

HCBS Final Rule Compliance: Rights Modifications Policy

Hawaii DOH, Developmental Disabilities Division Webinar
Sharon Lewis, Health Management Associates
April 1, 2022

HCBS Settings Final Rule: What is it, again?

- The rule identifies what is considered home and community-based - and what is not
- The goal of the rule is to make sure people receiving HCBS can live and work and spend time in the greater community in the ways they want, including with people who are not involved in services
- Each person's experience, and their opportunity for community integration and participation is very important



HCBS Rule: What Does It Mean to You (As A Person Receiving Services)



<https://www.youtube.com/watch?v=8sJl-LF5ufg>

Specifically, the rule requires settings to:

- Be integrated in and support access to the greater community
- Provide opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensure the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services
- Be selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting
- Ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimize individual initiative, autonomy, and independence in making life choices
- Facilitates individual choice regarding services and supports, and who provides them

HCBS Rights Modification Policy

- Any modification to the rights and freedoms of a participant in an HCBS setting must be supported by a specific health and safety assessed need and must be justified in the ISP.
- The modification should rely upon the least restrictive approach to address the participant's needs, should be reviewed periodically for effectiveness, and should be terminated when there is no longer a demonstrated need or when a less restrictive approach would achieve the same result.
- The policy also describes which rights and freedoms may be modified and which may not, the circumstances under which modifications may be incorporated into participants' ISPs, and the requirements that must be met, including documentation requirements.



Rights that may be modified ONLY based on documented health and safety needs

- Entrance doors lockable by the participant, with only appropriate staff having keys to doors
- Choice of roommates
- Freedom to furnish and decorate sleeping or living units within the lease or other agreement
- Participants control own schedules and activities
- Access to food at any time
- Access to visitors of the participant's choosing at any time



Rights that may not be modified (except by court order)

- The right to access and participate in the greater community and engage in community life
- The right to dignity, respect, and autonomy
- The right to freedom from coercion, abuse, neglect, or exploitation
- The right to seek employment and work in competitive, integrated settings
- The right to receive services and supports in settings that are physically accessible to the participant
- The right to make informed choices about services and supports and who provides them
- The right to freedom from seclusion, aversive procedures, and restraints and interventions prohibited by DOH DDD Policy 2.02 on Restrictive Interventions
- The right to freedom from restrictions or interventions imposed for the purpose of discipline, retaliation, and/or staff convenience.



Examples of Rights Modifications

- A person has Prader-Willi syndrome and is unable to manage an appropriate volume of food intake due to this condition, so the right to access food may be restricted until the person develops self-management tools related to food
- A person with dementia may be at risk when leaving the setting due to history of wandering and getting lost, so the right to depart is limited to leaving with appropriate support/assistance
- A person with self-injurious behavior may be at risk when supports cannot quickly reach them, so the right to privacy with a locked door may be temporarily suspended until the behavior needs subside



Examples of Inappropriate Restrictions

- Restricting rights or freedoms based upon “house rules” or for the convenience of the provider/caregiver
 - Visitor restrictions
 - Curfews
 - Set meal times without flexibility, options or individualization
- Making decisions for a participant without a health or safety reason
 - Choosing clothing or hairstyles
 - Restricting access to phones, computers, technology, alone-time, friends
 - Setting schedules and activity choices (without the person driving the decision)



HCBS Rights Modification Policy, cont

Any modification to a participant's rights and freedoms:

- Are only meant to address individual specific health and safety assessed needs;
- Must be highly individualized and may not be established for groups of participants receiving services in a particular setting;
- Should be considered a last option, only after positive interventions and supports and other less intrusive methods have been attempted and documented; and
- May not cause any harm to the participant.

Members of the ISP team (including providers, family, circles of support) are responsible for developing any necessary modification and related documentation as part of the person-centered planning process.



Implementing Modifications

Conversation about risks/needs

- Identified in assessment
- Part of ISP planning
- Identified by team member

Best way to address risk/needs

- What has been tried?
- What is least restrictive?
- Does it require a modification?

