

Title of Rule: Revision to the Medical Assistance Rule concerning the Home and Community Based Services Final Settings Rule, Section 8.484
Rule Number: MSB 21-02-09-A
Division / Contact / Phone: COB Section / Cassandra Keller / 303-866-5181

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

In 2014, the federal Centers for Medicare & Medicaid Services (CMS) published a rule requiring Home- and Community-Based Services (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. These rules codify in regulation the federal requirements for all HCBS Waivers.

2. An emergency rule-making is imperatively necessary

- to comply with state or federal law or federal regulation and/or
 for the preservation of public health, safety and welfare.

Explain:

3. Federal authority for the Rule, if any:

§ 441.301(C)(4))

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);

Initial Review
Proposed Effective Date

10/08/21
01/10/22

Final Adoption
Emergency Adoption

11/12/21

DOCUMENT #08

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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The proposed regulations will impact all HCBS members, approximately 55,000 individuals. All providers who accept Medicaid funding are required to comply with these rules. Member's will greatly benefit from the implementation of these rules by ensuring everyone gets the most out of community living, all services are provided in integrated settings, and the provision of services are person-centered. There may be costs incurred by providers in order to come into compliance with these regulations. For example, a provider may need to invest in locks for bedroom doors. The Department has engaged stakeholders throughout the process to understand the potential costs incurred from the implementation of this rule.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

The codification of the federal Final Settings Rule will have a significant, positive impact for our members. As noted, these regulations ensure services are delivered in an integrated, person-centered manner. A members' rights are outlined and protected within these regulations. If a right needs to be modified for some reason, informed consent must be given by the member or the guardian. These rules will ensure all providers follow these requirements and allows the oversight agency to survey on these requirements.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Department has partnered with the Department of Public Health and Environment on this project. There are no additional costs to CDPHE from these regulations. The work to conduct the surveys has already been incorporated into their existing workload.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

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The Department must implement these regulations otherwise we will be out of compliance with the federal regulations. By being out of compliance, there is a risk of losing the federal match on all HCBS services.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no other methods to achieve our purpose. These regulations must be promulgated in order to remain in compliance with federal regulations.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

No alternative methods were considered.

1 **8.483 ADULT FOSTER CARE - REPEALED**

2 [~~Repealed effective April 2, 2007~~]

3 **8.484 HOME AND COMMUNITY BASED SERVICES SETTINGS FINAL RULE**~~HOME CARE~~
4 ~~ALLOWANCE -- REPEALED~~

5 [~~Repealed effective April 2, 2007~~]

6 **8.484.1 STATEMENT OF PURPOSE AND SCOPE AND ENFORCEMENT**

7 8.484.1.A The purpose of Rules 10 CCR 2505-10, Sections 8.484.1 through 8.484.5 is to
8 implement the requirements of the federal Home- and Community-Based Services (HCBS)
9 Settings Final Rule, 79 Fed. Reg. 2947 (2014), codified at 42 C.F.R. § 441.301(c)(4). These rules
10 identify individual rights that are protected at settings where people live or receive HCBS. They
11 also set out a process for modifying these rights as warranted in individual cases. These rules
12 apply to all HCBS under all authorities, except where otherwise noted.

13 8.484.1.B Rules 10 CCR 2505-10, Sections 8.484.1 through 8.484.5 are enforced pursuant to
14 existing procedures, subject to the following transition period exceptions:

15
16 1. The following settings were presumed compliant during the transition period and remain
17 covered by this presumption until March 17, 2023:

18
19 a. Residential settings owned or leased by individuals receiving HCBS or their
20 families (personal homes);

21
22 b. Professional provider offices and clinics;

23
24 c. Settings where children receive Community Connector services under the CES
25 Waiver; and

26
27 d. Settings where people receive individual Supported Employment services.

28
29 2. Any setting for which a Provider Transition Plan (PTP) has been submitted by the
30 effective date of Rules 10 CCR 2505-10, Sections 8.484.1 through 8.484.5 may continue
31 to transition toward compliance according to the schedule set forth in the PTP. This
32 exception is to be narrowly construed and does not apply to other situations, such as, by
33 way of illustration only, noncompliance:

34
35 a. At case management agencies;

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37 b. At a setting for which a PTP was not submitted by the effective date of Rules 10
38 CCR 2505-10, Sections 8.484.1 through 8.484.5 for any reason;

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40 c. At a setting after the applicable deadline in the setting's PTP, with the deadline
41 being (i) three months after the PTP was submitted unless adjusted with
42 departmental approval and (ii) in no event after March 17, 2023; or

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44 d. Involving compliance issues that have been verified as resolved through the PTP
45 process and therefore no longer subject to transition.

