

# HCBS Final Rule Compliance: Remediation and Completing POCs

Hawaii DOH, Developmental Disabilities Division Webinar  
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May 30, 2023

# 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
- EVERY person's experience, and their opportunity for community integration and participation is very important



# Specifically, the rule requires all 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

# What does this mean for Licensed Homes?

Waiver participants have rights and freedoms afforded to most of us, including:

- To be able to come and go from their home, make their own schedules, and decide what they want to do and when they want to do it, including working in a job
- Privacy rights, including the ability to lock their bedroom door, be alone in their room, entertain visitors, pick their roommate, and use the phone or internet without interference
- To access food at any time, make choices about food
- Express themselves through what they choose to wear, how they want to decorate their room, who they want to associate with
- And more!!



# Confirming and validating

How does the DDD provide oversight and monitor for compliance in DDD Licensed Settings?

## 1. Site visits:

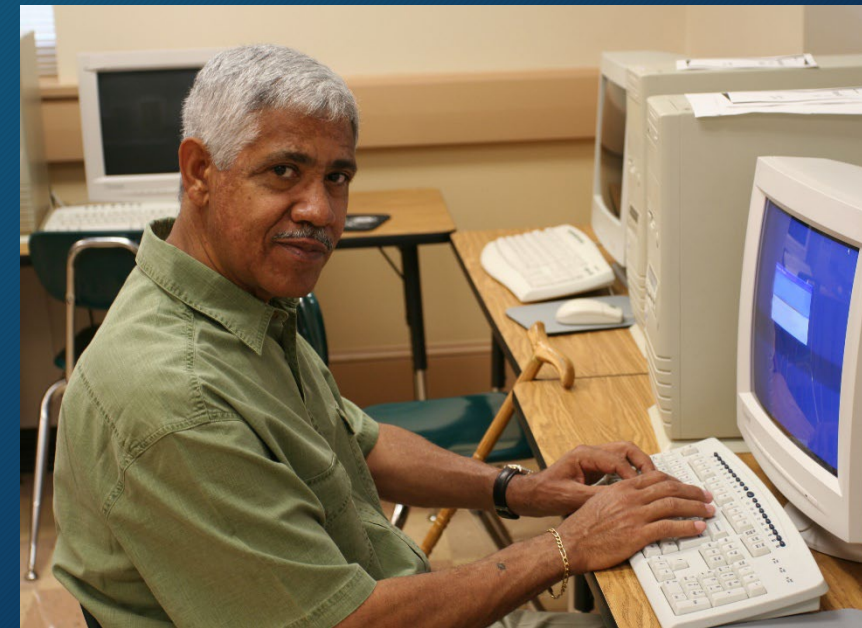
- DDD Staff visited 100% of licensed settings serving people receiving I/DD Waiver Services

## 2. Development of Plans of Correction:

- Individual Settings/Caregivers received feedback on areas requiring remediation or additional evidence
- Plans of Correction sent to ResHab Provider Agencies for follow up

## 3. Completion of Remediation:

- Agencies need to work with caregivers/settings to address compliance as part of their role delivering ongoing oversight of individual settings



# Compliance in DDD Settings - Plans of Correction

- Nearly all settings needed some level of remediation or correction
- Providers, caregivers, families and people receiving services have many different interpretations and ideas of what's possible
- Caregivers and providers are still working through Plans of Correction



## Common remediation activities:

- Establishing residential agreement
- Facilitating opportunities for personal choices and decisions, including schedule and activities, choice of roommate(s), decorating bedrooms, opportunities to go out of the house
- Ensuring choices about food, and access to food at any time
- Right to privacy - providing a lockable bedroom door, keys to the home
- Helping participants understand and exercise their rights - no “house rules”
- Supporting access to the greater community, intentionally and often

