



OPERATIONAL MEMO

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**DIVISION AND OFFICE: POLICY, INNOVATION, AND ENGAGEMENT DIVISION,
OFFICE OF COMMUNITY LIVING**

PROGRAM AREA: HCBS WAIVERS

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Purpose and Audience:

The purpose of this Operational Memo is to summarize direction provided to case management agencies and providers serving the home- and community-based services (HCBS) waivers regarding one-on-one (1:1), line-of-sight, and/or 24-hour supervision under the HCBS Settings Final Rule.

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 a number of rights that individuals have in HCBS settings and sets out a process for modifying those rights where appropriate in an individual case.

Under the HCBS Settings Final Rule, HCBS settings must ensure “an individual’s rights of privacy, dignity and respect,” and they must optimize “individual initiative, autonomy, and independence in making life choices.” 42 C.F.R. § 441.301(c)(4).

CMS has indicated that intensive supervision of individuals (a) may interfere with their right to privacy and their exercise of autonomy, and (b) may be warranted on an individualized basis, subject to the federal criteria for rights modifications, including obtaining informed consent. See CMS, *HCBS Final Regulations: Questions and Answers Regarding Home and Community-Based Settings*, p. 4 (April 2016) (noting that “some community providers support individuals with a history of sexual predation where line-

of-sight supervision and limits on interaction with certain members of the community may need to be imposed”).

A number of providers and case management agencies have asked whether intensive supervision—such as one-on-one (1:1), line-of-sight, and/or 24-hour supervision—always qualifies as a rights modification. The Department has responded with the direction summarized below and in the [transcript of its January 2019 training on rights modifications](#). The Department is issuing this Operational Memo more broadly to ensure that everyone shares the same understanding of these issues.

Information/Procedure:

In all cases, the individual’s support needs should be documented by their case manager in their person-centered service plan. This requirement predates the HCBS Settings Final Rule and applies to all waiver participants, whatever level of supervision (or lack thereof) may be warranted.

The individual or their guardian/other legally authorized representative, if applicable, always consents to and signs their person-centered service plan. This requirement, too, predates the HCBS Settings Final Rule.

Simply providing services and supports—even intensive supervision—is not necessarily a rights modification under the HCBS Settings Final Rule. Intensive supervision should be handled through the rights modification process in two situations:

1. When the supervision is a rights suspension or restrictive procedure within Colorado’s existing regulatory framework. For example, intensive supervision of individuals who have the skills to safely be alone at home or in the community, but who also have a history of sexual offenses, theft, aggression, or other inappropriate behaviors, is a rights suspension under current authorities. As the Department has stated in its responses to frequently asked questions (FAQs) and in trainings, all rights suspensions and restrictive procedures under current rules are encompassed within the federal concept of a rights modification.
2. When the individual verbally or nonverbally expresses that they do not want the supervision. For example, if an individual communicates through words or behaviors that they want to be alone in their room or to go out alone into the community, and the provider does not want to allow this for any reason (*e.g.*, protecting the health and safety of the individual or others in the community), then the provider is proposing to limit the individual’s privacy and autonomy—even if the provider believes that the individual does not have the skills to safely be alone. The provider should initiate the documentation for a rights

modification, and the case manager must discuss alternatives with the individual and, if they grant their informed consent, collect their signature.

Intensive supervision that does not fit within the two situations described above should be documented as always in the individual's person-centered service plan, but need not be handled as a rights modification.

Attachment(s):

None

Department Contact:

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