

Rights Modification Training

Training for Case Managers and Providers

January 2019



COLORADO

Department of Health Care
Policy & Financing

Our Mission

Improving health care access and outcomes for the **people** we serve while demonstrating sound stewardship of financial **resources**



COLORADO

Department of Health Care
Policy & Financing

Right to Humane Treatment

“Every person has the right to humane treatment. It is the responsibility of all service agencies and community centered boards to prohibit mistreatment, exploitation, neglect or abuse in any form.”

C.R.S. 25.5-10-221



COLORADO

Department of Health Care
Policy & Financing

“To deny people their human rights is to challenge their very humanity.”

- Nelson Mandela



Purpose

To provide training for Case Management Agencies (CMAs) and Home- and Community-Based Services (HCBS) Provider Agencies on the use of rights modifications *when all options for less restrictive interventions have been tried without success to support an individual's health and safety needs and/or the health and safety needs of the community.*



COLORADO

Department of Health Care
Policy & Financing

Topics

- Individual rights under the HCBS Settings Final Rule
- Rights modifications
 - Requirements, including collecting informed consent and who does what
- What if ...
 - The individual chooses not to give or revokes their consent?
 - The individual has/does not have a guardian?
- Updated deadlines



Individual Rights under the HCBS Settings Final Rule



COLORADO

Department of Health Care
Policy & Financing

HCBS Settings Final Rule

In 2014, the federal Centers for Medicare & Medicaid Services (CMS) published a [rule](#) requiring HCBS to be provided in settings that meet certain criteria.

The criteria ensure that HCBS participants have access to the benefits of community living and live and receive services in integrated, non-institutional settings.



COLORADO

Department of Health Care
Policy & Financing

People have rights to live and receive HCBS in settings that:

- Are integrated in, and support full access to the greater community.
- Are selected by them from among various options, including non-disability specific settings, and an option for a private unit.



COLORADO

Department of Health Care
Policy & Financing

People have rights to live and receive HCBS in settings that:

- Ensure privacy, dignity, respect, and freedom from coercion and restraint.
- Optimize individual initiative, autonomy, and independence.
- Facilitate individual choice regarding services and supports, and who provides them.



COLORADO

Department of Health Care
Policy & Financing

People have rights to live and receive HCBS in settings that meet the following additional conditions:

- For residential settings, the person has a lease giving them the same responsibilities and protections from eviction as other tenants in the area, or they have a written residential agreement giving them comparable protections.



COLORADO

Department of Health Care
Policy & Financing

People have rights to live and receive HCBS in settings that meet the following additional conditions:

- People have privacy in their residential unit:
 1. They can lock their doors.
 2. They can choose their roommates (if any).
 3. They can furnish and decorate as they like.
- People have the freedom and support to control their schedules and activities and have access to food at any time.
- They can have visitors of their choosing at any time.
- The setting is physically accessible.



More Information

Information about the following items is available on the Department's [HCBS Settings Final Rule Website](#):

- Implementation of the federal settings criteria, including the [Statewide Transition Plan \(STP\)](#);
- The [Systemic Assessment Crosswalk](#) setting out planned changes to Colorado's statutes, regulations, and waivers; training materials; and
- Frequently asked questions (FAQs) regarding implementation of the settings criteria ([FAQ Part I](#); [FAQ Part II](#); [FAQ Part III](#)).



COLORADO

Department of Health Care
Policy & Financing

Questions or Concerns?



