

Rule XXX—Statement of Purpose and Scope; ~~Consequence of Noncompliance~~

The purpose of Rules XXX through CCC is to implement the requirements of the federal Home- and Community-Based Services (HCBS) Settings Final Rule, 79 Fed. Reg. 2947 (2014), codified at 42 C.F.R. § 441.301(c)(4). These rules identify individual rights that are protected at settings where people live or receive ~~Home and Community Based Services (HCBS)~~ HCBS. They also set out a process for modifying these rights as warranted in individual cases. These rules apply to all ~~Medicaid-funded~~ HCBS under all ~~waivers and other programs~~ authorities, except where otherwise noted.

~~A. The Department will not pay for Covered HCBS provided at any setting that does not comply with Rules XXX through CCC.~~

Rule YYY—Definitions

“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 the developmental level and physical skills of the individual.

“Covered HCBS” means any Home- and Community-Based Service(s) provided under the Colorado State Medicaid Plan, ~~or~~ a Colorado Medicaid waiver program, or a State-funded program administered by the Department. This category excludes, except for 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.

“HCBS Setting” means any physical location where Covered HCBS are provided.

- 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.
- If Medicaid-funded HCBS are provided at a physical location to one or more individuals, the setting is considered an HCBS Setting, ~~even regardless if of whether~~ some individuals at the setting do not receive Medicaid-funded HCBS. The requirements of Rules XXX through CCC apply to the setting as a whole and protect the rights of all individuals at the setting.

“Other Nonresidential Setting” means a physical location that is nonresidential and that is not owned, leased, operated, or managed by an Medicaid HCBS provider or by an independent contractor of such a provider.

- Other Nonresidential Settings include, but are not limited to, locations in the community where Supported Community Connections and Supported Employment Services are provided.

“Other Residential Setting” means a physical location that is residential and that is not owned, leased, operated, or managed by an ~~an Medicaid~~-HCBS provider or by an independent contractor of such a provider.

- Other Residential Settings include, but are not limited to, residential settings owned or leased by individuals receiving HCBS (personal homes) as well as those owned or leased by people paid to provide HCBS, if they are related to the individuals receiving HCBS (Family Caregiver settings).

Person-Centered Support Plan means a service and support plan that is directed by the individual, prepared by the case manager under 10 CCR _____, and to identify the supports needed for the individual to achieve personally identified goals, and is based on respecting and valuing individual preferences, strengths, and contributions.

“Provider-Owned or -Controlled Nonresidential Setting” means a physical location that is nonresidential and that is owned, leased, operated, or managed by an ~~an Medicaid~~-HCBS provider or by an independent contractor of such a provider.

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

“Provider-Owned or -Controlled Residential Setting” means a physical location that is residential and that is owned, leased, operated, or managed by an ~~an Medicaid~~-HCBS provider or by an independent contractor of such a provider.

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

Rule AAA—Basic Criteria Applicable to All HCBS Settings

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-directed~~person-centered ~~support~~service plan, subject to the rights modification process in Rule CCC:

- A. 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, ~~engage in age appropriate activities within and outside of the setting,~~

control personal resources, and receive services in the community, to the same degree of access as individuals not receiving ~~Medicaid~~-HCBS.

~~Individuals are not required to leave setting or engage in community activities. The individual must be offered and may select from of Age Appropriate Activities both within and outside of the setting.~~

~~1. This rule does not require Individuals are not required to leave a setting, or to engage in community activities, or to engage in Age Appropriate Activities.~~

~~2.1. Integration and engagement in community life include supporting individuals in accessing public transportation and, Medicaid-funded medical and non-medical transportation, and other generally available transportation resources.~~

~~3.2. Individuals receiving Medicaid-HCBS are not singled out from other community members, through a requirements of individual identifiers, signage, or other means.-~~

~~3. Individuals may communicate privately with anyone of their choosing. Methods~~

4. Methods of communication are not limited by the provider.

a. The setting must provide ~~24-7~~ access to shared telephones 24-7 if it is residential and during business hours if it is nonresidential.

b. People Individuals are allowed to maintain and use their own cell phones, tablets, computers, and other personal communications devices, at their own expense.

c. Individuals People are allowed to access telephone, cable, and Ethernet jacks, as well as wireless networks, in their rooms/units, at their own expense.