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8.484.2 DEFINITIONS

8.484.2.A Age Appropriate Activities and Materials means activities and materials that foster social, intellectual, communicative, and emotional development and that challenge the individual to use their skills in these areas while considering their chronological age, developmental level, and physical skills.

8.484.2.B Covered HCBS means any Home- and Community-Based Service(s) provided under the Colorado State Medicaid Plan, a Colorado Medicaid waiver program, or a State-funded program administered by the Department. This category excludes Respite Services, Palliative/Supportive Care services provided outside the child's home under the Children with Life-Limiting Illness Waiver, and Youth Day Services under the Children's Extensive Supports (CES) Waiver.

8.484.2.C HCBS Setting means any physical location where Covered HCBS are provided.

1. HCBS Settings include, but are not limited to, Provider-Owned or -Controlled Nonresidential Settings, Other Nonresidential Settings, Provider-Owned or -Controlled Residential Settings, and Other Residential Settings.
2. If Covered HCBS are provided at a physical location to one or more individuals, the setting is considered an HCBS Setting, regardless of whether some individuals at the setting do not receive Covered HCBS. The requirements of [Sections 10 CCR 2505-10, Sections 8.484.1 through 8.484.5](#) apply to the setting as a whole and protect the rights of all individuals receiving services at the setting regardless of payer source.

8.484.2.D Informed Consent means the informed, freely given, written agreement of the individual (or, if authorized, their guardian or other legally authorized representative) to a Rights Modification. The case manager ensures that the agreement is informed, freely given, and in writing by confirming that the individual (or, if authorized, their guardian or other legally authorized representative) understands all of the information required to be documented in [Section 8.484.5](#) and has signed the Department-prescribed form to that effect.

8.484.2.E Intensive Supervision means one-on-one (1:1), line-of-sight, or 24-hour supervision. Intensive Supervision is a Rights Modification if the individual verbally or nonverbally expresses that they do not want the supervision or if the supervision would be covered by the Department's former processes for rights suspensions or restrictive procedures.

8.484.2.F Other Nonresidential Setting means a physical location that is nonresidential and that is not owned, leased, operated, or managed by an HCBS provider or by an independent contractor providing non-residential services.

1. Other Nonresidential Settings include, but are not limited to, locations in the community where Covered HCBS are provided.

8.484.2.G Other Residential Setting means a physical location that is residential and that is not owned, leased, operated, or managed by an HCBS provider or by an independent contractor providing residential services.

1. Other Residential Settings include, but are not limited to, residential settings owned or leased by individuals receiving HCBS, their families (personal homes), and those owned or leased by relatives paid to provide HCBS.

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2 ~~2. Notwithstanding subsection 1, Other Residential Settings do not include settings in which~~
3 ~~Individual Residential Services and Supports (IRSS) are provided, even if provided by~~
4 ~~family caregivers~~

5 8.484.2.H Person-Centered Support Plan means a service and support plan that is directed by the
6 individual, prepared by the case manager under 10 CCR 2505-10, Sections 8.393.2.E or
7 8.519.11, identifies the supports needed for the individual to achieve personally identified goals,
8 and is based on respecting and valuing individual preferences, strengths, and contributions.

9 8.484.2.I Provider-Owned or -Controlled Nonresidential Setting means a physical location that is
10 nonresidential and that is owned, leased, operated, or managed by an HCBS provider or by an
11 independent contractor providing non-residential services.

12 1. Provider-Owned or -Controlled Nonresidential Settings include, but are not limited to,
13 provider-owned facilities where Adult Day, Day Treatment, Specialized Habilitation,
14 Supported Community Connections, Prevocational Services, and Supported Employment
15 Services are provided.

16 8.484.2.J Provider-Owned or -Controlled Residential Setting means a physical location that is
17 residential and that is owned, leased, operated, or managed by an HCBS provider or by an
18 independent contractor providing residential services.