# Examples of Evidence

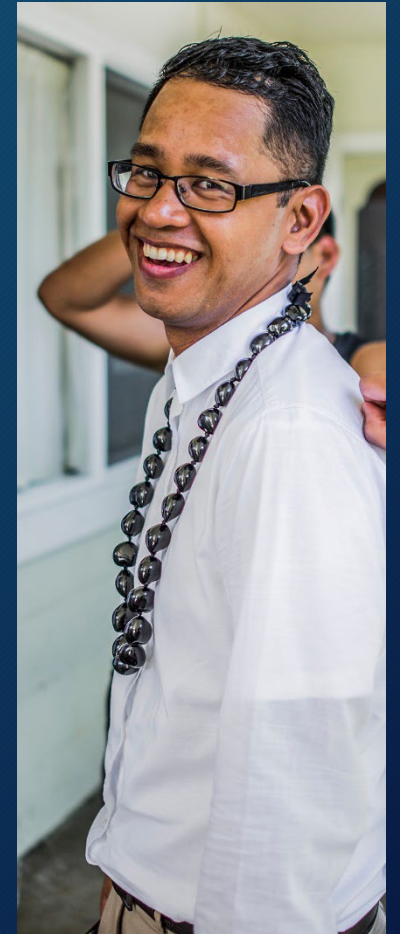
Indicator	Agency evidence	Caregiver/Setting evidence*
Is each participant free to control their own daily schedules and activities?	Policy manual, Participant handbook, Staff training requirements or curricula	Site visit observations; redacted participant schedules; redacted individual plan(s); transportation data; individual participant examples of individual activities, clubs, community membership
Can each participant close and lock doors to their personal or private spaces in the setting, including their bedroom and bathroom, with only appropriate staff able to access keys?	Policy manual, Participant handbook, Staff training requirements or curricula	Site visit observations, photos, redacted individual plan(s), individual participant examples
Is each participant allowed to have visitors at any time, without restrictions?	Policy manual, Participant handbook, Staff training requirements or curricula	Site visit observations, redacted individual plan(s), visitor policy as posted, visitor logs, redacted schedules

\*Remember - no protected health information or personally identifiable information, including in photos!

# Example: Kimo

1. Kimo used to work, and he decided to retire several years ago
2. He prefers a regular routine which he follows every day. Kimo can decide what activities he prefers to participate in, including bowling and playing bocce ball
3. His caregiver helped him register for the Special Olympics and he has been regularly participating
4. He has won numerous medals that he proudly displays in his bedroom, which is painted a color he picked out
5. Kimo is excited that the Special Olympics has started again this year, and he actively participates in weekly meetings via zoom and enjoys being part of the team
6. Kimo is supported to go shopping at different stores and eat at different places. He collects the bags from each store and has a big collection in of them in his bedroom
7. He also has his own television in his bedroom, a cell phone, his own ipad and internet access. He uses these things at any time, 24/7, when he wants to talk to his friends and family

**Kimo lives in a compliant setting that supports his full access to the community.**





# Example: Kai

1. Kai can be a silly and outgoing guy most of the time, but he has demonstrated some challenging behaviors when he is frustrated
2. 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 does not support individual activities
3. Kai doesn't belong to any groups or clubs or a spiritual community, and does not seem to have any hobbies or outside activities
4. Kai does not work in a job. He goes to an Adult Day Health center where he often tries to leave, or he acts out towards staff by hitting or spitting
5. The site visit noted that Kai does have access to a computer and the internet, and he said he likes to facetime with new people he meets online
6. Kai doesn't have any dietary restrictions from a doctor or nutritionist. His guardian worries about Kai's weight and has asked the caregiver to restrict his access to food, which is kept in a locked cabinet

**Kai's home needs to improve support for his full access to the community, and help protect his rights.**

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# 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.



# Examples of 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 only 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)

# 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

- Documentation
- Case manager approval
- Person/representative consent

# The Settings Rule is for EVERYONE



# Ongoing Compliance Activities

## Remediation Activities

Provider Agencies and Individual Settings work together to address Plans of Correction

## Compliance

Provider Agencies attest to completion of Plan of Correction; may be subject to sanctions for non-compliance

## Ongoing

Participant experience  
Annual provider monitoring, including evidence updates

# Questions and Answers

- Please use Q&A feature to ask questions
- More resources about the rule, including webinars, videos and other information, available here:  
<https://health.hawaii.gov/ddd/news/references-for-ddd-hcbs-final-rule-compliance/>
- For additional information, please email [doh.dddcrb@doh.hawaii.gov](mailto:doh.dddcrb@doh.hawaii.gov)

Mahalo! Thank you!!