5. Individuals have control over their personal resources. If an individual is not able to control their resources, an assessment of ~~the individual's~~their skills must be completed and documented in the ~~person-directed~~person-centered support plan. The assessment and ~~person-directed~~person-centered support plan must identify what individualized assistance the provider or other person will provide and any training for the individual to become more independent, based on the outcome of the assessment.

a. Providers may not insist on controlling an person's individual's funds as a condition of providing services and cannot require individuals to sign over their Social Security checks or paychecks.

b. A provider may control an individual's funds if the individual so desires, or if it has been designated as their representative payee under the Social

Security Administration's (SSA's) policies. If a provider holds or manages an individual's funds, their signed ~~person-directed~~ person-centered support service plan must:

- i. Document the request or representative payee designation;
 - ii. Document the reasons for the request or designation; and
 - iii. Include the parties' agreement on ~~how~~ the scope of managing the funds, how the provider should handle the funds, and what they define as "reasonable amounts" under C.R.S. 25.5-10-227.
- c. The provider must ensure that the individual can access and spend money at any time, including on weekends, holidays, and evenings, with assistance or supervision if necessary.
- B. 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-directed~~ person-centered support service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
- C. ~~The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.~~
1. The right of privacy includes the right to be free of cameras, audio monitors, and devices that chime when a person stands up or passes through a doorway.
 - a. The use of cameras, audio monitors, and chimes in (a) interior areas of residential settings, including common areas as well as bathrooms and bedrooms, and in (b) typically private areas of nonresidential settings, including bathrooms and changing rooms, is acceptable only under the standards for modifying rights on an individualized basis pursuant to Rule CCC.
 - b. If an individualized assessment indicates that the use of a camera, audio monitor, or chime in the areas identified in the preceding paragraph in Section i is necessary for an individual, this modification must be reflected in their ~~person-directed~~ person-centered support plan. ~~The person-directed~~ person-centered support plans of other individuals at that setting must reflect that they have been informed of the camera(s)/monitor(s)/chime(s) and any methods in place to mitigate the impact on their privacy. The provider must ensure that only appropriate staff/contractors have access to the camera(s)/monitor(s)/chime(s) and any recordings and files they generate, and it must have a method for secure disposal or destruction of any recordings and files after a reasonable period.

- c. Cameras, audio monitors, and chimes on staff-only desks, entrances/exits, and exterior areas, as well as cameras typically found in integrated employment settings, generally do not raise privacy concerns, so long as their use is similar to that practiced at non-HCBS settings. Notice must be provided to all individuals that they may be on camera and specify where the cameras are located. If such devices have the effect of restricting or controlling egress, they are subject to Rule CCC.
2. The right of privacy includes the right not to have one's name or other confidential items of information posted in common areas of the setting.
- D. The setting ~~optimizes, but does not regiment,~~ fosters individual initiative ~~and,~~ autonomy, and the individual is afforded the opportunity to make independent independence in making life choices. ~~This, -includesing,~~ but is not limited to, daily activities, physical environment, and with whom to interact; and
 - E. The setting facilitates individual choice regarding services and supports, and who provides them.
 - F. ~~Person directed thinking and planning~~ The person-centered plan should drives the services afforded to the individual, - drive the setting's operations and services for each person, ~~and~~ and the setting staff/contractors are trained on these concepts as well as the concept of dignity of risk.
 - G. ~~The setting ensures that e~~Each individual is afforded the opportunity to:
 1. Leads the development of, and grant informed consents to, any provider-specific treatment, care, or support plan.
 2. Has freedom of ~~thought, conscience, and religion, and religion and~~ has the ability to participate in religious or spiritual activities, ceremonies, and communities.
 3. Lives and receives services in a clean, safe environment.
 4. ~~Individuals are~~ Be free to express their opinions and have those included, when possible, Has their opinions heard and is included, to the greatest extent possible, when any decisions are being made affecting their life.
 5. ~~Is-Be~~ free from physical abuse and inhumane treatment.
 6. ~~Is-Be~~ protected from all forms of sexual exploitation.
 7. ~~Can a~~ Access necessary medical care which is adequate and appropriate to their condition.
 8. ~~Can e~~ Exercise personal choice, in areas including personal style-choices. -in their haircut, hair style, clothing, makeup, and jewelry.

