Systemic Assessment Crosswalk on Settings

In January 2014, the Centers for Medicare & Medicaid Services (CMS) published a rule to ensure that Home and Community Based Services (HCBS) are provided in settings that meet certain criteria. 79 Fed. Reg. 2948 (Jan. 16, 2014). The rule went into effect in March 2014, and states have five years—until March 2019—to ensure that their HCBS settings are compliant with the rule. Although the Department has begun coordinating with CDPHE and CDHS on this endeavor, this crosswalk is issued only by the Department and is not a joint publication with CDPHE or CDHS.

In addition to the Department, other state agencies, such as the Colorado Department of Public Health and Environment (CDPHE) and the Colorado Department of Human Services (CDHS), are involved in ensuring compliance with the HCBS Settings Rule. The Department plans to work with these agencies to ensure that their relevant statutes and regulations promote compliance. Although the Department has begun coordinating with CDPHE and CDHS on this endeavor, this crosswalk is issued only by the Department and is not a joint publication with CDPHE or CDHS.

The following notes are intended to make it easier to review and comment on the crosswalk:

1. Certain criteria in the HCBS Settings Rule apply to all HCBS settings. These criteria are set out below in red font above Table 1. Within Table 1, all affected HCBS settings are listed alphabetically from top to bottom. From left to right, the crosswalk summarizes existing state statutes, regulations, and waivers, stating whether they are consistent with, silent with respect to, or in conflict with each federal criterion.

2. Additional criteria in the HCBS Settings Rule apply only to provider-owned or -controlled residential HCBS settings. These criteria are set out below in orange font above Table 2. Within Table 2, all affected provider-owned or -controlled residential HCBS settings are listed alphabetically from top to bottom. From left to right, the crosswalk summarizes existing state statutes, regulations, and waivers, stating whether they are consistent with, silent with respect to, or in conflict with each federal criterion.

3. The Department is proposing to take a “belt and suspenders” approach to ensuring that all HCBS settings conform to the federal requirements.
   a. Pursuant to this approach, the Department plans to propose two new regulations: 10 CCR 2505-10 AAA, requiring all HCBS settings to comply with set 1 of the federal criteria (see red text above Table 1, and 10 CCR 2505-10 BBB, requiring all provider-owned or -operated residential HCBS settings to comply with set 2 of the federal criteria (see orange text above Table 2). “AAA” and “BBB” are placeholders for numbers to be assigned later.
   b. In addition, the Department plans to propose piecemeal edits to its regulations governing particular HCBS settings, and to work with other agencies that are involved with such settings, as set out in the two tables below. These edits are described below as “redlines.” The Department hopes that these redlines will be relatively uniform across different kinds of settings, but it invites comment on whether different language or considerations should apply to particular settings.

4. For the sake of efficiency and uniformity, the Department expects the bulk of the redlines to affect its own regulations and those of other agencies. The Department plans to seek changes to statutes and waivers only where necessary to mitigate possible conflicts with federal requirements, and not to address mere silence in a statute or waiver vis-à-vis federal requirements (which will be addressed via regulatory amendments). Working with CMS, the Department may eventually seek to amend its waivers so that similar requirements are addressed with similar language, and so that services that are provided under multiple waivers are described in a consistent way.

5. Where a statute, regulation, or waiver is silent with respect to two or more federal requirements, the silence is noted in the first column in the table; subsequent columns in the table that direct the reader to “see Column X” (prior column) mean that the authority is also silent with respect to the additional federal requirements.

6. Where the crosswalk indicates that the Department plans to propose redlines or work with another agency to do so, the public will have an opportunity down the road to review and comment on the actual proposed redlines (e.g., during a rulemaking proceeding or the notice-and-comment period for waiver amendments). Therefore, while you may comment on all aspects of this crosswalk, you may find it most efficient to focus now on big-picture issues, and to save particular wording preferences for the comment periods to come.

7. To review the authorities identified in this crosswalk, please visit:
   b. For regulations: https://www.sos.state.co.us/CCR/Welcome.do.
Set 1 of federal criteria: standards applicable to all HCBS settings (42 C.F.R. § 441.301(c)(4))

Home and community-based settings must have all of the following qualities, and such other qualities as [CMS] determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

(i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

(ii) The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.

(iii) Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.

(iv) Optimizes, but does 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.

(v) Facilitates individual choice regarding services and supports, and who provides them.

New Rule AAA will provide that the above standards apply to all settings in which HCBS services are provided, except where HCBS services are otherwise permitted to be delivered in a setting that is institutional or does not meet the HCBS settings standards, such as respite services available under certain waivers. See 79 Fed. Reg. at 3011. Palliative/Supportive Care services provided outside the child’s home (under the Children with Life-Limiting Illness waiver) are similar to respite, and new Rule AAA will not apply to such services. In addition to protecting the federally prescribed rights as set forth above, new Rule AAA will also

- protect some of the rights currently set forth in 10 CCR 2505-10 8.515.80(C) (rights of participants in the Waiver for People with Brain Injury);
- require that if restraints are used with an individual, the use be based on an assessed need after all less restrictive interventions have been exhausted; be documented in the individual’s person-centered plan as a modification of the generally applicable settings criteria, consistent with the standards in Rule BBB; be complaint with any applicable waiver; and be reassessed over time;
- provide that any restrictive or controlled egress measures must be consistent with the following criteria:
  - the measures are implemented on an individualized (not setting-wide) basis;
  - the measures make accommodations for individuals who are not at risk of wandering or exit-seeking behaviors;
  - the measures are documented in the individual’s person-centered plan as a modification of the generally applicable settings criteria, consistent with the standards in Rule BBB;
  - the plan documents an assessment of the individual’s wandering or exit-seeking behaviors and the underlying conditions, diseases, or disorders relating to such behaviors and the need for safety measures; options that were explored before any modifications occurred to the person-centered plan; the individual’s understanding of the setting’s safety features, including any controlled-egress; the individual’s choices for prevention of unsafe wandering or exit-seeking; the individual’s and their caregivers’/representatives’ consent to controlled-egress goals for care; the individual’s preferences for engagement within the setting’s community and within the broader community; and the opportunities, services, supports, and environmental design that will enable the individual to participate in desired activities and support their mobility; and
  - the measures are not developed or used for non-person-centered purposes, such as punishment or staff convenience;
- provide that if an individual requests that a provider hold his/her funds, their signed person-centered plan must document this request, the reasons for the request, and the parties’ agreement on how the provider should handle the funds (including acknowledgement of the provider’s obligations under C.R.S. 25.5-10-227 and the Social Security Administration’s (SSA’s) requirements for representative payees, if applicable or if the parties so elect) and what they define as “reasonable amounts” under C.R.S. 25.5-10-227 (if applicable or if the parties so elect).

Table 1: standards applicable to all HCBS settings

<table>
<thead>
<tr>
<th>Type of setting</th>
<th>A. Integrated</th>
<th>B. Selected by Individual</th>
<th>C. Ensures individual’s rights</th>
<th>D. Optimizes autonomy in life choices</th>
<th>E. Facilitates choice regarding services and supports</th>
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<tbody>
<tr>
<td>1. Adult day services centers (alternatives to nursing facilities)— includes basic and specialized adult day services centers</td>
<td>Statute: C.R.S. 25-5-6-303(1) generally requires that all federal requirements be met, but does not specifically list integration, etc. C.R.S. 25-5-6-313(1,5) requires the MMR to regulate integrated settings criteria, including opportunities to seek employment and work in competitive integrated settings. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and, for residential settings, resources available for room and board.</td>
<td>Statute: See Column A. Regs: See Column A; as stated at left, the Department plans to add a reference to new Rule AAA within the two adult day services regulations.</td>
<td>Statute: See Column A. Regs: 10 CCR 2505-10 8.491.14(F) provides that clients have the right to choose not to participate in social and recreational activities. 8.515.70 is silent on autonomy. As stated at left, the Department plans to add a reference to new Rule AAA within the two adult day services regulations.</td>
<td>Statute: See Column A. Regs: See Column A; as stated at left, the Department plans to add a reference to new Rule AAA within the two adult day services regulations.</td>
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<td>The Department has convened a stakeholder workgroup comprised of providers, clients, advocates, and representatives from CDPHE.</td>
<td>See Column A; as stated at left, the Department plans to add a reference to new Rule AAA within the two adult day services regulations.</td>
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The workgroup is reviewing current Department regulations for compliance with the HCBS Settings Rule and to make any other necessary updates.

**Summary of cited authorities:** C.R.S. 25.5-6-301 et seq. provides statutory authority for HCBS services for people who are elderly, blind, or physically disabled (EBD). Section 303 sets out definitions, including one for adult day care facilities. Section 313 requires the Medical Services Board (MSB) to adopt certain rules for the administration of the EBD waiver, including adult day care services. C.R.S. 26-20-101 et seq. is the Protection of Individuals from Restraint and Seclusion Act.

CDPHE’s general licensure standards are set forth in 6 CCR 1011-1 Chapter 02, and its regulations protecting people from involuntary restraints in licensed health care facilities are set forth in Chapter 02 Part 8. 10 CCR 2505-10 8.491 regulates adult day services for purposes of the EBD Waiver, the Waiver for Persons with Spinal Cord Injury (SCI) (see 8.517.1), and the Waiver for Community Mental Health Services (CMHS) for Persons with Major Mental Illnesses (see 8.509.13). Section 8.315 et seq. regulates services under the Waiver for Persons with Brain Injury (Bi), with Section 8.315.70 defining adult day services for purposes of that waiver. The cited waivers provide for adult day services.

