WISCONSIN DEPARTMENT of HEALTH SERVICES

Home and Community Based Services (HCBS) Settings Rule Modifications: Residential Provider Support Tool for Family Care and Family Care Partnership Members

Table of Contents

Purpose

This resource is intended to assist residential providers (adult family homes (AFHs), community-based residential facilities (CBRFs), and residential care apartment complexes (RCACs)) supporting residents (a.k.a. members) enrolled in the Family Care and Family Care Partnership programs in ensuring compliance with HCBS settings rule requirements.

- ✓ Family Care and Family Care Partnership are HCBS waiver programs.
- ✓ HCBS waiver programs allow individuals who are functionally and financially eligible to receive services in their own home or community, rather than in institutions or other isolated settings.
- ✓ Modifying the rights of anyone is a matter to be taken very seriously and to be well-thought through with all alternatives being explored before arriving at the decision to modify a person's rights.

Instructions

Each section corresponds to one of six HCBS setting rules for which a modification may be applied when appropriate. Under each rule, guidance is provided to explain the requirement, outline questions providers should consider, and identify common interventions that may indicate a rule is being modified and that a formal HCBS rule modification may be required. **This is not an all-inclusive list.** If a modification is being considered, the resource includes a dedicated section outlining next steps, documentation requirements, final steps, and a workflow summary.

*If the home is certified as a 1-2 bed AFH, any modification marked with an (*) will require both an **HCBS rule modification** and an **MCO (**managed care organization) **Exception Request.** The MCO Exception Request is processed through the MCO and submitted by the MCO to obtain approval from DHS. For questions related to the MCO Exception Request, contact your certification point of contact from the MCO and review the Wisconsin Medicaid Standards for Certified 1-2 Bed Adult Family Homes, P-00638 (PDF) (dhs.wi.gov/publications/p0/p00638.pdf).

Additional documentation may be required, such as in a provider's Behavior Support Plan (BSP) or Client Rights Limitation or Denial (CRLD) documentation; however, modification documentation is also required. Modifications that may also require CRLD documentation are noted below as "CRLD may also be required."

Compliance Requirements

This document serves as a resource and support tool only. It is not an all-inclusive summary of HCBS setting rule requirements for residential providers. Providers are encouraged to work closely with a member's MCO care team and utilize the DHS resources below to ensure compliance.

- HCBS Settings Rule Homepage (dhs.wi.gov/hcbs/index.htm)
- HCBS Settings Rule: Compliance for Residential Service Providers (dhs.wi.gov/hcbs/residential.htm)
- HCBS Settings Rule: Supporting Your Independence–Residential, P-03677 (PDF) (dhs.wi.gov/publications/p03677.pdf)
- HCBS Settings Rule: Benchmark Guide for Adult Residential Settings: Licensed CBRFs, Licensed 3-4 bed AFHs, and Certified RCACs, P-02207 (PDF) (dhs.wi.gov/publications/p02207.pdf)
- HCBS Settings Rule Benchmarks: Heightened Scrutiny for Nonresidential Providers and 1-2 bed AFHs, P-03629 (PDF) (dhs.wi.gov/publications/p03629.pdf)

The HCBS settings rule also pertains to adult day services settings, adult day care centers, prevocational settings, group supported employment settings, and children's day services settings. Information regarding these settings can be found using the links below:

- HCBS Settings Rule: Compliance for Nonresidential Services Providers (dhs.wi.gov/hcbs/nonresidential.htm)
- HCBS Settings Rule: Supporting Your Independence–Nonresidential, P-03678 (PDF) (dhs.wi.gov/publications/p03678.pdf)

Rule #1–Each individual has privacy in their sleeping and living units.

What This Means for You (the Provider)

- ✓ Staff must knock and receive permission prior to entering the member's private living unit (RCAC = member's apartment, CBRF or AFH = member's bedroom).
  - ➢ An exception may be made during an emergency. "Emergency" means there is reason to believe there is an immediate threat to the health and safety of the member. In an emergency, staff may enter without permission to check on a member's safety and assist the member in resolving the emergency.
  - ➢ Non-emergency exceptions must be individualized and must follow the HCBS settings rule modification process.
- ✓ Settings cannot have setting-wide restrictions related to the right to privacy, such as:
  - ➢ Staff complete safety checks at regular intervals (every half-hour, hour, two hours, etc.) without knocking and receiving permission to enter the member's room.
  - ➢ Staff complete overnight safety checks.
  - ➢ Providing line of sight supervision where a member cannot choose to have privacy in their living unit (without staff knocking and receiving permission).
- ✓ Any restrictions must be individualized and follow the HCBS settings rule modification process, including obtaining informed consent from the individual or their legal decision maker.

