



## OPERATIONAL MEMO

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<b>EFFECTIVE DATE:</b>	<b>DECEMBER 21, 2020</b>
<b>DIVISION AND OFFICE:</b>	<b>OFFICE OF COMMUNITY LIVING</b>
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*HCPF Memo Series can be accessed online: <https://www.colorado.gov/hcpf/memo-series>*

### **Purpose and Audience:**

The purpose of this Operational Memo is to inform Case Management Agencies (CMAs) of updates in the Benefits Utilization System (BUS) which allow for a standardized method of entering the required documentation of members' Rights Modifications and to inform CMAs and provider agencies of the availability of a standardized template for obtaining members' informed consent to a Rights Modification.

### **Background:**

In 2014, the federal Centers for Medicare & Medicaid Services (CMS) published a rule establishing criteria for settings where Home and Community-Based Services (HCBS) are provided. 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. A [Training](#) (along

with a [webinar recording](#) and a [transcript](#)) for providers and CMAs on Rights Modifications is available on the Department's website.

To date, case managers have been using existing fields in the BUS to save the required information to support a Rights Modification, including the DD Section of the Service Plan (where available, for individuals served by Community Centered Boards (CCBs)) and/or Log Notes (if needed, including for individuals served by Single Entry Point (SEP) entities).

Also, to date, case managers have been keeping copies on file of an individual's signed informed consent to a Rights Modification. Initially, providers and CMAs developed their own informed consent templates based on the training materials (linked above) and any informed consent forms they may previously have been using. In June 2020, at the request of providers, CMAs, and other stakeholders, the Department shared with the HCBS Settings Final Rule Rights Modification Stakeholder Workgroup a proposed standardized template for documenting the individual's informed consent to a Rights Modification. In the months that followed, the Department also obtained feedback on this template from the HCBS Settings Final Rule Open Meeting participants. Feedback on the template is still being collected through the informal Open Meeting process and will also be collected through the more formal notice-and-comment rulemaking process to follow.

### **Information/Process:**

The Department of Health Care Policy & Financing (Department) has updated the BUS to ensure compliance with CMS requirements and to provide Rights Modification reporting capability that is consistent across all CMAs and all waivers. This update includes the addition of a Rights Modification section where case managers can enter information specific to a member's Rights Modification. Screenshots of the new screens are attached to this Operational Memo.

Beginning January 1, 2021, all CMAs with access to the BUS, including CCBs and SEPs, will be required to begin entering Rights Modification information into the new screens in the BUS, instead of other screens in the BUS that have been used on an interim basis. This information must be entered for all new modifications as they are implemented and for continuing modifications as they come up for review/renewal (e.g., during a member's Continued Stay Review; when a measure is due for review by an Interdisciplinary Team and/or Human Rights Committee). CMAs are permitted but not required to use the new screens to document existing Rights Modifications that are not up for review/renewal and that are appropriately documented elsewhere (e.g., on the DD Section of the Service Plan, as allowed on an interim basis until now). The attached document provides screenshots of the new screens and instructions on how to

enter the required documentation. In the BUS, most of the new fields also include hovertext instructions to guide case managers in entering the required information. For additional guidance about the information to be included in these screens, please refer to the training materials (linked above) and the built-in guidance for providers and case managers (included with the informed consent template).

The Department is providing, as an attachment to this Operational Memo, an informed consent template that should be used by all providers and CMAs as of January 1, 2021. In using this template, please delete italicized text (which is intended not for members, but for the guidance of providers and case managers). This template contains some updates to the versions previously circulated to the Rights Modification Stakeholder Workgroup and the stakeholders participating in the HCBS Settings Final Rule Open Meetings. Feedback on the template is still being collected through the informal Open Meeting process and will also be collected through the more formal notice-and-comment rulemaking process to follow in early 2021, meaning that further updates may be made to the template by spring 2021. If the template is revised, the Department will circulate the revised version to providers and CMAs. As previously indicated, providers may begin filling out information in this template; however, the case manager is expected to review the information with the individual and ensure their understanding and informed agreement, and only the case manager may obtain the individual's signature reflecting their informed consent.

CMAs should continue to maintain on file any signed informed consent materials, as before. Electronic signatures collected through appropriate methods continue to be allowed.

CMAs should continue to share with providers implementing a Rights Modification a copy of the completed materials, including the signed informed consent. The BUS update makes this process easier through the Print function available for each Rights Modification.

Beginning January 1, 2021, the new Rights Modification One-Time Questions should be answered when the case manager is initially using the Rights Modification screens for a member to add or review/renew a Rights Modification for that member. (Again, case managers may elect to answer these questions before that point but doing so is not required.) The answers to these questions can be updated as needed on a going-forward basis.

Beginning today, all CMAs—including CCBs and SEPs—will be required to begin answering new Yes/No questions in the Log Notes screen when saving new Log Notes.

The Department will host a Technical Assistance call on January 13, 2021 from 10:30 a.m. to 11:30 a.m. Staff from CCBs and SEPs should plan to join this call (if they have questions about the BUS updates).

**Attachment(s):**

- BUS Screenshots and Data Entry Instruction for Rights Modification Screens
- BUS Screenshots for Log Notes
- Informed Consent Template

**Department Contact:**

Feedback on the informed consent template and other HCBS Settings Final Rule materials, and to participate in Open Meetings:

[HCPF\\_STP.PublicComment@state.co.us](mailto:HCPF_STP.PublicComment@state.co.us).

Questions about the BUS Rights Modification screens and BUS Log Notes additions:

[HCPF\\_PTP@state.co.us](mailto:HCPF_PTP@state.co.us).