### 2. Alternative care facilities (ACFs)

The Department has convened a stakeholder workgroup comprised of providers, clients, advocates, and representatives from CDPHE. The workgroup is reviewing current Department regulations for compliance with the HCBS Settings Rule and to make any other necessary updates. The Department is working closely with CDPHE to ensure that any revisions to the new Rule AAA within these two regs. For this particular setting and federal requirement (integration), the Department also plans to propose redlines that specify concrete, desired outcomes. The Department will implement C.R.S. 25.5-6-313(1.5) by adding the reference to Rule AAA—which will specify that any restrictive egress measures must meet the criteria set out above—and any additional appropriate language to the adult day services regulations.

**Waiver:** Bi Waiver, EBD Waiver, SCI Waiver, and CMHS Waiver are silent with respect to integration, etc.

**Regulations:**
- **ACFs** are regulated by state agencies as well as private entities that contract with or are licensed/certified by state agencies.
- **ACFs** to be homelike and provide social and recreational activities within and outside the facility.
- **ACFs** are regulated by state agencies as well as private entities that contract with or are licensed/certified by state agencies.
- **ACFs** must have written policies on resident rights that incorporate the provisions of Section 1.106(1), which address privacy, dignity, respect, and freedom from restraint; see also 6 CCR 1011-1 Chap 07 Part 8 and Chap 07 1.106(1)(i) (limiting use of restraints); 10 CCR 2505-10 8.495.6.E. (protection of privacy during phone calls and visits and in bed). Also, 6 CCR 1011-1 Chap 07 1.102(3)(b)(iv), 1.104(5)(j), 1.105(3), and 1.106(1)(m) protect residents’ control of their money and property. And under 10 CCR 2505-10 8.495.4.B, clients shall be informed of their rights.

**Facilitates choice regarding services and supports:**
- add a reference to new Rule AAA within the two adult day services regulations.
- Waiver: See Column A.

**C.R.S. 25-27-104 is silent with respect to integration, etc. C.R.S. 25.5-6-301.3 generally requires that all federal requirements be met, but does not specifically list integration, etc.**

**Regs:**
- For ACFs generally: 6 CCR 1011-1 Chap 07 1.106(1)(m) requires ALRs to have a policy on restrictive egress alert devices, and 1.108 regulates secured environments. 1.106(1)(j) protects resident’s right to make visits outside the facility. 1.107(2) requires ALRs to provide opportunities for social and recreational activities within and outside the facility.

**For ACFs specifically:** under 10 CCR 2505-10 8.495.1, protective oversight includes resident choice and ability to travel and engage independently in the wider community. 8.495.2.B requires an assessment of whether the ACF meets the person’s need for independence and community integration. 8.495.6.E requires ACFs to encourage and assist client’s participation in activities within the wider community, when appropriate. The Department plans to add a reference to this requirement, the Department will propose to modify this rule to require a restraint-free environment.

**Other silent:**
- **Notwithstanding** anything in Rule AAA that might otherwise appear to allow a restraint.
- see Column A: as stated at left, the Department plans to add a reference to new Rule AAA.

**Waiver:** Bi Waiver, EBD Waiver, SCI Waiver, and CMHS Waiver at App. G-2 describe statutory and regulatory protections for certain rights, including freedom from restraint.
Type of setting

- Foster Care Homes (no more than 3 foster care children)
- Kinship Foster Care
- Non-certified Kinship Care
- Specialized Group Facilities (SGFs)
  - Group Homes (up to 6 children if three are in CHRP program)
  - Group Centers (up to 7 children if two are in CHRP program or 6 children if one is in CHRP program)
- Residential Child Care Facilities (RCCFs)

The rules relating to this type of setting are currently being revised.

The Department plans to work with CDHS on regulatory and/or waiver edits that will have minimal impact on the numerous foster care homes, SGFs, and RCCFs that serve children who are not enrolled in the Children’s Habilitation Residential Program (CHRP) Waiver.

Summary of cited authorities:
- C.R.S. 25.5-10-201 et seq. sets forth statutory standards and procedures for providing services to individuals with IDD. C.R.S. 26-10-101 et seq. is the Child Care Licensing Act. C.R.S. 26-20-101 et seq. is the Protection of Individuals from Restraint and Seclusion Act.

Statutory authority for HCBS services for people who are elderly, blind, or physically disabled (EBD). Section 303 sets out definitions, including one for ACFs. C.R.S. 26-20-101 et seq. is the Protection of Individuals from Restraint and Seclusion Act.

CDPHE’s general licensure standards are set forth in 1 CCR 1011-1 Chapter 02, and its regulations protecting people from involuntary restraints in licensed health care facilities are set forth in Chapter 02 Part 8. CDPHE’s regulations for ALRs are set forth in 6 CCR 1011-1 Chap 07.

The cited waivers provide for ACF services.

New Rule AAA within 10 CCR 2505-10 8.495. As stated above, new Rule AAA no requires integration and will specify that any restrictive egress measures must meet the criteria set forth above.

Waiver: EBD Waiver, App. G-2, item 4 requires ACF to facilitate community integration. CMHS Waiver at App. G-2, item a, ii, states that a survey tool administered by CDPHE ensures that ACFs “comply with the home-like and person centered environment requirements and support community integration.” CMHS Waiver at App. G-2, item c, states that ACF “must facilitate community integration; protect the health, welfare and safety of the client; and be home-like and person centered.” The Department plans to delete references to ACFs in the BI Waiver (with ACFs being replaced by 10Supported Living Program (SLP) or Transitional Living Program (TLP).)

Statute: C.R.S. 25.7-10-201 et al declares the General Assembly’s intent that individuals with IDD be included in community life, but does not specify integration as a requirement for particular settings. C.R.S. 25.7-10-227 provides that “[u]pon the request of a person receiving services, a service agency may hold [in trust] money or funds belonging to the person receiving services,” and that “[u]pon request, a person receiving services is entitled to receive reasonable amounts of such person’s money or funds held in trust” by the agency. In conjunction with the part of new Rule AAA relating to agreements on the provider’s handling of funds, this statutory provision is consistent with the HCBS Settings Final Rule.

Reqs: The Department plans a reference to new Rule AAA in the Department’s CHRP-specific regulations (10 CCR 2505-10 8.508).

12 CCR 2509-8 7.708.61 (for children in foster care), 7.714.2 (for children in SGFs and RCCFs), and the service plan require placement agreement to be developed with the involvement of the child and parent(s) or guardian(s).

Waiver: CHRP Waiver, App. B-7, provides that “[w]hen an individual is determined to be likely to require a level of care as indicated in the waiver, the individual or his/her legal representative will be: a. informed of any feasible alternatives under the waiver; and b. given the choice of either institutional or home and community-based services.” In some circumstances, the legal guardian or custodian making this choice may be the court.

Reqs: C.R.S. 25.7-10-216 through -240 protects the rights of individuals with IDD in general (218), and in particular with respect to privacy (223) and freedom from coercion and restraint (221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole. C.R.S. 26-6-106(2)(g) authorizes child care facility licensing rules to “safeguard the legal rights of children served,” but does not specify which rights. C.R.S. 26-6-106(2)(k) authorizes rules to set standards for short-term confinement of children.

C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies.

Reqs: As stated at left, the Department plans a reference to new Rule AAA, which will explicitly protect an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint, to the Department’s CHRP-specific regulations (10 CCR 2505-10 8.508). In addition, the Department plans to propose redefinitions to 10 CCR 2505-10 8.508.180 to more explicitly ensure children’s rights of privacy, dignity and respect, and freedom from coercion and restraint, and to ensure that any use of restraints is based on an assessed need after all less restrictive interventions have been exhausted; be documented in the child’s person-centered plan as a modification of the generally applicable

Statute: See Column B.

Reqs: No redlines needed beyond adding references to new Rule AAA in the Department’s CHRP-specific regulations (10 CCR 2505-10 8.508).

10 CCR 2505-10 8.608 requires providers serving people with IDD to work to help these clients make increasingly sophisticated and responsible choices, exert greater control over their life, and develop and exercise their competencies and talents.

12 CCR 2509-8 7.708.61 (for children in foster care) and 7.714.2 (for children in SGFs and RCCFs) require care to be provided in the least restrictive, most appropriate setting in order to meet the child’s needs.

Waiver: CHRP waiver is silent with respect to autonomy.