Questions to Consider

- Does the member have privacy in their bedroom (for CBRFs and AFHs) or living unit (for RCACs)?
- Do staff knock and receive permission prior to entering the member's bedroom (for CBRFs and AFHs) or private living unit (for RCACs)?

Common Interventions Checklist Are any of the following interventions currently in place (indicating a modification is already in use) or are they being considered for use? If you check any boxes below, it means you are already using an HCBS settings rule modification or are considering using it. **You must stop using it until the modification process is complete and the member or their legal decision has given informed consent.**

☐ *Regular bed or safety checks.

☐ A member is not allowed to keep their bedroom door closed.

☐ *Staff do not knock and do not ask for permission to enter a member's bedroom (for CBRFs and AFHs) or apartment unit (for RCACs).

☐ A member does not have privacy when receiving personal care. CRLD may also be required.

☐ Audio monitoring of a member (like a home intercom or baby monitor).

☐ Facility-wide or individual bedroom searches.

☐ *Bedroom door is replaced with any other structure (like curtains, baby gates, other "door" types, etc.)

☐ *Camera(s) in the bedroom, bathroom, or common areas such as the living and dining areas (**heavily restricted**).

☐ Supervision that is line-of-sight (1:1, dedicated staffing, etc.) where a member cannot choose to have privacy in their living unit.

☐ Member(s) is not given privacy when communicating with others, whether via phone calls, video calls, messages, mail, email, etc.

Rule #2–Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.

What This Means for You (the Provider):

- ✓ Member rooms must have lockable key entry to their living unit. In CBRF and AFHs, a member's bedroom is considered their living unit. In RCACs, a member's apartment is considered their living unit.
  - ➢ Every member's living unit's door must have a keyed lock and every member must be offered a key to their living unit.
  - ➢ Lockable entries must lock from the inside of the room, must unlock from the outside with a key, and each member's room door must be keyed differently. **Push-pin locks are not acceptable.**
  - ➢ Members can choose (without an HCBS settings rule modification) not to accept a key and choose to not lock their doors. This choice does not remove the setting's responsibility to document the decision, provide locks on the doors, and provide the key to the door if a member wants it later.
  - ➢ The lock can only be deactivated or accessed if there is an emergency or if there is an assessed need and the need is documented as an HCBS settings rule modification, including the member's consent.
  - ➢ *Best practice:* For members with an HCBS settings rule modification, discuss a plan for the setting to keep a key in a safe place and lock and unlock the door for the member.
- ✓ Any restrictions or modifications to a rule must be individualized and follow the HCBS settings rule modification process **prior** to implementing the modification. This includes obtaining informed consent from a member or their legal decision maker.

Questions to Consider

- For members residing in a CBRF or AFH: Does the member's bedroom door have a lockable key entry (must lock and unlock from the inside of the room, must lock and unlock from the outside with a key, with each door being keyed differently) and does the member have a key to the lock?
- For members residing in an RCAC: Does the member's apartment door have a lockable key entry (must lock and unlock from the inside of the room, must lock and unlock from the outside with a key, with each door being keyed differently) and does the member have a key to the lock?
- Do only appropriate staff have keys to the lock for the member's bedroom door (CBRFs and AFHs) or apartment door (RCACs)?

Common Interventions Checklist Are any of the following interventions currently in place (indicating a modification is already in use) or are they being considered for use? If you check any boxes below, it means you are already using an HCBS settings rule modification or are considering using it. **You must stop using it until the modification process is complete and the member or their legal decision has given informed consent.**

☐ Push-pin locks are being used (not permitted).

☐ *Locks are present, but the member does not have the key.

☐ *No locks on living unit doors.

☐ *Bedroom door is replaced with another structure (like curtains, baby gates, other "door" types).

Rule #3–Individuals sharing units have a choice of roommates in the setting.

What This Means for You (the Provider):

- ✓ Members can provide input and participate in the choice of their roommate. Note: If a setting only has private rooms, this item is not applicable.
- ✓ A modification is required if a member cannot participate in choosing their roommate or if they are restricted from residing with a certain person. Note: The other person must also agree to share the room. If the other person does not want to share a room, this is not an HCBS settings rule modification.
- ✓ Any restrictions must be individualized and follow the HCBS settings rule modification process, including obtaining informed consent.