9. ~~Has~~ Have input in the selection of age-appropriate activities at the setting and outside the setting.

~~10.9.~~ Receives the same consideration and treatment as anyone else regardless of race, color, national origin, religion, age, sex, political affiliation, sexual orientation, financial status, gender identity, gender expression, or disability.

~~11.10.~~ ~~Can a~~ Accept or decline treatmentservices and supports of their own free will and on the basis of informed choice.

- H. Nothing in this rule shall be construed to prohibit necessary assistance as appropriate to those individuals who may require such assistance to exercise their rights.
- I. Nothing in this rule shall be construed to interfere with the ability of a guardian or other legal representative to make decisions within the scope of their guardianship order or other authorizing document.
- J. Providers shall supply all individuals at the setting with a plain-language (including pictorial, if warranted) explanation of their rights under Rules XXX through CCC.
- K. Providers shall supply all individuals at the setting with a plain-language (including pictorial, if warranted) explanation of available dispute resolution and grievance/complaint procedures, along with outside agency contact information, including phone numbers, for assistance. Providers must allow grievances/complaints to be submitted anonymously and at any time (not subject to a deadline).
- L. For children under age 18, a limitation or restriction to any of the rights in Rule AAA that is typical for children of that age, including children not receiving HCBS, need not be handled as a rights modification under Rule CCC.

Rule BBB—Additional Criteria for HCBS Settings

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-directed~~person-centered supportservice plan, subject to the rights modification process in Rule CCC:

- 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, 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.

1. The lease, residency agreement, or other written agreement must:
 - a. Provide substantially the same terms for all individuals;
 - b. Be in plain language that is understandable to the individual, or if the provider cannot adjust the language, at least be explained in plain language to the individual;
 - c. 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;
 - d. Specify that the individual will occupy a particular room or unit;
 - e. Explain the conditions under which people may be asked to move or leave;
 - f. Provide a process for individuals to dispute 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;
 - g. Specify ~~a term~~ (duration of the agreement);
 - h. Specify rent or room-and-board charges ~~that are consistent with applicable authorities~~;
 - i. Specify expectations for maintenance;
 - j. 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;
 - k. Specify refund policies in the event of a resident's absence, hospitalization, voluntary or involuntary move to another setting, or death; and
 - l. Be signed by all parties, including the individual or, if within the scope of their authority, their guardian or other legally authorized representative.
2. The lease, residency agreement, or other written agreement may:
 - a. include generally applicable limits on furnishing/decorating of the kind that typical landlords might impose; and
 - b. provide for a security deposit or other provisions outlining how property damage will be addressed.

3. The lease, residency agreement, or other written agreement may not modify the individual rights protected under Rules AAA and BBB, such as (a) by imposing individualized terms that modify these conditions or (b) by requiring individuals to comply with house rules or resident handbooks that modify everyone's rights.
4. Providers must engage in documented efforts to resolve problems and meet residents' care needs before seeking to move ~~or discharge~~ individuals or asking them to leave. Providers must have a substantial reason for seeking any move/~~termination~~eviction (e.g., protection of someone's health/safety), and minor personal conflicts do not meet this threshold.
5. A violation of a lease or residency agreement that leads to a ~~discharge~~notice to leave must include at least 30 days' notice to the individual (or, if authorized, their guardian or other legal representative).
6. If an individual has not moved out after the end of a 30-day (or longer) notice period, the provider may not act on its own to evict the individual until the individual has had the opportunity to pursue and complete any applicable grievance, complaint, dispute resolution, and/or court processes, including obtaining a final decision on any appeal, request for reconsideration, or further review that may be available.
7. A provider may not ~~discharge~~require an individual who has nowhere else to live to leave the setting.

Section A does not apply to children under age 18.

B. Individuals have the right to dignity and privacy, including in their living/sleeping units, and including the following criteria:

1. Individuals must have a key or key code to their home, a bedroom door with a lock, lockable bathroom doors, privacy in changing areas, and a lockable place for belongings, with only appropriate staff/contractors having keys to such doors and storage areas. Staff/contractors must knock and obtain permission before entering individual units, bedrooms, bathrooms, and changing areas. Staff/contractors may use keys to enter these areas and to open private storage spaces only under limited circumstances agreed upon with the individual.
2. Individuals shall have choice in a roommate/housemate. Providers must have a process in place to document expectations and outline the process to accommodate choice.
3. Individuals have the right to furnish and decorate their sleeping and/or living units in the way that suits them, while maintaining a safe and sanitary environment and, for individuals age 18 and older, complying with the applicable lease, residency agreement, or other written agreement.