Reqs: See Column B.
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<tr>
<td>The Department’s regulations for CHRP services are set forth in 10 CCR 2505-10 &amp; 8.508, and its general regulations for the provision of services to individuals with IDD are set forth in 10 CCR 2505-10 &amp; 8.600 et seq. CDHS’s regulations for child welfare services and facilities are set forth in 12 CCR 2509 et seq., also known as Staff Manual Volume 7 and 7.705.21(C) for RCCFs). 7.708.1(A)(3) for foster care, 7.701.2 for SGFs, 12 CCR 2509 and provider requirements, and Part 8 (Section 7.700 et seq.) addresses child care facility licensing. Several of CDHS’s regulations require counties and child welfare providers serving children enrolled in the CHRP waiver to follow the Department’s CHRP-specific regulations. See 12 CCR 2509-7-7.406.2(O) as well as 2509-8 7.708.1(A)(3) for foster care, 7.701.2 for SGFs, and 7.705.21(C) for RCCFs). The cited waiver provides for CHRP services.</td>
<td>care; work must be approved by foster parent(s) and the county designee. 12 CCR 2509-8 7.708.3, 7.708.67, and 7.708.68 (for foster care) and 7.714.31 and 7.714.7 (for SGFs and RCCFs) protect children’s right to keep and use their possessions, subject to certain limits, and be allowed to spend a “reasonable sum” of their own money. 12 CCR 2509-8 7.714.2, 7.714.6, &amp; 7.714.7, applicable to SGFs and RCCFs, require facilities to have policies on participation in recreational &amp; religious activities &amp; community life; to provide for educational &amp; vocational programs in the most appropriate &amp; least restrictive setting; &amp; to encourage participation in community activities. 7.709.25 provides for children in SGFs to participate in school &amp; community activities. Waiver: CHRP waiver does not expressly address integration, although it states in App. C 2 that “[a] group home is located within a community and provides an environment that is similar to a foster or familial home. The children [like those in a foster home] have access to activities in the community.”</td>
<td>settings criteria, consistent with the standards in Rule BBB; be compliant with the CHRP waiver; and be reassessed over time. The Department will also propose to update this regulation’s reference to “Children’s Rights as defined in CDHS Social Services Staff Manual” from the outdated “Section 7.714.50, ‘CHILDREN’S RIGHTS’ (12 CCR 2509-8)” to the current relevant provisions. 10 CCR 2505-10 8.604.1 (relating to people with IDD) reiterates that people receiving services have the same rights as others; 8.604.2 requires providers to protect rights in C.R.S. 25.5-10-218 through -231 (the Department plans to change this to C.R.S. 25.5-10-216 through -240) and 8.608.3 thru 8.608.5 limit the use of restraints. The Department plans to propose redlines to some or all of these regulations to more explicitly state that individuals have rights of privacy, dignity, respect, and freedom from coercion and restraint, and to require that any use of restraints be based on an assessed need after all less restrictive interventions have been exhausted; be documented in the child’s person-centered plan as a modification of the generally applicable settings criteria, consistent with the standards in Rule BBB; be compliant with the CHRP; and be reassessed over time. In 10 CCR 2505-10 8.500.15, 8.500.105, and 8.503.150, the Department plans to update references from the outdated C.R.S. 27-10.3-101 et seq. or 112 et seq. to the current C.R.S. 25.5-10-216 through -240. 12 CCR 2509-8 7.708.33 thru .37 (for foster care) and 7.714.31 thru 7.714.4 &amp; 7.714.52 (for SGFs and RCCFs) explicitly protect privacy, implicitly protect dignity and respect, and limit coercion &amp; restraint. 12 CCR 2509-8 7.714.53 et seq. sets out conditions under which restraints are allowed in foster care, SGFs, and RCCFs. Waiver: CHRP waiver, App. C-2, refers to CDHS’s rules for group homes, including rights protections as described above. CHRP waiver Appendix G-2 describes safeguards concerning restraints and restrictive intentions.</td>
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<p>| 4. Day Habilitation/treatment locations for individuals with IDD – includes 3 subcategories, below | Statute: C.R.S. 25.5-10-206(1)(i) and 27-10.5-104(1)(c) require day services and supports to support community integration. Also, C.R.S. 25.5-6-409.3 requires redesignated adult IDD waiver to support | Statute: C.R.S. 25.5-6-409.3 requires redesignated adult IDD waiver to incorporate freedom of choice over living arrangements and social, community, and recreational opportunities; individual authority over | Statute: C.R.S. 25.5-6-409.3 is silent with respect to individual rights. However, C.R.S. 25.5-10-216 through -240 protect the rights of individuals with IDD in general (218), and in particular with respect to | Statute: C.R.S. 25.5-6-409.3 requires redesignated adult IDD waiver to incorporate freedom of choice over living arrangements and social, community, and recreational opportunities; individual authority over | Statute: C.R.S. 25.5-6-409.3 requires redesignated adult IDD waiver to provide support to organize resources and achieve |</p>
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<tr>
<td><strong>Summary of cited authorities:</strong></td>
<td>C.R.S. 13-21-101 et seq. sets forth provisions on damages in court proceedings. C.R.S. 25.5-6-401 et seq. is the Home- and Community-based Services for Persons with Developmental Disabilities Act. C.R.S. 25.5-10-201 et seq. sets forth statutory standards and procedures for providing services to individuals with IDD. C.R.S. 26-20-101 et seq. is the Protection of Individuals from Restraint and Seclusion Act. C.R.S. 27-10.5-104 authorizes services and support for people with IDD. CDPHE’s general licensure standards are set forth in 6 CCR 1011-1 Chapter 02, and its regulations protecting people from involuntary restraints in licensed health care facilities are set forth in 8.500.105, and 8.500.94.A(3), defining Day Habilitation services for purposes of the DD waiver, and its regulations for the Supported Living Services (SLS) Waiver are set forth in 10 CCR 2505-10. SLS Waiver is set forth in 8.600.5 et seq. (see 8.500.94.A(3), defining Day Hab for purposes of SLS waiver). The general’s Department plans to change this section 8.609.5(B)(6) presumes that the provision of services to individuals with IDD are set forth in 10 CCR 2505-10. SLS Waiver is set forth in 8.600.5 et seq. (see 8.600.9, defining Day Hab in general). The cited waivers provide for day habilitation services for individuals with IDD.</td>
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<td>**employment and community integration. (N/A to children.) See also C.R.S. 25.5-10-201 &amp; 2021(21) (General Assembly’s intent that individuals with IDD be included in community life). In addition, C.R.S. 13-21-117.5 encourages community integration by limiting the liability of CCBS &amp; providers serving individuals with IDD. C.R.S. 25.5-10-227 provides that “[u]pon the request of a person receiving services, a service agency may hold [in trust] money or funds belonging to the person receiving services,” and that “[u]pon request, a person receiving services is entitled to receive reasonable amounts of such person’s money or funds held in trust” by the agency. In conjunction with the part of new Rule AAA relating to agreements on the provider’s handling of funds, this statutory provision is consistent with the HCBS Settings Final Rule.</td>
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<td><strong>restraints in licensed health care facilities are set forth in 8.500.105, and 8.500.94.A(3), and 8.609.9(A)(1) require day habilitation services to be provided outside the home unless otherwise indicated by documented need. The Department plans to change the foregoing regs, as well as 8.609.4 and 8.609.9(A)(3), which provide for non-integrated, sheltered, or segregated settings for activities. The Department plans to propose redlines to eliminate non-integrated settings and require integration. In addition, the Department plans to add a reference to new Rule AAA to one or more of the foregoing regs.</strong></td>
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<td><strong>Waiver:</strong> SLS Waiver, App. D-1, items c, d, and f, confirm that the CCBS must provide information to participants about the potential services, supports, and resources that are available, and that the participant or his/her guardian are offered free choice from among qualified providers. See also DD Waiver, App. D-1, items c, d, and f (same).**</td>
<td></td>
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<td><strong>waivers:</strong></td>
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<tr>
<td><strong>privacy (223) and freedom from coercion and restraint (231). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole. In addition, C.R.S. 26-101-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies.</strong></td>
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<td><strong>Waiver:</strong> SLS Waiver, App. G-2, describes statutory protections for certain rights, including freedom from restraint. See also DD Waiver, App. G-2 (same).</td>
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</tbody>
</table>

**Key service outcomes:** (N/A to children.)

**Waiver:** SLS Waiver and DD Waiver are silent with respect to obligation on provider’s part to facilitate choice regarding services and supports.
### Type of setting

<table>
<thead>
<tr>
<th>A. Integrated</th>
<th>B. Selected by individual</th>
<th>C. Ensures individual's rights</th>
<th>D. Optimizes autonomy in life choices</th>
<th>E. Facilitates choice regarding services and supports</th>
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</table>

**Type of setting**

- (a) Specialized Habilitation centers

**Summary of cited authorities:** See Row 4, above.

- (b) Supported Community Connections (SCC) (adults)/Community Connector (children) locations

**Summary of cited authorities:** See Row 4, above.

- (c) Prevocational Services centers

**Summary of cited authorities:** See Row 4, above.

### Day treatment facilities under BI waiver

The Department has convened a stakeholder workgroup to ensure that the rules relating to this type of setting comply with the HCBS Settings Rule.

**Summary of cited authorities:** C.R.S. 25.5-6-701 et seq. provides statutory authority for HCBS services for people with brain injuries (BI), Section 701 sets definitions, including one for structured day treatment. C.R.S. 26-20-101 et seq. is the protection of individuals from Restraint and Seclusion Act. CDPHE’s general licensure standards are set forth in 6 CCR 1011-1 Chapter 02, and its regulations protecting people from involuntary restraints in licensed health care facilities are set forth in Chapter 02 Part B. 10 CCR 2505-10 8.515 et seq. regulates services under the Waiver for Persons with Brain Injury (BI), with Section 8.515.80 defining day treatment services for purposes of that waiver.

The cited waiver provides for day treatment services.

### Statute: C.R.S. 25.5-6-703(7) is silent with respect to integration, etc.

**Regs:** 10 CCR 2505-10 8.515.80 is silent with respect to integration, etc. The Department plans to add a reference to new Rule AAA within this regulation.

**Waiver:** BI waiver is silent with respect to integration, etc.

See Column A. **Regs:** See Column A; no redlines needed beyond adding a reference to new Rule AAA within the day treatment regulation.

