



OPERATIONAL MEMO

TITLE:	HCBS SETTINGS FINAL RULE—USE OF UPDATED DOCUMENTS
SUPERSEDES NUMBER:	N/A
EFFECTIVE DATE:	SEPTEMBER 24, 2021
DIVISION AND OFFICE:	STRATEGIC OUTCOMES DIVISION, OFFICE OF COMMUNITY LIVING
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Purpose and Audience:

The purpose of this Operational Memo is to inform providers of Home and Community-Based Services (HCBS) of the need to use the updated versions of any documents they have revised for purposes of HCBS Settings Final Rule compliance.

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 standards. Under these standards, settings must ensure that people are able to exercise a variety of rights. They also must ensure that any modifications to these rights meet several criteria, such as being based on individualized need and having the individual's informed consent.

In the years since the issuance of the federal rule, the Colorado Departments of Health Care Policy & Financing (HCPF) and Public Health & Environment (CDPHE) have been working with affected providers to ensure that they are coming into compliance with the federal requirements. This work has included review of various provider documents,

such as house rules, leases/residential agreements, and policies and procedures. It is typical for such materials to reflect a number of compliance issues that must be addressed via provider revisions. Providers have been updating their documents and submitting them for final review and approval.

It has come to the departments' attention that after obtaining approval of their updated documents, some providers are not using the updated versions. For example, some providers of adult residential services are not replacing their posted house rules (which are not compliant with the HCBS Settings Final Rule) with their updated house rules (which are). As another example, some such providers are having only their new residents sign the updated version of the applicable lease/residential agreement, without extending the benefits of this version to existing residents.

Guidance

To ensure that people can enjoy the rights protected by the HCBS Settings Final Rule, providers must implement the updates they have made under the rule. This includes:

- Posting updated house rules once approved and removing superseded postings.
- Using updated leases/residential agreements with current residents when their existing agreement comes up for renewal. For most waiver participants, providers will give notice of upcoming changes to the amount due for rent/room and board by December 1, 2021, for an effective date of January 1, 2022. Providers should employ updated agreements for signature during this cycle. For new residents, the updated agreement must be used from the outset.
- Using updated dispute and grievance/complaint policies, rights handouts, and other materials with current participants when their service plan comes up for renewal. Both residential and nonresidential providers are required to have some of these materials (depending on the services they offer). Providers are already required to give such materials to individuals (and their guardians or other legal representatives, if authorized) as part of the annual service plan meeting. For new participants, the updated materials must be used from the outset.
- Informing individuals of the updates. This includes, for house rules, documenting that the changes were reviewed during a monthly resident meeting (if applicable to the setting type) or other conversation. Updates to the lease/residential agreement should be explained before the document is signed, and updates to other materials, before or during the annual service plan meeting.

Attachment(s):

None

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