



## OPERATIONAL MEMO

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<b>TITLE:</b>	<b>HOME AND COMMUNITY-BASED SERVICES (HCBS) SETTINGS FINAL RULE — RIGHTS MODIFICATION REMINDERS AND TRAINING FOR CASE MANAGERS</b>
<b>SUPERSEDES NUMBER:</b>	N/A
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<b>APPROVED BY: AMANDA LOFGREN</b>	

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### **Purpose and Audience:**

The purpose of this Operational Memo is to remind case managers of requirements relating to entering rights modification information into the Benefits Utilization System (BUS). This memo also announces an upcoming training for case managers on this subject. Case managers employed by a case management agency (CMA), including Community Centered Boards (CCBs) and Single Entry Points (SEPs), are required to review this memo and attend the training.

### **Information:**

#### Background

In 2014, the 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. The Department of Health Care Policy & Financing (Department) codified the federal standards in a rule, [10 CCR 2505-10 section 8.484](#), that went into effect in January 2022.

The Department has previously provided CMAs with guidance regarding case managers' role in entering rights modification information into the BUS. This includes:

- [Operational Memo 21-032 - Informed Consent Template for Rights Modifications](#) – March 17, 2021
  - [Informed Consent Template](#) – March 2021
- [Rights Modification Documentation TA Call - Webinar Recording](#) – Jan. 13, 2021
- [Operational Memo 20-103 - Rights Modifications Documentation](#) – Dec. 21, 2020
  - [BUS Screenshots and Data Entry for Rights Modification Screens](#)
  - [BUS Screenshots for Log Notes](#)
  - Informed Consent Template (use March 2021 version, linked above)
- [BUS Log Notes Reporting Enhancements](#) – Feb. 7, 2019

### **Case Management Agency Rights Modification Reminders**

Case managers should review the materials listed above to be sure they are familiar with existing guidance regarding rights modification data entry. In addition, case managers should take note of the following points:

- 1) **Enter every rights modification in the BUS.** The Department has observed that some rights modifications are being implemented without being documented in the BUS as rights modifications. Case managers must utilize the Rights Modification tab in the BUS for documentation. The Department is required to report to CMS on rights modification-related performance measures, which requires a complete record in the BUS.
- 2) **Accurately and timely enter all required information in the BUS.** Ensure that once a case manager initiates the data entry, it is completed. For example, once the individual has signed the Informed Consent Template, the case manager should check the box confirming that informed consent has been

obtained. If the individual is still deciding whether to grant informed consent, it is too early to check this box. The case manager should not only enter details on the screens for an individual rights modification, but also update the Rights Modification Questions screen, relating to Human Rights Committee (HRC) review. The case manager should also enter log notes reflecting the discussion of all proposed rights modifications, not just one if there are multiple. This data entry is important to ensure the Department can accurately report to CMS regarding whether a rights modification is in place with all required steps completed.

- 3) Confirm that the [Informed Consent Template](#) has been used**, with all italicized instructions followed and the text of those instructions deleted from the document the individual is being asked to sign. The case manager should ensure that the information supplied by the provider meaningfully addresses the required criteria. Please note: only one person has the authority to decide whether to consent to a rights modification. This is either the individual, or someone else with legal authority to make the decision (for example, the parent of a minor, or the court-appointed guardian if the guardianship order includes this kind of decision within the scope of guardianship). The Informed Consent Template includes a signature line for both the individual and a guardian/other authorized legal representative, but only one of these lines needs to be used for a given rights modification. If an individual does not have the legal authority to make this decision, but would like to sign anyway, they may. The case manager also signs the form.
- 4) If the individual has an interdisciplinary team (IDT), review their rights modifications every six months through the IDT meetings.**
- The case manager should document the results of the review in the BUS. This includes documenting through a log note that the meeting occurred, who was present, and the outcome of the review. Case managers will select "**Rights Modification contact type**" from the log note dropdown menu and include "**6-Month Rights Modification Review**" in the body of the log note.
  - If the review indicates that changes are needed to the rights modification, the provider, case manager, and individual will work together to update the information on the Informed Consent Template. The case manager will obtain a new signature on the Informed Consent Template and document rights modification changes in all prescribed areas of the BUS.
  - If the review indicates no changes are needed, then the original signature is still valid for the remaining period (up to six months).

- If the individual has no IDT, then there is no requirement for a six-month review unless the individual requests one.

#### **5) Renew rights modifications, if still needed, every year.**

- Under [10 CCR 2505-10 section 8.484](#), the Department's codification of the federal rule, a rights modification "must be reviewed and revised upon reassessment of functional need at least every 12 months, and sooner if the individual's circumstances or needs change significantly, the individual requests a review/revision, or another authority requires a review/revision."
- As outlined in the Informed Consent Template, "[t]he end date can be up to one year after the start date and can be earlier. If a similar Rights Modification is used in later periods, **complete a fresh form with new dates**, and update any other information in the form as appropriate."
- Upon receipt of a new Informed Consent Template from the provider, the case manager will review the form with the individual and ensure that they are given the opportunity to ask questions, raise concerns, edit the information on the form, etc. before signing.
- If the individual grants their informed consent, the case manager will then create a new entry in the rights modification section of the BUS. **Please do not overwrite the dates on the original rights modification.**

#### **Training**

The Department will be presenting a mandatory training to review the points above and answer any questions. CMAs, please have your case managers and their supervisors attend one of the following (duplicate) sessions:

- **Dec. 6, 2022, at 1 p.m. MT** ([register here](#))
- **Dec. 8, 2022, at 10 a.m. MT** ([register here](#))

After registering, participants will receive a confirmation email containing information about joining the webinar. The training with a question-and-answer period will take about an hour, but extra time is included in the invitation to ensure nothing is cut short.

**Attachment(s):** None

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