

# HCBS 101: Home and Community Based Services Final Rule on Community Integration Webinar Transcript

Welcome to today's presentation of the HCBS 101 for Adult Foster Home Caregivers!

It is with my honor that we, the training unit, as well as the developmental disabilities division announce our featured speaker for today. Sharon Lewis is a nationwide policy expert around Home and Community Based Services.

So it is with my honor that I turn over today's presentation to Sharon Lewis.

**Sharon:** Thanks Abby! And if we could go ahead and bring up the slides that would be great!

Welcome everyone! We're glad that you're here with us today, and we're going to be talking about the Home and Community Based Services Final Rule on Community Integration.

Really targeted towards adult foster home caregivers. Next slide please!

So, our agenda today... is pretty straightforward. We're gonna... I'm gonna talk briefly... and provide a few reminders about what is the Home and Community-Based Settings Final Rule, and what are the federal requirements under the rule, and why should we worry about this. And then I'm going to turn it over to our colleague Tracy-- who is going to talk about... the adult foster homes in Hawaii.

And then we're going to spend the second half of our time together... walking through some scenarios, and really looking at... What does this mean on the ground? And looking at some examples of how caregivers might want to think about the rule and then take some questions and answers at the end.

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So, what is the final rule?

We've been talking about it in Hawaii for a long time. It is a requirement that was established by the Centers for Medicare and Medicaid Services... that really identifies what is considered a home and community-based service (or setting), and what is not.

These rules dictate or...are requirements that the state has to meet in order to get federal money from the Medicaid program to help pay for Waiver Services. Those are the services that are delivered through DDD--which includes the adult foster homes as well as other services (such as adult day health).

Sometimes some folks receive... residential services in... ARCHs, and others receive those ResHab services from in... DD-Doms-- as well as a whole wide range of services and supports in the broader community including: employment-based services, personal attendant services, and more.

So... the rule affects all of the services within the Medicaid Waiver. And, the goal of the rule is to really make sure that people who are participating in the Waiver can live the lives that they want. They can work and spend time in the greater community, and have the opportunities to exercise choice, be treated with dignity and respect, have independence, and have opportunity to have the lives that most of us want to have.

The reason we're talking a lot about this rule right now is...that every single setting in the State of Hawaii (and across the country) that receives Medicaid Home and Community-Based Services has to be fully compliant by March of 2023, or risk not being able to be paid for these services.

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So, what are the key parts of the federal rule?

The federal rule is really about making sure... that people who are receiving home and community-based services have access to the greater community to the same degree as people who do not receive services. How does that play out?

That means that people need to be able to make choices about where and how they live. They get to choose their providers. They get to decide and control what their schedule looks like (what their day-to-day looks like). If they say... "I don't want to go to the day program today," that they have an alternative, and that that is planned for... That people are able to really exercise informed choice. That they are supported to make informed decisions-- so they are able to.... receive services and supports from... in a way that allows them to really drive the decisions (not the providers, not the guardians, not other people). But, they really have the opportunity... to make decisions themselves.

The people who are receiving home and community-based services live with privacy. They have doors with locks on their bedrooms. They have the opportunity to... have a place where they can have conversations on a phone or on the internet, and those are private and be... are respected.

That they are able to have visitors 24 hours a day seven days a week, and that they get to decide who they want to invite into their home. That they're supported in ways that show that they have dignity and that they're respected. That staff and caregivers (and people who are supporting them) are kind and respectful and treat adults as adults (not children).

That waiver recipients have the opportunity to seek a job in a community-integrated setting.

What does that mean-- to work in the regular workforce? It means that they have a chance to work any place that any of us would work-- in a hotel, in a restaurant, in a school, in a library, and that they are not relegated only to jobs where they are hired because they are a person with a disability working with other people with disabilities. And that when they do work, that they're paid at or above minimum wage. That people are able to interact with the broader community.

That services and settings don't create barriers to people being able to participate in community... communities of faith. If someone wants to go to the church or the synagogue or the mosque, that they're supported to do that. That they have the opportunity to know their neighbors.

That they have the opportunity to join clubs or participate in local community activities that are not necessarily just about participating in something that's targeted towards people with disabilities. That they're supported to develop and keep relationships with people with and without disabilities.

That their lives are not limited only to people who are paid to be in their life, and to other people with disabilities.

Again, that opportunity to interact with the broader community.

That people are really supported in a person-centered way.

When we're designing and thinking about how we support people (both in the development of those person-centered individualized support plans, as well as the day-to-day in ISPs individual plans)-- that they are done in a person-centered way that allows each individual to pursue a great quality of life.

Next slide please!

So, in adult foster homes... what are the kinds of things that we need to be thinking about?

We need to make sure that Waiver participants have the rights and freedoms that most of us enjoy.

They're able to come and go from their home-- that may be with support (if that's what they need) or that may be without support (if that's appropriate to their needs).