**Waiver:** BI waiver at App. B-7 and App. D 1, items b & c confirms that people are informed of feasible service alternatives provided by the waiver and the choices of either institutional or home and community-based services, and that the case manager provides a choice of providers.

See Column A. **Regs:** See Column A; no redlines needed beyond adding a reference to new Rule AAA within the day treatment regulation.

**Waiver:** BI waiver at App. B-7 and App. D 1, items b & c confirms that people are informed of feasible service alternatives provided by the waiver and the choices of either institutional or home and community-based services, and that the case manager provides a choice of providers.

See Column A. **Regs:** See Column A; no redlines needed beyond adding a reference to new Rule AAA within the day treatment regulation.

**Waiver:** BI waiver at App. B-7 and App. D 1, items b & c confirms that people are informed of feasible service alternatives provided by the waiver and the choices of either institutional or home and community-based services, and that the case manager provides a choice of providers.

See Column A.
6. Group Residential Services and Supports (GRSS) community residential homes for four to eight people

Summary of cited authorities: C.R.S. 13-21-101 et seq. sets forth provisions on damages in court proceedings. C.R.S. 25.5-6-401 et seq. is the Home- and Community-based Services for Persons with Developmental Disabilities Act. C.R.S. 25.5-10-201 et seq. sets forth statutory standards and procedures for providing services to individuals with IDD. C.R.S. 26-20-101 et seq. is the Protection of Individuals from Restraint and Seclusion Act. C.R.S. 27-10.5-104 authorizes services and support for people with IDD.

CDPHE’s general licensure standards are set forth in 6 CCR 1011-1 Chapter 02, and its regulations protecting people from involuntary restraints in licensed health care facilities are set forth in Chapter 02 Part B. CDPHE’s regulations for facilities for individuals with IDD, including group homes, are set forth in 6 CCR 1011-1 Chapter 08. The Department’s regulations for the Waiver for Persons with Developmental Disabilities (IDD) are set forth at 10 CCR 2505-10 et seq. (see 8.500.1 on GRSS and 8.500.5 A(S) on Residential Habilitation Services and Supports (RHS&S)). The Department’s general regulations for the provision of services to individuals with IDD are set forth in 10 CCR 2505-10 et seq. (see 8.609.5 on comprehensive services and 8.609.8 on GRSS).

The cited waiver provides for GRSS services for individuals with IDD.

### A. Integrated

**Statute:** C.R.S. 25.5-6-409.3 requires redesignated adult IDD waiver to incorporate employment and community integration, N/A to children. See also C.R.S. 25.5-10-201 B (2021) (General Assembly’s intent that individuals with IDD be included in community life). Also, C.R.S. 25.5-10-214(5)(a) requires regulation of the distance between such homes. In addition, C.R.S. 13-21-117.5 encourages community integration by limiting the liability of CCBs & providers serving individuals with IDD. C.R.S. 25.5-10-227 provides that “[u]pon the request of a person receiving services, a service agency may hold [in trust] money or funds belonging to the person receiving services,” and that “[u]pon request, a person receiving services is entitled to receive reasonable amounts of money ‘out of the person’s money or funds held in trust’ by the agency.” In conjunction with the part of the new Rule AAA relating to agreements on the provider’s handling of funds, this statutory provision is consistent with the HCBS Settings Final Rule.

**Reqs:** 10 CCR 2505-10 et seq. requires providers serving people with IDD to promote community inclusion. 8.609.8(B) also provides reasonable groupings of GRSS homes near other DD settings. The Department plans to update 8.600.4 (definition of Regional Center), which should say that CCHF, not HCDF, operates Regional Centers.

6 CCR 1011-1 Chap 08 Section 10 requires policy on resident funds but does not explicitly provide for resident control of personal resources.

**Waiver:** DD Waiver, App. C-2, item c-i, cites rule above regarding community inclusion. Also, under App. C, residential habilitation services, which include GRSS, “are designed to assist participants to reside as independently as possible in the community” and include community access services to “explore community services available to all people, natural supports available to the participant, and develop methods to access additional services/supports/activities needed by the participant.”

### B. Selected by individual

**Statute:** C.R.S. 25.5-6-409.3 requires redesigned adult IDD waiver to incorporate freedom of choice over living arrangements and social, community, and recreational opportunities, and individual authority over supports and services. N/A to children.) Under C.R.S. 25.5-10-216(7) and 27.10-5-110(2), a person shall not be admitted to a Regional Center without a court order.

**Reqs:** No redlines needed beyond adding reference(s) to new Rule AAA within the Department’s GRSS regulations.

**Waiver:** DD Waiver, App. D-1, items c, d, and f, confirm that the CCB must provide information to participants about the potential services, supports, and resources that are available, and that the participant or his/her guardian are offered free choice from among qualified providers.

### C. Ensures individual’s rights

**Statute:** C.R.S. 25.5-6-409.3 is silent with respect to individual rights. However, C.R.S. 25.5-10-216 through -240 protect the rights of individuals with IDD in general (218), and in particular with respect to privacy (223) and freedom from coercion and restraint (221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole. C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies.

**Reqs:** As stated at left, the Department plans to add reference(s) to new Rule AAA within the Department’s GRSS regulations.

10 CCR 2505-10 et seq. (relating to people with IDD) reiterates that people receiving services have the same rights as others; 8.604 requires providers to protect rights in C.R.S. 25.5-10-216 through -231 (the Department plans to change this to C.R.S. 25.5-10-216 through -240); and 8.608.3 thru 8.608.5 limit the use of restraints. The Department plans to propose redlines to some or all of these regulations to more explicitly state that individuals have rights of privacy, dignity, respect, and freedom from coercion and restraint, and to ensure that any use of restraints be based on an assessed need after all less restrictive interventions have been exhausted; be documented in the individual’s person-centered plan as a modification of the generally applicable settings criteria consistent with the standards in Rule BBB; be compliant with any applicable waiver; and be reassessed over time.

In 10 CCR 2505-10 et seq. (relating to people with IDD) reiterates that people receiving services have the same rights as others; 8.604 requires providers to protect rights in C.R.S. 25.5-10-216 through -231 (the Department plans to change this to C.R.S. 25.5-10-216 through -240); and 8.608.3 thru 8.608.5 limit the use of restraints. The Department plans to propose redlines to some or all of these regulations to more explicitly state that individuals have rights of privacy, dignity, respect, and freedom from coercion and restraint, and to ensure that any use of restraints be based on an assessed need after all less restrictive interventions have been exhausted; be documented in the individual’s person-centered plan as a modification of the generally applicable settings criteria consistent with the standards in Rule BBB; be compliant with any applicable waiver; and be reassessed over time.

**Waiver:** DD Waiver, App. C, residential habilitation services, which include GRSS, “are designed to assist participants to reside as independently as possible in the community” and include self-advocacy training (which may include training “to make increasingly responsible choices”) and cognitive services (which may include training in “planning and decision making”).

### D. Optimizes autonomy in life choices

**Statute:** C.R.S. 25.5-6-409.3 requires redesigned adult IDD waiver to incorporate freedom of choice over living arrangements and social, community, and recreational opportunities; individual authority over supports and services; and maximum personal control. N/A to children.

**Reqs:** No redlines needed beyond adding reference(s) to new Rule AAA within the Department’s GRSS regulations. Under 10 CCR 2505-10 et seq. (residential habilitation services assist clients to reside as independently as possible in the community, including through self-advocacy training and community access services. Also, 10 CCR 2505-10 et seq. requires providers serving people with IDD to help work to help these clients make increasingly sophisticated and responsible choices, exert greater control over their life, and develop and exercise their competencies and talents.

**Waiver:** DD Waiver is silent with respect to obligation on provider’s part to facilitate choice regarding services and supports.

### E. Facilitates choice regarding services and supports

**Statute:** C.R.S. 25.5-6-409.3 requires redesigned adult IDD waiver to provide support to organize resources and achieve “key service outcomes.” N/A to children.

**Reqs:** Regs for GRSS community residential homes are silent with respect to facilitating choice regarding services and supports. The regs for case planning cover this, but the Department plans to add this point to the regs for this setting as well by adding reference(s) to new Rule AAA within the Department’s GRSS regulations.

**Waiver:** DD Waiver is silent with respect to obligation on provider’s part to facilitate choice regarding services and supports.
7. Individual Residential Services and Supports (IRSS) homes for up to 3 people

- Host homes
- Homes owned or leased by agency
- Family homes (see Row B)
- Own homes (see Row B)

Summary of cited authorities: C.R.S. 13-21-101 et seq. sets forth statutory standards and procedures for providing services to individuals with IDD. C.R.S. 26-20-101 et seq. is the Protection of Individuals from Restraint and Seclusion Act.

The Department’s regulations for the Waiver for Persons with Developmental Disabilities (DD) are set forth at 10 CCR 2505-10 8.500 et seq. (see 8.500.1 on IRSS and 8.500.5.A(5) on Residential Habilitation Services and Supports (RHSS)). The Department’s general regulations for the provision of services to individuals with IDD are set forth in 10 CCR 2505-10 8.600 et seq. (see 8.609.5 on comprehensive services and 8.609.7 on RHSS).

The cited waiver provides for IRSS services for individuals with IDD.

<table>
<thead>
<tr>
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<th>D. Optimizes autonomy in life choices</th>
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</tr>
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</table>

- **Statute:** C.R.S. 25.5-6-409.3 requires redesigning adult IDD waiver to incorporate choice of living arrangements and community, and the rights of individuals with IDD in general. (218), and in particular with respect to privacy (223) and freedom from coercion and restraint (221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole.