ISP Modification Addendum

- Provider Documentation
- Person/representative consent
- Case manager approval

DDD HCBS Rights Modification Process Steps

- At any time, any member of the ISP team may request the case manager convene a discussion to consider whether a rights modification is needed based on a health and safety concern.
- The case manager shall determine if the request is for a restriction that is allowable under the DOH-DDD policy. If for an allowable modification, the case manager will facilitate a person-centered discussion with the ISP team on the specific assessed health and safety need(s).
- If the ISP team agrees that a modification is warranted, the case manager will create the ISP addendum and share with the affected provider(s), within 14 calendar days.
- The provider has 30 days to complete the modification documentation, and return the completed ISP addendum to the case manager.
- Upon receipt from the provider, the case manager shall review the documentation and approve, deny, or request more information from the provider within 14 calendar days.
- Once the ISP addendum is complete, the participant, as applicable their legal representative, must provide informed consent for the modification and sign off on the ISP addendum.
- Once a modification has been approved, data must be reviewed by the team periodically (monthly, quarterly or otherwise as defined in the addendum) to determine the need to maintain or eliminate the modification.



ISP Meetings on Rights Modifications

When the case manager facilitates a person-centered discussion with the ISP team on the specific health and safety assessed need(s), discussion shall include:

- The situation, condition, or behavior that creates the health and safety need;
- The specific assessed need, including verification that the health and safety need is identified in a formal assessment specific to the participant;
 - If a formal assessment is needed, the case manager shall work with the ISP team to ensure an appropriate, formal assessment is completed or attained.
- How the modification balances health and safety needs with participant rights to privacy, dignity, respect, autonomy, independence, choice, and community integration and participation;
- Attempts made to modify the environment prior to requesting a modification; and
- Other positive interventions, supports, and less intrusive methods that the setting may try to meet the participant's needs.



HCBS Providers' Role in Rights Modifications

1. Describe the modification. The description needs to answer the following questions:
 - Who proposed it?
 - What is it?
 - How often will it be implemented?
 - By whom?
 - How is it proportional to the risk?
2. Describe what has already been tried and other possible options that were ruled out. Include documentation of positive interventions used prior to the modification, documentation of less intrusive methods tried, but did not work, etc.
3. Describe how the modification is the most appropriate option and benefits the participant (why/how does implementing the modification make sense for the participant's personal situation?).
4. Describe how the effectiveness of the modification will be measured, including ongoing assessment and/or data collection and frequency. *(For example, documentation to review may include observational data, incident reports, progress reports, and other supplemental provider documentation that demonstrates whether the modification should be maintained, reduced, eliminated or replaced.)*
5. Describe the plan for monitoring the safety, effectiveness, and continued need for the modification. This monitoring can align with other monitoring activities such as service and onsite monitoring.
 - Who is responsible for monitoring?
 - How often will monitoring occur (monthly, quarterly, semi-annually, annually)?
 - How will a determination be made that there continues to be a need for the modification?

Implementing Rights Modifications

A person has Prader-Willi syndrome and is unable to manage an appropriate volume of food intake due to this condition, so the right to access food may be restricted until the person develops self-management tools related to food

- ISP should include services and supports aligned to this need
- Team should brainstorm alternatives and processes:
 - Small amounts of food available/accessible, with cues and support to reinforce for self-management development
 - Assistance from a nutrition counselor or dietician for strategies
 - Develop capacity to make good food choices with support by offering different options at meals to reinforce portion control and food selection
 - Support the person to grow food in a garden, allow access to that food
- Provider should develop opportunities to reduce the modification, set milestones and report data