That they're able to... make their own schedules, and decide what their calendar looks like. And that they decide what they want to do, and when they want to do it (including whether they want to work in a job).

That their rights related to privacy (including the opportunity and ability to lock their bedroom door or have a key to the front door of the house) are respected. That they can be alone in their room when they want to. I know I would be very sad in my life if I always had to leave my door open, or I didn't have a door, and I just had a curtain, or if the expectation is that someone always had their eyes on me.

So those rights to privacy are super important.

That people have a place and an opportunity to have visitors.

That they can invite their friends or their family (or those people that they get to know in those community activities) into their home.

And, that that's their right to do that-- the same way any of us would want to do that in our own home.

That they get to choose their roommate if they're living in a situation where they're sharing a room.

That they have the opportunity to choose whether the person that may be available

to them (to live with them) is someone that they want to live with or not, and that they have a place to have privacy to use the phone or use the internet without interference from other people.

That people have access to food at any time, and that they're able to make choices about food.

That we're not setting a meal time and saying you know "lunch is always at noon, and if you're not here for lunch then you don't get lunch" or "dinner is always at five o'clock."

Those kinds of rules are not appropriate for adults, and people should have access and the opportunity to make choices about food, to participate in meal-planning, and to have access to food when they... would prefer it. Additionally, that they have visitors, and they have (I mean, excuse me) the opportunity to... express themselves through what they choose to wear, how they want to decorate the room, who they want to associate with (which, you know, again back to the idea of visitors-- that they have the opportunity to get out into the community, meet people, make friends with people that they share common interests with... and that their life is not limited simply to paid providers and other peoples with people with disabilities).

So, there's a lot of information about the rule that's available... online, and we'll talk a little bit about those specifics later on in the presentation.

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But before I turn it over to Tracy, I just wanted to note one more important thing--which is, as we talk about the implementation of this rule, and meeting all these requirements (whether we're talking about visitors or food or whether somebody has a lock on their door, and really implementing the opportunity for people to participate in the greater community to the same degree as people who don't receive services)-- we all have a role in ensuring community integration.

DDD has been working very hard with the ResHab agencies to ensure that they all have policies and procedures that are compliant with the rule. If you are here today as an adult foster home provider and/or a caregiver, I would strongly suggest that you talk to your ResHab agency about implementation of the rule. They should be able to support you with policies and procedures, and ensure that the delivery of service that you are offering... is compliant with the community integration requirements. We also know that case managers (as their supporting individuals) will be paying attention to that services oversight, and will report back to certifiers and to the provider unit (if we're seeing things that are not compliant that are taking place in people's homes).

DDD will also be collecting information from... individuals / participants who receive services and their families about how community immigration is unfolding for them.

While we have to ensure that everyone is fully compliant by March of 2023, this will be an ongoing concern, and these issues will be monitored on an ongoing basis (including through the annual certification process).

So with that ... I'm going to turn it over to Tracy, and I will be back to talk to you about examples in a little bit.

Thank you!

**Tracy:** Okay, thank you Sharon!

So, how does the DD provide oversight and monitor for compliance of DD adult foster homes? So the division took two major steps: the first is that we aligned our certification rules for adult foster homes so that we're able to implement the settings requirements, and we also updated our inspection to include the setting requirements in our monitoring.

And, in addition, the Community Resource Branch is going to be conducting provider monitoring of ResHab agencies to ensure that they demonstrate evidence of compliance with their policies and procedures, and provide adequate ongoing oversight of their individual settings.

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So, the division drafted new adult foster home rules (which were adopted by the Department of Health on August 2nd, 2021)... and, that's the... Hawaii Administrative Rules 148.1.

And the... and 148.1 implements the settings criteria-- in addition to including the additional requirements of provider-owned or controlled settings (which are our licensed and certified homes).

And, this is a list of the additional requirements that are in HAR 148.1... a lease or other legally enforceable agreement to protect from eviction, privacy in their unit (including entrances lockable by the individual with staff having keys as needed), choice of roommates, freedom to furnish and decorate their unit, control of their scheduled activities, access to food at any time, visit... visitors of their choice at any time, and physical accessibility for the individual.

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So compliance... will be verified through the adult... through the annual recertification process-- and that's by the Adult Foster Certifier. We started monitoring and using the new tool in April of this year-- so that we're able to meet the march 2023rd transition date.

Evidence will be documented in the inspection tool (to show how the certified caregiver is meeting the requirements), and any area of non-compliance will require implementation of a plan of correction (or POC) by the certified caregiver that describes the steps to remediate and achieve compliance.

A copy of the POC will also be provided to the ResHab agency-- to assist the certified caregiver in bringing their home in alignment with the requirements. And, we will also provide a copy to the Community Resource Branch-- who will be monitoring the ResHab agencies.

Okay. Next slide please!

Okay. So this is not... the inspection tool, but I wanted to provide you with the crosswalk between the federal requirements, HAR 148.1, the corresponding question in the inspection tool, and what evidence looks like for compliance. So, these are just... questions that are in the tool, but they are not all the questions related to the final requirement. So the first question is: "Can each adult with I/DD have access to food of their choice at any time without restriction?"

