



Frequently Asked Questions (FAQ) on HCBS Settings Requirements, Part III **Leases and Residential Agreements**

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. The Department's [website](#) contains information about implementation of the federal settings criteria, including the [Statewide Transition Plan \(STP\)](#); the [Systemic Assessment Crosswalk](#) setting out planned changes to Colorado's statutes, regulations, and waivers; training materials; and additional guidance.

The Department has published responses to frequently asked questions (FAQs) regarding general requirements of the rule and miscellaneous aspects of its implementation ([FAQ Part I](#); [FAQ Part II](#)).

This document addresses the following requirements for residential settings:

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.

[42 C.F.R. § 441.301\(c\)\(4\)\(vi\)\(A\)](#).

The numbering of the questions picks up consecutively from FAQ Part II.



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Applicability of the enforceable agreement requirement

71. When does this requirement apply?

This requirement applies to all residential settings where people live or receive HCBS, including alternative care facilities (ACFs), group homes, host homes, Supported Living Program (SLP) facilities, Transitional Living Program (TLP) facilities, and private homes.¹

The requirement does not apply to children under age 18 (*e.g.*, in the Children's Habilitation Residential Program (CHRP)). After the Department [stated](#) that it "plans to require that the child's parent, guardian, or other legal representative sign a lease on the child's behalf," it learned from CMS that the HCBS Settings Final Rule does not require leases for children. In addition, in Colorado, (a) children live where their parents or guardians decide, and this location may change quickly and without the child's input, and (b) the age of majority for purposes of entering into a binding contract is 18. This means that in Colorado, children do not have an ordinary tenant's protections against sudden involuntary moves or evictions, the right to advance notice of such moves, or the right to appeal such moves.² CHRP and other waiver participants age 18 and older have the same rights as other adult waiver participants.

72. Are there HCBS settings in Colorado "in which landlord tenant laws do not apply"?

There is no longer an express statutory carve-out. Until recently, Colorado law provided that "[i]n any civil action brought against a provider, a person with [an intellectual or developmental disability (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." The statute also provided that "[n]o real property rights shall accrue to a person with [IDD] by virtue of placement in a residential setting."³ In April 2018, the quoted language was struck from the statute. People with IDD now have the same right as anyone else to have and enforce a lease in their residential settings.⁴

¹ For purposes of site-specific assessments (*e.g.*, Provider Transition Plans (PTPs) and site visits), Colorado plans to presume that private homes comply with the applicable federal requirements. Anyone may seek to rebut this presumption by providing information about a particular setting to the Department. For situations where an individual receives 24-hour services in a private home that they do not rent or own, Colorado plans to test its presumption by conducting randomly selected site visits; assuming the presumption holds, PTPs will not be required for all such homes.

² That said, a number of rules do protect CHRP participants against sudden, involuntary moves from one setting to another. *See, e.g.*, 10 CCR 2505-10 8.508.160(H), 8.604.3(B)(5); 12 CCR 2509-4 7.301.24(G), 7.304.62.J, 7.304.62.K; 12 CCR 2509-7 7.610, 7.611; 12 CCR 2509-8 7.708.61.B, K, 7.714.31.A.

³ C.R.S. 13-21-117.5(7) (2017).

⁴ SB 18-174; *see also* C.R.S. 25.5-10-218(1) ("Unless a person's rights are modified by court order, a person with [IDD] has the same legal rights and responsibilities guaranteed to all other persons . . .").

Meaning of the enforceable agreement requirement

73. What should the lease/residential agreement say and not say?

The agreement must:

- give all people receiving the same kind of HCBS from that provider substantially the same terms, including protections against eviction and the right to seek review from a neutral decisionmaker⁵;
- be clear, short, and written in plain language understandable to the individual, or at least be explained in plain language to the individual (in the case of prescribed U.S. Department of Housing and Urban Development (HUD) leases or similar documents that cannot be altered by the landlord);
- provide that the individual has “the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity,” and indicate the authorities that govern these responsibilities and protections and related disputes (landlord-tenant law, the standards for providers serving people with IDD, and/or or the standards for ACFs (including SLPs and TLPs));
- specify that the individual will occupy a particular room or unit;
- explain the conditions under which people may be asked to move or leave⁶;
- explain the process for individuals to dispute and seek review of any notice that they must move or leave, or tell individuals where they can easily find such an explanation, and restate this information in any notice to move or leave;
- specify a term (duration of the agreement);
- specify rent or room-and-board charges that are consistent with applicable authorities⁷;
- specify refund policies in the event of a resident’s absence, hospitalization, voluntary or involuntary move to another setting, or death; and

⁵ To give all people substantially the same protections, the provider should use a single type of agreement (*e.g.*, residential agreement, lease), with a standardized template, across all its settings. The Department does not object to variations driven by the U.S. Department of Housing and Urban Development (HUD) or other funding authorities.