Requirements for Rights Modifications

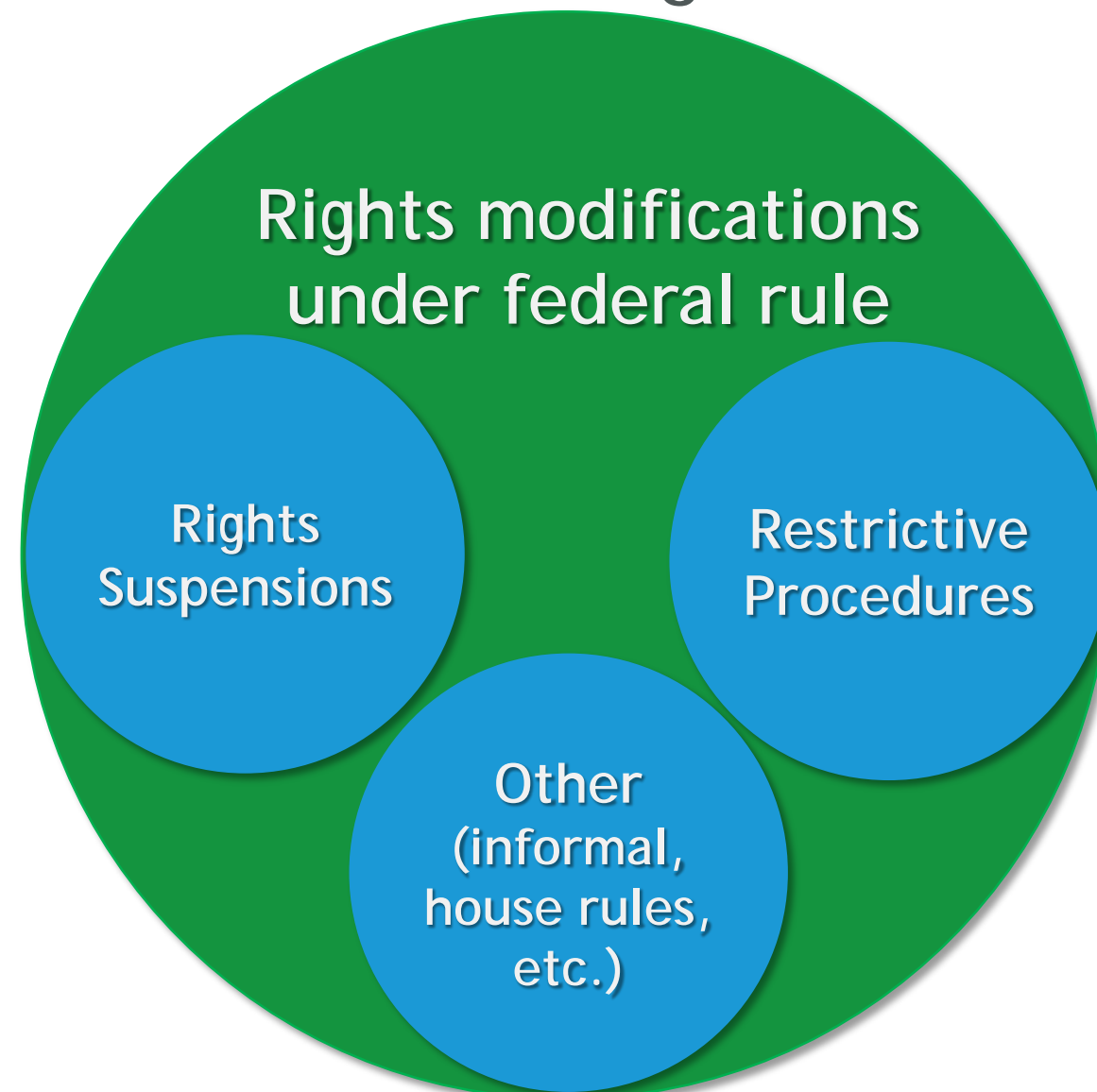


COLORADO

Department of Health Care
Policy & Financing

What is a rights modification?

- A limitation or restriction to the rights that people have under the HCBS Settings Final Rule.



Examples (not exhaustive)

- Cameras in group homes or other residential settings
- Not allowing someone outside alone, where they express a contrary desire
- House rules that limit visiting hours for everyone, or prevent everyone from having food or alcohol in their rooms/units
- Day program requirement that participants turn in their cellphones for the day

Examples (not exhaustive)

- For children: Is the restriction typical for children of that age, whether or not they are receiving HCBS?
 - e.g., it is typical for 5-year-olds to have a fixed bedtime, and to not have a house key. But these things are not typical for 16-year-olds.



COLORADO

Department of Health Care
Policy & Financing

Rights Modification Requirements

- Rights modifications are based on the specific assessed needs of the individual. They are not imposed across-the-board and are not based on the convenience of the provider.
 - Everyone awakes at the same time, eats at the same time, bathes at the same time, etc.
- The process for implementing rights modifications is person-centered. It ensures that the individual fully understands and agrees to the modifications.



COLORADO

Department of Health Care
Policy & Financing

Rights Modification Criteria

- Any rights modification must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:
 1. Identify a specific and individualized assessed need.
 2. Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
 3. Document less intrusive methods of meeting the need that have been tried but did not work.



Rights Modification Criteria

4. Include a clear description of the modification that is directly proportionate to the specific assessed need.
5. Include regular collection and review of data to measure the ongoing effectiveness of the modification.
6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
7. Include the informed consent of the individual.
8. Include an assurance that interventions and supports will cause no harm to the individual.



Rights Modification Process

- Under the rule as published, the rights modification process was available only for “the additional conditions.”
- CMS has since indicated that some of the other rights may also be modified if a similar individualized process is followed.
- The right to a physically accessible setting is not subject to modification.
 - For implementation details, see FAQ Part I, Item #26.



Who Does What - Provider

If a provider believes that a rights modification is needed for a current client, it should initiate the process by collecting information on a form that it develops and provides to the case manager.