So, what we're going to be looking at is... we're going to interview the caregiver, and observe how each adult with I/DD can eat a meal or snack at any time? Do they have choice of meal times?

And, is food available or accessible without the adult with I/DD having to ask for permission?

Another question in the tool is: "Does each adult with I/DD have the freedom and support to control their own schedules and activities?"

So, we're going to be looking for documentation of individual schedules-- showing how each adult with I/DD [is] supported to plan their own schedule and activities in the community.

Documentation of activities that are based on their personal preferences and interests, and that there is no set schedule that everyone has to follow.

Another question on the tool is... "How is each adult with I/DD allowed to have visitors at any time without restriction?" So, interviewing the caregiver to understand how participants are supported to have visitors without restrictions on visit times, and if there is a private place in the home where they're able to meet with their visitors.

And then, the last question in this example is: "Can each adult with I/DD close and lock their doors to their personal private spaces in their setting (including their bedroom and bathroom) with only appropriate staff able to access keys to the bedroom?" So that would involve observation of a lockable door to their bedroom, and that the adult with I/DD has keys to their bedroom.

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So this is... an example of what a POC looks like. So we're gonna... in the far left column is the citation to HAR 148.1.

And, in this example, this home had... restrictive visiting hours, and that the home did not allow visitors after 8 pm.

And visitors were only allowed in the living room-- where other people in the home were watching TV.

In addition, the adults did... in this home... did not have control over their schedules, and that... they had to follow the same morning schedule--because the caregiver needed to be at work by 8 a.m. So the certified caregiver in this example would have to describe steps and actions that are taken (or will be taken) to address the visiting hours, and how the adults in this home will be able to have visitors at a time that they choose. And, that they'll have privacy (when they do have visitors).

And also, provide documentation of how the adults with I/DD will be supported to have their own schedule of activities (based on their personal preferences).

And, we know that these are new expectations of our caregivers, and (you know) many caregivers will find that they're going to have to implement plans of correction.

However, this is the process to document how each caregiver is going to come into compliance.

And, before I turn it over... to Sharon, I just want to emphasize that demonstrating alignment with the settings requirement is not something that only happens during the annual recertification

process but is expected on an ongoing basis. And, a key function in the process is the monitoring by the ResHab agencies case management and the certification staff to ensure that supports are carried out-- reflecting the values and the intent of the final rule, and that we focus on community and participation of our individuals.

Okay. And with that, I'm gonna turn it over to Sharon who's going to walk you through some scenarios.

**Sharon:** Great! So what we're going to do now is... I'm hoping you will all participate.

We've got 138 people on our webinar today, and I'm hoping to see at least 100 respondents to our next set of questions. We're going to walk through five different scenarios in five different homes. These are largely based on real participant experiences. We... the names have been changed, and some of the details have been modified. And, you'll see some pictures. And, I want to be really clear-- they're all stock pictures off the internet. These are not real people that live in Hawaii, and are participating in the Waiver. We just thought it's nice to have a face to go along with the scenarios. And, this is really... about the practice of understanding the rule. This is not a test. We're not recording who responds in what way.

We really hope that you'll participate in understanding these scenarios, and what this looks like in people's real lives.

So, let's go ahead, and go to the first... scenario, and meet our friend Kimo.

So, this is Kimo. He used to work, and he decided to retire.

That was his choice. He...had a job with (I think) a packaging company, and he decided to stop doing that a few years ago.

And so, he has a very regular routine which he follows every day, but it's a routine that he set in place, and he decides what activities he prefers to participate in.

So, he likes bowling and playing bocce ball.

And, because he likes bowling and playing bocce ball, his caregiver helped him learn more, and register for Special Olympics, and he participates in those two sports on a regular basis.

He's gotten so good at participating in those sports-- that he's won several medals for his bocce ball and his bowling, and he has them displayed in his bedroom in his adult foster home.

The room that he lives in (the bedroom that he lives in) is painted a color that he picked out and, those... ribbons are displayed on his wall in his room. When the certifier came to the house, the...

Kimo was really excited to share that...Special Olympics had just started up again, and he is... participating in weekly meetings... on Zoom (being part of a team). So, even when there are not in-person events, he's... participating and has the opportunity to Zoom in on those meetings, and connect with those other individuals.

He also loves to go shopping. He's supported to go shopping in different stores, and to eat in different places. And, when he goes shopping he likes to collect the bags from each store, and he has a big collection of those in his bedroom-- that he's... proud to share with other people.

He also (in his bedroom) has his own TV.

He has a cell phone. He has his own iPad, and that iPad is supported with internet access.

He's able to use his phone and his iPad at any time (24 hours a day).

When he wants to talk to his friends and family, or use the internet, no one comes in and says "It's 10 o'clock, it's time to put away that iPad."