⁶ *See* CMS, Exploratory Questions to Assist States in Assessment of Residential Settings, p.6 (2015) (“Do individuals know their rights regarding housing and when they could be required to relocate?”).

⁷ *See, e.g.*, 10 CCR 2505-10 Section 8.603.5K.

- be signed by all parties, including the individual (or, if within the scope of their authority, their guardian or other legally authorized representative).

The agreement may include generally applicable limits on furnishing/decorating of the kind that typical landlords might impose (*e.g.*, no waterbeds).

The agreement must not modify the conditions imposed by the HCBS Settings Final Rule, such as (a) by imposing individualized “stipulations” that modify these conditions or (b) by requiring individuals to comply with house rules or resident handbooks that modify everyone’s rights on a broad (not individualized) basis. If a rights modification is appropriate for an individual, it should be documented in their person-centered plan, which is maintained by their case manager. See FAQ Part I, Items ##28-29 & 35.

74. What does it mean for a unit or dwelling to be a “specific physical place that can be owned, rented, or occupied under a legally enforceable agreement”?

This means that the individual has a right to a particular room or unit, and not just to lodging in general. Just as an apartment manager cannot move tenants from one apartment to another without their consent, an HCBS provider cannot move individuals from one room/unit to another without their consent.

If a setting has only a few rooms/units that are not numbered or lettered, the written agreement may identify the room/unit by other characteristics (*e.g.*, “upstairs bedroom to the left of the staircase”). The identification must be sufficient to ensure that the individual has stability in where they reside.

75. Does the legally enforceable agreement always have to be in writing?

Yes. This ensures that the parties reach a complete meeting of the minds, that they can refer to the terms of the agreement down the road, and that the provider and the Department can demonstrate compliance with the federal requirement that a “legally enforceable agreement” be in place for each HCBS participant.

76. Can a residential agreement be used instead of a lease?

Yes, if residential agreements are already allowed or required under current law.⁸ Some providers have traditionally used a residential agreement instead of a lease, and this practice may continue, subject to the guidance in this document.

⁸ CMS, *Home and Community-Based Setting Requirements*, p. 10 (June 26, 2015). Some Colorado authorities explicitly allow for residential agreements or for either form of agreement to be used. See, *e.g.*, C.R.S. 25-27-104(2)(e), 25-27-104.5 (statutes for assisted living residences (ALRs)); 10 CCR 2505-10 8.515.85.F.1.f (rule for SLPs). Residential agreements are also commonly used under the waivers serving people with IDD, and the Department does not object to the continuation of this practice. In some cases, the use of a lease (including a prescribed form of lease) may be required, as with certain housing funded by HUD.

Whereas a lease is typically a two-way agreement between the landlord (who owns the property) and the tenant (who occupies it), a residential agreement may take other forms, such as:

- A two-way agreement between the provider agency (which rents the property from the landlord) and the individual (who occupies it).
- A three-way agreement between a host home provider (who owns or rents the property and occupies it), the provider agency, and the individual.

Going forward, waiver participants and their residential providers may use either a lease or, where already allowed or required, a residential agreement. The provider agency or another party to the residential agreement (such as a host home provider) must have a deed/lease/other legally enforceable right to occupy the property. Without such a right, the provider is not in a position to guarantee stable occupancy to the individual.

77. What legal authorities govern involuntary moves, evictions, and related appeals?

The controlling factor is the kind of setting, regardless of whether the written agreement is a lease, a residential agreement, or some other kind of document.

In all residential settings that are provider-owned or -controlled, such as ACFs, SLPs, TLPs, group homes, and host homes, involuntary moves or evictions of residents and related appeals are governed by Colorado Department Health Care Policy & Financing (HCPF) and Colorado Department of Public Health & Environment (CDPHE) regulations, which providers cannot opt out of.⁹ Individuals who live in these settings usually have a residential agreement.