- C. The residential setting does not have staff uniforms; entryways ~~filled with~~containing numerous staff postings or messages; labels on drawers, cupboards, or bedrooms for staff convenience; or other institutional features not found in a typical home.
- D. Individuals have the freedom and support to determine their own schedules and activities, including methods of accessing the greater community;
- E. Individuals have access to food at all times, choose when and what to eat, have input in menu planning (if the setting provides food), have access to food preparation and storage areas, and have access to a dining area for meals/snacks with comfortable seating where they can choose their own seat, choose their company (or lack thereof), and choose to converse (or not);
- F. Individuals are able to have visitors of their choosing at any time and are able to socialize with whomever they choose (including romantic relationships); and
- G. The setting is physically accessible to the individual, and the individual has unrestricted access to all common areas ~~of setting facility or home~~, including access to typical facilities in the home (areas such as the bathroom, kitchen, dining area, ~~laundry, and~~ comfortable seating in shared areas). If the individual wishes to do laundry and their home has laundry machines, the individual has physical access to those machines.

Provider-Owned or -Controlled Nonresidential Settings must have all of the qualities of and protect all of the same individual rights as Provider-Owned or -Controlled Residential Settings, as listed above, other than Requirement A relating to a lease or other written agreement providing protections against eviction and Requirement B relating to privacy in one's living/sleeping unit, subject to the rights modification process in Rule CCC.

- Provider-Owned or -Controlled Nonresidential Settings must afford individuals privacy in changing areas and a lockable place for belongings, with only the individuals and appropriate staff/contractors having keys to such doors and storage areas.
- This Rule BBB does not require Nonresidential Settings to provide food if they are not already required to do so under other authorities. This Rule BBB does require Nonresidential Settings to ensure that individuals have access to their own food at any time.

Other Nonresidential Settings must have all of the qualities of and protect the same individual rights as Provider-Owned or -Controlled Nonresidential Settings, as stated immediately above, to the same extent for HCBS participants as they do for other individuals, subject to the rights modification process in Rule CCC.

For children, a limitation or restriction to any of the rights in Rule BBB that is typical for children of that age, including children not receiving HCBS, need not be handled as a rights modification under Rule CCC.

Rule CCC—Rights Modifications

- A. Any modification of an individual’s rights must be supported by a specific assessed need and justified in the ~~person-directed~~ person-centered supportservice plan, pursuant to the process set out in Section C below. Rights modifications may not be imposed across-the-board and may not be based on the convenience of the provider. The provider must ensure that a rights modification does not infringe on the rights of individuals not subject to the modification. Wherever possible, rights modifications should be avoided or minimized, consistent with the concept of dignity of risk.
- B. The rights modification process set out in Section C below applies to all situations in which an individual is limited in the full exercise of their rights, including but not limited to: the use of restraints (otherwise precluded by Rule AAA); the use of restrictive or controlled egress measures (otherwise precluded by Rule AAA); modifications to the rights in Sections A through E of Rule AAA, excluding the rights to dignity and respect (which may not be modified); modifications to the rights in Sections A through F of Rule BBB; any provider actions to implement a court order limiting any of the foregoing individual rights; and all situations formerly covered by the processes for rights suspensions and restrictive procedures (as set forth in the version of 10 CCR 2505-10 8.600.4, 8.604.3, and 8.608.2 being replaced by this rule; copy of superseded version available from the Department upon request). Modifications to the other rights protected by Rules AAA and BBB are not permitted.
- C. For a rights modification to be validimplemented, the following information must be documented in the individual’s ~~person-directed~~ person-centered supportservice plan, and any provider implementing the rights modification must have a copy of the documentation:
1. The specific and individualized assessed need for the rights modification.
 2. The positive interventions and supports used prior to any rights modifications, as well as the plan going forward for the provider to support the individual in learning skills so that the modification becomes unnecessary.
 3. The less intrusive methods of meeting the need that were tried but did not work.
 4. A clear description of the rights modification that is directly proportionate to the specific assessed need.
 5. A plan for regular collection and review of data to measure the ongoing effectiveness of the rights modification.
 6. ~~Established time limits for periodic reviews to determine whether the rights modification is still necessary or can be terminated.~~ The individual’s ~~person-directed~~ person-centered supportservice plan must be reviewed and revised upon reassessment of functional need at least every 12 months, ~~when and sooner if~~ the individual’s circumstances or needs change significantly, ~~or at the request of the individual~~ requests a review/revision, or another authority requires a review/revision. ~~Nothing in this rule shall be construed to eliminate any~~