19 1. Provider-Owned or -Controlled Residential Settings include, but are not limited to,
20 Alternative Care Facilities (ACFs); Supported Living Program (SLP) and Transitional
21 Living Program (TLP) facilities; group homes for adults with IDD; Host Homes for adults
22 with IDD; any Individual Residential Services and Supports (IRSS) setting that is owned
23 or leased by a service provider or independent contractor of such a provider; foster care
24 homes, Host Homes, group homes, and residential child care facilities in which Children's
25 Habilitation Residential Program (CHRP) services are provided.
26

27 8.484.2.K Restraint means any manual method or direct bodily contact or force, physical or
28 mechanical device, material, or equipment that restricts normal functioning or movement of all or
29 any portion of a person's body, or any drug, medication, or other chemical that restricts a
30 person's behavior or restricts normal functioning or movement of all or any portion of their body.
31 Physical or hand-over-hand assistance is a Restraint if the individual verbally or nonverbally
32 expresses that they do not want the assistance or if the assistance is a safety or emergency
33 control procedure or would be covered by the Department's former processes for rights
34 suspensions or restrictive procedures.

35 8.484.2.L Restrictive or Controlled Egress Measures means devices, technologies, or approaches
36 that have the effect of restricting or controlling egress or monitoring the coming and going of
37 individuals. The following measures are deemed to have such an effect and are Restrictive or
38 Controlled Egress Measures include: locks preventing egress; audio monitors, chimes, motion-
39 activated bells, silent or auditory alarms, and alerts on entrances/exits at residential settings; and
40 wearable devices that indicate to anyone other than the wearer their location or their
41 presence/absence within a building. Other measures that have the effect of restricting or
42 controlling egress or monitoring the coming and going of individuals are also Restrictive or
43 Controlled Egress Measures.

44 8.484.2.M Rights Modification means all situations in which an individual is limited in the full
45 exercise of their rights, including but not limited to:

1. the use of Intensive Supervision if deemed a Rights Modification under the definition in Section 8.484.2.E above;
2. the use of Restraints (;
3. the use of Restrictive or Controlled Egress Measures;
4. modifications to the other rights in Section 8.484.3 (basic criteria applicable to all HCBS Settings) and Sections 8.484 (additional criteria for HCBS Settings);
5. any provider actions to implement a court order limiting any of the foregoing individual rights;
6. rights suspensions under C.R.S. 25.5-10-202(19) and 218(3); and
7. all situations formerly covered by the Department's processes for rights suspensions and restrictive procedures.

Modifications to the rights to dignity and respect, the rights in Sections 8.484.3.A.6-11 (covering such matters as person-centeredness; civil rights; freedom from abuse; and plain-language explanations of rights, dispute resolution policies, and grievance/complaint procedures), and the rights to physical accessibility are not permitted.

8.484.3 BASIC CRITERIA APPLICABLE TO ALL HCBS SETTINGS

8.484.3.A All HCBS Settings must have all of the following qualities and protect all of the following individual rights, based on the needs of the individual as indicated in their Person-Centered Support Plan, subject to the Rights Modification process in 10 CCR 2525-10, Section 8.484.5:

1. The setting is integrated in and supports full access of individuals to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, including with individuals who are not paid staff/contractors and do not have disabilities, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving HCBS.
 - a. Individuals are not required to leave the setting or engage in community activities. Individuals must be offered and have the opportunity to select from Age Appropriate Activities and Materials both within and outside of the setting.
 - b. Integration and engagement in community life include supporting individuals in accessing public transportation and other available transportation resources.
 - c. Individuals receiving HCBS are not singled out from other community members through requirements of individual identifiers, signage, or other means.
 - d. Individuals may communicate privately with anyone of their choosing.
 - e. Methods of communication are not limited by the provider.

- 1 i. The setting must provide access to shared telephones 24-7 if it is a
2 Provider-Owned or -Controlled Residential Setting and during business
3 hours if it is a Provider-Owned or -Controlled Nonresidential Setting.
- 4 ii. Individuals are allowed to maintain and use their own cell phones,
5 tablets, computers, and other personal communications devices, at their
6 own expense.
- 7 iii. Individuals are allowed to access telephone, cable, and Ethernet jacks,
8 as well as wireless networks, in their rooms/units, at their own expense.
- 9 f. Individuals have control over their personal resources. If an individual is not able
10 to control their resources, an assessment of their skills must be completed and
11 documented in their Person-Centered Support Plan. The assessment and
12 Person-Centered Support Plan must identify what individualized assistance the
13 provider or other person will provide and any training for the individual to become
14 more independent, based on the outcome of the assessment.
- 15 i. Providers may not insist on controlling an individual's funds as a
16 condition of providing services and cannot require individuals to sign
17 over their Social Security checks or paychecks.
- 18 ii. A provider may control an individual's funds if the individual so desires,
19 or if it has been designated as their representative payee under the
20 Social Security Administration's (SSA's) policies. If a provider holds or
21 manages an individual's funds, their signed Person-Centered Support
22 Plan must:
- 23 a) Document the request or representative payee designation;
24 b) Document the reasons for the request or designation; and
25 c) Include the parties' agreement on the scope of managing the
26 funds, how the provider should handle the funds, and what they
27 define as "reasonable amounts" under C.R.S. 25.5-10-227.
- 28 iii. The provider must ensure that the individual can access and spend
29 money at any time, including on weekends, holidays, and evenings,
30 including with assistance or supervision if necessary.
- 31 2. The setting is selected by the individual from among setting options, including non-
32 disability specific settings and an option for a private unit in a residential setting. The
33 setting options are identified and documented in the Person-Centered Support Plan and
34 are based on the individual's needs, preferences, and, for residential settings, resources
35 available for room and board.
- 36 3. The setting ensures an individual's rights of privacy, dignity, and respect, and freedom
37 from coercion and Restraint.
- 38 a. The right of privacy includes the right to be free of cameras, audio monitors, and
39 devices that chime or otherwise alert others, including silently, when a person
40 stands up or passes through a doorway.

