
(d) Additional points raised included the importance of ensuring that individuals have the opportunity for input into the available options and choice among those options, even if they then choose to do something that seems childish; the need for a choice of alternative activities that are typical of adults; the fact that people's preferences and choices can change over time; the need to give people exposure to new things and the encouragement to branch out; and not requiring people to participate in activities just because others want to. (HCPF, CDPHE, and PCG.)

(2) Comment regarding *Section 4*, *Individuals may communicate privately with anyone of their choosing. Methods of communication are not limited by the provider:* **some of the proposed criteria relate to access to communications, not privacy of communications.**

(3) Question regarding the Social Security Rule and the HCBS Settings Rule, connected to *Section 5*: It seems like the Social Security Administration's (SSA's) rule and the Settings Rule conflict in terms of who should control an individual's money. Where does the Department stand on who should control an individual's money?
(a) Answer: The draft rule seeks to accommodate both authorities and allow the provider to be a rep payee consistent with the SSA rules. *Section 5* outlines a process to determine an individual's ability to control their own resources. This is all documented in their person-centered support plan. In a situation where a person is not in control of their resources and the provider is bound by the regulations of the SSA, the provider still has a fiduciary responsibility to the person to allow them as much freedom with their spending money as possible. (HCPF).
(b) Follow up question: What if an individual chooses for a provider to manage their money, but on their assessment, they could manage their own money if they chose to?
   (i) Answer: Be cautious. If people can manage their own money, the provider should support them to manage their own money as much as possible. If the provider is going to manage an individual's funds, the provider needs to

document the reasons and that informed consent in their person-centered support-plan (PCSP) and comply with all parts of Section 5. (HCPF).

(4) Question regarding *Section 5*: Where is this information documented in the PCSP? Would the information a case manager enters into the financial section of the BUS be sufficient, or will there be another area added to the BUS where a case manager can centralize and document these financial areas in *sections b i-iii* of *Section 5*?
   (a) Answer: The BUS is the current case management database, and it is being replaced by something called Aerial. HCPF will provide more details at a later date. (HCPF).

(5) Question regarding *Section C(1)*: If a host home provider has security cameras prior to the client moving in, do they still need to have a rights modification in and outside the home?
   (a) Answer: HCPF has made a policy decision that outside security cameras like the Ring system are acceptable. However, inside security cameras are going to require a rights modification. There is concern with inside security cameras and the potential for restricting or monitoring individual movement within the setting. This is consistent with feedback from CMS that inside security cameras are not indicative of a home setting. (HCPF, CDPHE, and PCG).

(6) Request to align *Section G* with the rights currently outlined in 10 CCR 2505-10 ch. 8.600 for I/DD waivers

(7) Question regarding *Section G* as a whole: how will these rights be ensured in family caregiver settings?
   (a) Answer: This issue already exists with other regulatory requirements applicable to paid family caregivers alongside other provider types. It seems best for everyone to ensure that the requirements are observable and measurable. (HCPF.)

(8) Concern expressed over *Section G #2*. *Has freedom of thought, conscience, and religion, and has the ability to participate in religious or spiritual activities, ceremonies, and communities.* "Freedom of thought [and] conscience" seems subjective and difficult to measure for surveyor/auditor purposes.
   (a) Observation: this and other items in proposed Section G come from the rules for the Brain Injury Waiver; given successful implementation under that waiver, it appears that this language is workable. A concrete example of a violation of someone's freedom of thought/conscience would be requiring them to fill out their ballot a certain way. (HCPF.)
   (b) Proposal: adjust language to reflect or increase emphasis on informed choice. (HCPF, PCG.)
   (c) Observation: statute already protects people's right to vote and other civil rights, so regulatory protections for freedom of thought/conscience are unnecessary.
   (d) Response: it might be worth reviewing the history of the language in the Brain Injury Waiver rules to see whether issues like these were already considered. (HCPF.)

(9) Request to ensure that *Section G, #10* (*Receives the same consideration and treatment as anyone else regardless of race, color, national origin, religion, age, sex, political affiliation, sexual orientation, financial status, or disability)* includes gender identity and gender expression.

Rule BBB–Additional Criteria for HCBS Settings

Summary: The purpose of this section is to outline the qualities that Provider-Owned or -Controlled Residential Settings and other settings must have and the individual rights that the Settings must

protect, based on the needs of the individual as indicated in their person-directed service plan, subject to the rights modification process in Rule CCC.

A. Discussion

(1) Comment regarding *Section A(5), A violation of a lease or residency agreement that leads to a discharge must include at least 30 days' notice to the individual (or, if authorized, their guardian or other legal representative)*: Under the DD waiver, the required notice period is 15 days.

(a) Response: Requiring 30 days would be a change for the DD waiver, in order to conform the notice period across waivers. (HCPF.)

(2) Questions and concerns regarding *Section A(7)* (*A provider may not discharge an individual who has nowhere else to live)*:

(a) Question: for this purpose, is the provider the PASA or the individual host home provider?

(i) Response: the PASA. (HCPF.)

(b) Concern: This requirement does not make sense for all provider types and waivers. There are too many variables and there needs to be more conversation. There may be a need to modify the language here based on different provider/setting types or waivers.

(c) Question: What is the role of the provider versus the case management agency?

(i) Response: The obligation on the provider would be to not discharge until a new living arrangement is set up. ACFs already work within a requirement like the one in the draft rule, so a similar requirement should be workable for DD providers. (HCPF.)

(d) Concern: DD providers do not always have the capacity (in terms of staffing, alternative settings available and willing to serve the individual, etc.) to support all individuals in this situation.

(e) Question: Can these concerns be handled by referrals to the Regional Centers? Some providers say that this process is too slow.

(f) Question: How do we prevent individuals from being "dumped" from the setting and/or made homeless?

(g) Comment: After due process has been concluded, there should be a point when the provider's responsibility is concluded. Any further responsibility should rest with the case management agency.

(h) Question: Should the rule against discharging individuals into homelessness be part of the residency agreement? This can help determine what the next steps are and who is responsible to prevent individuals from becoming homeless.

Questions and comments regarding draft rule as a whole

(1) Question: How much of this process is about promoting best practices versus promoting compliance with federal rules?

(a) Answer: This rule is about promoting compliance with the federal rule as set out by CMS in the rule itself and other CMS issuances and indications of how CMS interprets its rule. These authorities and interpretations are reflected in the FAQs issued by HCPF and the compliance issues included within the Provider Transition Plans (PTPs). This draft rule is the baseline and HCPF's hope is that providers will go above and beyond. (HCPF) It is possible that over time, the floor could be raised to require more widespread adoption of what are now only best practices. (PCG)

(2) Question: Could HCPF publish a manual or a set of interpretive guidelines to support this rule?
   (a) Answer: For historical reasons, HCPF and CDPHE rely only on rules (and during the transition period, there are also the Provider Transition Plans and FAQs.) The two agencies have open channels of communication and will be available to address questions and concerns raised during surveys after the rule is codified. (HCPF and CDPHE.)

IV. Next Steps

A. Reconvene on Rules BBB and CCC
B. Questions or thoughts: Email hcpf_stp.publiccomment@state.co.us
C. A Doodle Poll will be sent out for scheduling purposes of the next meeting

V. Action Items

A. HCPF to re-send slide deck with federal clarification on provider-owned and -controlled residential settings and criteria relating to informed consent, previously sent on 12/18/2019
B. HCPF to send Doodle Poll with dates for scheduling purposes of the next Rights Modification Stakeholder Workgroup