In residential settings that are not provider-owned or -controlled, such as private houses and apartments, involuntary moves or evictions and related appeals are governed by Colorado and local (e.g., county, city) landlord-tenant law. Individuals who live in these settings usually have a lease or deed.

In some residential settings, such as provider-controlled settings where some or all rent is covered by HUD funding, involuntary moves or evictions of residents and related appeals are governed by both bodies of law. Individuals who live in these settings usually have a lease governed by the funding authority (which typically incorporates landlord-tenant law); at the same time, the provider is governed by the HCPF and CDPHE regulations that apply to all providers. Parties that would normally fall into one of the first two categories may elect this third category by so specifying in writing.

⁹ The Department does not require parties in this category to follow landlord-tenant law for involuntary moves, evictions, and related appeals. That said, the Department does not enforce landlord-tenant law and cannot waive its requirements for purposes of enforcement by any other agency or court.

78. What does it mean for the individual to have “the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity”?

While it is not feasible to outline all of these responsibilities and protections, here are some important statewide standards:

- People choose where to live and have an expectation of stability in their home.
- There are no “self-help” evictions, lockouts, or moves of an individual from one home to another without their consent, except as specified below.¹⁰
- To evict, lock out, or move someone without their consent, a court or other neutral body (*e.g.*, a case management agency (CMA) or the Department) must be involved. The decision is not up to the provider/landlord alone. The applicable processes are described in Item #79 below.
- Residents are responsible for paying rent or room and board, not creating nuisances, and giving advance notice before moving, except in emergencies.

79. What is the process to evict, lock out, or move an individual without their consent?

The applicable process depends upon which body of law applies (see Item #77 above).

The court process for a landlord to evict a tenant under landlord-tenant law is a Forced Entry and Detainer (FED) legal action. In this type of action, the landlord must provide anywhere from three to 91 days’ notice to the tenant (depending upon the reason for the termination of tenancy), the tenant has an opportunity to fix the problem, and then the landlord may begin a court proceeding in which the court may ultimately issue a writ requiring the tenant to vacate the property. Both parties have appeal rights.¹¹

The regulatory process for providers serving people with IDD under the DD waiver (*e.g.*, in group homes and host homes) is as follows:

- Providers that want a person with IDD to move from one setting to another must provide 15 days’ notice and an opportunity to be heard via the agency’s grievance process (which includes an informal “opportunity . . . to attempt finding a mutually acceptable solution,” and which must be resolved by “the agency director or designee if [it] cannot be resolved at a lower level”).¹²

¹⁰ Under Colorado law, it is “unlawful for a landlord to remove or exclude a tenant from a dwelling unit without resorting to court process, unless the removal or exclusion . . . is with the mutual consent of the landlord and tenant or unless the dwelling unit has been abandoned by the tenant.” C.R.S. 38-12-510.

¹¹ C.R.S. 13-40-101 through 123. Some municipalities may impose additional requirements.

¹² 10 CCR 2505-10 8.605.5, 8.609.5.B.8; *see also* 6 CCR 1011-1 Chap. 8, § 9.1(B) (group homes must provide “resident notice at least 15 days prior to the effective date when there is a decision to terminate

- When a provider or CMA seeks to move someone with IDD because they “may be at risk of abuse, neglect, mistreatment, exploitation, or other harm,” advance consent is not required, but person-centered planning “must occur as soon as possible following the move.” Specifically, “[i]f an immediate move is required for the protection of the person [with IDD], notification shall occur as soon as possible before the move or not later than three (3) days after the move.”¹³
- Providers that wish to terminate residential services provided to a person with IDD must provide 15 days’ notice, an opportunity to be heard via the agency’s dispute resolution process (which includes an informal negotiation opportunity and which must be resolved by an impartial decisionmaker who was not “directly involved in the specific decision at issue”); and a chance to seek review by a neutral third party (the Department). Before starting this process, the provider must engage in documented efforts to resolve the situation. Except when the Department determines that there is an emergency, the person’s services may not be terminated during the dispute resolution process (including departmental review if requested).¹⁴
- Services for people with IDD may not be suspended, even temporarily, “if such suspension would place [the] person at risk of loss of a place of abode,” and if they are suspended, the provider must still provide “modified services or supports . . . in an alternative setting.”¹⁵

The regulatory process for ACFs (including SLPs and TLPs) is as follows:

- Providers that want a resident to move from one room/unit to another must provide 30 days’ notice (except where there are “[c]hanges in the resident’s medical acuity that result in a documented decline in condition and that constitute an increase in care necessary to protect the health and safety of the resident”), an opportunity to be heard via the ACF’s internal grievance/complaint resolution process, and an opportunity for the individual to raise the issue with their SEP.¹⁶

services or transfer the resident”); *id.* § 9.1(C) (group homes must assure that “any resident transfer shall be in the best interests of the resident and not for the convenience of the facility”).