Questions to Consider

- Does the member have a roommate (an individual they share a bedroom or sleeping unit with)?
- If the member has a roommate, was the member able to participate in choosing their roommate?
- If the member has a roommate, are they satisfied with the roommate?
- If the member was assigned to a roommate at admission due to bed availability or other residents declining to move, did the member agree to this arrangement, and is the setting aware that the member must be offered the option to change rooms or roommates when a bed becomes available, with the agreement of affected residents?

Common Interventions Checklist Are any of the following interventions currently in place (indicating a modification is already in use) or are they being considered for use? If you check any boxes below, it means you are already using an HCBS settings rule modification or are considering using it. **You must stop using it until the modification process is complete and the member or their legal decision has given informed consent.**

☐ Member(s) cannot or are not allowed to participate in choosing their roommate.

☐ A member was not involved in choosing their roommate.

☐ A member is not offered the option to change rooms or roommates when a bed becomes available (if they were admitted without a choice due to limited bed availability).

☐ A member is restricted from residing with a certain person.

☐ A member is not currently satisfied with their roommate.

Rule #4–Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement

What This Means for You (the Provider):

- ✓ Members are given freedom to decorate their room within the bounds of the lease or rental agreement. The lease or service agreement cannot fully restrict the member's right to furnish and decorate their bedroom.
- ✓ Any restrictions must be individualized and follow the HCBS settings rule modification process, including obtaining informed consent.

Questions to Consider

- Are there any limitations on a member's ability to decorate their bedroom or sleeping unit?
- Are there any items the member is not allowed to have in their bedroom or sleeping unit?
- Does the member have any limitations to how they want to decorate their home or living unit?
- Are there any items the member is not allowed to have in their home or living unit?

Common Interventions Checklist Are any of the following interventions currently in place (indicating a modification is already in use) or are they being considered for use? If you check any boxes below, it means you are already using an HCBS settings rule modification or are considering using it. **You must stop using it until the modification process is complete and the member or their legal decision has given informed consent.**

☐ *Personal possessions have been removed (like sharps, breakable glass, ropes or cords, cleaners or chemicals, hygiene items, items that could be used as a weapon, clothing, etc.). CRLD may also be required.

☐ *Plexiglass on bedroom windows, throughout the home, covering TVs, etc.

☐ *Mattress on the floor or bed modified to limit ability to crawl underneath it, prevent the member from transferring out independently, or to prevent falls.

☐ *Weighted furniture or furniture that is bolted down.

Rule #5–Individuals have the freedom and support to control their own schedules and activities (part one) and have access to food at any time (part two).

Rule #5–Part One

What This Means for You (the Provider):

✓ The setting allows members to choose and control their schedule and activities, including:
  - When they wake up, eat, and go to bed. Members are not required to mirror the setting's schedule.
  - When they leave and return to the setting. The setting will accommodate scheduled and unscheduled activities and will not impose a setting-wide curfew.
  - When and for how long members access personal electronic devices including computers, tablets, cell phones, and other personal communication devices.
  - Who a member interacts with and for how long. Members may spend as much of their free time as they like with whomever they choose.
  - Community-based and setting-based options for where services and activities take place.
  - **(1-2 bed AFH only):** An immediate and independent access method of entrance to the home.
  - The setting cannot have setting-wide restrictions or "house rules" limiting a member's ability to control their own schedule and activities.
  - This is a broad category that can encompass any type of activity the person may engage in (in the setting or community).

✓ Any restrictions must be individualized and follow the HCBS settings rule modification process, including obtaining informed consent.

Questions to Consider

- Does the member have any limitations to their right to control their schedule and activities?

- Does the main entrance door to the home have a locking system **and** does the member have a key, key fob, access code, etc., to the locking system?
- Do only appropriate staff have a key, key FOB, access code, etc., to the locking system on the member's bedroom or living unit?