- The form should include information addressing the 8 required items (leaving signature collection to the case manager).
- Many providers already have forms along these lines for use with rights suspensions and restrictive procedures.
- This is not the end of the process.



COLORADO

Department of Health Care
Policy & Financing

Who Does What - Case Manager

Meet with the individual to confirm that they fully understand their rights, the proposed modification, and all options and alternatives to the modification.

If the individual consents, enter the required information into their person-centered plan and get their signature.

Provide a copy of the compiled and signed documentation, along with the rest of the service plan, to any provider(s) involved in implementation.



Who Does What - Case Manager

The case manager may initiate the rights modification process, using a form that they develop, for people who are new to a waiver or who develop or express new needs or preferences not yet known to their provider(s).

CMAAs that have already started using their own forms covering the federal requirements need not redo any completed work. They may distribute their forms to the providers they work with as a template, if desired.



COLORADO

Department of Health Care
Policy & Financing

Information Storage & Distribution

The case manager enters the information into the individual's person-centered service plan.

- Rights modification information may be stored in the DD Section of the Service Plan in the BUS, if available, otherwise other fields (e.g., Log Notes) - be consistent so you can edit and print information down the road.
- The Department is working to add dedicated fields for rights modifications to the BUS for all case managers and individuals, regardless of waiver.
- Aerial, the new case management platform, will include dedicated fields for rights modifications.



COLORADO

Department of Health Care
Policy & Financing

Information Storage & Distribution

The case manager maintains a copy of the finalized rights modification with 8 required kinds of information, as entered into the individual's person-centered service plan, with the signed informed consent.

The case manager gives a copy of these materials, along with the rest of the service plan, to the provider.

The provider gives these materials to the Department and CDPHE.



Questions or Concerns?



What If . . .



COLORADO

Department of Health Care
Policy & Financing

What if . . .

- The individual chooses not to give or revokes their consent?
 - A court may impose restrictions on the individual without their consent (document these in the person-centered plan). But if a provider is taking action(s) to implement a court order, this is a rights modification that requires consent.
 - Ask whether modifications are truly needed
 - Use a person-centered approach and honor dignity of risk
 - If there is a serious risk to anyone's health or safety, the modification can be used/continued for a short time, so long as the provider immediately (a) implements staffing/other measures to deescalate the situation and (b) reaches out to the case manager to set up a meeting as soon as possible. At the meeting, the individual can grant or deny their consent.



What if . . .

- The individual chooses not to give or revokes their consent?
 - People can decide they do not consent
 - May explore obtaining a new provider that would not require the same modification(s)

What if . . .

- The individual has/does not have a guardian?
 - The individual always leads the person-centered planning process where possible.
 - If there is no guardian (or person with similar decisionmaking authority), then only the individual can grant, deny, or withdraw consent.
 - Authorized Representatives do not have this kind of authority
 - Consider supported decisionmaking
 - If there is a guardian (or person with similar authority), the court order must be consulted.
 - Does it say the guardian can make this kind of decision?



Updated Deadlines



COLORADO

Department of Health Care
Policy & Financing

Updated Deadlines

- Over the next six months:
 - Providers should discuss possible rights modifications with individuals and case managers and start the paperwork.
 - Case managers should:
 - meet with individuals;
 - finalize and compile the information in the person-centered plan;
 - collect signed informed consent; and
 - give a copy to the individual and the provider(s) implementing the rights modification



Updated Deadlines

- By July 31, 2019, each provider must have a copy of the appropriate documentation OR stop implementing the rights modification.
 - The provider must be able to show this documentation to the Department, CDPHE, and (in some cases) CMS



COLORADO

Department of Health Care
Policy & Financing

Links to References

HCBS Settings Final Rule:

- Text of rule:

www.federalregister.gov/documents/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider

- Department's implementation of rule, with trainings, FAQs, and other guidance:

www.colorado.gov/hcpf/home-and-community-based-services-settings-final-rule

Department's regulations:

www.colorado.gov/hcpf/department-program-rules-and-regulations



COLORADO

Department of Health Care
Policy & Financing

Links to References

Waiver Applications:

www.colorado.gov/hcpf/programs-individuals-physical-or-developmental-disabilities#foradults

Statutes and Regulations:

www.colorado.gov/hcpf/regulatory-resource-center

Long-Term Services and Supports Programs Page:

www.colorado.gov/hcpf/long-term-services-and-supports-programs



COLORADO

Department of Health Care
Policy & Financing

Questions or Concerns?



hcpf_ptp@state.co.us



COLORADO

Department of Health Care
Policy & Financing

Thank You!



COLORADO

Department of Health Care
Policy & Financing