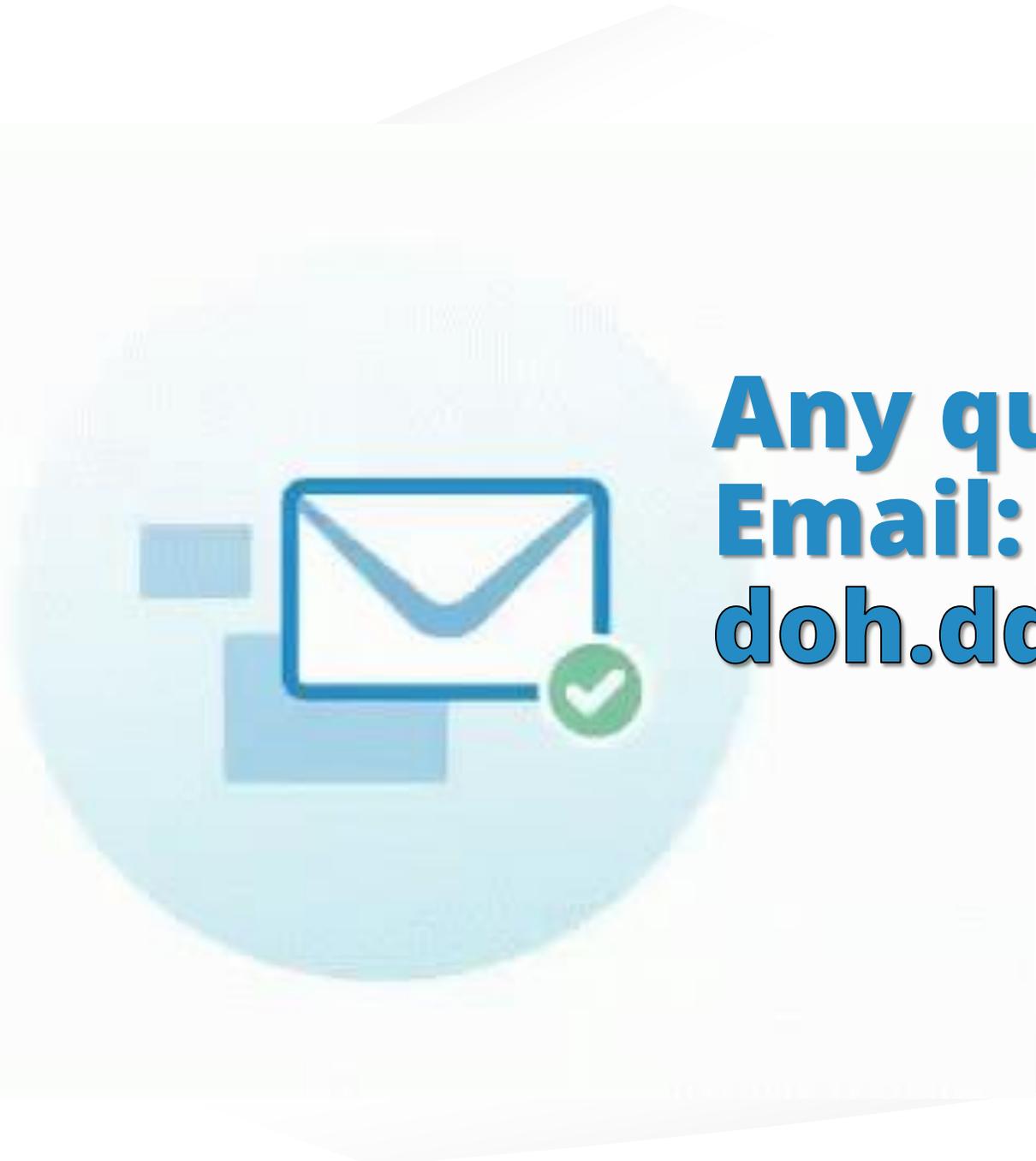


Rights Modifications: Use with Caution

- Modifications should be viewed as a “last resort” and should only be applicable to a small minority of participants
- Modifications should very, very rarely be an ongoing solution and must be reviewed frequently at ISP meetings, case management check-ins, or when requested by any team member
- Modifications should be narrow enough to target only the specific need. Broad modifications may create unintended consequences and may be a violation of federal rules and/or other legal rights
- Case managers shall not approve modifications requested by guardians or representatives that do not adhere to the policy requirements and are not aligned with specific assessed health and safety needs

Questions?





Any questions?

Email:

doh.dddcrb@doh.hawaii.gov

VISIT OUR WEBSITE

<https://health.hawaii.gov/ddd>

