



## INFORMATIONAL MEMO

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<b>TITLE:</b>	<b>HCBS SETTINGS FINAL RULE—RIGHTS MODIFICATION WORKGROUP</b>
<b>SUPERSEDES NUMBER:</b>	N/A
<b>EFFECTIVE DATE:</b>	<b>AUGUST 27, 2019</b>
<b>DIVISION AND OFFICE:</b>	<b>STRATEGIC OUTCOMES DIVISION, OFFICE OF COMMUNITY LIVING</b>
<b>PROGRAM AREA:</b>	<b>HCBS WAIVERS</b>
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<b>APPROVED BY: AMANDA LOFGREN</b>	

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*HCPF Memo Series can be accessed online: <https://www.colorado.gov/hcpf/memo-series>*

### **Purpose and Audience:**

The purposes of this Informational Memo are (1) to announce that the Department of Health Care Policy & Financing (Department) will host a workgroup to develop proposed materials regarding the rights modification process under the Home and Community-Based Services (HCBS) Settings Final Rule and (2) to invite those who are interested in participating to reach out. Interested people might include waiver participants, relatives of participants, advocates, and representatives of providers and case management agencies serving the HCBS waivers.

### **Information:**

#### Background

In 2014, the federal Centers for Medicare & Medicaid Services (CMS) published a [rule](#) requiring HCBS to be provided in settings that meet certain criteria. The rule identifies rights that individuals have in HCBS settings and sets out a process for modifying those rights where appropriate in an individual case. The process includes documenting

several criteria, including the individualized assessed need for the modification and the informed consent of the individual.

The Department provided guidance for implementation of the rights modification process in several issuances, including its responses to frequently asked questions (FAQs) [Part I](#) (January 2018) and [Part II](#) (June 2018), a [training series](#) (January 2019), and three Operational Memos ([February 2019](#), [June 2019](#), and [July 2019](#)).

### Workgroup

The Department is planning to host a workgroup to develop proposed additional materials regarding the rights modification process, such as:

- Proposed best practices for not just complying with the requirements of the rule, but going above and beyond to implement person-centeredness, community integration, and other core values;
- Lists of frequently asked questions (FAQs) not already addressed in the Department's FAQ series and Operational Memos, along with proposed answers, including guidance targeted toward implementing best practices;
- Proposals for updating regulations and waivers to incorporate the requirements of the rule, including by streamlining existing processes under the waivers serving people with intellectual and developmental disabilities (IDD) for rights suspensions and restrictive procedures;
- Proposed forms to use in documenting the rights modification criteria, including informed consent; and/or
- Proposed trainings for individuals and families, providers, and/or case managers.

The workgroup will decide at its first meeting which of these materials to develop and will then discuss, draft, and finalize its selected item(s). The Department will consider the final material(s) proposed by the workgroup with the goal—to which it cannot currently commit—of issuing, enacting, or implementing the material(s).

The Department expects to host roughly three to five monthly meetings in person, with the option for participants to join by phone or webinar. Participants will be consulted about their preferred meeting dates and times, as well as their preferences for how long each meeting should last. The Department expects that Department staff not directly participating in the workgroup and/or a contractor will facilitate the meetings; prepare minutes; and help collect and compile drafts and feedback from participants.

Anyone interested in participating in the workgroup is invited to contact the Department for further information by September 17, 2019. The Department expects that the following groups may be interested:

- Waiver participants, their family members, and advocates;
- HCBS provider agencies, including those providing alternative care facility (ACF), supported living program (SLP), transitional living program (TLP), group home, host home, adult day, day habilitation, day treatment, supported employment, and Children's Habilitation Residential Program (CHRP) services; and
- Case management agencies serving the HCBS waivers, including Community Centered Boards (CCBs) and Single Entry Point (SEP) agencies.

Representatives from the Department and the Colorado Department of Public Health & Environment (CDPHE) will also participate.

**Attachment(s):**

None

**Department Contact:**

Inquiries may be sent to the following shared inbox: [STP.PublicComment@state.co.us](mailto:STP.PublicComment@state.co.us).