So, I want to bring up our set of questions here. And, I want to understand whether, first, do you think that... this experience that Kimo is having is mostly or is all compliant (is supportive of the of the expectations that we would hope to see). Might have some compliance violations in there, or might violate the final rule compliance.

So, if you can answer that question. And then, if you do think that there are some compliance violations-- if you can select which of the things that we described here today that you think might be a problem under either the state or the federal rules, please let us know what those are. We're going to leave this open for about a minute for all of you to select your choices in this poll, and then we'll bring up the results, and talk through it.

You're also (in this process) welcome to put some... questions in the Q&A, and we will... start addressing the Q&A questions as well.

[No sound]

So... team let me know when we're ready to close out that panel (I mean that poll), and we'll bring up the results.

[No sound]

Okay. So, most of you believe that Kimo's experience in an AFH generally supports final rule compliance.

Yes, that is correct! This is a good example of compliance.

It might include some compliance violations (you know)-- these scenarios are going to be a little bit imperfect. You don't have all the information.

And one person thought that there might be a violation of final rule compliance.

So... the question about what might violate: he follows a regular routine which he follows every day...and he gets to decide what he wants to participate in. That is actually highly compliant-- because he is able to... do the things...

He may want a regular routine. So, kind of back to the plan of correction that Tracy was pointing out before.

If the regular routine is driven by the person (because of their preferences, or their work schedule, or you know... I know a lot of people who prefer a very regular and consistent schedule)-- if it's that's their choice, then that regular routine is compliant with the rule.

Where we run into the problem is that... if Kimo said: "you know, I actually like a rule that varies and (I mean) an opportunity to vary, and I'd like to be able to decide when I get to sleep in and when I don't-- then that would be problematic.

His caregiver helped him register for the Special Olympics.

You know, again, Kimo is interested in the Special Olympics, and he wants to participate in it.

And even though... it's not necessarily an event that... where it's inclusive (as it relates to...lots of other people without disabilities participating in it)--it is something that (again) he's choosing... and he's not restricted in the setting to only selecting Special Olympics. He gets out for shopping, and he does other things.

So, I'm not sure what the concern is about that.

And then... the last one that someone noted that might be con... of concern is that he has his own TV in his bedroom, a cell phone, the access to the internet-- and he can use that when he wants to. That's a really important right, and a right to privacy that we are trying to support across all of the individuals who receive Waiver services.

Okay, and I know that there are some questions that are popping up in the Q&A-- so please, as we're talking about this, if there are questions that you have, we are happy to... answer them.

So, we'll go on to another scenario here.

And let's meet Michael!

So Michael has very different needs than Kimo. Michael communicates with his caregiver and with others through gestures and facial expressions. Michael doesn't necessarily have spoken words.

Michael uses a wheelchair, and his caregiver arranges for the handyman to take him to medical appointments.

Michael does have a schedule that the caregiver has determined is best for him, and the caregiver has decided what time he gets to... get up, what time he eats, and what time he goes to bed.

Michael does go out a couple times a week with his PAB worker and enjoys this.

When he goes out with that worker, he smiles, and he shows happiness through his gestures.

When the certifier visited the home and asked the caregiver how Michael was supported to enjoy the community, the caregiver said that Michael really likes to stay home and watch TV or listen to the radio.

The caregiver couldn't describe what other activities Michael might like besides watching TV.

When the certifier went into the home, they noticed that Michael's bedroom has bare walls.

There's no posters. There's no art. There's nothing that shows what a visitor might learn about Michael, and what Michael likes and dislikes (based on what's in the room).

And, finally, in the home where Michael lives there's a path to Michael's bedroom and to his bathroom that are accessible for his big power wheelchair, but Michael can't get into the kitchen. Michael can't get into the laundry room.

And Michael can't get into all the different parts of the house where the family might participate in different activities.

So, given this scenario, do you think that this experience that Michael's having is mostly compliant, may have some compliance violations or violates the final rule compliance?

[No sound]

Okay! Yes!

Nobody... said that this is a fully [Laughing] compliant environment.

That it probably has some compliance violations, and several of you said "yes." There are violations all over the place, right?

So, really the first one is a little bit of a kind of... not really... it's not really a compliance issue (you know). Michael communicates with his caregivers and others through gestures and facial expressions. That's just a fact (you know). It would be great if in a person-centered planning meeting, we were talking about how to make sure he has access to full communication, but that's a little bit outside of what we're doing.

The fact that he is only able to use the HandyVan to go to medical appointments (instead of doing other things in the community) is a bit of a problem. So, it's really, you know, that combined with... it's not a problem that he's using the HandyVan to go to medical appointments. The problem is that... is he using it for anything else? Does he get to do anything else? And is he able to really access the broader community?

Really a problem that Michael's schedule is not necessarily driven by Michael, you know, that Michael's... caregiver has decided he's going to get up a certain time, he's going to eat at a certain time, and he's going to go to bed at a certain time. And, sometimes those restrictions (that we've seen in some circumstances) are pretty ridiculous. I don't know a lot of adults that go to bed at 7:30pm at night.