**Regulations:**
- **No redlines needed beyond adding reference(s) to new Rule AAA within the Department’s IRSS regulations.**
- **Waiver:** DD Waiver, App. G-2, describes statutory protections for certain rights, including freedom from restraint.

**Statute:** C.R.S. 25.5-6-409.3 requires redesigning adult IDD waiver to incorporate choice of living arrangements and community, and the rights of individuals with IDD in general (218), and in particular with respect to privacy (223) and freedom from coercion and restraint (221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole.

**Regulations:** No redlines needed beyond adding reference(s) to new Rule AAA within the Department’s IRSS regulations.

**Statute:** C.R.S. 25.5-6-409.3 requires redesigning adult IDD waiver to incorporate choice of living arrangements and community, and the rights of individuals with IDD in general (218), and in particular with respect to privacy (223) and freedom from coercion and restraint (221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole.

**Regulations:** No redlines needed beyond adding reference(s) to new Rule AAA within the Department’s IRSS regulations.

**Statute:** C.R.S. 25.5-6-409.3 requires redesigning adult IDD waiver to incorporate choice of living arrangements and community, and the rights of individuals with IDD in general (218), and in particular with respect to privacy (223) and freedom from coercion and restraint (221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole.

**Regulations:** No redlines needed beyond adding reference(s) to new Rule AAA within the Department’s IRSS regulations.

**Statute:** C.R.S. 25.5-6-409.3 requires redesigning adult IDD waiver to incorporate choice of living arrangements and community, and the rights of individuals with IDD in general (218), and in particular with respect to privacy (223) and freedom from coercion and restraint (221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole.

**Regulations:** No redlines needed beyond adding reference(s) to new Rule AAA within the Department’s IRSS regulations.

**Statute:** C.R.S. 25.5-6-409.3 requires redesigning adult IDD waiver to incorporate choice of living arrangements and community, and the rights of individuals with IDD in general (218), and in particular with respect to privacy (223) and freedom from coercion and restraint (221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole.

**Regulations:** No redlines needed beyond adding reference(s) to new Rule AAA within the Department’s IRSS regulations.
8. Private homes belonging to clients of their families, professional provider offices, and clinics

Colorado’s statutes, regulations, and waivers do not expressly require that private homes, professional provider offices, and clinics be integrated, selected by the individual, etc. Colorado understands IDEA’s position to be that if HCBS services are provided in a private home, professional provider office, or clinic, the setting must meet the HCBS settings requirements set forth in 42 C.F.R. § 441.301(c)(4). Colorado plans to promulgate new Rule AAA making these requirements applicable to all settings in which HCBS services are provided.

For purposes of specific-site assessments (e.g., Provider Transition Plans and site visits), Colorado plans to draw on its understanding of the way most private homes, professional provider offices, and clinics operate in presuming that they are compliant with these requirements. Anyone may seek to rebut this presumption by providing information about a particular setting to the Department. For situations where a family caregiver is a provider and owns the home in which he or she provides services to a family member, Colorado plans to test its presumption by conducting site visits at a random selection of family-caregiver-owned homes; assuming the presumption holds, Provider Transition Plans will not be required for all family-caregiver-owned homes.

9. Supported Employment/vocational services locations

· Group
· Individual

Summary of cited authorities: C.R.S. 13-21-101 et seq. sets forth provisions on damages in court proceedings. C.R.S. 25.5-6-401 et seq. is the Home- and Community-Based Services for Persons with Developmental Disabilities Act. C.R.S. 25.5-10-201 et seq. sets forth statutory standards and procedures for providing services to individuals with IDD. C.R.S. 26-20-101 et seq. is the Protection of Individuals from Restraint and Seclusion Act.

The Department’s regulations for the Waiver for Persons with Developmental Disabilities (DD) are set forth at 10 CCR 2505-10.8.500 et seq. (see 8.500.5.A(7) on Supported Employment for Persons with Developmental Disabilities (DD) and the Department’s regulations for the Home and Community-Based Services for Persons with Developmental Disabilities Act). C.R.S. 25.5-10-218 through -240 protect individuals with disabilities from coercion and restraint, and to require that private homes, professional provider offices, and clinics be compliant with these requirements. Colorado’s statutes, regulations, and waivers do not expressly require that private homes, professional provider offices, and clinics be integrated, selected by the individual, etc. Colorado understands IDEA’s position to be that if HCBS services are provided in a private home, professional provider office, or clinic, the setting must meet the HCBS settings requirements set forth in 42 C.F.R. § 441.301(c)(4). Colorado plans to promulgate new Rule AAA making these requirements applicable to all settings in which HCBS services are provided.

For purposes of specific-site assessments (e.g., Provider Transition Plans and site visits), Colorado plans to draw on its understanding of the way most private homes, professional provider offices, and clinics operate in presuming that they are compliant with these requirements. Anyone may seek to rebut this presumption by providing information about a particular setting to the Department. For situations where a family caregiver is a provider and owns the home in which he or she provides services to a family member, Colorado plans to test its presumption by conducting site visits at a random selection of family-caregiver-owned homes; assuming the presumption holds, Provider Transition Plans will not be required for all family-caregiver-owned homes.

The cited waivers provide for Supported Employment services for individuals with IDD.

<table>
<thead>
<tr>
<th>Type of setting</th>
<th>A. Integrated</th>
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<tbody>
<tr>
<td>Supported Living Services (SLS)</td>
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<td>Supported Employment/vocational services</td>
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<td>· Group</td>
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<td>· Individual</td>
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<td>Type of Setting</td>
<td>A. Integrated</td>
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<td>occurs outside of a provider facility; is provided in community jobs, enclaves, or mobile crews. The Department plans to change 8.609.4 and 8.609.9(a), which provide for non-integrated, sheltered, and/or segregated work services, to eliminate non-integrated settings and require integration. The Department also plans to eliminate “enclaves” from 8.500.5.A(7) and 8.500.94.A(14). In addition, the Department plans to add a reference to new Rule AAA to one or more of the foregoing regs. Waiver: SLS Waiver, App. C, describes supported employment as established in the above-cited regulations. The Department plans to eliminate “enclaves” from the waiver. See also DD Waiver, App. C (same).</td>
<td>10 CCR 2505-10 8.609.5(b)(6) presumes that people can manage their own funds and possessions unless their plan documents limitations and a plan to increase this skill. Waiver: SLS Waiver, App. G-2, describes statutory protections for certain rights, including freedom from restraint. See also DD Waiver, App. G-2 (same).</td>
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<tr>
<td>10. Supported Living Program (SLP) facilities under BI waiver (note that SLP providers must be licensed as an ALR (see Row 2 above))</td>
<td>The cited waiver provides for SLP services.</td>
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<tr>
<td>11. Transitional Living Program (TLP) facilities under BI waiver (note that TLP providers must be licensed as an ALR (see Row 2 above))</td>
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For purposes of site-specific assessments (e.g., Provider Transition Plans and site visits), Colorado plans to draw on its understanding of the way most Supported Employment - Individual settings operate in presuming that they are compliant with these requirements. Anyone may seek to rebut this presumption by providing information about a particular setting to the Department. Supported Employment - Group settings will be subject to the same PTP and site visit process as other settings.
### Type of setting

<table>
<thead>
<tr>
<th>12. Youth Day Service settings under the Children's Extensive Support (CES) Waiver</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Integrated</strong></td>
</tr>
<tr>
<td>Regs: The Department plans to add a reference to new Rule AAA within 10 CCR 2505-10 8.516.30.</td>
</tr>
<tr>
<td>Under 10 CCR 2505-10 8.516.30(E)(6), TLP services &quot;will occur in the community or in natural settings and be non-institutional in nature.&quot; 8.516.30(C)(4) provides that &quot;[i]tems of personal need or comfort shall be paid out of money set aside from client’s income.&quot; As stated above, new Rule AAA will require that if an individual requests that a provider hold his/her funds, their person-centered plan must document this request as well as the parties’ agreement on how the provider should handle the funds (including acknowledgement of the provider’s obligations under the SSA’s requirements for representative payees, if applicable or if the parties so elect).</td>
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<tr>
<td><strong>B. Selected by individual</strong></td>
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<tr>
<td>Department plans add a reference to new Rule AAA within the TLP reg. Waiver: BI Waiver at App. B-7 and App. D-1, items b &amp; c confirms that people are informed of feasible service alternatives provided by the waiver and the choices of either institutional or home and community-based services, and that the case manager provides a choice of providers.</td>
</tr>
<tr>
<td><strong>C. Ensures individual’s rights</strong></td>
</tr>
<tr>
<td>Regs: As stated at left, the Department plans to add a reference to new Rule AAA within the TLP reg. 10 CCR 2505-10 8.516.30(H) makes rights in 8.515.80(C) (for day treatment facilities under BI waivers) applicable, and adds more privacy in correspondence. The Department plans to propose redlines to 8.516.30(E) to clarify that TLP providers may not use restraints or seclusion (as stated in the waiver). Also, 6 CCR 1011-1 Chapter 2 Part 8 limits the use of restraints in all licensed health care facilities. Waiver: BI Waiver at App. C-2, item c(iii) requires TLP facility to be homelike and non-institutional in setting.</td>
</tr>
<tr>
<td><strong>D. Optimizes autonomy in life choices</strong></td>
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<tr>
<td>TLP helps client work toward goals that include personal and living independence. Waiver: BI Waiver at App. C-2, item c(iii) requires TLP facility to be homelike and provide choice about care and lifestyle.</td>
</tr>
<tr>
<td><strong>E. Facilitates choice regarding services and supports</strong></td>
</tr>
<tr>
<td>Waiver: BI Waiver at App. C-2, item c(iii) requires TLP facility to be homelike and provide choice about care and lifestyle.</td>
</tr>
</tbody>
</table>