1 i. The use of cameras, audio monitors, chimes, and alerts in (a) interior
2 areas of residential settings, including common areas as well as
3 bathrooms and bedrooms, and in (b) typically private areas of
4 nonresidential settings, including bathrooms and changing rooms, is
5 acceptable only under the standards for modifying rights on an
6 individualized basis pursuant to Ssection 8.484.5.

7 ii. If an individualized assessment indicates that the use of a camera, audio
8 monitor, chime, or alert in the areas identified in the preceding paragraph
9 is necessary for an individual, this modification must be reflected in their
10 Person-Centered Support Plan. The Person-Centered Support Plans of
11 other individuals at that setting must reflect that they have been informed
12 in plain language (including pictorial methods, if warranted, and in their
13 native language) of the camera(s)/monitor(s)/chime(s)/alert(s) and any
14 methods in place to mitigate the impact on their privacy. The provider
15 must ensure that only appropriate staff/contractors have access to the
16 camera(s)/monitor(s)/chime(s)/alert(s) and any recordings and files they
17 generate, and it must have a method for secure disposal or destruction
18 of any recordings and files after a reasonable period.

19 iii. Cameras, audio monitors, chimes, and alerts on staff-only desks and
20 exterior areas, cameras on the exterior sides of entrances/exits, and
21 cameras typically found in integrated employment settings, generally do
22 not raise privacy concerns, so long as their use is similar to that
23 practiced at non-HCBS settings. In provider-owned or -controlled
24 settings, notice must be provided to all individuals that they may be on
25 camera and specify where the cameras are located. If such devices have
26 the effect of restricting or controlling egress or monitoring the coming and
27 going of individuals, they are subject to Ssection 8.484.5.

28 iv. Audio monitors, chimes, motion-activated bells, silent or auditory alarms,
29 and alerts on entrances/exits at residential settings have the effect of
30 restricting or controlling egress and are subject to Ssection 8.484.5. If
31 such devices on entrances/exits at nonresidential settings have the effect
32 of restricting or controlling egress or monitoring the coming and going of
33 individuals, they are subject to Ssection 8.484.5.

34 b. The right of privacy includes the right not to have one's name or other
35 confidential items of information posted in common areas of the setting.

36 4. The setting fosters individual initiative and autonomy, and the individual is afforded the
37 opportunity to make independent life choices. This includes, but is not limited to, daily
38 activities, physical environment, and with whom to interact; and

39 5. The setting facilitates individual choice regarding services and supports, and who
40 provides them.

41 6. The Person-Centered Support Plan drives the services afforded to the individual, and the
42 setting staff/contractors are trained on this concept and person-centered practices, as
43 well as the concept of dignity of risk.

44 7. Each individual is afforded the opportunity to:

- 1 a. Lead the development of, and grant Informed Consent to, any provider-specific
2 treatment, care, or support plan.
- 3 b. Have freedom of religion and the ability to participate in religious or spiritual
4 activities, ceremonies, and communities.
- 5 c. Live and receive services in a clean, safe environment.
- 6 d. Be free to express their opinions and have those included when any decisions
7 are being made affecting their life.
- 8 e. Be free from physical abuse and inhumane treatment.
- 9 f. Be protected from all forms of sexual exploitation.
- 10 g. Access necessary medical care which is adequate and appropriate to their
11 condition.
- 12 h. Exercise personal choice in areas including personal style.
- 13 i. Receive the same consideration and treatment as anyone else regardless of
14 race, color, national origin, religion, age, sex, political affiliation, sexual
15 orientation, financial status, gender identity, gender expression, or disability.
- 16 j. Accept or decline services and supports of their own free will and on the basis of
17 informed choice.