And, I'm not saying that Michael does, but those are things that sometimes we see.

You know... Michael goes out with his PAB worker, and really enjoys it. So that is showing us that Michael can get out in the community. And, that is actually a very compliant part of this story-- is that Michael is getting out, and he's doing things, and he shows us that he likes certain things.

But then his caregiver turns around and says "no no no... he just likes to watch TV"-- and that doesn't make sense when Michael enjoys that time out in the community with a different worker.

So, we'd really like that caregiver to understand that part of their role is to get out in the community with Michael, or find ways to make sure that Michael is supported to do things in the community.

Michael's bedroom has bare walls.

I don't know a lot of people who like to live in an environment where they just have... white walls, and no decorations, and no stuff that shows who they are. Most of us decorate our spaces. Most of us have things on our bed, or on our wall, or on top of our dresser that tell us a little bit (tell other people a little bit) about who we are and what we like.

Things that bring us pleasure.

People with I/DD should have those things in their bedrooms too.

And finally, it is a requirement of the rule (that may not be modified) that people must be have accessibility in their own homes.

So, Michael needs to be able to get into the kitchen. Michael needs to be able to go... throughout the house (not just to his bedroom). So, if that is a concern in this particular house, then (you know) we would strongly suggest that the caregiver talk to the case manager and to Michael and his family about what... environmental modifications need to occur in the house so that Michael can use his wheelchair throughout the house.

Okay. Let's go on to the next scenario.

This is Lynn.

Lynn is able to express her wants and needs verbally, but sometimes can be a little bit hard to understand.

She enjoys journaling, shopping for bracelets.

She likes to eat Dim sum, and going to McDonald's to buy her favorite items-- pancakes and egg McMuffins.

She has a wallet where she keeps her money-- so that she can go shopping and buy those pancakes and egg McMuffins.

She likes to show people her room-- where she proudly shares her bracelets (which are hung nicely and ready to be worn).

She selects which bracelet she wants to wear every day. That's part of her routine. In her room, there's a picture of Lynn, and she's smiling, and she's eating Dim sum with some of the caregivers and caregivers family members in a Chinese restaurant.

During a certification visit, Lynn decided that she was really kind of tired of the certifier following her around, and asking her questions, and preferred to sit at her desk, and write in her journal with the bedroom door. So, she walked into the bedroom, and shut that door (showing that she had the opportunity to make that decision herself).

Lynn also likes to visit with the neighbor and the neighbor's dog, and has learned to play with the dog safely-- getting the dog to sit and to give the dog treats. It's something that she enjoys...that she can do close to her home.

So, in general, would you say that the AFH where Lynn lives... is this description is showing that we're meeting final rule compliance, may include some compliance violations, or violates the final rule expectations?

[No Sound]

Okay. So most of you think that Lynn has a pretty good... Lynn's AFH is pretty well compliant, right?

Again, these questions of these things that describe the individual are less about compliance, and more about background. So, Lynn's able to communicate her needs (you know), and that really isn't a compliance issue.

Lynn loves to... and do journaling and shopping, and... eating Dim sum, and going to McDonald's.

Those are all things that she likes, and she's supported to do them.

Sometimes that means that Lynn's making some choices that are not necessarily healthy, right? Going to McDonald's is not necessarily something that all of us would say is the healthiest choice, but at the same time it is supported by the rule. Unless there is a reason that... a health and safety reason that Lynn can't go to McDonald's every once in a while, it's her choice to do that (even if that's not the values of the caregiver or the family that she's living with).

She has the right to do that.

The same thing with Dim sum. If she really likes Dim sum, and that's important to her (and maybe she really likes those pork dumplings, and she lives with someone else in the house that's a vegetarian)-- they don't get to say "you have to be a vegetarian."

We get to support her to go eat that Dim sum (including those pork dumplings).

She has a wallet where she keeps her money.

That is a super important piece of this.

Even though people have rep payees, even though people may have limited access to personal resources, they do need to be able to control the personal resources that are theirs. So, the fact that Lynn has a wallet and she's able to take that money and go and buy that Dim sum and go to McDonald's is an important indicator of her ability to control personal resources.

She has personal items in her room. She has those bracelets that she likes to display, and she has the freedom to choose the decor of her room.

And, that's part of her routine-- is that she has these bracelets and she gets to put them on every day.

The picture in her room (of Lynn getting out with her family, and eating that Dim sum with an extended group of people)-- that's also a great demonstration of Lynn having access to the greater community.

And, Lynn being able to say during a certification visit: "I'm done with you, and I'm going to go into my room and shut the door" is a great example of compliance"-- in showing that Lynn has the freedom and the self-determination to decide how she's going to share, spend her time.

Even if it would be nice if Lynn talked to the certifier, she gets to decide and she you know... went into a room, shut the door, and engaged in an activity that she found important. And, then nobody thought that it was a problem that she was visiting the neighbor and the neighbor's dog (which is really good) because that is part of the broader community.