### Statute: C.R.S. 25.5-10-201 declares the General Assembly’s intent that individuals with IDD be included in community life, but does not specify integration as a requirement for particular settings. **Regs:** The Youth Day Service rule has not yet been promulgated. When it publishes this rule, the Department plans to include a reference to new Rule AAA. Under 12 CCR 2509 8.702.51(C), the child care center must make a reasonable effort to integrate children with IDD with other children. The Department plans to work with CDHS to provide in CDHS’s regulations that child care centers (as 12 CCR 2509 8.702 et seq.), family child care homes (7.707 et seq.), and school-age child care centers (7.712 et seq.) that provide services under the CES Waiver must comply with the Department’s criteria for such providers. Waiver: CES Waiver is silent w/11 integration, etc. **Statute:** Statutes do not address whether the child chooses the Day Youth Service setting. **Regs:** See Column A. CDHS’s child care center regulations do not address whether the child chooses the setting. As stated at left, when it publishes its Youth Day Service rule, the Department plans to include a reference to new Rule AAA. Waiver: CES Waiver, App. B-7, provides that the child’s parents, guardian, or representative are informed of any feasible alternatives under the waiver and given choice of either institutional or home and community based services. The case manager provides the child’s parents, guardian, or representative with a choice of providers as well as choice of whether these services will be provided in the community or in an Intermediate Care Facility for Individuals with an Intellectual Disability (ICF/IID). **Statute:** C.R.S. 25.5-10-216 through -240 protect the rights of individuals with IDD in general (-218), and in particular with respect to privacy (-223) and freedom from coercion and restraint (-221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole. C.R.S. 26-6-106(2)(g) authorizes child care facility licensing rules to "safeguard the legal rights of children served," but does not specify which rights. C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies. **Regs:** See Column A. As stated at left, when it publishes its Youth Day Service rule, the Department plans to include a reference to new Rule AAA. 10 CCR 2505-10 8.604.1 (relating to people with IDD) reiterates that people receiving services have the same rights as others; 8.604.2 requires providers to protect rights in C.R.S. 25.5-10-218 through -231 (the Department plans to change this to C.R.S. 25.5-10-216 through -240); and 8.608.3 thru 8.608.5 limit the use of restraints. The Department plans to propose redlines to some or all of these regulations to more explicitly state that individuals have rights of privacy, dignity, respect, and freedom from coercion and restraint, and to require a reference to new Rule AAA. **Statute:** See Column A. **Regs:** See Column A. **Waiver:** See Column A. **Statute:** See Column B. **Regs:** See Column A. **Waiver:** See Column A. **Statute:** See Column B.
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<td>and school-age child care centers at 7.712 et seq.</td>
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<td>that any use of restraints be based on an assessed need after all less restrictive interventions have been exhausted; be documented in the individual’s person-centered plan as a modification of the generally applicable settings criteria, consistent with the standards in Rule 888; be complaint with any applicable waiver; and be reassessed over time.</td>
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<tr>
<td>The cited waiver provides for Youth Day services.</td>
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<td>In 10 CCR 2505-10 8.500.15, 8.500.105, and 8.503.150, the Department plans to update references from the outdated C.R.S. 27-10.5-101 et seq; or 112 et seq. to the current C.R.S. 25.5-10-216 through -240.</td>
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</table>

### Set 2 of federal criteria: standards applicable to provider-owned or controlled residential settings (42 C.F.R. § 441.301(c)(4))

Home and community-based settings must have all of the following qualities, and such other qualities as [CMS] determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

(vi) In a provider-owned or controlled residential setting, in addition to the qualities at §441.301(c)(4)(i) through (v), the following additional conditions must be met:

(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.

(B) Each individual has privacy in their sleeping or living unit:

(J) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

(2) Individuals sharing units have a choice of roommates in that setting.

(J) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

(D) Individuals are able to have visitors of their choosing at any time.
Table 2: standards applicable to provider-owned or -controlled residential settings

<table>
<thead>
<tr>
<th>Type of setting</th>
<th>A. Landlord/tenant rights</th>
<th>B. Privacy in sleeping/living unit</th>
<th>C. Freedom from forced medication</th>
<th>D. Visitors at any time</th>
<th>E. Physically accessible</th>
<th>F. Documented justification for any modification to these conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Adult day services centers</strong></td>
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<td><strong>N/A</strong> this type of setting is not residential.</td>
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<tr>
<td>2. Alternative care facilities (ACFs)</td>
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<td><strong>N/A</strong> this type of setting is not residential.</td>
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<tr>
<td></td>
<td><strong>Statute</strong>: 25-27-104.5 contemplates leases but does not require them or require that they provide protections comparable to landlord/tenant law. <strong>Regs</strong>: For ALRs generally: 6 CCR 1011-1 Chap 07 1.104(5)(ii) requires ALR to have a policy for eviction, and 1.105(6) limits discharge of residents, but they do not say that the policy must comply with landlord/tenant rights; 1.105(2) requires a written resident agreement but does not require that it provide protections comparable to landlord/tenant law. For ACFs specifically: 10 CCR 2505-10 8.495 is silent with respect to landlord/tenant rights. <strong>Waiver</strong>: EBD Waiver is silent with respect to landlord/tenant rights. CMHS Waiver, Attach 2, notes plans to “support providers in documenting protections and appeals comparable to those provided**.</td>
<td><strong>Statute</strong>: 25-27-104 and 25-27-104.5 are silent with respect to privacy in unit. <strong>Regs</strong>: As stated at left, the Department plans to add a reference to new Rule BBB within its ACF regulation. <strong>Waiver</strong>: EBD Waiver and CMHS Waiver at App. G-2, item b, refer to visitors, but not necessarily at any time.</td>
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<td></td>
<td><strong>Statute</strong>: See Column B. <strong>Regs</strong>: Under 10 CCR 2505-10 8.495.6,(E), ACFs must maintain a home-like quality and feel. 8.495.6,(E)(9) provides that “Facilities shall provide nutritious food and beverage that clients have access to at all times.” 8.495.4.(H) provides that “Clients shall have unscheduled access to food and food preparation areas if determined capable to appropriately handle cooking activities.” The Department plans to change this regulation to state that “ Clients shall have access to food at all times. Clients shall have access to food preparation areas if they can appropriately handle any equipment in these areas.” In addition, as stated at left, the Department plans to add a reference to new Rule BBB within its ACF regulation.</td>
<td><strong>Statute</strong>: See Column B. <strong>Regs</strong>: 6 CCR 1011-1 Chap 07 1.106(1)(i) protects right to visitors, but not necessarily at any time. As stated at left, the Department plans to add a reference to new Rule BBB within its ACF regulation.</td>
<td><strong>Regs</strong>: 10 CCR 2505-10 8.495.6.(E)10 provides for client’s cooking capacity to be assessed and limited if necessary, and for the foregoing to be contained in the care plan. Otherwise silent with respect to documenting modifications to the ACF regulations. <strong>Waiver</strong>: EBD Waiver, and CMHS Waiver at App. G-2, item b, refer to visitors, but not necessarily at any time.</td>
<td><strong>Regs</strong>: See Column B.</td>
<td><strong>Regs</strong>: See Column B.</td>
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</tbody>
</table>

New Rule BBB will provide that the above standards apply to all provider-owned or controlled residential settings in which HCB services are provided, except where HCB services are otherwise permitted to be delivered in a setting that is institutional or does not meet the HCBS settings standards, such as respite available under certain waivers. See 79 Fed. Reg. at 3011. Palliative/Supportive Care services provided outside the child’s home (under the Children with Life-Limiting Illness waiver) are similar to respite, and new Rule BBB will not apply to such services. In addition to protecting the federally prescribed rights as set forth above, new Rule BBB will also protect some of the rights currently set forth in 10 CCR 2505-10 8.515.80(1) (rights of participants in the Waiver for People with Brain Injury).
### Child Residential Habilitation settings

**A. Landlord/tenant rights**

- Under Colorado landlord tenant law. The Department plans to delete references to ACFs in the BI Waiver (with ACFs being replaced by SLPs and TLPs).

**B. Privacy in sleeping/living unit**

- Person-centered care plan. Only appropriate staff shall have keys to private quarter doors, as specified in the person’s plan.
- (2) 8.495.4.F, provides that “the provider will accommodate roommate choices within reason.” The Department plans to strike “within reason” to prevent providers from interfering with roommate choices outside of the person-centered planning process.
- (3) 8.495.4.E is compliant with the federal rule “(C)lients shall be allowed to decorate and use personal furnishings in their bedrooms in accordance with house rules while maintaining a safe and sanitary environment at all times.”

**C. Freedom over schedule and access to food**

- Waiver: EBD Waiver at App. G-2, item b requires ACF to be homelike and provide privacy. CHRS Waiver at App. G-2, item b refers to regulatory protections for privacy in general (see Table 1, cel C-2 above).