18 8. Nothing in this rule shall be construed to prohibit necessary assistance as appropriate to
19 those individuals who may require such assistance to exercise their rights.

20 9. Nothing in this rule shall be construed to interfere with the ability of a guardian or other
21 legally authorized representative to make decisions within the scope of their guardianship
22 order or other authorizing document.

23 10. Providers shall supply all individuals at the setting with a plain-language (including
24 pictorial, if warranted, and in the individuals' native language) explanation of their rights
25 under Rules 10 CCR 2505-10, Sections 8.484.1. through 8.484.5.

26 11. Providers shall supply all individuals at the setting with a plain-language (including
27 pictorial, if warranted, and in the individuals' native language) explanation of available
28 dispute resolution and grievance/complaint procedures, along with outside agency
29 contact information, including phone numbers, for assistance. Providers must allow
30 grievances/complaints to be submitted anonymously and at any time (not subject to a
31 deadline).

32 8.484.3.B For children under age 18, a limitation or restriction to any of the rights in Ssection
33 8.484.3 that is typical for children of that age, including children not receiving HCBS, need not be
34 handled as a Rights Modification under Ssection 8.484.5. Consider age-appropriate behavior
35 when assessing what is typical for children of that age. If the child is not able to fully exercise the
36 right because of their age, then there is no need to pursue the Rights Modification process.
37 However, if the proposed limitation or restriction is above and beyond what a typically developing
38 peer would require, then it must be handled as a Rights Modification under Ssection 8.484.5.

8.484.4 ADDITIONAL CRITERIA FOR HCBS SETTINGS

8.484.4.A Provider-Owned or -Controlled Residential Settings must have all of the following qualities and protect all of the following individual rights, based on the needs of the individual as indicated in their Person-Centered Support Plan, subject to the Rights Modification process in 10 CCR 2505-10, Section 8.484.5:

1. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual, 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, a lease, residency agreement, or other form of written agreement must be in place for each individual, and the document must provide protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord/tenant law.

a. The lease, residency agreement, or other written agreement must:

i. Provide substantially the same terms for all individuals;

ii. Be in plain language that is understandable to the individual, and in their native language, or if the provider/its independent contractor cannot adjust the language, at least be explained to the individual in plain language and in their native language;

iii. Provide the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of their State, county, city, or other designated entity (or comparable responsibilities and protections, as the case may be), and indicate the authorities that govern these responsibilities, protections, and related disputes;

iv. Specify that the individual will occupy a particular room or unit;

v. Explain the conditions under which people may be asked to move or leave;

vi. Provide a process for individuals to dispute/appeal and seek review by a neutral decisionmaker of any notice that they must move or leave, or tell individuals where they can easily find an explanation of such a process, and state this information in any notice to move or leave;

vii. Specify the duration of the agreement;

viii. Specify rent or room-and-board charges;

ix. Specify expectations for maintenance;

x. Specify that staff/contractors will not enter a unit without providing advance notice and agreeing upon a time with the individual(s) in the unit;

- 1 xi. Specify refund policies in the event of a resident's absence,
2 hospitalization, voluntary or involuntary move to another setting, or
3 death; and
- 4 xii. Be signed by all parties, including the individual or, if within the scope of
5 their authority, their guardian or other legally authorized representative.
- 6 b. The lease, residency agreement, or other written agreement may:
 - 7 i. Include generally applicable limits on furnishing/decorating of the kind
8 that typical landlords might impose; and
 - 9 ii. Provide for a security deposit or other provisions outlining how property
10 damage will be addressed.
- 11 c. The lease, residency agreement, or other written agreement may not modify the
12 individual rights protected under Sections 8.484.3 and 8.484.4, such as (a) by
13 imposing individualized terms that modify these conditions or (b) by requiring
14 individuals to comply with house rules or resident handbooks that modify
15 everyone's rights.
- 16 d. Providers and their independent contractors must engage in documented efforts
17 to resolve problems and meet residents' care needs before seeking to move
18 individuals or asking them to leave. Providers and their independent contractors
19 must have a substantial reason for seeking any move/eviction (e.g., protection of
20 someone's health/safety), and minor personal conflicts do not meet this
21 threshold.
- 22 e. A violation of a lease or residency agreement, a change in the resident's medical
23 condition, or any other development that leads to a notice to leave must include
24 at least 30 days' notice to the individual (or, if authorized, their guardian or other
25 legally authorized representative).
- 26 f. If an individual has not moved out after the end of a 30-day (or longer) notice
27 period, the provider/its independent contractor may not act on its own to evict the
28 individual until the individual has had the opportunity to pursue and complete any
29 applicable grievance, complaint, dispute resolution, and/or court processes,
30 including obtaining a final decision on any appeal, request for reconsideration, or
31 further review that may be available.
- 32 g. A provider/its independent contractor may not require an individual who has
33 nowhere else to live to leave the setting.
- 34 h. Section 1 does not apply to children under age 18.
- 35 2. Individuals have the right to dignity and privacy, including in their living/sleeping units.
36 This right to privacy includes the following criteria:
 - 37 a. Individuals must have a key or key code to their home, a bedroom door with a
38 lock and key, lockable bathroom doors, privacy in changing areas, and a lockable
39 place for belongings, with only appropriate staff/contractors having keys to such
40 doors and storage areas. Staff/contractors must knock and obtain permission
41 before entering individual units, bedrooms, bathrooms, and changing areas.