¹³ SB 18-174; C.R.S. 13-21-117.5(10); 10 CCR 2505-10 8.609.5.B.8.

¹⁴ C.R.S. 25.5-10-212; 10 CCR 2505-10 8.500.9.A, 8.600.4 (definition of notice), 8.605.2, 8.605.4 (emergency situations); *see also* 6 CCR 1011-1 Chap. 8, § 4.5 (group home “shall create policies and procedures for admission and discharge . . . that fully comply with state and federal law”); *id.* § 9.1(B).

¹⁵ 10 CCR 2505-10 8.604.3.B.

¹⁶ 6 CCR 1011-1 Chap. 7, §§ 13.1(D)(9), 13.10; 10 CCR 2505-10 8.393.1.I, 8.393.2.G.4.c-d, 8.516.30.G.7. In addition, SLP residents may “voice grievances” to the Department “in accordance with the grievance and appeal process in 10 CCR 2505-10 § 8.209.” *Id.* 8.515.85.K.

- Providers that wish to discharge a resident—meaning “termination of the resident agreement and the resident’s permanent departure from the facility”¹⁷—must provide 30 days’ notice (“except in cases of imminent physical harm to or by the resident or medical emergency”), an opportunity to be heard via the ACF’s internal grievance/complaint resolution process, and an opportunity for the individual to raise the issue with their SEP. The provider “shall not discontinue or refuse services to a client unless documented efforts have been made to resolve the situation.” The provider must send a copy of any involuntary discharge notice “to the state and/or local long-term care [(LTC)] ombudsman” within five days of giving the notice to the resident.¹⁸

The regulatory procedures summarized above give residents protections against eviction and appeal rights that are comparable to those available under Colorado landlord-tenant law in key respects, including the provision of notice and due process.¹⁹ This comparability is demonstrated in the summary table below:

	Landlord-tenant law	Standards for providers serving people with IDD under the DD waiver	Standards for ACFs
When does this body of law apply?	When the setting is not provider-owned or -controlled, <i>e.g.</i> , private house, apartment; also when specified in the agreement, even if the standards at right also apply	When the setting is provider-owned or -controlled, <i>e.g.</i> , group home, host home	When the setting is provider-owned or -controlled, <i>e.g.</i> , ACF, SLP, TLP
What initial process must the landlord/provider follow?	N/A	Provider must engage in documented efforts to resolve the situation before seeking to terminate services	Provider must engage in documented efforts to resolve the situation/meet resident’s care needs before seeking to terminate services

¹⁷ 6 CCR 1011-1 Chap. 7, § 2.

¹⁸ 6 CCR 1011-1 Chap. 7 §§ 11.16, 11.17, 13.10; 10 CCR 2505-10 8.393.1.I, 8.393.2.G.4.c-d, 8.487.11, 8.516.30.G.7; *see also* 6 CCR 1011-1 Chap. 7 § 11.4 (“The terms of a resident agreement shall not alter, or be construed to relieve the [ALR] of compliance with, any requirement or obligation under relevant federal, state or local law and regulation.”); *id.* §§ 11.14, 25.8. See also footnote 16 for SLP residents.

¹⁹ As noted in footnote 11, some local governments may impose requirements beyond those in Colorado statute before an individual can be moved or evicted. The parties should check these requirements to see whether the regulatory procedures summarized in the text are in fact comparable.

