



## OPERATIONAL MEMO

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<b>Title:</b> HCBS Settings Final Rule—updated Informed Consent for Rights Modification Template	<b>Topic:</b> HCBS
<b>Audience:</b> HCBS Case Management Agencies (CMAs) and Provider Agencies	<b>Sub-Topic:</b> HCBS Settings Final Rule
<b>Supersedes Numbers:</b> HCPF OM 20-103 & HCPF OM 21-032	<b>Division:</b> Strategic Outcomes Division
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<b>Approved By:</b> Hayley Gleason	

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### Purpose and Audience:

The purpose of this Operational Memo is to inform Case Management Agencies (CMAs) and Provider Agencies of the availability of an updated standardized template for obtaining Members' Informed Consent to a Rights Modification.

### Information:

#### Background

The Home and Community-Based Services (HCBS) Settings Final Rule identifies rights that individuals have in settings where they live or receive HCBS. This rule is codified in Colorado at 10 CCR 2505-10 section 8.7001. As provided in rule, a Rights Modification is “any situation in which an individual is limited in the full exercise of their rights.” Section 8.7001.A.17. For a Rights Modification to be implemented, the process in Section 8.7001.B.4 must be followed. This process includes documenting

“[t]he Informed Consent of the individual (or, if authorized, their Guardian or other Legally Authorized Representative) agreeing to the Rights Modification, as documented on a completed and signed Department-prescribed form.”

At the request of Provider Agencies, CMAs, and other stakeholders, the Colorado Department of Health Care Policy and Financing (HCPF) worked with stakeholders to develop a standardized template for documenting the individual’s Informed Consent to a Rights Modification. In 2020, HCPF provided, as an attachment to Operational Memo 20-103, an Informed Consent template for use by all Provider Agencies and CMAs. As indicated in that memo, the template was still undergoing some revisions in response to stakeholder input. Based on further stakeholder input, HCPF issued a revised Informed Consent template in 2021, as an attachment to Operational Memo 21-032.

### Updates

Today, HCPF is issuing [a new Informed Consent template](#), to replace the one in use since 2021. The updates are intended to make the form clearer and easier to use and do not require additional information to be documented. Principal changes include:

- Overhauling the format so that Provider Agencies and Case Managers do not need to delete blocks of italicized instructions intended for them but not Members. Instructions for Provider Agencies and Case Managers are now condensed to two locations:
  - (1) a Cover Sheet that can be removed when the form has been filled out and is ready to share with the Member; and
  - (2) information icons ( ⓘ ) that provide guidance and examples for filling out each item—the information appears when the user clicks on the icon or navigates to and selects it via keyboard with their screen reader.

With these changes, the template continues to contain all information necessary for Provider Agencies and Case Managers to correctly fill out the form, generally without having to consult separate resources. At the same time, Provider Agencies and Case Managers are required to do less manual clean-up work to create a streamlined document for the Member’s review.

- Plain Language edits to make the template more user-friendly for Members. These edits do not eliminate the need for Provider Agencies and Case Managers to help Members understand the form and the information it contains. The Cover Sheet and the guidance and examples associated with the information icons are not written in Plain Language.

- Technical enhancements to make the template easier to fill out and more accessible to anyone with disabilities. To fill out the form, download the PDF file to your computer. Open it in Adobe Acrobat Reader ([free software available here](#)). Save your changes to the PDF.
- Clarifications throughout to address frequently asked questions and prevent commonly seen mistakes in how the forms are filled out.

### Things that are not changing

While the Rights Modification form is changing, the overall process is not changing. Provider Agencies will typically still initiate the process by filling out most of the information in the template. They will still review and discuss the form with the Member. Then, the Case Manager will further review it with the Member, after offering them the chance to consult with independent advocates and others of the Member's choosing, as well as sharing [these videos](#) with accompanying resource sheet (the resource sheet is linked below each video). Only the Case Manager may obtain the Member's signature reflecting their Informed Consent. CMAs should continue to maintain signed forms on file, record information in the Care & Case Management System (CCM), and share completed materials with implementing Provider Agencies.