1 Staff/contractors may use keys to enter these areas and to open private storage
 2 spaces only under limited circumstances agreed upon with the individual.

3 b. Individuals shall have choice in a roommate/housemate. Providers must have a
 4 process in place to document expectations and outline the process to
 5 accommodate choice.

6 c. Individuals have the right to furnish and decorate their sleeping and/or living units
 7 in the way that suits them, while maintaining a safe and sanitary environment
 8 and, for individuals age 18 and older, complying with the applicable lease,
 9 residency agreement, or other written agreement.

10 3. The residential setting does not have staff uniforms; entryways containing numerous staff
 11 postings or messages; labels on drawers, cupboards, or bedrooms for staff convenience;
 12 or other institutional features not found in a typical home.

13 4. Individuals have the freedom and support to determine their own schedules and
 14 activities, including methods of accessing the greater community;

15 5. Individuals have access to food at all times, choose when and what to eat, have input in
 16 menu planning (if the setting provides food), have access to food preparation and storage
 17 areas, can store and eat food in their room/unit, and have access to a dining area for
 18 meals/snacks with comfortable seating where they can choose their own seat, choose
 19 their company (or lack thereof), and choose to converse (or not);

20 6. Individuals are able to have visitors of their choosing at any time and are able to socialize
 21 with whomever they choose (including romantic relationships);

22 7. The setting is physically accessible to the individual, and the individual has unrestricted
 23 access to all common areas, including areas such as the bathroom, kitchen, dining area,
 24 and comfortable seating in shared areas. If the individual wishes to do laundry and their
 25 home has laundry machines, the individual has physical access to those machines; and

26 8. Individuals are able to smoke and vape nicotine products in a safe, designated outdoor
 27 area, unless prohibited by the restrictions on smoking near entryways set forth in the
 28 Colorado Clean Indoor Air Act, C.R.S. 25-14-203(7), or any law of the county, city, or
 29 other local government entity.

30 8.484.4.B Other Residential Settings in which one or more individuals receiving 24-hour residential
 31 services and supports reside must have all of the qualities of and protect all of the same
 32 individual rights as Provider-Owned or -Controlled Residential Settings, as listed above, other
 33 than Section 8.484.4.A –relating to a lease or other written agreement providing protections
 34 against eviction, subject to the Rights Modification process in Section 8.484.5.

35 8.484.4.C Other Residential Settings in which no individuals receiving 24-hour residential services
 36 and supports reside are excluded from Section 8.484.4.

37 1. This group of settings includes, but is not limited to, homes in which no individual
 38 receives IRSS and one or more individuals receive Consumer-Directed Attendant
 39 Support Services (CDASS), Health Maintenance Services, Homemaker Services, In-
 40 Home Support Services (IHSS), and/or Personal Care Services.

1 8.484.4.D Provider-Owned or -Controlled Nonresidential Settings must have all of the qualities of
 2 and protect all of the same individual rights as Provider-Owned or -Controlled Residential
 3 Settings, as listed above, other than Section 8.484.4.A relating to a lease or other written
 4 agreement providing protections against eviction and Section 8.484.4.B relating to privacy in
 5 one's living/sleeping unit, subject to the Rights Modification process in Section 8.484.5.

6 1. Provider-Owned or -Controlled Nonresidential Settings must afford individuals privacy in
 7 bathrooms and changing areas and a lockable place for belongings, with only the
 8 individuals and appropriate staff/contractors having keys to such doors and storage
 9 areas.