Common Interventions Checklist Are any of the following interventions currently in place (indicating a modification is already in use) or are they being considered for use? If you check any boxes below, it means you are already using an HCBS settings rule modification or are considering using it. **You must stop using it until the modification process is complete and the member or their legal decision has given informed consent.**

☐ Home schedule or house rules limit a member's ability to control their own schedule and activities.
☐ A member is woken at a certain time for meals or medications.
☐ A member needs to wake up or go to bed at scheduled times. A member cannot choose to sleep in.
☐ A member does not have an immediate and independent access method to the entrance of the home **(1–2 bed AFH only).**
☐ *A member does not have a key, key fob, access code, etc., that allows them to utilize the main entrance door.
☐ A member must ask staff to buzz or unlock the door for them to leave the facility. (They cannot leave independently).
☐ There is a bell or alarm on doors that are intended to deter the member from leaving.
☐ A member has a curfew for when they need to arrive back at the facility.
☐ A member is not provided with transportation for community integration, or the facility does not have a process for staff to assist the member to set-up transportation.
☐ There is a smoking or vaping schedule.
☐ Rules about when and how long the member can use their personal electronic devices (like computers, tablets, cell phones, other personal communication devices). CRLD may also be required.
☐ A member is not included in their own schedule planning.
☐ A member is required to follow a schedule for days they complete specific ADLs and IADLs (for example, Monday is shower day).
☐ Rules about who a member interacts with, where they can interact, and for how long.
☐ A member is not allowed to leave the home independently and return when they want.
☐ Any type of locking system that provides locked or delayed egress is being used.
☐ A member must use a buzzer system to re-enter the home where staff must respond and allow them to enter.
☐ Wander-guard type systems are being used (alarms when a member is near to an exit).
☐ Services and activities only occur at the setting vs. opportunities to engage in services and activities in the community.
☐ The setting will not accommodate unscheduled activities.
☐ Any limitations to a member's access to the setting's Wi-Fi.
☐ A member is not asked if they are interested in competitive integrated employment (CIE) or provided access, if they are interested.

Rule #5–Part Two

What This Means for You (the Provider):

- ✓ The setting allows members access to food provided by the facility at any time, including:
  - ➢ Setting provides members with access to food and drink at any time and ensures a dignified, age-appropriate dining experience.
  - ➢ This includes in what order the food is eaten, the pace it is eaten, and refusal to eat certain foods.
  - ➢ This also includes there being no restrictions on the type or frequency of food or drink (including alcohol) consumed by the member unless an HCBS settings rule modification process is followed.
  - ➢ There are no restrictions on when and where members can eat, including an option to eat in their room.
  - ➢ Note: DQA-regulated settings must also follow DQA's restrictive measure procedure if limiting access to food.
- ✓ Any restrictions must be individualized and follow the HCBS settings rule modification process, including obtaining informed consent.

Questions to Consider

Does the member have access to food and drink provided by the facility at any time?

Common Interventions Checklist Are any of the following interventions currently in place (indicating a modification is already in use) or are they being considered for use? If you check any boxes below, it means you are already using an HCBS settings rule modification or are considering using it. **You must stop using it until the modification process is complete and the member or their legal decision has given informed consent.**

- ☐ A member is not given full access to the kitchen and dining area.
- ☐ A member is not included in menu and snack planning.
- ☐ Rules that state where the member is allowed to eat. (They cannot eat in their bedrooms, living rooms, etc.)
- ☐ Restrictions on any type or amount of food and drink, even if ordered by a doctor. A medical order to avoid "unhealthy" foods like high calories, sugar, fat is not sufficient to limit access.
- ☐ Kitchen cabinets and/or pantries are locked. CRLD may also be required.
- ☐ A member is only allowed to eat at the scheduled times.
- ☐ A member can only eat when supervised.
- ☐ A member is not allowed to drink alcohol, even if a doctor has provided an order stating the member is not allowed to have alcohol. (A medical order to avoid alcohol is not sufficient to limit access.)

Rule #6–Individuals are able to have visitors of their choosing at any time.

What This Means for You (the Provider):

- ✓ Members may have visitors whenever they wish, and they may meet with them in a private area.
- ✓ Settings cannot have suggested or recommended visiting hours.
- ✓ Settings cannot prohibit overnight guests in the member's bedroom.

- ✓ No guest may remain for more than two weeks without written consent of setting, which will not be unreasonably withheld.
- ✓ Any restrictions must be individualized and follow the HCBS settings rule modification process, including obtaining informed consent.

Questions to Consider
Are members aware they may have visitors whenever they wish, and they may meet with the visitors in a private area?