<p>How much notice must be given to the resident before they have to move/leave?</p>	<p>From 3 to 91 days, depending on the reason for terminating the tenancy</p>	<p>15 days, except when there is a risk of abuse, neglect, mistreatment, or other harm</p> <p>Once notice has been provided, the individual has an opportunity to work with their case manager to make an informed choice of an alternative setting</p>	<p>30 days, except where the provider seeks to (a) move a resident from one room to another because of increased medical acuity or (b) terminate services because of imminent physical harm or medical emergency</p> <p>Once notice has been provided, the individual has an opportunity to work with their case manager to make an informed choice of an alternative setting</p>
<p>What happens if the resident is still there after the end of the notice period?</p>	<p>No self-help evictions; FED process must be completed and writ executed by sheriff before the person can be made to leave</p>	<p>No self-help evictions; grievance/dispute resolution process and any further review must be completed before the person can be made to leave, except when there is a risk of abuse, neglect, mistreatment, or other harm</p>	<p>No self-help evictions; grievance/complaint resolution process and any further review must be completed before the person can be made to leave</p>
<p>Does the resident have an opportunity to be heard?</p>	<p>Yes (the court hearing the FED action)</p>	<p>Yes (the people that resolve the grievance process, in the case of moves, or the dispute resolution process, in the case of terminations)</p>	<p>Yes (the people that resolve the grievance/complaint resolution process)</p>
<p>Does the resident have an opportunity to appeal to a neutral third party?</p>	<p>Yes (the appellate court)</p>	<p>Yes (individual can ask case manager to help facilitate a resolution, and for terminations, can seek review by HCPF)</p>	<p>Yes (individual can ask case manager to help facilitate a resolution and can raise the issue with the SEP); in addition, SLP residents may raise grievances to HCPF</p>
<p>Is the resident at risk of becoming homeless during the dispute resolution process?</p>	<p>Yes, if the court issues a writ that is not stayed (preventing the county sheriff from executing it) during any appeal</p>	<p>No, as (a) services may not be suspended if doing so would put person at risk of loss of abode, (b) moves from one setting to another do not make the person homeless, and (c) services may not be terminated during dispute resolution, except when HCPF determines that there is an emergency (in which case HCPF would work with the person, the CMA, and</p>	<p>This risk is small, given the procedures set out above; the Department plans to expressly eliminate it as part of a future rulemaking</p>

		providers to offer respite services and identify a new long-term setting)	
What additional considerations are there?	Additional requirements may be imposed by (a) Colorado landlord-tenant law that is not summarized here and (b) county, city, and other local government authorities	The provider must have a good reason for seeking the move/termination (<i>e.g.</i> , protection of someone’s health/safety), and minor personal conflicts do not meet this threshold As part of the CHRP redesign under HB 18-1328, the Department plans to extend the standards described above to CHRP participants age 18 and older	The provider must have a good reason for seeking the move/termination (<i>e.g.</i> , protection of someone’s health/safety), and minor personal conflicts do not meet this threshold A copy of any involuntary discharge notice must be sent to the state and/or local LTC ombudsman
Citations	C.R.S. 13-40-101 through 123	C.R.S. 25.5-10-212; 6 CCR 1011-1 Chap. 8, §§ 4.5, 9.1; 10 CCR 2505-10 8.500.9.A, 8.600.4, 8.605.2, 8.605.4, 8.605.5, 8.609.5.B.8	6 CCR 1011-1 Chap. 7, §§ 2, 11.4, 11.14, 11.16, 11.17, 13.1, 13.10, 25.8; 10 CCR 2505-10 8.393.1.I, 8.393.2.G, 8.487.11, 8.515.85.K, 8.516.30.G

80. Can the provider require people to pay (and potentially forfeit) a security deposit?

Yes, security deposits are allowed if charged and returned in accordance with state and local law,²⁰ and if appropriate for the resident. That said, standard security deposits and other ways of charging individuals for property damage may not be appropriate for all individuals, and the Department expects that they will rarely if ever be used in HCBS-funded settings where they have not historically been used. In order to fulfill its obligations as a provider and avoid discriminating against individuals with disability-related cognitive or behavioral challenges (who may be more likely to cause damage or not understand such damage), the provider may need to make an exception or modification to any policy it may have for charging residents for damage—perhaps with some other measure(s) taken to prevent damage to the property.²¹

²⁰ See, *e.g.*, C.R.S. 25-27-104.5 (prohibition on lease provisions for “forfeiture of more than thirty days of rent if a resident moves due to a medical condition or dies during the term of the plan”); C.R.S. 38-12-103 (provisions regarding return of security deposits); 6 CCR 1011-1 Chap. 7, § 11.6(A) (CDPHE regulation for ALRs requiring that deposit policies be set forth in resident agreement).