**D. Visitors at any time**

- Waiver: EBD Waiver and CHRS Waiver do not address freedom over schedule (except in CDASS context) or access to food.

**E. Physically accessible**

- Waiver: CHRS, SLP, and TLP provide privacy to the extent that is feasible.

**F. Documented justification for any modification to these conditions**

<table>
<thead>
<tr>
<th>Type of setting</th>
<th>A. Landlord/tenant rights</th>
<th>B. Privacy in sleeping/living unit</th>
<th>C. Freedom over schedule and access to food</th>
<th>D. Visitors at any time</th>
<th>E. Physically accessible</th>
<th>F. Documented justification for any modification to these conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foster Care Homes (no more than 3 foster care children)</td>
<td>Under Colorado landlord tenant law. The Department plans to delete references to ACFs in the BI Waiver (with ACFs being replaced by SLPs and TLPs).</td>
<td>Person-centered care plan. Only appropriate staff shall have keys to private quarter doors, as specified in the person’s plan.</td>
<td>Waiver: EBD Waiver and CHRS Waiver do not address freedom over schedule (except in CDASS context) or access to food.</td>
<td>Waiver: CHRS, SLP, and TLP provide privacy to the extent that is feasible.</td>
<td>Documented justification for any modification to these conditions</td>
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<td>Type of setting</td>
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<td>F. Documented justification for any modification to these conditions</td>
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<td><strong>serve children who are not enrolled in the CHRP waiver.</strong></td>
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</tbody>
</table>

**Summary of cited authorities:** C.R.S. 25.5-10-101 et seq. sets forth statutory standards and procedures for providing services to individuals with IDD. C.R.S. 26-6-101 et seq. is the Child Care Licensing Act.

The Department’s regulations for CHRP services are set forth in 10 CCR 2505-10.8.508, and its general regulations for the provision of services to individuals with IDD are set forth in 10 CCR 2505-10.8.600 et seq. CDHS’s regulations for child welfare services and facilities are set forth in 12 CCR 2509 et seq., also known as Staff Manual Volume 7, Part 1 (Section 7.401 et seq.) addresses reimbursement and provider requirements, and Part 8 (Section 7.700 et seq.) addresses child care facility licensing. Several of CDHS’s regulations require counties and child welfare providers serving children enrolled in the CHRP waiver to follow the Departments CHRP-specific regulations. See 12 CCR 2509-5, 7.406.2(3) as well as 2509-7.708.1(A)(3) for foster care, 7.701.2 for SGFs, and 7.705.21(C) for RCCFs.

The cited waiver provides for CHRP services.

**Chapter 08. Homes, are set forth in C.R.S. providing statutory standards and procedures for providing services to individuals with IDD.** C.R.S. 25.5-10-101-223, person with IDD has right to reasonable and frequent opportunities to meet with visitors. The Department interprets reasonable and frequent as meaning unlimited except as modified through the person-centered plan.

**Summary of cited authorities:** C.R.S. 13-21-101 et seq. is the Home- and Community-based Services for Persons with Developmental Disabilities Act. C.R.S. 25.5-10-201 et seq. sets forth statutory standards and procedures for providing services to individuals with IDD. C.R.S. 27.10.5-104 authorizes services and support for people with IDD. CDPHE’s regulations for facilities for individuals with IDD, including group homes, are set forth in 6 CCR 1011-1 Chapter 08. The Department’s regulations to ensure compliance with the federal rules, the Department plans to propose redlines to or deletion of C.R.S. 13-21-117,5(7), which provides that “[a]ny civil action brought against a provider, a person with [IDD] who is served in a residential setting owned or leased by a provider shall not be considered a tenant of the provider and statutes regarding landlord-tenant relationships shall not apply. . . . No real property rights shall accrue to a person with [IDD] by virtue of placement in a residential setting.”

To ensure compliance with the federal rule, the Department plans to propose redlines to or deletion of C.R.S. 13-21-117.5(10), which provides that CCBs and

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<th>Statute:</th>
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<th>Regs:</th>
<th>As stated at left, the Department plans to add a reference to new Rule BBB to one or more of its regulations regarding GRSS settings (10 CCR 2505-10.8.500.1, 8.500.5.A(5), 8.609.5, and 8.609.8). 6 CCR 1011-1 Chap 0B regs are silent with respect to privacy in sleeping/living unit.</th>
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<td><strong>Waiver:</strong></td>
<td>DD Waiver is silent with respect to privacy in sleeping/living unit.</td>
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**Summary of cited authorities:** C.R.S. 13-21-101 et seq. is the Home- and Community-based Services for Persons with Developmental Disabilities Act. C.R.S. 25.5-10-201 et seq. sets forth statutory standards and procedures for providing services to individuals with IDD. C.R.S. 27.10.5-104 authorizes services and support for people with IDD. CDPHE’s regulations for facilities for individuals with IDD, including group homes, are set forth in 6 CCR 1011-1 Chapter 08. The Department’s regulations to ensure compliance with the federal rule, the Department plans to propose redlines to or deletion of C.R.S. 13-21-117,5(7), which provides that “[a]ny civil action brought against a provider, a person with [IDD] who is served in a residential setting owned or leased by a provider shall not be considered a tenant of the provider and statutes regarding landlord-tenant relationships shall not apply. . . . No real property rights shall accrue to a person with [IDD] by virtue of placement in a residential setting.”

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</thead>
<tbody>
<tr>
<td><strong>Waiver:</strong></td>
<td>DD Waiver is silent with respect to freedom over schedule and access to food.</td>
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</tr>
</tbody>
</table>

**Summary of cited authorities:** C.R.S. 13-21-101 et seq. is the Home- and Community-based Services for Persons with Developmental Disabilities Act. C.R.S. 25.5-10-201 et seq. sets forth statutory standards and procedures for providing services to individuals with IDD. C.R.S. 27.10.5-104 authorizes services and support for people with IDD. CDPHE’s regulations for facilities for individuals with IDD, including group homes, are set forth in 6 CCR 1011-1 Chapter 08. The Department’s regulations to ensure compliance with the federal rule, the Department plans to propose redlines to or deletion of C.R.S. 13-21-117,5(7), which provides that “[a]ny civil action brought against a provider, a person with [IDD] who is served in a residential setting owned or leased by a provider shall not be considered a tenant of the provider and statutes regarding landlord-tenant relationships shall not apply. . . . No real property rights shall accrue to a person with [IDD] by virtue of placement in a residential setting.”

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<th>See Column A.</th>
<th>Regs:</th>
<th>As stated at left, the Department plans to add a reference to new Rule BBB to one or more of its regulations regarding GRSS settings (10 CCR 2505-10.8.500.1, 8.500.5.A(5), 8.609.5, and 8.609.8). 6 CCR 1011-1 Chap 0B section 22.10 protects right to use common areas, and building.</th>
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<tbody>
<tr>
<td><strong>Waiver:</strong></td>
<td>DD Waiver, App. C.2, item c-i requires accessibility.</td>
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</table>
For the DD Waiver are set forth in 10 CCR 2505-10 8.500 et seq. (see 8.500.1 on GRSS and 8.500.5.A(5) on Residential Habilitation Services and Supports (RHSS)). The Department’s general regulations for the provision of services to individuals with IDD are set forth in 10 CCR 2505-10 8.609 et seq. (see 8.609.5 on comprehensive services and 8.609.8 on GRSS).

The cited waiver provides for GRSS services for individuals with IDD.

<table>
<thead>
<tr>
<th>Type of setting</th>
<th>A. Landlord/tenant rights</th>
<th>B. Privacy in sleeping/living unit</th>
<th>C. Freedom over schedule and access to food</th>
<th>D. Visitors at any time</th>
<th>E. Physically accessible</th>
<th>F. Documented justification for any modification to these conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the DD Waiver</td>
<td>Service agencies may remove a person with IDD from a residential setting if they believe that the person &quot;may be at risk of abuse, neglect, mistreatment, exploitation, or other harm in such setting,&quot; and limits liability for such removals. <strong>Regs:</strong> The Department plans to add a reference to new Rule BBB to one or more of its regulations regarding GRSS settings (10 CCR 2505-10 8.500.1, 8.500.5.A(5), 8.609.5, and 8.609.8). Under 10 CCR 2505-10 8.500.9(A)(4), a provider under the DD waiver may discontinue services only after documented efforts to resolve the situation. The Department plans to add &quot;and only in compliance with any eviction and appeals processes required under Rule BBB.&quot; Under 8.604.3(b)(5) (relating to people with IDD), services may not be suspended if doing so would put person at risk of loss of abode. The Department plans to add &quot;or would be in violation of any eviction and appeals processes required under Rule BBB.&quot; 8.609.5(b)(8) establishes notice requirements relating to changes in residential placements. The Department plans to add a new paragraph at the end of this subsection, stating that in addition to and notwithstanding the foregoing requirements, changes to residential placements must be in compliance with any eviction and appeals processes required under Rule BBB. In light of all the foregoing changes, similar changes would be duplicative, and are not necessary, for 6 CCR 1011-1 Chap DB Section 9.1(b) and (C) and 18.3, relating to resident transfers and terminations. <strong>Waiver:</strong> DD Waiver is silent with respect to landlord/tenant rights, etc.</td>
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<tr>
<td>7. Individual Residential Services and Supports (IRSS) homes for up to three people</td>
<td><strong>Statute:</strong> See Column A, above. <strong>Regs:</strong> 10 CCR 2505-10 8.609.5(b)(8) is silent with respect to landlord/tenant rights, etc. The Department plans to add a reference to new Rule BBB to one or more of its regulations regarding IRSS settings (10 CCR 2505-10 8.500.1, 8.500.5.A(5), 8.609.5, and 8.609.7). <strong>Waiver:</strong> DD Waiver is silent with respect to right to visitors at any time. <strong>Statute:</strong> Statute is silent with respect to privacy in sleeping/living unit, etc. <strong>Regs:</strong> See Column A; as stated at left, the Department plans to add a reference to new Rule BBB to one or more of its regulations regarding IRSS (10 CCR 2505-10 8.500.1, 8.500.5.A(5), 8.609.5, and 8.609.7). <strong>Statute:</strong> Statute is silent with respect to privacy in sleeping/living unit, etc. <strong>Regs:</strong> See Column A; as stated at left, the Department plans to add a reference to new Rule BBB to one or more of its regulations regarding IRSS settings (10 CCR 2505-10 8.500.1, 8.500.5.A(5), 8.609.5, and 8.609.7). <strong>Statute:</strong> See Column B. <strong>Regs:</strong> See Column A; as stated at left, the Department plans to add a reference to new Rule BBB to one or more of its regulations regarding IRSS settings (10 CCR 2505-10 8.500.1, 8.500.5.A(5), 8.609.5, and 8.609.7). <strong>Statute:</strong> See Column B. <strong>Regs:</strong> See Column A; as stated at left, the Department plans to add a reference to new Rule BBB to one or more of its regulations regarding IRSS settings (10 CCR 2505-10 8.500.1, 8.500.5.A(5), 8.609.5, and 8.609.7). <strong>Statute:</strong> See Column B. <strong>Regs:</strong> 10 CCR 2505-10 8.604.3(A) (relating to people with IDD) and 8.608.2 (same) requires that any suspension of rights and restrictive procedures be documented in plan and monitored; the Department plans to propose redlines to require that in addition to the</td>
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8. Private homes belonging to clients or their families, professional provider offices, and clinics