Okay!

And, we will get to the questions as quickly... I want to address one right here.

What if Lynn is allergic to pork and has a fatal effect on her? What is the modification to be made?

So we haven't talked a lot about modifications, but...if someone has a... an important health and safety reason that their rights or their freedoms need to be restricted-- that can happen with the case manager and the circle of support.

But providers may not restrict someone's rights without that approval from the case manager. And, that has to be written into the ISP.

There's an entire process for that. We can share a link on the training that relates to modifications. But if Lynn is allergic to pork (and we have to make sure that Lynn is avoiding pork at all...at all times), it can be written into our ISP, and that can be supported as a restriction.

But, you know, restrictions, are not a way... I mean the modifications are not a way to avoid compliance with the rule, and we... and a modification has to be supported by an assessed health and safety need.

Okay. Let's go on to the next scenario please.

Okay. So this is Kai.

Kai can be a silly and outgoing guy (most of the time), but sometimes he demonstrates some challenging behaviors when he's frustrated.

He likes to interact with other people, and go out into the community.

His caregiver takes him to the store to see other people, and sees this as a good recreational activity, but doesn't see him doing a lot of other activities (mostly going to the store).

Kai doesn't belong to any groups or clubs or doesn't have a spiritual community.

He doesn't go to church or a synagogue or a mosque or any other form of spiritual recreation.

And, he doesn't seem to have any hobbies or outside activities-- other than going to the store with his caregiver.

Kai doesn't have a job.

He goes to an adult day health center-- where he often tries to leave or he acts out towards the people at the adult day health center.

The certifier noticed that Kai does have access to a computer and internet in his room, and he said (and Kai said) that he likes to Facetime with new people that he meets online.

Kai doesn't have any dietary restrictions from a doctor or nutritionist.

So, back to your question about Lynn-- Kai doesn't have any of those issues (he's not allergic to pork).

But his guardian worries about Kai's weight, and has asked the caregiver to restrict his access to food (which then the caregiver keeps in a locked cabinet).

So, given this scenario, do you think that the adult foster home where Kai lives is (in this experience)-- and I know you don't have all the information, but just based on what you know--that are the... does this description support HCBS final rule compliance?

Does it include perhaps some compliance violations, or is it certainly violating HCBS final rule?

[No Sound]

Okay!

So, we got a real mix here, right? Some people have said "yeah, it mostly supports final rule compliance."

Some people said "it's in the middle," and some people said "definitely there's some rule compliance issues, right?"

So... Kai can be a silly and outgoing person, and sometimes demonstrate some challenging behaviors when he's frustrated, right? So, we might want to make sure that Kai is supported. If he needs a functional behavior... assessment, and there are some things that need to be supported in order for his behavior... to not be the way that he communicates-- that might be something that somebody needs to figure out, but it's not necessarily a compliance or non-compliance issue.

The next one however is (you know) he likes to interact and go out and go with other people out in the community, but he's not really given a lot of opportunities to do that.

That would probably be a concern if (you know)... if it becomes clear that that Kai likes to come out and go out in the community and then the certifier comes to visit, or the ResHab agency is checking in with Kai, or the case manager is having a conversation with Kai... and Kai...and when Kai is asked what he gets to do, he says "I go to the store and I go to my DayHab program [and that's it]."

But Kai is a pretty social and engaged person.

That would mean that the setting is not necessarily supporting his access to the greater community.

What is that caregiver doing to help Kai find some of those other communities? Does Kai have a neighbor like Lynn does-- where he can get to know somebody? Does Kai have a spiritual community that he can join?

Can Kai join Special Olympics? None of those things are really present in Kai's life--which says that maybe there's some barriers to him accessing the greater community, and the caregiver should begin to figure out what we need to do to address that.

Kai doesn't work, and he goes to the ADH.

There's a lot of people who may choose not to work, but we really want to encourage working age adults to at least explore the opportunity.

So, I would have questions about (you know)... has the circle of support and the pro... the caregiver and others involved in

Kai's life tried to figure out... is Kai interested in working and... and if he is, is that something we can explore through a CLSI or other services... to begin to see what Kai's interest may be.

You know, is he talking to VR? Is he figuring out the things it would take in order for him to work?

And, at the same time, if he's expressing behaviors that show that he's not real happy about the ADH, what are we doing to make sure that Kai has the kinds of opportunities in the community that he wants?

Kai does have access to a computer and the internet-- and the fact that he's... able to do that...is great! And that means (you know) that he... that is one aspect of this situation that is compliant.

And, he should be able to meet other people online, and he should be able to make those connections (you know)-- unless, again, there's a real health and safety issue (not that I am concerned that he's vulnerable, and he might meet some scary people). It really has to be that Kai has demonstrated a particular issue, and that there has been an observed behavior, and there is an assessment that says that he... shouldn't have access to the internet, or he shouldn't have access to a computer without... some support.

