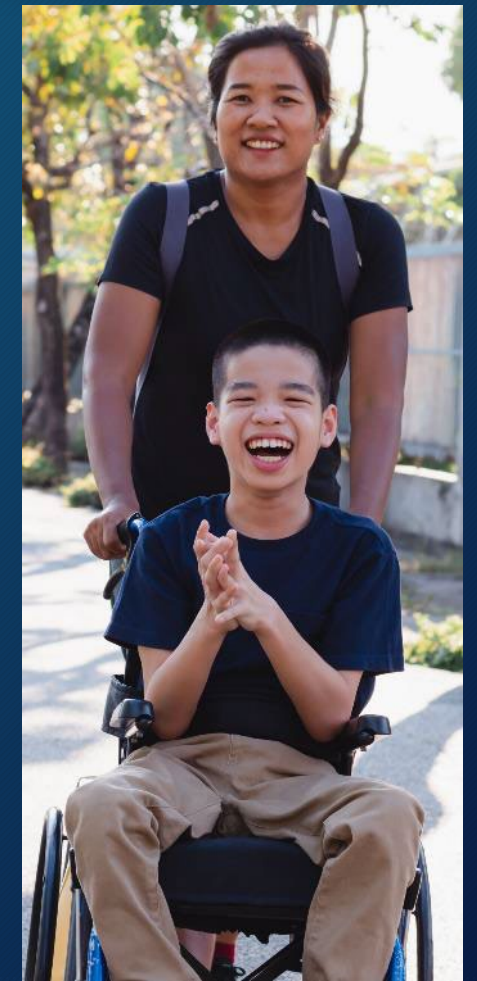


HCBS Final Rule Compliance: Moving Forward

Hawaii DOH, Developmental Disabilities Division Webinar
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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



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

Compliance Activities

Rule in effect as of March 2023

Provider Agencies and Individual Settings are still working together to address Plans of Correction

Participant Rights

Providers and Caregivers should NOT be restricting individual rights without an ISP Modification based on Health and Safety Needs

Ongoing Oversight

Participant experience interviews with Case Managers

Annual provider monitoring, including evidence updates

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

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.

The Hawai'i DOH-DDD policy is available here:

<https://health.hawaii.gov/ddd/files/2022/09/DD-Policy-02.06-HCBS-Rights-Modifications.pdf>



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)



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.



Example: 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



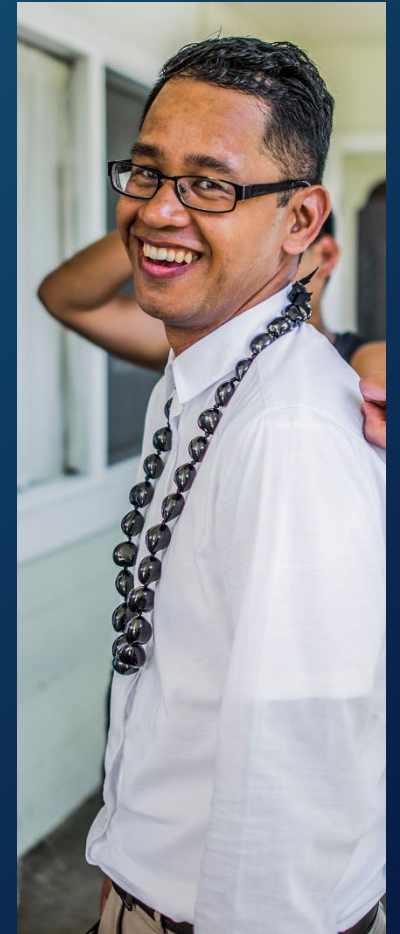
The Settings Rule is for EVERYONE



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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What do I do if my setting is not compliant?

Participants and Families who have concerns about HCBS Compliance can:

- Try to resolve the issue directly with your provider/caregiver
- Contact your DDD case manager
- File a formal complaint about your services with the DDD Consumer Grievance Resolution Unit,
doh.dddccru@doh.hawaii.gov

For more information, please visit

<https://health.hawaii.gov/ddd/participants-families/file-a-grievance/>

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

Mahalo! Thank you!!