²¹ See 10 CCR 2505-10 8.515.85.F.3.c (rule for SLPs when “client needs assistance with challenging behavior, including . . . behavior that results in significant property destruction”); 10 CCR 2505-10 8.608.1.E-G (similar rule for providers serving people with IDD).

81. Will the Department review a provider's standard lease/residential agreement?

Yes, the Department is working with CDPHE to conduct such a review as part of the site-specific assessment process. This review ensures only that the agreement complies with the HCBS Settings Final Rule, not necessarily all other legal requirements (many of which are beyond the Departments' expertise, making the issuance of a sample lease/residential agreement infeasible here). To ensure full compliance with authorities other than the HCBS Settings Final Rule, providers should consult with experts in those authorities.

Modifications in individual cases

82. Can the right to a lease/residential agreement that meets all of the requirements above be modified?

In some situations, the provider and the individual may wish to agree to modify the general rights and procedures set out in Item #79 and the table above. For example, if an individual has been asked to leave numerous residential settings because of their behaviors, they might want to encourage more providers to serve them by agreeing to a modification allowing for a faster move/eviction process than would otherwise apply under HCPF and CDPHE regulations and/or landlord-tenant law. The Department expects modifications to be rare.

A modification may be permissible, subject to the following criteria:

First, the legal standards for involuntarily moving or evicting someone always apply, unless properly waived.

- The HCPF and CDPHE regulatory standards discussed above generally apply across the board to all residential settings that are provider-owned or -controlled, such as ACFs, SLPs, TLPs, group homes, and host homes. If a provider does not wish to be subject to a particular regulatory requirement, it may seek a waiver from the regulating agency by following that agency's ordinary waiver-request process. In the absence of such a waiver, the provider must comply fully with all applicable regulations.
- The landlord-tenant standards discussed above generally apply across the board to all settings that are not provider-owned or -controlled, such as private houses and apartments. If a landlord does not wish to be subject to a particular legal requirement, it may seek a waiver from the tenant, if allowed by law.²²

Second, landlords and providers of residential HCBS that want to seek a waiver from the applicable legal standards must have generally applicable criteria for seeking any waiver and for asking for an individual's and their case manager's support in developing

²² Colorado law forbids certain kinds of waivers. *See, e.g.*, C.R.S. 13-40-104(1)(d).

a rights modification.²³ The generally applicable criteria must not be based on the individual's disability or diagnosis. Examples of generally applicable criteria include:

- Whenever a prospective resident has been asked to leave/evicted from three or more places where they lived in the last three years, for any reason, the provider may pursue a modification appropriate to the circumstances (potentially one allowing the provider to move or evict the person more quickly than usual);
- Whenever a prospective resident is not capable of signing an enforceable lease/residential agreement, and does not have a guardian or other legally authorized representative who can do so in their stead, for any reason, the provider may pursue a modification appropriate to the circumstances (potentially one allowing for some other representative to support the individual in housing matters)²⁴;
- Whenever a current resident seriously damages the property (beyond normal wear and tear) three or more times, for any reason, the provider may pursue a modification appropriate to the circumstances (potentially one allowing the provider to move or evict the person more quickly than usual).

Providers that want to seek a waiver must set out their criteria in writing (*e.g.*, in a policy or resident handbook). Landlords that are not providers may also wish to do so.

Third, to comply with the federal HCBS Settings Final Rule, any rights modification—that is, any deviation from the applicable standards set out above for moves/evictions—must be supported by an individualized, assessed need and appropriately supported, including with the individual's informed consent, in the person-centered plan created with the case manager. The plan must specify how the provider's generally applicable criteria apply to the individual's specific situation, how the individual's expectation of stability in housing will be protected, what alternative(s) to the regulatory/court procedures discussed above will be pursued if the provider and the individual cannot agree on a date for the individual to leave, and how the individual will be protected against any risk of becoming homeless. For guidance on the rights modification process, refer to FAQ Part I, Items ##28-32, and FAQ Part II, Items ##51-69.

²³ This guidance relates only to HCBS settings requirements. The Department does not enforce Fair Housing and reasonable accommodation law and does not intend to alter its application in any way.

²⁴ If the individual has a guardian with the authority to enter into a lease/residential agreement on their behalf (see FAQ Part I, Item #30), the guardian should sign the agreement and be contacted about any evictions, appeals, etc. This situation does not involve a rights modification under the HCBS Settings Final Rule. Even when there is a guardian with this kind of authority, the individual should still lead the person-centered planning process where possible (*id.*) and be consulted regarding any possible moves.