Common Interventions Checklist Are any of the following interventions currently in place (indicating a modification is already in use) or are they being considered for use? If you check any boxes below, it means you are already using an HCBS settings rule modification or are considering using it. **You must stop using it until the modification process is complete and the member or their legal decision has given informed consent.**

☐ Setting wide "House Rules" about visitors.
☐ The setting has suggested or recommended visiting hours. CRLD may also be required.
☐ Rules against overnight guests or limits on how many nights a guest can stay. CRLD may also be required.
☐ The home requires visitors to use a sign in and out book.
☐ Rules against unsupervised visits. CRLD may also be required.
☐ Rules against who can visit the member. CRLD may also be required.
☐ Rules about where visits can occur within the home.

Next Steps of the Modification Process

If one or more boxes in the "Common Interventions Checklist" sections of the rules above are checked, complete the following steps with the member, legal decision maker, and member's MCO care team. The MCO care team will document this information in the Member Centered Plan (MCP) and provide you (the provider) a copy. **Please ensure this copy is added to the member's chart that is always available at the residence.**

1. **Identify the specific and individualized need.** Describe the behavioral, medical, or other need. Explain how the severity of the need justifies the modification. Describe how the need impacts the health, safety, or well-being of the individual or community.
2. **Document the positive interventions and supports used prior to implementing an HCBS Setting Rule Modification**. Positive interventions and supports address and encourage positive behavior. They are not restrictive. Examples may include using positive language and praise to encourage desired behaviors, engaging the individual in meaningful activities, teaching coping skills, implementing environmental adaptations, etc. Provide timeline of when these were used and how they were not effective in meeting the need. If these have not been exhausted, use this space to develop a plan for using positive interventions and supports to meet the need.
3. **Document less intrusive methods of meeting the need that have been tried but did not work.** Less intrusive methods address and discourage challenging behavior. They include some restrictions but aim to meet a member's needs with the least number of restrictions possible. Examples may include providing the individual with choices and control, using structured routines, implementing de-escalation techniques, increasing staff presence and

observation, implementing environmental adaptations, etc. Provide timeline of when these were used and how they were not effective in meeting the need. Less intrusive methods may overlap with positive interventions and supports (described in Step 2). If these have not been exhausted, use this space to develop a plan for using less intrusive methods to meet the need.

4. **Include a clear description of the condition(s) of the HCBS settings rule modification that is directly proportionate to the specific assessed need.** Describe the modification—what is it, how will it be implemented, and who is responsible for implementing it. Ensure the modification aligns with the assessed need in Step 1.
5. **Include regular collection and review of data to measure the ongoing effectiveness of the modification.** Describe what data will be collected, when and how often it will be collected, and who is responsible for the collection of the data. Data collection will help evaluate if the modification is effective and whether it should be continued.
6. **Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.** Per the settings rule, reviews must occur at least annually; however, they typically occur at least every six months as part of the MCO's assessment, with the option to occur more frequently. During the reviews, the data collected should be assessed by the member (or legal decision maker when applicable), provider, and the MCO's care team to determine whether the modification is effective, whether it should be continued, and to incorporate the member's input regarding the modification).
7. Include an assurance that the intervention or support will cause no harm to the individual.
8. **Include the informed consent of the individual, including an attestation of which modification(s) the member agrees to and a member signature indicating informed consent to the modification.** The member (or legal decision maker when applicable) **must** consent specifically to the HCBS settings rule modification. A signature on the full MCP is not sufficient for this requirement. The member (or legal decision maker when applicable) must sign specifically indicating consent to the HCBS settings rule modification(s) in their plan.

   Reminder: Ensure the member (or legal decision maker when applicable) has signed the HCBS Settings Rules Modification section on the MCO's Service Plan (SP).

Final Steps

If the member resides in a 1-2 bed AFH, and boxes are checked with an (*), this may also require an **MCO Exception Request** if the modifications are found to be appropriate to use. **You (the provider) will need to request an exception from your certifier.**

If any modifications that include "CRLD may also be required" are checked and found to be appropriate, these modifications may also require the related documentation to be completed **in addition to** the requirements for the HCBS settings rule modifications. Rights that pertain to CRLDs include the right to:

- ✓ Make and receive phone calls.
- ✓ Privacy while using the toilet and bathing.
- ✓ Secure storage space.
- ✓ See visitors.
- ✓ Wear their own clothes and use their own belongings.

MCO Modification Workflow for Residential Providers

LDM = Legal decision maker. A legal decision maker is only applicable when one has already been established for the member.
mod = HCBS settings rule modification or modification of rights (MOR)
MCP = Member Centered Plan
SP = Service plan