~~requirement of more frequent review that is set forth in the authorities applicable to a particular waiver or type of rights modification.~~

7. The informed consent of the individual (or, if authorized, their guardian or other legal representative) agreeing to the rights modification, which means agreement or decision a member or guardian gives to the provider, which must be in writing on a document, outlining the specific modification and circumstances for its use. The case manager ~~collects~~obtains the individual's informed consent after confirming with the individual that they understand the following:
 - a. Their rights;
 - b. The proposed modification;
 - c. Why the modification is being considered;
 - d. The implications of the modification for their everyday life;
 - e. When the modification will be reviewed;
 - f. What they can do to change or terminate the modification; and
 - g. Other information being documented pursuant to this Rule CCC, as all as all options and alternatives to consenting to the modification.
8. An assurance that interventions and supports will cause no harm to the individual, including documentation of the ways the modification is paired with additional supports to prevent harm.
9. ~~Prior to collection of obtaining~~ informed consent, the case manager must offer the individual the opportunity to have an advocate, who is identified and selected by the individual, present at the time that informed consent is collected/obtained. This offer and the individual's response should/must be documented by the case manager.
- 8.10. ~~Any providers that desire or expect to be involved in implementing a rights modification may supply to the case manager information required to be documented under this Rule CCC, except for informed consent, which may be obtained only by the case manager. The individual determines whether any information supplied by the provider is satisfactory before the case manager enters it into their person -centered support plan.~~

D. If restraints are used with an individual at an HCBS Setting, their use must:

1. be based on an assessed need after all less restrictive interventions have been exhausted;

2. be documented in the individual's ~~person-directed~~ person-centered support ~~service~~ plan as a modification of the generally applicable rights protected under Rule AAA, consistent with the rights modification process in this Rule CCC;
3. be compliant with any applicable waiver; and
4. be reassessed over time.

Nothing in this Section D permits the use of any restraint that is precluded by ~~the other~~ authorities ~~applicable to a particular waiver, provider, or setting type~~.

- E. If restrictive or controlled egress measures, including egress alert devices (such as electronic accessories and exterior door chimes or alarms) are used at an HCBS Setting, they must:
1. be implemented on an individualized (not setting-wide) basis;
 2. make accommodations for individuals in the same setting who are not at risk of unsafe wandering or exit-seeking behaviors;
 3. be documented in the individual's ~~person-directed~~ person-centered support ~~service~~ plan as a modification of the generally applicable rights protected under Rule AAA, consistent with the rights modification process in this Rule CCC, with the documentation including:
 - a. an assessment of the individual's unsafe wandering or exit-seeking behaviors (and the underlying conditions, diseases, or disorders relating to such behaviors) and the need for safety measures;
 - b. options that were explored before any modifications occurred to the ~~person-directed~~ person-centered support plan;
 - c. the individual's understanding of the setting's safety features, including any restrictive or controlled egress;
 - d. the individual's choices regarding measures to prevent unsafe wandering or exit-seeking;
 - e. the individual's (or, if authorized, their guardian's or other legal representative's) consent to restrictive- or controlled-egress goals for care;
 - f. the individual's preferences for engagement within the setting's community and within the broader community; and
 - g. the opportunities, services, supports, and environmental design that will enable the individual to participate in desired activities and support their mobility; and

4. not be developed or used for non-~~person-directed~~person-centered purposes, such as punishment or staff/contractor convenience.
- F. If there is a serious risk to anyone's health or safety, a rights modification may be implemented or continued for a short time without meeting all the requirements of this Rule CCC, so long as the provider immediately (a) implements staffing and other measures to deescalate the situation and (b) reaches out to the case manager to set up a meeting as soon as possible. At the meeting, the individual can grant or deny their consent to the rights modification.

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