83. How should residential providers handle emergency/near-emergency situations?

The Department has been asked about situations in which a resident creates a potentially serious risk to themselves or others, for example, showing up at the residence with a gun, assaulting someone, or repeatedly smoking while using an oxygen tank or being around others who use oxygen tanks, after being asked not to.

CMS has acknowledged that emergent situations warrant an exception to the usual rights and procedures summarized above. In Colorado, the guidance for these situations is set forth in FAQ Part I, Items ##28-32, and Part II, Items ##51-69. In brief:

- The provider should plan in advance for any rights modification that it believes should apply, working with the person and their case manager to document the required information (including informed consent) in the person-centered plan.
- If the person refuses to grant/revokes their consent, or the situation was not foreseen as part of the ordinary person-centered planning process, the provider can no longer take actions that were legal only because of that consent, but it can take actions that are justified on other grounds (such as the need for staff to protect themselves and others). In that case, the provider should immediately (a) work to deescalate the situation safely—including by arranging for temporary alternative housing if needed—and (b) reach out to the case manager so that they, with the individual, can work together to resolve the issue. The provider may not allow the person to become homeless during this process.

84. What if a resident's health worsens and/or they are hospitalized?

The provider should assess whether it can continue to serve the resident safely in their current room/unit. If it can, it must continue to do so.²⁵ If it cannot, it should pursue the applicable process above for pursuing a resident move or service termination.

85. Must the residential HCBS provider allow another provider into the setting during the process for resolving any involuntary moves, evictions, or related appeals?

It depends on the services at issue. In the HCBS Settings Final Rule, CMS stated that it was "not requiring the separation of the housing provider from the provider of HCBS." CMS elaborated as follows in a guidance document issued around the same time:

²⁵ See, e.g., 6 CCR 1011-1 Chap. 7 § 11.14 ("Prior to discharging a resident because of increased care needs, the [ALR] shall make documented efforts to meet those needs through other means."); *id.* § 25.8 (for ALRs with secure environments, "[i]f at any time a resident is determined to be a danger to self or others, the [ALR] shall be responsible for developing and implementing a temporary plan to monitor the resident's safety along with the protection of others until the issue is appropriately resolved and/or the resident is discharged").

[W]hen an individual chooses to receive [HCBS] in a provider owned or controlled setting where the provider is paid a single rate to provide a bundle of services, the individual is choosing that provider, and cannot choose an alternative provider, to deliver all services that are included in the bundled rate. For any services that are not included in the bundled rate, the individual may choose any qualified provider For example, if a residential program provides habilitation connected with daily living and on-site supervision under a bundled rate, an individual is choosing the residential provider for those two services when he or she chooses the residence. The individual has free choice of providers for any other services in his or her service plan, such as employment services²⁶

Hence, in Colorado, where the individual chooses bundled services, such as those provided under the ACF, SLP, TLP, CHRP, group home, host home, and other Individual Residential Support Services (IRSS) billing codes, they are choosing to receive all services in that bundle, if at all, from their chosen provider (unless the parties reach a different agreement that is allowed by the applicable rules).

If the residential provider and the individual are not getting along, they should contact the individual's case manager to discuss possible solutions. The case manager may be able to help the parties improve their situation, *e.g.*, by facilitating a conversation so that the parties can discuss their issues constructively, by arranging for additional supports and services (if desired by the individual), or by helping the parties identify provider staffing changes that would be mutually agreeable.

If these methods do not succeed and the parties are ultimately unwilling/unable to provide or receive the bundled services in a workable way, then:

- The individual may contact their case manager to arrange for moving out of their current setting and possibly moving in to a different residential setting; and/or
- The provider may pursue a move (*e.g.*, to another setting that it operates) or termination of services, subject to the applicable authorities set out above.

The individual always has the right to receive services other than those in the bundle from any provider, including an outside provider that visits them in their home.

²⁶ CMS, [HCBS Settings Final Rule](#) at 2958; CMS, *Fact Sheet: Summary of Key Provisions of the Home and Community-Based Services (HCBS) Settings Final Rule* (Jan. 10, 2014). The Department's rules are to the same effect. *See, e.g.*, 10 CCR 2505-10 8.515.85.F.3.b (SLP regulation).