<table>
<thead>
<tr>
<th>Type of setting</th>
<th>A. Landlord/tenant rights</th>
<th>B. Privacy in sleeping/living unit</th>
<th>C. Freedom over schedule and access to food</th>
<th>D. Visitors at any time</th>
<th>E. Physically accessible</th>
<th>F. Documented justification for any modification to these conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generally N/A – private homes belonging to clients or their families are not generally provider-owned or -controlled, and professional provider offices and clinics are not residential. As stated above, however, New Rule BBB will generally apply to all provider-owned or controlled residential settings in which HCBS services are provided; hence, it will apply to situations where a family caregiver is a provider and owns the home in which he or she provides services to a family member. For purposes of site-specific assessments (e.g., Provider Transition Plans and site visits), Colorado plans to draw on its understanding of the way most family-caregiver-owned homes operate in presuming that they are compliant with these requirements. Anyone may seek to rebut this presumption by providing information about a particular setting to the Department. For situations where a family caregiver is a provider and owns the home in which he or she provides services to a family member, Colorado plans to test its presumption by conducting site visits at a random selection of family-caregiver-owned homes; assuming the presumption holds, Provider Transition Plans will not be required for all family-caregiver-owned homes.</td>
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</table>

9. Supported Employment/vocational services locations

N/A – this type of setting is not residential.

10. Supported Living Program (SLP) facilities under BI waiver (note that SLP providers must be licensed as an ALR (see Row 2 above))

The rules relating to this type of setting are currently being revised.

Summary of cited authorities: C.R.S. 25.5-6-701 et seq. provides statutory authority for HCBS services for people with brain injuries (B). Section 703 sets out definitions, including one for supportive care campuses.

Under 10 CCR 2505-10 8.515.85 et seq. regulates services under the BI Waiver, with Section 8.515.85 setting out criteria for the SLP. Statute: C.R.S. 25.5-6-701(1)(a) states that SLPs must provide eligible individuals with the freedom to choose their schedule and activities, and have access to food at any time. 8.515.85(9) states that SLPs must provide for the freedom and independence of the participants in control of the food, and only in compliance with any procedures or requirements relating to changes in residential placements. The Department plans to add a new paragraph at the end of this subsection, stating that in addition to and notwithstanding the foregoing requirements, changes to residential placements must be in compliance with any evictions and appeals processes required under Rule BBB.

The SLP must put in place a lease or other arrangement to ensure that SLP providers must be responsible for the provision and maintenance of all utilities and services for the unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit. When it promulgates Rules AAA and BBB, the Department will eliminate this.

The cited waiver provides for IRSS services to individuals with IDD. The Department’s regulations for the DD Waiver are set forth at 10 CCR 2505-10 8.500.5 et seq. (see 8.500.1 on IRSS and 8.500.5(A)(5) on Residential Habilitation Services and Supports (RHS)). The Department’s general regulations for the provision of services to individuals with IDD are set forth in 10 CCR 2505-10 8.600 et seq. (see 8.609.5 on comprehensive services and 8.609.7 on IRSS). The cited waiver provides for IRSS services for individuals with IDD.

When it promulgates Rules AAA and BBB, the Department plans to add a new paragraph at the end of this subsection, stating that in addition to and notwithstanding the foregoing requirements, changes to residential placements must be in compliance with any evictions and appeals processes required under Rule BBB. DD Waiver is silent on comprehensive services and 8.609.7 on IRSS. The cited waiver provides for IRSS services for individuals with IDD.

18
<table>
<thead>
<tr>
<th>Type of setting</th>
<th>A. Landlord/tenant rights</th>
<th>B. Privacy in sleeping/living unit</th>
<th>C. Freedom over schedule and access to food</th>
<th>D. Visitors at any time</th>
<th>E. Physically accessible</th>
<th>F. Documented justification for any modification to these conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>The cited waiver provides for TLP services.</td>
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<td>restatement in order to avoid duplication and potential inconsistency.</td>
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<td>Waiver: BI Waiver at App. C-2, item (ii) requires SLP facility to be homelike and provide access to food and kitchen facilities.</td>
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<tr>
<td></td>
<td>Waiver: SLP is provided under BI waiver, which is silent with respect to landlord/tenant rights, etc.</td>
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<tr>
<td>11. Transitional Living Program (TLP) facilities under BI waiver (note that TLP providers must be licensed as an ALR (see Row 2 above))</td>
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<tr>
<td>The rules relating to this type of setting are currently being revised.</td>
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<tr>
<td>Summary of cited authorities: C.R.S. 25.5-6-701 et seq. provides statutory authority for HCBS services for people with brain injuries (BI). Section 703 sets out definitions, including one for transitional living. 10 CCR 2505-10 8.515 et seq. regulates services under the BI Waiver, with Section 8.516.30 setting out criteria for the TLP. The cited waiver provides for TLP services.</td>
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<tr>
<td></td>
<td>Statute: See Column A. Regs: See Column A; as stated at left, the Department plans to add a reference to new Rule BBB within its TLP regulation. Waiver: BI Waiver at App. C-2, item c(ii) requires TLP facility to be homelike and provide privacy.</td>
<td></td>
<td>Statute: See Column A. Regs: See Column A; as stated at left, the Department plans to add a reference to new Rule BBB within its TLP regulation. Waiver: BI Waiver at App. C-2, item c(ii) requires TLP facility to be homelike and provide access to food and kitchen facilities.</td>
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<td>12. Youth Day Service settings under the Children’s Extensive Support (CES) Waiver</td>
<td></td>
<td>N/A – this type of service is not residential.</td>
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<td>To the extent that the service is provided in the child’s or provider’s home, see Row 8.</td>
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Additional updates: Under the Brain Injury (BI) Waiver, respite is defined as “Services provided to individuals unable to care for themselves; furnished on a short-term basis because of the absence or need for relief of those persons normally providing the care.” BI Waiver, App. C. The BI Waiver regulations state that “Respite Care means services as defined at Section 8.516.70.” 10 CCR 2505-10 8.515.2. The cited regulation, in turn, states that “[a]n individual client shall be authorized for no more than a cumulative total of thirty (30) days of respite care in each certification period unless otherwise authorized by the Department.” Id. 8.516.70. The Department will propose to add this modifiable 30-day limit to the waiver.

The Supported Living Services (SLS) Waiver states that “Respite services [are] provided on a short-term basis, because of the absence or need for relief to those persons who normally provide care for the participant.” SLS Waiver, App. C. In addition, SLS waiver participants can obtain only a limited amount of respite, because they are subject to a Service Plan Authorization Limit (SPAL), that is, “an annual upper payment limit of total funds available to purchase services to meet the client’s ongoing needs.” Id. 8.500.90. The Department will propose to add a modifiable 30-day limit, similar to the one in the BI Waiver regulations, to the SLS Waiver and regulations.

Global updates: In 10 CCR 2505-10 8.500 et seq., 8.500.90 et seq., and 8.503 et seq. (regulations for DD, SLS, and CES waivers), and 8.600 et seq. (regulations for individuals with IDD), the Department plans to update definitions and references involving the Division for Developmental Disabilities and the Operating Agency (i.e., the former DDD within CDHS) to the Division for Intellectual & Developmental Disabilities (i.e., the current DDID within HCFF). In these regulatory sections and in 10 CCR 2505-10 8.100.1 (Definitions), the Department also plans to update references involving intermediate care facilities for the mentally retarded (ICF/MRs or ICF-MRs) to intermediate care facilities for individuals with intellectual disabilities (ICF/IDs).