The Informed Consent for Rights Modification template is not intended for psychotropic medications. Rights Modifications and psychotropic medications involve different considerations, and consent for each measure entails documentation of different types of information. In the very rare situation where a psychotropic medication is used as a chemical restraint, consent would have to be obtained on separate forms for both the psychotropic medication and the Rights Modification (restraint).

Provider Agencies continue to be prohibited from proposing or implementing a Rights Modification at any HCBS Setting that conflicts with the HCBS Settings Final Rule or other regulations. As stated in rule and prior HCPF issuances, prohibited Rights Modifications include, but are not limited to, the following:

- Modifications to the rights of dignity and respect, person-centeredness, civil rights, freedom from abuse, and physical accessibility;
- Modifications inconsistent with the concept of dignity of risk;
- Implementation across-the-board for all individuals in a setting or that imposes upon the rights of individuals not subject to the modification;
- Implementation for provider convenience;

- Implementation without documentation of all required criteria; this includes the written Informed Consent of the Member or their Legally Authorized Representative, if applicable (unless otherwise outlined in regulation);
- The use of prone restraints; and
- Modifications that restrict and/or control egress in such a way that the safety of the Member is at risk should there be a need for immediate evacuation.

### Action To Be Taken:

CMAAs and Provider Agencies should ensure that relevant staff, including Case Managers and provider staff involved with Rights Modifications, review and familiarize themselves with the new template, including the Cover Sheet as well as the guidance and examples associated with the information icons.

Going forward: The [new template](#) should be used to obtain Informed Consent for all new Rights Modifications as well as all continuing Rights Modifications when they are up for annual review and potential renewal. Rights Modifications undergoing a six-month review need not be re-documented on the new template unless changes are made at that point. Existing Rights Modifications that are not up for review and updates/renewals need not be re-documented on the new template.

Rights Modifications in progress: There is no need to re-initiate any pending paperwork already started on the 2021 template, if it relates to a Rights Modification to go into effect or to be renewed/updated **within three months after the Effective Date of this memo**. Rights Modifications going into effect or renewing/being updated after this cutoff must be documented on the [new template](#), even if initially or previously documented on the 2021 template.

### Definition(s):

**Covered HCBS** means any Home and Community-Based Service(s) provided under the Colorado State Medicaid Plan, a Colorado Medicaid waiver program, Community First Choice, or a State-funded program administered by the Department. This category excludes Respite Services and Palliative/Supportive Care services provided outside the child's home as a benefit of the Children with Life-Limiting Illness Waiver or Children with Complex Healthcare Needs Waiver.

**Home and Community-Based Services (HCBS) Setting** means any physical location where Covered HCBS are provided.

**Informed Consent** means the informed, freely given, written agreement of the individual (or, if authorized, their Guardian or other Legally Authorized Representative) to a Rights Modification. The Case Manager ensures that the agreement is informed, freely given, and in writing by confirming that the individual (or, if authorized, their Guardian or other Legally Authorized Representative) understands all of the information required to be documented in Section 8.7001.B.4 and has signed the Department-prescribed form to that effect.

**Plain Language** means language that is understandable to the individual and in their native language, and it may include pictorial methods, if warranted.

**Rights Modification** means any situation in which an individual is limited in the full exercise of their rights. Rights Modifications include, but are not limited to:

- i. the use of Intensive Supervision if deemed a Rights Modification under the definition in Section 8.7001.A.6;
- ii. the use of Restraints;
- iii. the use of Restrictive or Controlled Egress Measures;
- iv. modifications to the other rights in Section 8.7001.B.2 (basic criteria applicable to all HCBS Settings) and Section 8.7001.B.3 (additional criteria for HCBS Settings);
- v. any provider actions to implement a court order limiting any of the foregoing individual rights; and
- vi. rights modifications under Section 25.5-10-218(3), C.R.S.

**Attachment(s):**

None

**HCPF Contact:**

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