So, that's actually a really good compliance piece-- that he has that unfettered access (that nobody is getting in his way in order to Facetime with other people).

And then, his (you know)... he... is supposed to have access to food.

There's no reason that a doctor (a nutritionist) has not said "you know you gotta cut off Kai's food, and you can't let him eat."

He does not have Prader-Willi. He does not have a...condition that says he has to have a restriction of food. So that cupboard with the locked food is a clear violation of the rule-- even if it is the guardian's preference.

Medicaid has been very clear (at the federal level) that a guardian may not ask a provider (including an AFH caregiver) to violate the requirements of the rule.

Guardians have a lot of decisional authority in Hawaii, but if they have chosen to support the person that they are the guardian for in a Medicaid setting-- they have to follow the Medicaid rules.

And, unless there's a health and safety reason, a guardian may not come in and just ask a provider to restrict someone's rights.

So, that includes access to food. That includes access to visitors. That includes curfews.

That includes whether or not someone can have their boyfriend or girlfriend over and close the door in their bedroom.

Those are not things that guardians can ask adult foster homes to violate the rule on--unless there is a clear, and health and safety reason that has been documented and gone through the process (in the individual supports planning process) to allow for that restriction.

Okay. Let's go on to our last scenario.

So, Leilani and Mary live together with a family, and they chose that (they asked to live together).

They became friends when they were younger, and when it was time to move out of their parents house.

They wanted to move in together.

So, they live together in a single AFH and...when... the certifier showed up in this home... both young women were out in... at a table with their family members / the caregiver.

They were playing board games, and cards, and listening to the radio and music and dancing-- and there seemed to be a lot of joy going on in the house. And, it was very clear that there were strong relationships across everyone living in the home.

The women themselves (Leilani and Mary) were able to describe how they'd spent their day and that... people had been doing manicures, and doing each other's nails, and they'd been dancing to the music on the radio, and they've been doing some drawing-- and it sounded like they've been having a pretty good day (doing a wide range of activities).

It was really clear, and Leilani and Mary were able to show... and the certifier was able to observe that Leilani and Mary can... (you know) are listened to by the caregivers and... when (you know) they have differences in things that they want to do... the caregiver does what they can to try and support them each as individuals, as well as when they want to do things together.

They're not... glued at the hip-- and that they're respected as individuals. And, even when there's some conflict (in terms of timing) that people try to work towards solution.

When they first moved to the home together, they really wanted to share a bedroom. But as they got a little bit older, they both wanted a little more privacy. And so... the adult foster home

caregiver and the case manager worked on some solutions, and made sure that there was a second room in the home where one of them could move out-- so that they could keep a good situation going.

But, each individual could have their own room (when they chose to do that).

And finally, Leilani works in a job in a hotel...and Mary's not working. But Mary has seen that Leilani has this extra money to go shopping.

And, Mary's now said "I'd like a job"-- and said that to the caregiver.

So the caregiver has asked the case manager to help Mary explore those employment options, and really try and figure out how she might get a job herself.

So, again, let's talk about whether or not this is compliant.

[No Sound]

There you go! We got there!

Everybody believes that there are no rights violated. We had one small thing--where people had questions about the two people wanting to live together.

That is fine!

If the two individuals choose the roommates-- then that is very compliant with the rule.

Where we have concerns is-- if there are two individuals who are placed together for the convenience of the provider... and those two individuals are not getting along (and don't want to share a room)-- then we have to address that.

People cannot be forced to live with roommates that they don't want to live with.

So with that, I'm going to turn it back over to... Abby's going to talk a little bit about where there are additional resources. And then maybe we can run through a few of the Q&A in the chat.

Abby: Yes! So, thank you Sharon! So this ends the formal portion of today's presentation.

Just like what Sharon mentioned, we do have a central location for all of the DDD's final rule resources that are available online. So if you have your smartphone, you can go ahead and scan the QR code listed, and it will take you directly to the...final rule resource page (that we have).

I know it's a pretty long... website address.

But if you go ahead and scan your QR code, you can access it that way.

We will also put the... resource page link in the chat, and it is also located in the slide deck that you are able to... download online. And, it also... one more place it's gonna be. It is going to be in the follow-up email that you'll receive from attending today's webinar.

All right! So we see your questions that are coming in...

We just wanted to remind everyone-- that if you could please... provide us with some of the questions... that pertain to today's presentation.

I know there are so many questions in general for our team, but we wanted to make sure that we make a good use of your time by answering the questions that only pertain to today's presentation.

Should you have additional questions-- we have an email address on screen. But we will also provide you with the email address at the end of the Q&A section.

All right! So as everyone starts getting their fingers ready to type... we did get a chance to answer a few questions that came in...earlier.

The question was "This is only true for AFHs. What about Doms and ARCHs?"

The final rule applies to any type of setting that requires... that has Medicaid Waiver services that are provided.

So, in addition to DD-DOMs-- ARCHs as well as adult foster homes.