10 2. Section 8.484.4 does not require Nonresidential Settings to provide food if they are not
 11 already required to do so under other authorities. Section 8.484.4 does require
 12 Nonresidential Settings to ensure that individuals have access to their own food at any
 13 time.

14 8.484.4.E Other Nonresidential Settings must have all of the qualities of and protect the same
 15 individual rights as Provider-Owned or -Controlled Nonresidential Settings, as stated immediately
 16 above, to the same extent for HCBS participants as they do for other individuals, subject to the
 17 Rights Modification process in Section 8.484.5.

18 8.484.4.F. For children, a limitation or restriction to any of the rights in Section 8.484.4 that is typical
 19 for children of that age, including children not receiving HCBS, need not be handled as a Rights
 20 Modification under Section 8.484.5. Consider age-appropriate behavior when assessing what is
 21 typical for children of that age. If the child is not able to fully exercise the right because of their
 22 age, then there is no need to pursue the Rights Modification process. However, if the proposed
 23 limitation or restriction is above and beyond what a typically developing peer would require, then
 24 it must be handled as a Rights Modification under Section 8.484.5.

25

26 **8.484.5 RIGHTS MODIFICATIONS**

27 8.484.5.A Any modification of an individual's rights must be supported by a specific assessed need
 28 and justified in the Person-Centered Support Plan, pursuant to the process set out in Sections
 29 8.484.5.C and 8.484.5.D below. Rights Modifications may not be imposed across-the-board and
 30 may not be based on the convenience of the provider. The provider must ensure that a Rights
 31 Modification does not infringe on the rights of individuals not subject to the modification.
 32 Wherever possible, Rights Modifications should be avoided or minimized, consistent with the
 33 concept of dignity of risk.

34 8.484.5.B The process set out in Sections 8.484.5.C and 8.484.5.D below applies to all Rights
 35 Modifications.

36 8.484.5.C For a Rights Modification to be implemented, the following information must be
 37 documented in the individual's Person-Centered Support Plan, and any provider implementing
 38 the Rights Modification must maintain a copy of the documentation:

39 1. The right to be modified.

40 2. The specific and individualized assessed need for the Rights Modification.

- 1 3. The positive interventions and supports used prior to any Rights Modifications, as
2 well as the plan going forward for the provider to support the individual in learning
3 skills so that the modification becomes unnecessary.
- 4 4. The less intrusive methods of meeting the need that were tried but did not work.
- 5 5. A clear description of the Rights Modification that is directly proportionate to the
6 specific assessed need.
- 7 6. A plan for regular collection of data to measure the ongoing effectiveness of and
8 need for the Rights Modification, including specification of the positive behaviors
9 and objective results that the individual can achieve to demonstrate that the
10 Rights Modification is no longer needed.
- 11 7. An established timeline for periodic reviews of the data collected in the preceding
12 paragraph. The Rights Modification must be reviewed and revised upon
13 reassessment of functional need at least every 12 months, and sooner if the
14 individual's circumstances or needs change significantly, the individual requests
15 a review/revision, or another authority requires a review/revision.
- 16 8. The Informed Consent of the individual (or, if authorized, their guardian or other
17 legally authorized representative) agreeing to the Rights Modification.
- 18 9. An assurance that interventions and supports will cause no harm to the
19 individual, including documentation of the implications of the modification for the
20 individual's everyday life and the ways the modification is paired with additional
21 supports to prevent harm or discomfort and to mitigate any undesired effects of
22 the modification.
- 23 10. Alternatives to consenting to the Rights Modification, along with their most
24 significant likely consequences.
- 25 11. An assurance that the individual will not be subject to retaliation or prejudice in
26 their receipt of appropriate services and supports for declining to consent or
27 withdrawing their consent to the Rights Modification.

28 8.484.5.DG Additional Rights Modification process requirements:

- 29 1. Prior to obtaining Informed Consent, the case manager must offer the individual
30 the opportunity to have an advocate, who is identified and selected by the
31 individual, present at the time that Informed Consent is obtained. The case
32 manager must offer to assist the individual, if desired, in identifying an
33 independent advocate who is not involved with providing services or supports to
34 the individual. These offers and the individual's response must be documented
35 by the case manager.
- 36 2. Any providers that desire or expect to be involved in implementing a Rights
37 Modification may supply to the case manager information required to be
38 documented under Section 8.484.5, except for documentation of Informed
39 Consent and the offer and response relating to an advocate, which may be
40 obtained and documented only by the case manager. The individual determines
41 whether any information supplied by the provider is satisfactory before the case
42 manager enters it into their Person-Centered Support Plan.