Another question that came in: "Are the homes required to have internet? If not, what will be the remediation?"

Sharon did you want to kind of elaborate on that, or I can go ahead and read it off?

**Sharon:** Sure! So... I mean...if the home does not have internet (as a rule, for anybody, right?) then no nobody is requiring at this point that a home install internet.

But if internet is available to other people in the home (so if the caregiver has access to internet or there are family members who have access to internet)-- then the person with I/DD should have access to internet. And that might be through (you know) a cell phone hot spot... or satellite or cable TV-- or (you know) any number of things.

But, if there is internet in the home for anyone, then there should be internet for the person with disabilities.

**Abby:** Awesome... thank you so much Sharon!

Another question that did come up was: "We talked about the need for keys for the bedroom. What about if the front door of the house is also dead bolted and locked? Do the participants (or the people living in the home) need a key for that also?"

**Sharon:** So, I think... the best practice is that... yes, a person has access to a key for their front door of their home. If they do not, then the caregiver needs to really ensure that the person has a way to get in and out of that house, and are not limited by not having access to that key.

And, you can't lock people in the house!

This came up in another circumstance where...(you know) someone was asking about... "well, we just we locked the door for everybody in our house at eight o'clock"... and it's like... well but what if the person wants to be out with their friends till nine?

You know, some of this is common sense.

It is preferred that people have keys to their front door and to their bedroom.

And, you know, it is... again, if those things are happening-- it is a good demonstration that the person has access to the broader community, and that they can come and go.

Obviously, we don't want people to come and go in ways that are not safe, and people need to be supported to come and go in the ways that work for them. But, it is preferable for people to have keys.

**Abby:** Thank you, Sharon! Another question that's a follow-up to pertaining to keys is... this is pertaining to having access to the house key.

Are caregivers allowed to use a lockbox--so only house members and participants have access to it?

**Sharon:** Sure... as long as the people who need to get access to it (you know) can use it, and also that there are clear expectations.

One of the things that we've talked a lot to the ResHab providers about is making sure that there are clear expectations around staff and caregivers.

We should be operating the same way we would operate in our own homes, right? If a door is closed, please knock before you enter. Don't just use a key and walk in on people.

As a parent, I can tell you that I don't know that I want to walk in on some of the things that I might observe if I walk in without knocking, right? People should have privacy.

So, if you want to... and however that works-- it can be a lock box, it can be with a key it can be (you know), we had one provider who has installed... the keypads, right?

So that there's a code-- because for some people that may be easier than keeping track of a key.

So, there's lots of different ways to do it. But, the idea is that if I want to go into my room and shut the door-- I can-- and that only people who should have a key-- have that key.

**Abby:** Awesome... thank you Sharon! I know we're up on time, but we have one more question (if that's okay).

**Sharon:** Yes!

**Abby:** We have a question about the renter's agreement. So the renter's agreement was mentioned.

With this, are participants considered renters?

So the... what the rule says is that... individuals who live in a provider-controlled setting have to have the same rights as a tenant who is under a lease.

So, they have to have the same eviction protections... and there has to be a written agreement in terms of that relationship between the participant and whoever controls or owns or manages the home.

DDD is in the process of... hoping to be able to put out some more guidance on this particular issue.

We know that it is... a concern for many people.

The way to address the concern-- if (you know)... if you are able to simply move forward with a straight... lease that provides those renters rights for the people who are living in the AFH... that is one way to address it.

You'll also see (and I'll let Tracy jump in here in terms of the compliance requirements)...

I think, because...the Department of Health is still working on the specific guidance on what this might look like, we're giving people a fair amount of leeway in implementing that particular element of the rule.

Tracy, do you want to expand on that?

**Tracy:** Sorry, yeah! Just to add... so we are working on a model (a template) that we can share with caregivers.

So (you know) until we're able to provide that...we're not really enforcing that requirement right now.

But, when we are able to share that with you, we are going to give you a time frame in which these agreements must be in place (with copies to the certifying agency).

**Abby:** Awesome! Thank you so much! so we are officially out of time...did we want to see any closing remarks... today Sharon or Tracy?

**Sharon:** I would just... and Abby if you can bring up that last the slide with the...the links on it. I just would really encourage all of you... if you have not taken the time to look at some of the other webinars that we've done about the rule-- we would strongly suggest that you go ahead and visit that website (the resource page where there are great great resources in terms of our webinars, CMS webinars.

There are some little videos that explain people's rights...

And please... if you have questions, reach out to your certifier.

You know... also please rely on your ResHab agency.

They should be a partner in supporting you (as an AFH) in coming into compliance.

They may have policies and procedures that can support you

in your efforts, and you may see some of these elements of the rule baked into things like independent contractor agreements or expectations (as it relates to those monthly visits).

So, hopefully you're getting a consistent perspective from your ResHab agency, from your certifier, from the case manager.

And, please don't hesitate to reach out to DDD with any questions.