1 8.484.5.E Use of Restraints

- 2 1. If Restraints are used with an individual at an HCBS Setting, their use must:
- 3
- 4 a. Be based on an assessed need after all less restrictive interventions
- 5 have been exhausted;
- 6
- 7 b. Be documented in the individual's Person-Centered Support Plan as a
- 8 modification of the generally applicable rights protected under [Section](#)
- 9 8.484.3, consistent with the Rights Modification process in [Section](#)
- 10 8.484.5; and
- 11
- 12 c. Be compliant with any applicable waiver.
- 13 2. Prone Restraints are prohibited in all circumstances. Nothing in this Section ~~DE~~
- 14 permits the use of any Restraint that is precluded by other authorities.

15 8.484.5.F If Restrictive or Controlled Egress Measures are used at an HCBS Setting, they must:

- 16 1. Be implemented on an individualized (not setting-wide) basis;
- 17 2. Make accommodations for individuals in the same setting who are not at risk of
- 18 unsafe wandering or exit-seeking behaviors;
- 19 3. Be documented in the individual's Person-Centered Support Plan as a
- 20 modification of the generally applicable rights protected under 10 CCR 2505-10,
- 21 [Section](#) -8.484.3, consistent with the Rights Modification process in [Section](#)
- 22 8.484.5, with the documentation including:
- 23 a. ~~a~~An assessment of the individual's unsafe wandering or exit-seeking
- 24 behaviors (and the underlying conditions, diseases, or disorders relating
- 25 to such behaviors) and the need for safety measures;
- 26 b. ~~e~~Options that were explored before any modifications occurred to the
- 27 ~~Person-Centered~~Person-Centered Support Plan;
- 28 c. ~~t~~The individual's understanding of the setting's safety features, including
- 29 any Restrictive or Controlled Egress Measures;
- 30 d. ~~t~~The individual's choices regarding measures to prevent unsafe
- 31 wandering or exit-seeking;
- 32 e. ~~t~~The individual's (or, if authorized, their guardian's or other legally
- 33 authorized representative's) consent to restrictive- or controlled-egress
- 34 goals for care;
- 35 f. ~~t~~The individual's preferences for engagement within the setting's
- 36 community and within the broader community; and
- 37 g. ~~t~~The opportunities, services, supports, and environmental design that will
- 38 enable the individual to participate in desired activities and support their
- 39 mobility; and

1 4. not be developed or used for non-person-centered purposes, such as
2 punishment or staff/contractor convenience.

3 8.484.5.G If there is a serious risk to anyone's health or safety, a Rights Modification may be
4 implemented or continued for a short time without meeting all the requirements of Section
5 8.484.5, so long as the provider immediately (a) implements staffing and other measures to
6 deescalate the situation and (b) reaches out to the case manager to set up a meeting as soon as
7 possible, and in no event past the end of the third business day following the date on which the
8 risk arises. At the meeting, the individual can grant or deny their Informed Consent to the Rights
9 Modification. The Rights Modification may not be continued past the conclusion of this meeting or
10 the end of the third business day, whichever comes first, unless all the requirements of this
11 Section 8.484.5 have been met.

12 8.484.5.H When a provider proposes a Rights Modification and supplies to the case manager all of
13 the information required to be documented under Section 8.484.5, except for documentation that
14 may be obtained only by the case manager, the case manager shall arrange for a meeting with
15 the individual to discuss the proposal and facilitate the individual's decision regarding whether to
16 grant or deny their Informed Consent. Except when the timeline in Section 8.484.5.G applies, the
17 case manager shall arrange for this meeting to occur within 10 business days of their receipt from
18 the provider of all the required information. The individual may elect to make a final decision
19 during or after this meeting. If the individual does not inform their case manager of their decision
20 within 5 business days, they are deemed not to have consented.

21
22
23 **8.485 HOME AND COMMUNITY BASED SERVICES FOR THE ELDERLY, BLIND AND DISABLED**
24 **(HCBS-EBD) GENERAL PROVISIONS**

25 **8.485.10 LEGAL BASIS**

26 The Home and Community Based Services for the Elderly, Blind and Disabled (HCBS-EBD) program in
27 Colorado is authorized by a waiver of the amount, duration and scope of services requirements contained
28 in Section 1902(a)(10)(B) of the Social Security Act. The waiver was granted by the United States
29 Department of Health and Human Services, under Section 1915(c) of the Social Security Act. The HCBS-
30 EBD program is also authorized under state law at C.R.S. section 25.5-6-301 et seq. – as amended.